

Gateway Development Commission  
Regular Meeting of the Board  
Held Virtually

July 2, 2024

MINUTES

The following Commissioners were present:

**NEW JERSEY**

Balpreet Grewal-Virk, Co-Chair  
Janine Bauer  
Amy Rosen

**NEW YORK**

Alicia Glen, Co-Chair  
Jamey Barbas  
Marie Therese Dominguez

**AMTRAK**

Anthony R. Coscia, Vice Chair

**I. Call to Order**

The public meeting was called to order by Co-Chair Glen at approximately 10:00 AM.

Co-Chair Glen advised that public comments were being solicited virtually, and audio of the meeting was being live-streamed from the Gateway Program website.

Co-Chair Glen noted that the Commission was continuing to solicit virtual comments, and that a form for soliciting these comments was posted on the Gateway website for those who wished to submit a comment for today's meeting.

Acting Secretary Caulfield conducted a roll call and confirmed that all Commissioners were present (Commissioner Dominguez having joined at approximately 10:07 AM), and there was a quorum.

Acting Secretary Caulfield stated that adequate notice of today's public meeting of the Board of Commissioners of the Commission had been provided in accordance with the Commission's enabling legislation.

**II. Report on Minutes of the May 6, 2024 Meeting**

Acting Secretary Caulfield reported that copies of the Minutes of the meeting of May 6, 2024 were delivered in electronic form by Acting Secretary Caulfield to the Governors of New York and New Jersey on May 9, 2024 and that the time for action by the Governors of New York and New Jersey expired at midnight on May 23, 2024, at which time the actions recorded in the Minutes went into full force and effect.

**III. Gateway Program Update**

The Commission's Chief Executive Officer, Kris Kolluri, provided an update on the Capital Improvement Program Full Funding Grant Agreement ("FFGA") for the Hudson Tunnel Project ("HTP") and recommended approval of the FFGA by the Board. The Commission's Chief Financial Officer, Patrick J. McCoy, summarized the Railroad Rehabilitation and Improvement Financing ("RRIF") Loan Agreements; the Continuing Covenants and Representations Agreement among USDOT, GDC, and the State of New York; each of the RRIF Direct Agreements among USDOT, GDC, NJ Transit Corporation, New Jersey Turnpike Authority, Treasurer of the State of New Jersey, and USDOT, GDC and Port Authority of New York and New Jersey; the Credit Facility Agreements between GDC and Bank of America, N.A.; the Collateral Agent Services Agreement with The Bank of New York Mellon; and the Letter of Amendment to

the Funding Agreement between GDC and the State of New York for Hudson Yards Concrete Casing - Section 3, and recommended approval of all such agreements by the Board.

Following the presentation, Co-Chair Glen thanked Mr. Kolluri and Mr. McCoy for the update, and there were no questions or comments from the Board.

**IV. Public Comments**

Co-Chair Glen announced that the Commission had solicited virtual comments from the public in advance of, and during, today’s meeting. She indicated that a form for soliciting these comments was posted to the Gateway Program website and was available throughout today’s meeting.

There were three (3) written comments received by 5:00 PM on July 1, 2024:

<b>Commenter</b>	<b>Topic</b>
Artie Silber	Operating Service on the Northeast Rail Corridor
Lishawn Alexander, Lishawn Consulting	Board Meeting
Sophie Cappello, Regional Plan Association	Hudson Tunnel Project

Co-Chair Glen noted that all written comments received by 5:00 p.m. on July 1, 2024 before the meeting were distributed to the Board, posted on the Gateway Program website, and would be filed in the Commission’s records after the meeting. Gateway did not receive any additional written comments on the day of the Board Meeting.

Before action items, Commissioner Grewal-Virk recognized and expressed appreciation to GDC staff and partners for the achievement. Commissioner Rosen provided an update on behalf of the Governance Committee regarding the search for Officer positions, including Inspector General.

**V. Action Items**

**Item #0724-01:** Item #0724-01: Authorization to Enter Into, Execute, and Amend Full Federal Funding Grant Agreement with the United States Department of Transportation, Federal Transit Administration, and Adopt Initial Project Budget and Executive Project Schedule

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Commissioner Rosen made a motion, and Co-Chair Grewal-Virk seconded the motion. The roll call vote is referenced in the attached Resolution.

**Item #0724-02:** Authorization to Enter into, Execute, and Amend RRIF Loan Agreements and Related RRIF Notes Between the Gateway Development Commission (GDC) and the United States Department of Transportation (USDOT) and RRIF Direct Agreements among USDOT, GDC, the Treasurer of the State of New Jersey, New Jersey Turnpike Authority, New Jersey Transit Corporation, Port Authority of New York and New Jersey, and the State of New York, and Amendment to RRIF Local Funding Agreement with PANYNJ

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Co-Chair Grewal-Virk made a motion, and Commissioner Barbas seconded the motion. The roll call vote is referenced in the attached Resolution.

**Item #0724-03:** Authorization to Enter into, Execute, and Amend Credit Facility Agreements with Bank of America, N.A. and Delegate Authority to Chief Executive Officer in Connection with the Establishment of a Credit Facility on Behalf of the Gateway Development Commission

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Commissioner Bauer made a motion, and Co-Chair Glen seconded the motion. The roll call vote is referenced in the attached Resolution.

**Item #0724-04:** Authorization to Enter into, Execute, and Amend Collateral Accounts and Security Agreement with The Bank of New York Mellon and Delegate Authority to Chief Executive Officer in Connection therewith on Behalf of the Gateway Development Commission

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Commissioner Rosen made a motion, and Commissioner Bauer seconded the motion. The roll call vote is referenced in the attached Resolution.

**Item #0724-05:** Authorization to Amend Funding Agreement with the State of New York for Hudson Yards Concrete Casing – Section 3

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Commissioner Dominguez made a motion, and Commissioner Barbas seconded the motion. The roll call vote is referenced in the attached Resolution.

**VI. Adjournment**

Co-Chair Glen noted that there was no further business to conduct, and then motioned to adjourn the meeting. Upon the motion being duly made by Co-Chair Glen and seconded by Co-Chair Grewal-Virk the meeting was adjourned at approximately 10:30 AM.

Respectfully submitted,

/s/ Edmund Caulfield  
Edmund Caulfield, Acting Secretary

**#0724-01: AUTHORIZATION TO ENTER INTO, EXECUTE, AND AMEND FULL FEDERAL FUNDING GRANT AGREEMENT WITH THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL TRANSIT ADMINISTRATION, AND ADOPT INITIAL PROJECT BUDGET AND EXECUTIVE PROJECT SCHEDULE**

To help ensure the functionality of intercity and commuter rail infrastructure between New Jersey and New York and throughout the Northeast Corridor, the State of New Jersey ("**New Jersey**") and the State of New York ("**New York**") created the Gateway Development Commission ("**GDC**") through the enactment of parallel legislation by each state codified as the Gateway Development Commission Act (2019 N.Y. Laws, Ch. 108 and N.J.S.A. 32:36-1, et seq.) (collectively, the "**GDC Act**").

The GDC Act empowers GDC to "enter into, execute and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power of the Commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, with any local government thereof, with any agency, instrumentality, department, commission or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them." 2019 N.Y. Laws, Ch. 108, Section 2(7)(e); N.J.S.A. 32:36-8(e).

By Resolution #0922-01, the Board authorized GDC to assume the role of NEPA Project Sponsor and federal grant recipient for the Hudson Tunnel Project ("**HTP**") from the Port Authority of New York and New Jersey.

GDC has been informed that the United States Department of Transportation ("**USDOT**"), through the Federal Transit Administration ("**FTA**"), has authorized GDC to receive a Capital Investment Grant ("**CIG**") in the maximum amount of \$6,880,000,000 to be used for payment of HTP project costs. Relevant terms and conditions pertaining to the CIG will be memorialized in a Full Funding Grant Agreement to be entered into between the FTA and GDC (the "**FFGA**"). Such terms and conditions include the submission of detailed budget and schedule information.

Pursuant to Articles 9.01(a) and 5.01(a), respectively, of the Project Development Agreement among GDC, the National Railroad Passenger Corporation ("**Amtrak**"), the State of New York and the State of New Jersey executed on February 3, 2023, as amended by a First Amendment dated May 24, 2023, and a Second Amendment dated March 5, 2024 ("**PDA**"), GDC is required to prepare an initial Project Budget and Executive Project Schedule in conformance with applicable requirements under federal grant agreements, including the FFGA. The initial Project Budget and Executive Project Schedule will be consistent with the budget and schedule information submitted to USDOT, and the updates to these documents, as required by the PDA, will also be consistent with the ongoing reporting that GDC will submit to USDOT during the course of the HTP.



Adopted - 7/2/24

Section 3.06 of the GDC Bylaws provides that “[t]he Board may delegate in whole or in part any power, authority, discretion or obligation to any Officer, in each case to the extent to which the Board deems appropriate.”

In order to enable the efficient and timely effectuation of the Gateway Program, and in particular the HTP, it is necessary to delegate to the Chief Executive Officer the authority to take categories of actions in addition to those delegated in the Bylaws.

Pursuant to the foregoing report, the following resolution was adopted, with Co-Chair Glen, Co-Chair Grewal-Virk, Vice Chair Coscia, Commissioner Barbas, Commissioner Bauer, Commissioner Rosen and Commissioner Dominguez voting in favor:

**RESOLVED**, that the GDC Chief Executive Officer is authorized on behalf of GDC to enter into the FFGA in a form substantially consistent with that attached hereto as Exhibit A.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions consistent with this Resolution, and is directed to finalize the terms of the FFGA and make, execute, and deliver in the name of and on behalf of GDC the FFGA once finalized, and to take all other steps necessary to comply with the terms and conditions of the FFGA once executed.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions to make, execute, and deliver in the name of and on behalf of GDC amendments to the FFGA as may be necessary or required for the delivery of the HTP, subject to the concurrence of the National Railroad Passenger Corporation, Port Authority of New York and New Jersey, NJ Transit Corporation, New Jersey Turnpike Authority, the Treasurer of the State of New Jersey, and/or State of New York, as applicable, on the content of such amendments, and to take all other steps necessary to comply with the terms and conditions of amendments to the FFGA.

**RESOLVED**, that the GDC Chief Executive Officer, General Counsel, Chief Financial Officer, and Chief Administrative Officer are each authorized to take any and all actions consistent with the FFGA, and make, execute, and deliver in the name of and on behalf of GDC any other documents and certifications as may be necessary or required in order to achieve entry into the FFGA.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to approve, create, amend, manage, and administer, the FFGA on behalf of GDC upon such terms as the Chief Executive Officer may deem proper, and to enter into or execute any such agreements or other documents or certifications on behalf of GDC as may be necessary or required in connection with the establishment, maintenance, receipt and disbursement of funds pursuant to the FFGA.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to delegate, in writing, the authority to authorize, approve, create, amend, and manage any aspect of the FFGA and execute such documents as may be required to effectuate the FFGA to other officers or employees of GDC provided that the GDC Chief Executive Officer provides notice in writing to the Co-Chairs and Vice Chair of the Board of such delegation.

Adopted - 7/2/24

**RESOLVED**, that the GDC Chief Executive Officer or designee may enter into and execute any agreements and other documents on behalf of GDC in connection with the FFGA in their discretion.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to settle all claims by or against GDC arising out of the FFGA where the total payment or amount of the claim is not in excess of \$500,000. Claims against GDC shall include claims against individuals for which GDC would be responsible under Article VII of GDC's Bylaws ("Defense and Indemnification of Individuals") provided, however, that in the case of claims against individuals for which GDC would be responsible under said Article VII which are covered by insurance purchased by or on behalf of such individuals, GDC shall pay such claims only to the extent that they are in excess of the amount for which insurance carriers are responsible.

**RESOLVED**, that the GDC Chief Executive Officer is authorized and directed to approve the Project Budget and Executive Project Schedule prepared pursuant to Articles 9.01(a) and 5.01(a) of the PDA attached hereto as Exhibit B.

**RESOLVED**, that the GDC Chief Executive Officer is authorized and delegated authority to update the Executive Project Schedule and Project Budget, subject to the terms and conditions of the PDA.

**RESOLVED**, that the GDC Chief Executive Officer will report back to the GDC Board of Commissioners upon entry into the FFGA, and execution of all documents related thereto or any amendments thereto.

Adopted - 7/2/24

**EXHIBIT A**

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION  
WASHINGTON, D.C.**

**FULL FUNDING GRANT AGREEMENT**

**GATEWAY DEVELOPMENT COMMISSION (GDC)**

**HUDSON TUNNEL PROJECT**

NY-2024-015-00

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**UNITED STATES OF AMERICA**  
**DEPARTMENT OF TRANSPORTATION**  
**FEDERAL TRANSIT ADMINISTRATION**

**FULL FUNDING GRANT AGREEMENT**

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official signs this Full Funding Grant Agreement, the Government (FTA) has awarded Federal assistance in support of the Project described below. Upon execution of this Full Funding Grant Agreement by the Grantee named below, the Grantee affirms this Award by the Government (FTA Award), and enters into this Full Funding Grant Agreement with FTA. The following documents are incorporated by reference and made part of this Full Funding Grant Agreement:

- (1) "Federal Transit Administration Master Agreement," FTA MA (31), May 2, 2024;
- (2) The Certifications and Assurances applicable to the Project that the Grantee has selected and provided to FTA, and
- (3) Any Award notification containing special conditions or requirements, if issued.

**FTA AWARD**

The Government (FTA) hereby awards a Full Funding Grant as follows:

Project Number(s): NY-2024-015-00

Grantee: Gateway Development Commission (GDC), New York, NY

Citation of Statutes Authorizing the Project: 49 U.S.C. §§ 5309(b), 5309(d)

Estimated Net Project Cost: \$ 14,576,170,721

Maximum FTA Amount Awarded: \$6,905,000,000

Amount of This FTA Award: \$800,000,000

Maximum Federal Section 5309 Capital Investment Grant Program Financial Contribution:  
\$6,880,000,000

Maximum Percentage of FTA Participation: 47.4 percent

Maximum Percentage of Section 5309 Capital Investment Grant Program Participation: 47.2 percent.

Special Conditions: Grantee shall provide evidence to FTA, in a timely manner, of the recording of the deed referenced in Section 7.02(e) and Section 14.01(c)(ii) of the Project Development Agreement (PDA) for the Hudson Tunnel Project among the Gateway Development Commission, the State of New Jersey, the State of New York, and the National Railroad Passenger Corporation, executed on February 3, 2023 as amended by First Amendment dated May 24, 2023 and Second Amendment dated March 5, 2024. To the extent that any transfer of real property, retention of easements, or transfer of Project Improvements referenced in Section 7.02(e) and Section 14.01(c) of the PDA will occur in a manner that is inconsistent with such provisions of the PDA, Grantee shall obtain approval from FTA prior to such transfer.

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Dates of U.S. Department of Labor Certifications of Transit Employee Protective Arrangements:

Original Project or

Amendment Numbers:

NY-2024-015-00

Certification Dates:

June 10, 2024

Revenue Service Date: November 9, 2040

Project Description:

The CIG Project consists of three elements: 1) the construction of a new Hudson River Tunnel between New York and New Jersey; 2) the rehabilitation of the existing North River Tunnel under the Hudson River; and 3) Long Island Rail Road (LIRR) Emergency Services Building (ESB) Utility Relocation Early Work associated with the separately funded Hudson Yards Concrete Casing Section 3 project.

For a more detailed description, see Attachments 1 and 2.



**UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION FEDERAL  
TRANSIT ADMINISTRATION**

**FULL FUNDING GRANT AGREEMENT TERMS AND CONDITIONS**

**THIS FEDERAL TRANSIT ADMINISTRATION FULL FUNDING GRANT**

**AGREEMENT** (Agreement) is entered into by the Gateway Development Commission, New York, NY (Grantee), and the United States of America, acting through the United States Department of Transportation, Federal Transit Administration (FTA or Government).

**WHEREAS**, the Grantee and cognizant jurisdictions have determined through the local planning process that construction of the Hudson Tunnel Project (Project) will effectively and efficiently serve the transportation needs of the Northeast Corridor located between Secaucus, New Jersey and New York, New York.

**WHEREAS**, the Grantee has developed a Financial Plan, as herein defined, using a combination of local, state, and Federal funds to finance the costs of the Project and, in accordance with its plan, has requested a Grant, as herein defined, of Federal financial assistance in the Project.

**WHEREAS**, the Project is the public transportation share of a new fixed guideway capital project that will provide both public transportation and intercity passenger rail service, and the Government has determined that the net capital costs of the new fixed guideway capital project attributable to public transportation are equal to 90 percent of the overall new fixed guideway capital project based on the peak hour usage of the existing North River (Hudson) Tunnel.

**WHEREAS**, the Government has determined to enter into this Agreement and to support the net capital costs of the Project up to a Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution of \$6,880,000,000, subject to all the terms and conditions set forth in this Agreement.

**WHEREAS**, the Grantee has submitted its request for Federal assistance (the Application) and the Government has received and is relying upon the Grantee's assurances, certifications, and all other documents required as conditions precedent to a grant of assistance by the Government for the Project; and, in its submissions, the Grantee has demonstrated justification for the Project, has demonstrated its financial, organizational, legal, and technical capacity as is necessary to complete the Project within the maximum amount of Federal assistance set forth in this Agreement, and has demonstrated the capability to secure non-Federal funds as may be necessary for such completion.

**WHEREAS**, the Government has determined that the Project is justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, land use, economic development effects, and congestion relief; and the Project is supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain, and operate the Project.

**WHEREAS**, a Project Development Agreement among the Grantee, the State of New Jersey, the State of New York, and the National Railroad Passenger Corporation (Amtrak), dated February 3, 2023 as amended by First Amendment dated May 24, 2023 and Second Amendment dated March 5, 2024, establishes the conditions upon which the Project will be completed, and post-construction responsibilities of GDC and the other parties to the agreement, including operation and maintenance of the Project.

**WHEREAS**, the Government and the Grantee have agreed that their respective duties and responsibilities as related to the completion of the Project shall be determined by and under the terms and conditions of this Agreement and have agreed that this Agreement shall be recognized as the sole understanding between the Government and the Grantee in consideration of the mutual promises as set forth in this Agreement.

**THEREFORE**, in consideration of the above and the parties' mutual promises as set forth in this Federal Transit Administration Full Funding Grant Agreement, the Grantee and the Government agree to the specific terms, conditions and provisions set forth in this entire Agreement including, in particular, the specific terms of the following Sections and Attachments:

DRAFT

## SECTION 1. DEFINITIONS

**“Agreement”** means this Federal Transit Administration Full Funding Grant Agreement (FFGA) and consists of all parts and documents listed in Section 20 of this Agreement, “Contents of Agreement,” and will include all future addenda, substitutions, modifications, and amendments as and when legally executed and effective. (This definition supersedes the definition of “Grant Agreement” set forth in Section 2(a) of the Federal Transit Administration Master Agreement (Master Agreement), incorporated by reference and made part of this Agreement).

**“Application”** means those documents and written submissions filed by or on behalf of the Grantee pursuant to its request for Federal financial assistance for support of the Project and relied upon by the Government as satisfaction of the legal and policy requirements of the Grant award. The Application includes all explanatory, supporting, or supplementary documents related to the Project that the Government relied upon in its determination to obligate and award Federal funds for the Project. (This definition is intended to supplement the definition “Application” set forth in Section 2(a) of the Master Agreement, incorporated by reference and made part of this Agreement.)

**“Baseline Cost Estimate”** means the Application document described in Section 13 of this Agreement and set forth in the Tables that comprise Attachment 3. The requirements of the Baseline Cost Estimate are set forth in FTA Circular 5200.1A, “Full Funding Grant Agreements Guidance,” as may be revised from time to time. The Baseline Cost Estimate reflects the total anticipated cost of the Project as of the Date of this Agreement.

**“Complete the Project”** means to accomplish all of the scope and activities of the Project as described in Attachment 1, “Scope of the Project,” and Attachment 2, “Project Description.”

**“Date of this Agreement”** means the date the Government awards this Full Funding Grant Agreement.

**“Estimated Net Project Cost”** means the amount that is calculated by subtracting the cost that can reasonably be financed from the Grantee’s revenue from the total anticipated cost of the Project as reflected in the “Baseline Cost Estimate,” Attachment 3. The Estimated Net Project Cost is set forth in Section 7 of this Agreement.

**“Financial Plan”** means the plan accepted by the Government as part of the Application process describing the Grantee's financial condition and capability to complete the Project and NJ Transit's financial condition and capability to maintain and operate commuter rail public transportation on the Project together with its existing system. It includes all explanatory, supporting and supplementary documents, commitments, and agreements accepted or approved by the Government.

**“Government”** means the United States of America, acting through the Federal Transit Administration of the United States Department of Transportation.

**“Grantee”** means the Gateway Development Commission, New York, NY (GDC).

**“Grant(s)”** means, in singular and plural forms, the obligation and award of Federal financial assistance by the Government pursuant to the laws codified at 49 U.S.C. Chapter 53.

**“Levels of Service”** means the hours of service and the service headways set forth in Attachment 1, “Scope of the Project.”

**“Local Share”** means that portion of the Grantee’s local financial commitment that is the Grantee’s legally required share of the Net Project Cost.

**“Master Agreement”** means the standard terms and conditions applicable to recipients of Federal financial assistance from the Government. It is updated and published annually. It is incorporated by reference and made part of this Agreement and identified in Federal Fiscal Year 2024 by FTA Form MA (31) (May 2, 2024).

**“Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution”** means the limit of Federal Section 5309 Capital Investment Grants Program financial participation in the Project. (The amount of the “Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution” is set forth in Section 8 of this Agreement, “Limitations of the Federal Funding Commitment,” and is only a portion of the total Federal financial contribution for the Project.)

**“Maximum FTA Amount Awarded”** means the total amount of Federal funds from all sources administered by FTA and awarded for the Project, regardless of source, and available to the Grantee. (This amount is set forth in the first page of this Agreement.)

**“Net Project Cost”** means the cost of the Project that cannot reasonably be financed from the Grantee’s revenues.

**“Project”** means the public transportation improvements the Grantee has promised to implement as a condition of its Full Funding Grant. A description of the Project is set forth in Attachment 1, “Scope of the Project.” Activities to carry out the project scope are set forth in Attachment 2, “Project Description.”

**“Project Cost”** means all costs eligible for Federal financial participation under the terms of this Agreement and consistent with the cost principles set forth in Section 7 of the Master Agreement, “Payments to the Recipient.”

**“Project Development Agreement”** means the agreement for the Hudson Tunnel Project among the Gateway Development Commission, the State of New Jersey, the State of New York, and the National Railroad Passenger Corporation (Amtrak), executed on February 3, 2023 as amended by First Amendment dated May 24, 2023 and Second Amendment dated March 5, 2024 and as subsequently amended from time to time. The Project Development Agreement is incorporated by reference and made part of this Agreement.

**“Recovery Plan”** means a plan developed by the Grantee, and accepted by the Government, whereby the Grantee will take every reasonable measure to minimize any delay in achieving the baseline schedule set forth in Attachment 4 to this Agreement (the Baseline Schedule) and



eliminate or otherwise mitigate (recover) any increase in the total Project costs as currently estimated, as compared to the total Project cost identified in Attachment 3 to this Agreement (the Baseline Cost Estimate).

**“Revenue Service Date”** means the date certain upon which NJ Transit or any successor transit agency, commences revenue operations of the full Project as defined in Section 5 of this Agreement.

## **SECTION 2. PURPOSES OF AGREEMENT**

Pursuant to 49 U.S.C. § 5309, the purposes of this Agreement are to:

- (a) provide Federal financial assistance to the Grantee in the form of this Full Funding Grant and possible future awards of financial assistance as contemplated under this Agreement, not to exceed the Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution for the Project, as is and may be awarded under this Agreement and the laws codified at 49 U.S.C. Chapter 53 for purposes that are consistent with those statutes, implementing regulations, and other applicable laws and regulations;
- (b) describe the Project and set forth the mutual understandings, terms, conditions, rights, and obligations of the parties related to implementing the Project, the future management and operation of the Project, and the manner in which Project real property and equipment will be used;
- (c) establish the Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution for the Project, and the manner in which all future Federal funds for the Project, if any, will be awarded and released to the Grantee;
- (d) establish the Grantee's financial commitment to the Project, including its obligation to fund the Local Share, its obligation to Complete the Project with a specified amount of Federal assistance, its obligation to ensure the Project achieves revenue operation by NJ Transit, or a successor transit agency, by a specified date, its obligation to pay all costs necessary to Complete the Project that are in excess of the Estimated Net Project Cost, its obligation to ensure the funding of future maintenance and operational costs of the Project, consistent with the terms of the Project Development Agreement; and
- (e) facilitate timely and efficient management of the Project.

## **SECTION 3. PREVIOUS FEDERAL DOCUMENTS AND GRANTS**

(a) Federal law, procedure, and policy require the completion of a project development process and environmental review prior to the Award and Execution of this Agreement. Prior Grants of Federal assistance awarded by the Government for this project development process are described in Attachment 5 to this Agreement. These Grants (and any other previous documents identified in Attachment 5, including Letters of No Prejudice) are incorporated by reference and made part of this Agreement, except for the terms and conditions thereof specifically superseded by this Agreement. Further, in executing this Agreement, the Grantee assures the Government that the

Certifications and Assurances (made by the Grantee, or on behalf of the Grantee by a third party), upon which the Government relied in these prior actions were made in good faith and to the best of the Grantee's knowledge and belief, and that the Grantee has no present knowledge of facts or circumstances substantially affecting the continued validity of these Certifications and Assurances that the Grantee has not formally conveyed to the Government prior to the Government's Award of funding set forth in this Agreement.

(b) This Agreement does not discharge or rescind any of the terms, conditions, or obligations established under the documents set forth in Attachment 5 unless specifically stated otherwise herein. Furthermore, the terms, conditions, and obligations of this Agreement take precedence over the provisions of all prior agreements between the Grantee and the Government related to the Project and will be controlling for all actions related to the Project taken after the Date of this Agreement unless specifically stated otherwise herein.

(c) No amendments will be sought or approved to increase the amount of funds in the prior Grants listed in Attachment 5 beyond the amounts described in this Agreement as available to the Project.

#### **SECTION 4. OBLIGATION TO COMPLETE THE PROJECT**

(a) The Government has no obligation to provide any financial assistance for the Project beyond the Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution. If the total Federal funding provided under Section 8 of this Agreement, "Limitations of the Federal Funding Commitment," is insufficient to undertake the activities necessary to Complete the Project and for NJ Transit, or a successor transit agency, to begin revenue operations, the Grantee agrees to Complete the Project and accepts sole responsibility for the payment of any additional costs (overruns).

(b) If at any time during its efforts to Complete the Project the Grantee determines that the total Project Cost will exceed the Baseline Cost Estimate, the Grantee must immediately notify the Government of the amount of the difference and the reasons for the difference. Further, the Grantee must provide the Government with a Recovery Plan that demonstrates the Grantee is taking and will take every reasonable measure to eliminate [recover] the difference between the total project cost and the Baseline Cost Estimate. Insofar as any difference between the total project cost and the Baseline Cost Estimate cannot be eliminated [recovered], the Grantee must secure and provide such additional resources as are necessary to meet the additional costs and expeditiously Complete the Project without further financial assistance from the Federal Section 5309 Capital Investment Grants Program. Further, in its Recovery Plan, the Grantee must identify the sources of funds it will draw upon to meet the additional costs and cover the difference between the total Project Cost and the Baseline Cost Estimate.

#### **SECTION 5. REVENUE SERVICE DATE AND LEVELS OF SERVICE**

(a) The Grantee agrees and promises to ensure the Project achieves revenue operations on or before November 9, 2040, (the Revenue Service Date), in accordance with the terms and conditions of this Agreement.

(b) The Revenue Service Date is a significant term of this Agreement. The Grantee's failure to ensure the Project meets the Revenue Service Date will constitute a breach of this Agreement. Upon the Grantee's request, the Government may determine, at its sole discretion, to waive a breach or an anticipatory breach of this Agreement and to extend the Revenue Service Date if there is an unavoidable delay in achieving the operational goals of the Project resulting from an event or circumstance beyond the control of the Grantee, or if the Government determines that allowing the delay is in the best interest of the Government and the success of the Project. Requests by the Grantee for waiver of a breach or anticipatory breach of this Agreement and extension of the Revenue Service Date for the reasons set forth herein shall be submitted promptly (with appropriate documentation) to the Government. In the exercise of its discretion to waive the breach and extend the Revenue Service Date, the Government will take into consideration the actions and measures taken by the Grantee to ensure adherence to its promise to achieve the operational goals of the Project on or before the scheduled Revenue Service Date.

(c) Delays in appropriations of funds from Congress shall not constitute a basis for extension of the Revenue Service Date.

(d) The Government's consent to extend the Revenue Service Date pursuant to Paragraph (b) of this Section 5 does not constitute a basis for additional Federal financial assistance beyond the Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution.

(e) Set forth in Attachment 1 to this Agreement, "Scope of Project," are the hours of service and headways the Grantee will ensure NJ Transit maintains (or a successor transit agency) once the Project is opened to revenue service and for no less than five years thereafter. These specified Levels of Service are a significant term of this Agreement. The Grantee's failure to ensure NJ Transit, or a successor transit agency, achieves and maintains these Levels of Service at the Revenue Service Date and for five years thereafter will constitute a breach of this Agreement. Upon the Grantee's request, the Government may determine in its sole discretion to waive a breach of the Grantee's obligation to maintain these specified Levels of Service for events or circumstances beyond the control of the Grantee, or if the Government determines that a waiver is in the interests of the United States. In the exercise of its discretion whether to waive a breach of the specified Levels of Service, the Government will take into consideration the actions and measures taken by the Grantee to ensure NJ Transit, or a successor transit agency, achieved and maintained the operational goals of the Project and NJ Transit's entire public transportation system for at least five years beyond the opening of the Project to revenue service.

## **SECTION 6. NET PROJECT COST**

(a) This Grant is to assist in the payment of actual eligible costs within the scope of the Project under this Agreement, minus any amount that can reasonably be financed from revenues of the Grantee. If the funds awarded under this Grant exceed the amount necessary to finance the Federal share, those excess funds are not available to the Grantee for payment of costs beyond the scope of the Project supported by this Grant.

(b) In accordance with FTA Master Agreement, a refund or reduction of the Grantee's Local Share of the Net Project Cost requires a refund to the Government of a proportional amount of the Federal financial assistance provided under this Agreement.



(c) The portion of the Net Project Cost that may be financed by the Government with Federal Section 5309 Capital Investment Grants Program funds may not exceed the amount of the Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution for this Project as stated in Section 8 of this Agreement, "Limitations of the Federal Funding Commitment."

(d) The Grantee acknowledges that Federal funds may be used only to reimburse eligible expenses for the Project. Should FTA determine that Federal funds have been used to reimburse any expenses that were ineligible for Federal reimbursement, FTA will direct the Grantee either to reimburse FTA with local funds not already committed to the Project or to reduce the total Project costs by the amounts found to have been ineligible.

## **SECTION 7. ESTIMATED NET PROJECT COST**

(a) The Government's determination to provide financial assistance for the Project is based, in significant part, upon the Grantee's estimated Project costs as set forth in the "Baseline Cost Estimate," Attachment 3 to this Agreement. The Estimated Net Project Cost reported in Attachment 3 is \$14,576,170,721.

(b) The Estimated Net Project Cost financed with the Execution of this Agreement is limited by the amount of the Maximum FTA Amount Awarded. The amount of the Estimated Net Project Cost and the amount of the Maximum FTA Amount Awarded are stated in the first page of this Agreement. The amount reimbursable by the Government is limited to the lesser of either the amount of the Maximum FTA Amount Awarded or the maximum percentage of FTA participation permitted by Federal law and regulations. Additional funds will not be provided until a Grant amendment awarding additional funds and amending this Full Funding Grant Agreement is executed.

## **SECTION 8. LIMITATIONS OF THE FEDERAL FUNDING COMMITMENT**

(a) With its Award set forth in this Agreement, the Government obligates \$800,000,000 in Section 5309 Capital Investment Grants Program financial assistance for the Project. FTA has not previously awarded Section 5309 Capital Investment Grants Program funds for the Project. The sources of this Federal financial assistance are set forth in the "Project Budget," Attachment 3A. These funds are in addition to all previous Federal financial commitments in the development of the Project as set forth in the schedule of "Prior Grants and Related Documents," Attachment 5 of this Agreement.

(b)(1) With its Award set forth in this Agreement, the Government also acknowledges its intent to provide Federal Section 5309 Capital Investment Grants Program financial assistance for the Project in addition to the amount appropriated and set forth in Paragraph (a) of this Section 8. The amount of additional Section 5309 Capital Investment Grants Program funds the Government may provide will not exceed \$6,080,000,000. The anticipated sources of Federal financial assistance in this amount are listed in Attachment 6 to this Agreement, "Schedule of Federal Funds". Additional funds obligated pursuant to this Paragraph will be subject to all the terms,



conditions and obligations established by this Agreement. Accordingly, it is expected that the award of funds will be processed through amendments to this Agreement.

(b)(2) The award by the Government of additional Federal Section 5309 Capital Investment Grants Program financial assistance to the Project under Paragraph (b)(1) of this Section 8 is subject to the following limitations:

(i) the availability of appropriated funds, and

(ii) the Grantee's continued performance under the terms and conditions of this Agreement.

(c) The Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution for the Project is limited to \$6,880,000,000.

## **SECTION 9. FEDERAL FUNDING—OTHER SOURCES**

The Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution specified in Section 8(c) of this Agreement does not include funds other than from the Capital Investment Grants program under 49 U.S.C. Chapter 53. Should such other Federal funds be provided for the Project in addition to the Section 5309 Capital Investment Grants Program funds set forth in Attachment 6 of this Agreement, the limitation on the Federal funding commitment set forth in Section 8 of this Agreement shall not apply to those funds.

Accordingly, such additional funds shall be excluded from the calculation of the Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution. Funds awarded pursuant to this Section will be subject to all other terms, conditions and obligations set forth in the Agreement.

## **SECTION 10. LOCAL FINANCIAL COMMITMENT—CAPITAL COSTS**

(a) As a condition of the Government's Award of this Full Funding Grant, the Grantee has developed and adopted a Financial Plan for financing all Project Costs necessary to Complete the Project. In addition to the amount of Federal funds requested, the Financial Plan includes a statement identifying the State, local and private sources of funding and the amount of funds available for and committed to the Project from each such source. This Financial Plan, as accepted by the Government, with the supporting documentation (including formal funding agreements and commitments) is hereby incorporated by reference and made part of this Agreement.

(b) The Grantee hereby commits and certifies that it will provide funds in an amount sufficient, together with the Federal contribution (acknowledging the limitations as set forth in this Agreement), to assure timely and full payment of the Project Costs as necessary to Complete the Project.

(c) The Grantee hereby commits and certifies that the Local Share portion of its financial commitment will be provided from funding sources other than Federal funds (except as may otherwise be authorized by Federal statute), receipts from the use of Project facilities or

equipment (except as may otherwise be authorized by Federal statute), or revenues of the public transportation system in which such facilities or equipment are used.

(d) Given the Estimated Net Project Cost, as set forth in Section 7 of this Agreement, the Grantee's financial commitment to the Net Project Cost is estimated to total \$3,940,334,889. This amount constitutes the Local Share needed to match the Maximum Section 5309 Capital Investment Grants Program Financial Contribution for the Project and Other Federal Sources. In the event that the actual Federal financial contribution for the Project is reduced or is increased or the funding percentage as set forth in this Agreement is changed, the portion of the Grantee's financial contribution for the Project that is identified as Local Share shall be adjusted accordingly.

(e) The Grantee agrees to notify the Government of any change in circumstances or commitments that adversely affect the Grantee's plan to fund the Project Costs necessary to Complete the Project as set forth in the Financial Plan. In its notification, the Grantee shall advise the Government of what actions it has taken or plans to take to ensure adequate funding resources and shall reaffirm its commitment to the Government as set forth in Paragraph (b) of this Section 10.

#### **SECTION 11. AUTHORIZATION TO ADVANCE PROJECT WITHOUT PREJUDICE**

The Grantee may incur costs or expend local funds for all phases of the Project as is reasonably necessary to advance the Project prior to an award of Federal funding assistance without prejudice to possible future Federal participation in or reimbursement of the Project Costs to the extent that such costs are incurred in accordance with all applicable Federal requirements and this Agreement. It is understood that the authority conferred on the Grantee to advance the Project without prejudice does not constitute a legal commitment by the Government to obligate and award Federal funds.

#### **SECTION 12. LOCAL FINANCIAL COMMITMENT—OPERATING AND MAINTENANCE COSTS**

(a) The Government recognizes that the Grantee has entered into a Project Development Agreement, which establishes the following: the conditions upon which the Grantee will ensure the Project will be completed, that NJ Transit, or a successor agency will provide commuter rail service, and how the Project will be maintained.

(b) As a condition of the Government's Award of funding set forth in this Agreement, and in cooperation with NJ Transit, the Grantee has developed and adopted a Financial Plan whereby NJ Transit will finance future operation and maintenance of the Project concomitant to NJ Transit's continuing financial responsibilities to operate, maintain, and reinvest in its transit existing system in a manner as described in the Financial Plan. This Financial Plan, as accepted by the Government, and the supporting documentation (including specific funding commitments) evidencing stable and dependable funding sources is an essential part of the Grantee's Application and is made part of this Agreement by incorporation of the Application.

(c) With the Execution of this Agreement, the Grantee assures that there are stable and dependable funding sources available to NJ Transit, sufficient in amount and in degree of commitment, to operate and maintain NJ Transit's entire mass transportation system at an adequate and efficient level of service, including future transit operations and maintenance of the Project, without additional Federal assistance beyond the amounts set forth in the Financial Plan.

(d) The Grantee will notify the Government of any change in circumstances or commitments that adversely affect the plan to fund the maintenance and operating costs of the Project as set forth in the Financial Plan. In its notification, the Grantee will advise the Government of actions it has taken or plans to take to ensure adequate funding resources and will reaffirm to the Government its assurance as set forth in Paragraph (b) of this Section.

### **SECTION 13. BASELINE COST ESTIMATE**

(a) In its Application, the Grantee submitted to the Government a Baseline Cost Estimate for the activities constituting the Project. The Baseline Cost Estimate is accepted by the Government and is Attachment 3 of this Agreement. The Baseline Cost Estimate is derived from cost estimates of the individual third-party contracts and force account work that, in sum, constitute the Project; it reflects appropriate escalation and Project schedule dates.

(b) The Government intends to use the Baseline Cost Estimate to monitor the Grantee's compliance with certain terms and conditions of this Agreement. The Baseline Cost Estimate established in Attachment 3 serves as the measure of cost estimates as of the Date of this Agreement, and should not be amended or modified during the implementation of the Project.

(c) The Grantee will submit cost reports on the implementation of the Project as required by this Agreement and in a format consistent with the units set forth in the Baseline Cost Estimate so that the Government can, with reasonable diligence, reconcile the Grantee's reports with the Baseline Cost Estimate.

### **SECTION 14. BASELINE SCHEDULE**

(a) In its Application, as approved, the Grantee submitted a Baseline Schedule for the Project that demonstrates how the Grantee intends to implement the Project and meet the Revenue Service Date. This Baseline Schedule has been accepted by the Government and is Attachment 4 of this Agreement.

(b) The schedule for the Project may be modified from time to time at the discretion of the Grantee. However, the Baseline Schedule is not to be modified because it is to be used as a basis for comparing planned to actual Project implementation. The Grantee will notify the Government when a Project schedule modification has the potential to change the Revenue Service Date and describe the actions planned to recover the schedule. The Government's acquiescence in such notice will not be deemed approval by the Government of an extension of a Revenue Service Date unless the Government expressly grants an extension in writing.



## **SECTION 15. PROJECT MANAGEMENT OVERSIGHT**

The Project is a “Major Capital Project” as defined in FTA’s Project Management Oversight regulations at 49 CFR § 633.5. Accordingly, the Grantee agrees that all requirements and conditions set forth in the rule at 49 CFR Part 633 apply to the Project activities. Noncompliance with any regulatory requirements shall constitute a breach of this Agreement, unless the Government formally waives the regulatory requirement.

## **SECTION 16. ENVIRONMENTAL PROTECTION**

(a) As a condition precedent to this Agreement, the environmental impacts of the Project have been assessed as required by law. The results of that assessment and the adopted mitigation measures are described in the environmental documents identified in Attachment 7 of this Agreement. These documents together with related agreements and supporting documentation are incorporated by reference and made part of this Agreement. To assist the Government in monitoring the implementation of the adopted mitigation measures, these measures are specifically referenced in Attachment 7 of this Agreement. It is understood and agreed that the description in Attachment 7 shall not supersede or in any way result in a circumvention of the requirements set forth in the Government’s environmental record for the Project.

(b) Certain terms and conditions of this Agreement as related to the Grantee’s responsibility to ensure protection of the environment are set forth in Section 26 of the Master Agreement, “Environmental Protections.” Under Subsection 26(i), “Mitigation of Adverse Environmental Effects,” the Grantee is required, among other actions, to undertake all environmental mitigation measures that are identified in environmental documents prepared for the Project. Accordingly, the Grantee understands that it shall not withdraw or substantially change any of the adopted mitigation measures as described in the Government’s environmental record for the Project without the express written approval of the Government.

(c) This Section is intended only to supplement the provisions set forth in Section 26 of the Master Agreement, “Environmental Protections.”

## **SECTION 17. LABOR PROTECTION**

The Grantee will carry out the Project in conformance with the terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the Project and meet the requirements of 49 U.S.C. § 5333(b) and U.S. Department of Labor (USDOL) Guidelines at 29 CFR Part 215. These terms and conditions are identified in the letters of certification from USDOL on the dates set forth on the first page of this Agreement. The Grantee will carry out the Project in compliance with the conditions stated in the USDOL certification letters. Those letters and any documents cited therein are incorporated by reference and made part of this Agreement.

## **SECTION 18. GOVERNMENT ACTIONS**

(a) In all cases where the Government’s review, approval, or concurrence is required under the terms and conditions of this Agreement, the Government will provide its response within sixty

(60) calendar days of receipt from the Grantee of all materials reasonably necessary for the formulation of the Government's response.

(b) If the Government determines that its position cannot be finalized within that sixty (60) day period, the Government will notify the Grantee, in writing, within thirty (30) days following receipt of the Grantee's submission that the Government's response will be delayed and advise the Grantee of the Government's anticipated time period for response.

(c) Whenever the Government's approval or concurrence is needed on any matter pertaining to or concerning this Agreement, the Government's approval or concurrence will not be unreasonably withheld.

## **SECTION 19. REMEDIES**

(a) Substantial failure of the Grantee to Complete the Project in accordance with the Application and this Agreement will be a default of this Agreement. In the event of default, the Government will have all remedies at law and equity, including the right to specific performance without further Federal financial assistance, and the rights to termination or suspension as provided by Section 11 of the Master Agreement, "Right of the Federal Government to Terminate." The Grantee recognizes that in the event of default, the Government may demand all Federal funds provided to the Grantee for the Project be returned to the Government. Furthermore, a default of this Agreement will be a factor considered before a decision is made with respect to the approval of future Grants requested by the Grantee.

Under the provisions of Section 15 of this Agreement, "Project Management Oversight," and under the terms and conditions of the Master Agreement, the Government will review performance by the Grantee to determine whether satisfactory progress is being made to Complete the Project. In the event that the Government determines that the Grantee is in breach of this Agreement, the Government may withhold its approvals of further funding and suspend drawdown of funds, under the provisions of Section 11 of the Master Agreement, "Right of the Federal Government to Terminate," until any necessary corrective action, which may be required by the Government, is accomplished. Any breach of this Agreement that is not corrected within a reasonable period of time will be a default of this Agreement. The Government in its discretion may permit the cost of such corrective action to be deemed a Project Cost, provided that such cost is an allowable cost under the requirements of Section 7(b) of the Master Agreement, "Eligible Costs," and so long as it remains within the limits of the Maximum Federal Section 5309 Capital Investment Grants Program Financial Contribution set forth in Section 8 of this Agreement, "Limitations of the Federal Funding Commitment."

(b) In the event of a breach of this Agreement by the Grantee and before the Government takes action contemplated by this Section, the Government will provide the Grantee with ninety (90) days' written notice that the Government considers that such a breach has occurred and will provide the Grantee a reasonable period of time to respond and to take necessary corrective action.

## **SECTION 20. CONTENTS OF AGREEMENT**

This Full Funding Grant Agreement consists of the text of this Agreement, which includes the first pages setting forth significant characteristics of the Agreement (such as the maximum Federal funds obligated and awarded for expenditure on the Project and the funding ratio of Federal and local funds to be expended for the Project, and such other data), followed by the Terms and Conditions and the Attachments to the Agreement. The Agreement also includes the following documents incorporated by reference and made part of this Agreement: the “Federal Transit Administration Master Agreement,” FTA Form MA(31) (May 2, 2024) as may be revised from time to time, the Application, the Government’s environmental record for the Project, related agreements, and prior Grant Agreements for the Project referenced in Attachment 5 of this Agreement. Should the Federal assistance award letter include special conditions for the Project, that letter is incorporated by reference and made part of this Agreement. Any inconsistency between the Application and the terms and conditions of this Full Funding Grant Agreement will be resolved according to the clear meaning of the provisions of this Agreement and Attachments hereto.

## **SECTION 21. SIMULTANEOUS CREATION OF AGREEMENT IN ELECTRONIC FORMAT**

Simultaneous to the Award and Execution of this Agreement set forth in typewritten hard copy, the Agreement is being awarded and executed by electronic means through FTA’s electronic award and management system. To the extent any discrepancy may arise between the typewritten version and the electronic version of this Agreement, the typewritten version will prevail. Should any special conditions or requirements for the Project be added separately in the electronic version, those conditions or requirements are incorporated by reference and made part of this Agreement.

## **SECTION 22. AMENDMENTS TO AGREEMENT**

Amendments to any of the documents referenced in Section 20, “Contents of Agreement,” will be made in accordance with the requirements and procedures set forth in FTA Circular 5010.1E, “FTA Project Management Guidelines” (July 16, 2018), as may be amended from time to time, and FTA Circular 5200.1A (December 5, 2002), “Full Funding Grant Agreements Guidance,” as may be amended from time to time.

## **SECTION 23. ATTACHMENTS—INCORPORATION**

Each and every Attachment to this Agreement is incorporated by reference and made part of this Agreement.

## **SECTION 24. NOTICES**

Notices required by this Agreement will be addressed as follows:

As to the Government:

Mr. Michael Culotta  
Regional Administrator  
Federal Transit Administration, Region II  
One Bowling Green, Suite 429  
New York, NY 10004

As to the Grantee:

Chief Executive Officer  
Gateway Development Commission  
120 Broadway, 10<sup>th</sup> Floor  
New York, NY 10271

With a copy to:

General Counsel  
Gateway Development Commission  
120 Broadway, 10<sup>th</sup> Floor  
New York, NY 10271

## **SECTION 25. APPLICABLE LAW**

If neither Federal statute nor Federal common law governs the interpretation of the provisions of this Agreement, New York law will apply. This provision is intended only to supplement Section 3(g) of the Master Agreement, "Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance."

## **SECTION 26. AWARD AND EXECUTION OF AGREEMENT**

There are several identical counterparts of this Agreement in typewritten hard copy; each counterpart is to be fully signed in writing by the parties and each counterpart is deemed to be an original having identical legal effect. When signed and dated by the authorized official of the Government, this instrument will constitute an Award that should be executed by the Grantee within ninety (90) days of the date of the Government's Award (FTA Award). The Government may withdraw its Award of financial assistance and obligation of funds if this Agreement is not executed within the ninety (90) day period. Upon full Execution of this Agreement by the Grantee, the effective date will be the date the Government awarded funding under this Agreement as set forth below.



**THE GOVERNMENT HEREBY AWARDS THIS FULL FUNDING GRANT AGREEMENT THIS**

\_\_\_\_\_ DAY OF \_\_\_\_\_, 2024

Signature: \_\_\_\_\_

Veronica Vanterpool  
Acting Administrator  
FEDERAL TRANSIT ADMINISTRATION

**EXECUTION BY GRANTEE**

The Grantee, by executing this Agreement, affirms this FTA Award; adopts and ratifies all statements, representations, warranties, covenants, and materials it has submitted to FTA; consents to this Award; and agrees to all terms and conditions set forth in this Agreement.

**THE GRANTEE HEREBY EXECUTES THIS FULL FUNDING GRANT AGREEMENT THIS**

\_\_\_\_\_ DAY OF \_\_\_\_\_, 2024

Signature: \_\_\_\_\_

Kris Kolluri  
Chief Executive Officer  
Gateway Development Commission

**ATTESTED BY:**

Signature: \_\_\_\_\_

Maria Anderson  
Deputy General Counsel  
Gateway Development Commission



**AFFIRMATION OF GRANTEE’S ATTORNEY**

As the undersigned Attorney for the Grantee, I affirm to the Grantee that I have examined this Agreement and the proceedings taken by the Grantee relating to it. As a result of this examination I hereby affirm to the Grantee the Execution of the Agreement by the Grantee is duly authorized under state and local law. In addition, I find that in all respects the Execution of this Agreement is due and proper and in accordance with applicable State and local law. Further, in my opinion, this Agreement constitutes a legal and binding obligation of the Grantee in accordance with the terms of the Agreement. Finally, I affirm to the Grantee that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the full implementation of the Project in accordance with the terms thereof.

DATED \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024

AFFIRMED BY:

Signature: \_\_\_\_\_

Edmund J. Caulfield  
Acting General Counsel, Chief Ethics & Compliance Officer and Secretary  
Gateway Development Commission

## **Attachment 1**

### **Gateway Development Commission Hudson Tunnel Project Located Between Secaucus, New Jersey and New York, New York**

#### **Scope of the Project**

The following scope described is for a new fixed guideway capital project that will provide both public transportation and intercity passenger rail service. The Government has determined that the net capital costs attributable to public transportation are equal to 90 percent of the overall new fixed guideway capital project based on the peak hour usage of the existing North River Hudson Tunnel. Therefore, 90 percent of the total net capital costs of the following described scope are eligible for funding under this grant and are considered “the Project” under this agreement, although percentages of elements or sub-elements allocated to the public transportation project may vary.

The Hudson Tunnel project (Project) consists of three elements: 1) the construction of a new Hudson River Tunnel between New York and New Jersey; 2) the rehabilitation of the existing North River Tunnel under the Hudson River; and 3) Long Island Rail Road (LIRR) Emergency Services Building (ESB) Utility Relocation Early Work associated with the separately funded Hudson Yards Concrete Casing Section 3 project.

The new Hudson River Tunnel includes two new surface tracks parallel to the south side of the Northeast Corridor (NEC) beginning at a realigned Allied Interlocking in Secaucus, New Jersey just east of NJ Transit’s Secaucus Junction Station. The new two-track Hudson River Tunnel runs parallel to the North River Tunnel, beneath the Palisades (North Bergen and Union City) and the Hoboken waterfront area, and beneath the Hudson River to connect to the tracks in the A Yard west of Penn Station New York (PSNY).

The rehabilitation of the North River Tunnel makes improvements to the existing North River Tunnel that opened in 1910.

The Hudson Yards Concrete Casing – Section 3 Long Island Rail Road Emergency Services Building (ESB) Utility Relocation move utilities out of the future path of the HYCC – Section 3, the third and final concrete casing section for rail right-of-way preservation beneath the extensive overbuild project that is planned to be constructed on a platform above the rail complex in Manhattan (immediately west of PSNY) known as “Hudson Yards.”

The Revenue Service Date is November 9, 2040.

NJ Transit service on the Project is planned to operate 24 hours a day, seven days a week, with trains every three minutes during peak periods (7:00 – 9:30 am and 3:30 – 6:00 pm), every nine minutes during off-peak periods, and every 10 minutes during evenings and weekends.

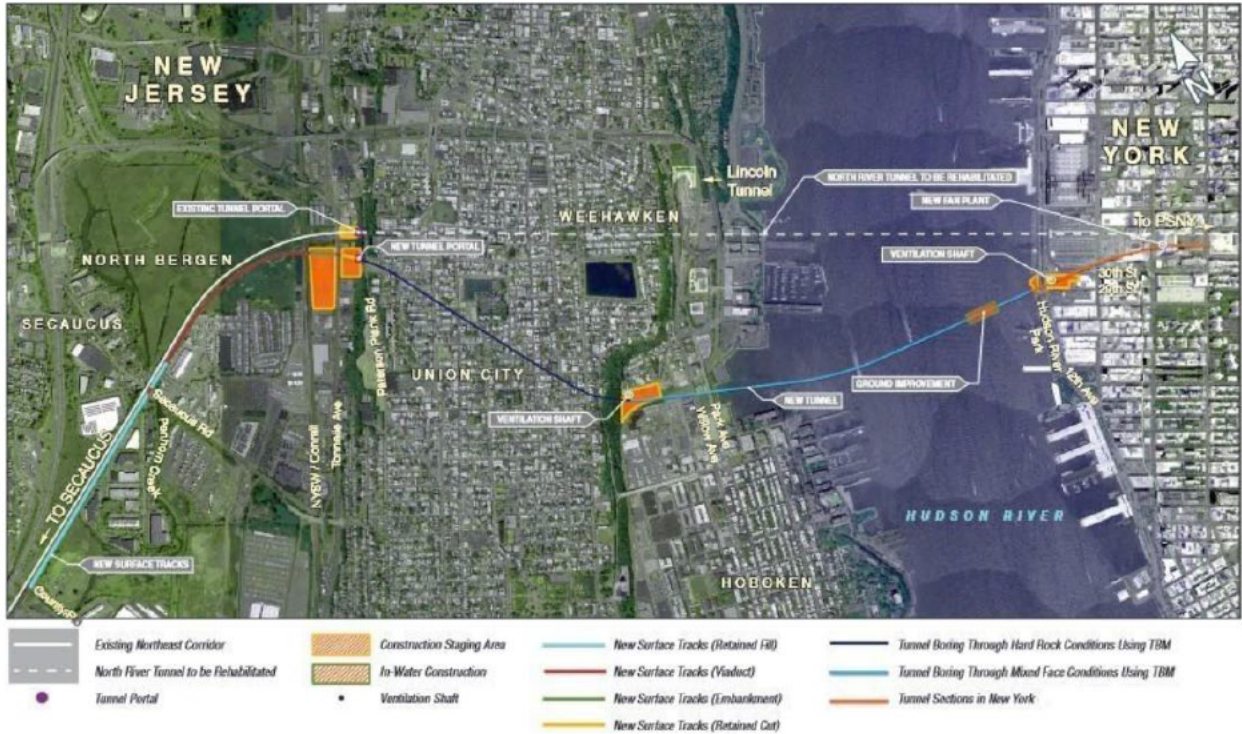
The forecasted public transportation ridership on the Project, using current year inputs of population and employment, is 189,000 daily linked trips. This number is expected to grow to 210,400 daily linked trips by the 10-year horizon used in the CIG evaluation process.

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**Attachment 1B**

**Gateway Development Commission  
Hudson Tunnel Project  
Located Between Secaucus, New Jersey and New York, New York**

**Project Location Map**



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## **Attachment 2**

### **Gateway Development Commission Hudson Tunnel Project Located Between Secaucus, New Jersey and New York, New York**

#### **Project Description**

##### **Narrative Description:**

The Project consists of three elements: 1) the construction of a new Hudson River Tunnel between New York and New Jersey; 2) the rehabilitation of the existing North River Tunnel under the Hudson River; and 3) Hudson Yards Concrete Casing - Section 3 (HYCC-3) Long Island Rail Road (LIRR) Emergency Services Building (ESB) Utility Relocation Early Work associated with the separately funded Hudson Yards Concrete Casing Section 3 project.

##### **Project Description by Standard Cost Category:**

The following descriptions follow the Federal Transit Administration's (FTA) Standard Cost Categories (SCC) for construction. These SCCs are the basis for the Baseline Cost Estimate and Baseline Schedule contained in Attachments 3 and 4, respectively.

##### **SCC 10 - GUIDEWAY & TRACK ELEMENTS**

This SCC includes the civil, geotechnical, and structural elements of the project. SCC 10 includes the following subcategories.

**SCC 10.04 Guideway: Aerial Structure:** This subcategory includes all structural steel, concrete, pre-cast concrete, cast in place concrete, drilled shafts, concrete-filled steel pipe pilings, safety railings, access systems, fiberglass walkway systems, aerial drainage systems, waterproofing and miscellaneous systems support structures. These structures include Meadowland Viaduct, Tonnelle Avenue Bridge, and bridges over Secaucus Road and Conrail, New York, Susquehanna & Western Railway (NYSW).

**SCC 10.05 Guideway: Built-Up Fill:** This subcategory includes cast in place concrete retaining wall along the alignment between County Road and Secaucus Road with pile foundation, safety railing.

**SCC 10.06 Guideway Underground Cut & Cover:** This subcategory includes excavation, support of excavation, construction of cast in place cut and cover box, back fill and surface restoration at the Palisades Tunnel Portal, and 10th Avenue in Manhattan.

**SCC 10.07 Guideway: Underground Tunnel:** This subcategory includes excavation, support of excavation, construction of cast in place cut and cover box, back fill and surface restoration at the Palisades Tunnel Portal, and 10th Avenue in Manhattan.

**SCC 10.08 Guideway: Retained cut or fill:** This subcategory includes earth work in addition to construction of the U-Shaped cast in place concrete structure at the Palisades Tunnel Portal.

SCC 10.09 Track: Direct Fixation: This subcategory includes installation of direct fixation track through both new Hudson River Tunnels and the existing North River Tunnels.

SCC10.11 Ballasted: This subcategory includes all costs associated with the construction of new ballasted track and the relocation(s) of existing track, including cutover, lining, and surfacing, bonded insulated joints, ballast and guard rail system along Amtrak NEC A-yard as well as new ballasted tracks on the aerial structures.

SCC 10.12 Track: Special (switches, turnout): This subcategory includes costs for the construction/installation of special track work along Amtrak NEC Allied interlocking.

### **SCC 30 - FACILITIES: YARD, SHOPS, ADMINISTRATION BUILDINGS**

SCC 30.05 Yard and Yard Track: This subcategory includes costs of track work in A yard including civil work and underpinning of Lerner building.

### **SCC 40 – SITEWORK AND SPECIAL CONDITIONS**

This SCC includes all necessary site work and special work associated with demolition, clearing, earthwork, and utilities needed for the construction of the Project. SCC 40 includes the following subcategories.

SCC 40.01 Demolition, Clearing, Earthwork: This subcategory includes call costs relating to the demolition in NJ along the surface alignment.

SCC 40.02 Site Utilities, Utility Relocation: This subcategory includes all costs associated with relocations of utility conduits and appurtenances owned and/or managed by PSE&G, Verizon, Hudson County ITS, etc. Additionally, this category contains costs for relocation of existing drainage and water mains and appurtenances.

SCC 40.03 Hazardous Materials Contaminated soil removal and mitigation, ground water treatments: This subcategory includes costs for the management of regulated materials and the disposal of hazardous and contaminated soils at all locations.

SCC 40.04 Environmental mitigation, e.g., wetlands, historic/archeological, parks: This subcategory contains costs for permanent wetland impacts and riparian impacts.

SCC 40.05 Site structures including retaining walls, sound walls: This subcategory includes costs associated with reconstruction of the Emergency Service Building.

SCC 40.08 Temporary Facilities and other indirect costs during construction: This subcategory includes costs associated with Amtrak forces providing flagging to support construction activities on the active railroad systems.

### **SCC 50 – SYSTEMS**

This SCC includes the installation of train control and signals, traction power distribution, and communications systems. SCC 50 includes the following subcategories.

SCC 50.1 Train Control and Signals: This subcategory includes costs for the construction of signaling and train control equipment along the NEC, the new Hudson Tunnel alignment, North River Tunnel, and A yard.

SCC 50.03 Traction power supply: substations: This subcategory contains costs for the modification of existing substation No. 42 and the existing substation at 31st Street (No. 43) by adding 1500A circuit breakers and disconnect switches and wiring including all supporting structures along with site modification.

SCC 50.04 Traction power distribution - catenary and third rail: This subcategory contains costs for the installation of new catenary structures and supports, feeders and wire, bonding and grounding, and new overhead contact system both along the surface alignments as well as through the new tunnels. It also includes the cost of new catenary systems in the existing rehabilitated North River Tunnel. In addition, it includes cost of new third rail installation both in the Hudson River Tunnels and the North River Tunnels.

SCC 50.05 Communication: This subcategory covers costs for the furnishing and installation of Closed-Circuit Television (CCTV), Radio, Telephone, Access Control systems.

SCC 50.07 Central Control: This category includes costs for a central control panel.

### **SCC 60 – RIGHT-OF-WAY, LAND, EXISTING IMPROVEMENTS**

This SCC includes all private takings, temporary and utility easements, and standard relocation costs required for the Project. It includes appraisal and consultant costs. Project staffing is included in SCC 80. SCC 60 includes the following subcategories.

60.01 Purchase or lease of real estate: This subcategory includes contains costs for the purchase of land to establish the proposed right-of-way (ROW) including all legal fees.

### **SCC 80 – PROFESSIONAL SERVICES**

This includes costs for the General Engineering Consultant, Program Management Consultant (PMC), Environmental Services Consultant, anticipated force account totals, lease payments, and Project Office costs. These costs are delineated by project development; engineering; project management for design and construction; construction administration and management; legal costs; surveys, testing, and inspection; as well as project start-up costs.

SCC 80.01 Project Development: This category includes all Grantee-incurred program management and engineering costs associated with the project at the conceptual design and preliminary design/construction level.

SCC 80.02 Engineering: This cost is for the engineering required before and during the construction stage(s) of the project.

SCC 80.03 Project Management for Design and Construction: This category covers the cost of project management by the D/B Contractor as well as a third-party Management firm.

**SCC 80.04 Construction Administration & Management:** This category aggregates costs for Grantee/Agency's project management and supervision personnel incurred during all phases of the project.

**SCC 80.05 Professional Liability and other Non-Construction Insurance:** This category includes cost of Workers Compensation, General Liability and Property Damage insurance as a form of Owners Control Insurance Program (OCIP) for all the work contained in Categories 10's thru 50's.

**SCC 80.06 Legal; Permits; Review Fees by other agencies, cities, etc.:** This category aggregates costs for fees paid to outside public entities for the issuance of required permits, reviews, etc.

**SCC 80.07 Surveys, Testing, Investigation, Inspection:** This category aggregates costs for preliminary and pre-construction surveys, site investigations, soil testing, etc. However, it is included with category 80.03.

**SCC 80.08 Start up:** This category includes costs sustained by the Grantee/Agency(ies) in facilitating the initiation of the project for both New Hudson River Tunnels and the existing North River Tunnels Rehabilitation.

**SCC 90 – UNALLOCATED CONTINGENCY**

This SCC includes unallocated contingency and project reserves. It provides for unknown additional costs and uncertainty due to risk factors such as third-party approvals, market fluctuation, differing site conditions, change orders and contract modifications.

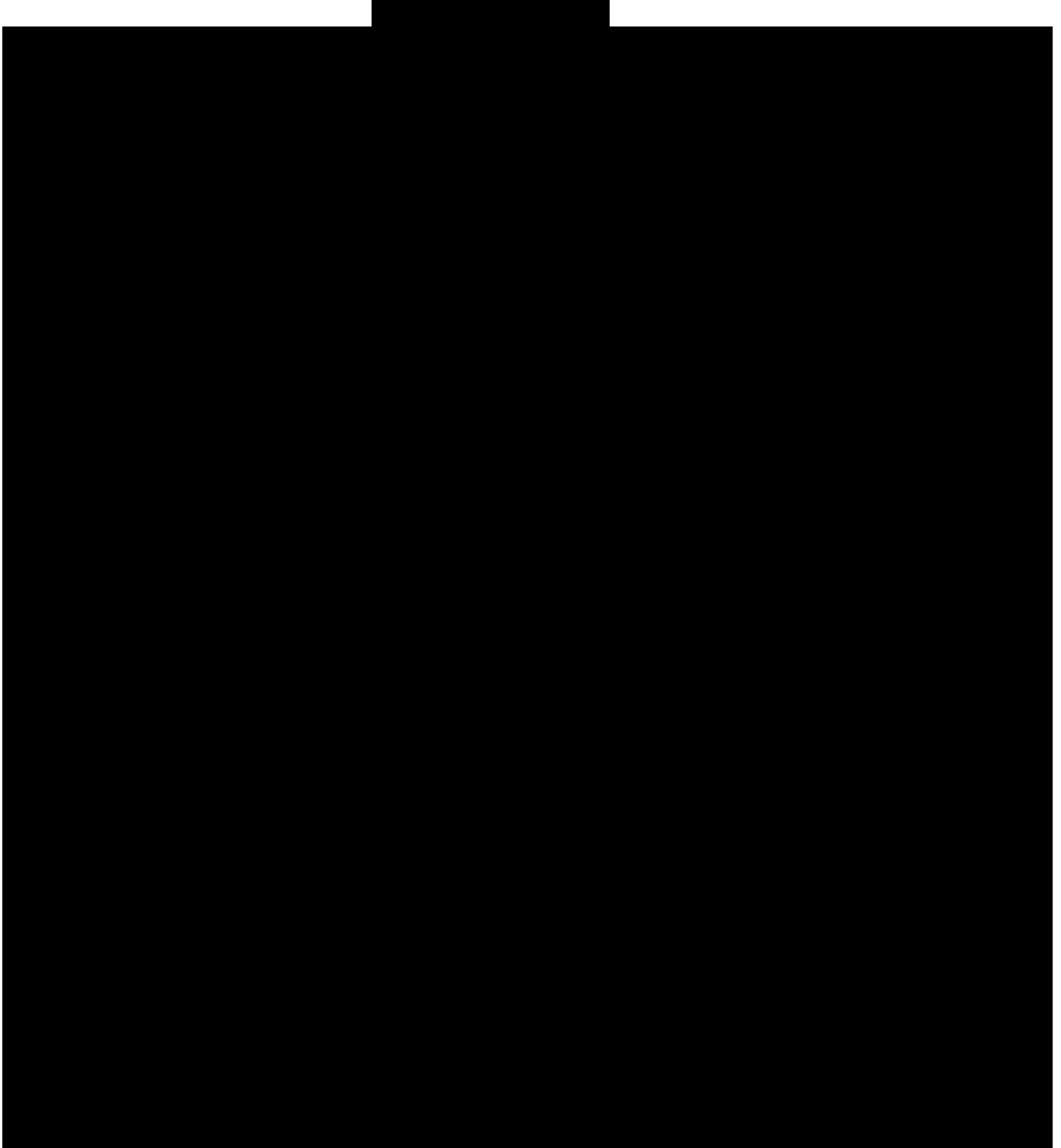
**SCC 100 – FINANCE CHARGES**

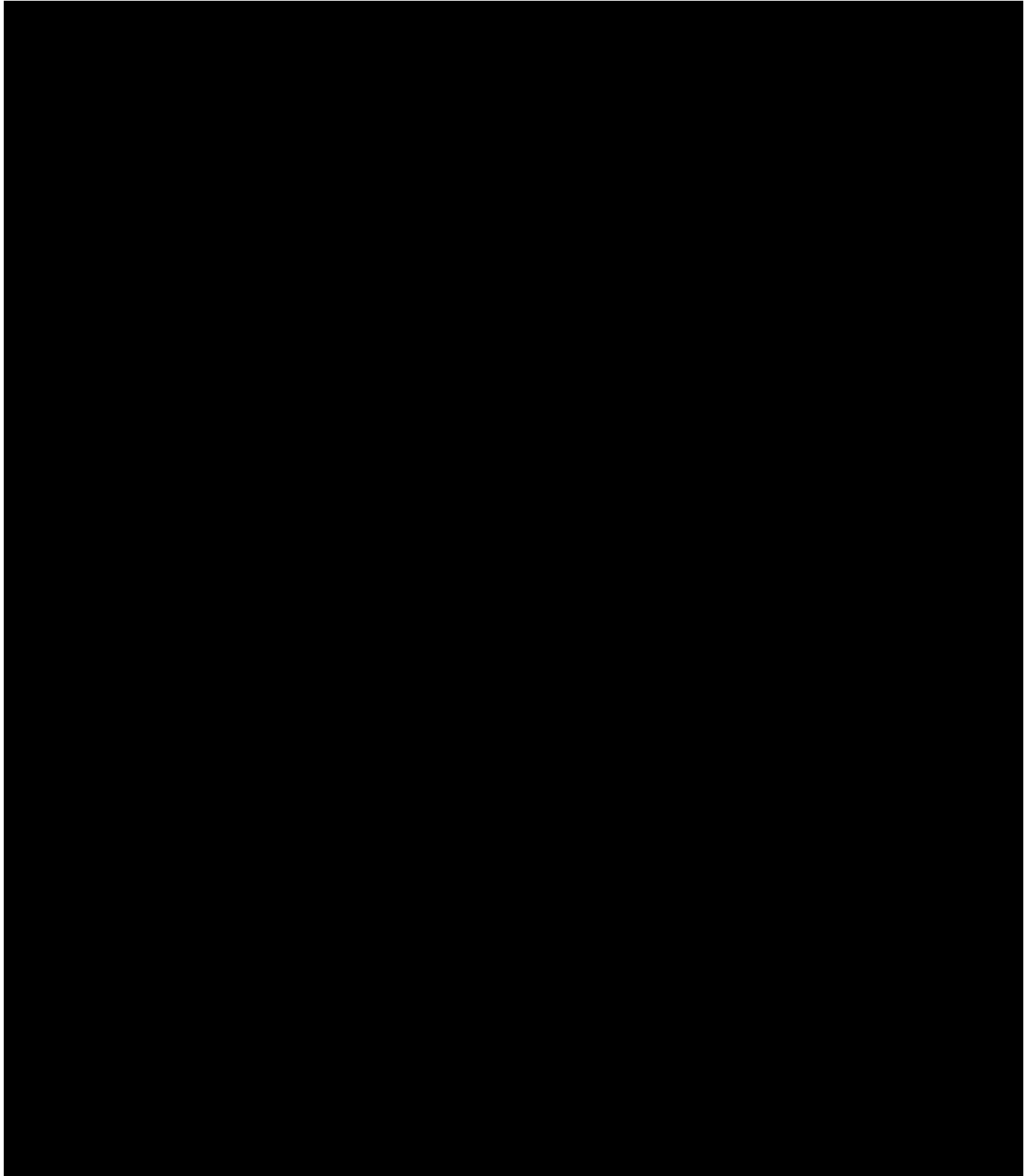
This SCC includes finance charges expected to be incurred by the Gateway Development Commission prior to either the completion of the Project or the fulfillment of the Capital Investment Grants funding commitment, whichever occurs later.



**Attachment 3**

**Gateway Development Commission  
Hudson Tunnel Project  
Located Between Secaucus, New Jersey and New York, New York**





*Subject to Approval by GDC Board of Commissioners*

*Draft - 06.27.2024*

**Attachment 3**

**Gateway Development Commission  
Hudson Tunnel Project  
Located Between Secaucus, New Jersey and New York, New York**

[Redacted]

[Redacted]

*Subject to Approval by GDC Board of Commissioners*

*Draft - 06.27.2024*

**Attachment 3**

**Gateway Development Commission  
Hudson Tunnel Project  
Located Between Secaucus, New Jersey and New York, New York**



*Subject to Approval by GDC Board of Commissioners*

*Draft - 06.27.2024*

**Attachment 3A**

**Gateway Development Commission  
Hudson Tunnel Project  
Located Between Secaucus, New Jersey and New York, New York**



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**Attachment 5**

**Gateway Development Commission  
Hudson Tunnel Project  
Located Between Secaucus, New Jersey and New York, New York**

**Related Documents and Grants****I. Prior Grants (Not included in the FFGA)**

Project Number	Federal Amount	Funding Source	Purpose
Not Applicable			

**II. Related Documents**

<b>Milestone</b>	<b>Date</b>
Notice of Intent to prepare an Environmental Impact Statement (EIS) with NJ TRANSIT as project sponsor	May 2, 2016
Entry into Project Development Phase of CIG Program	July 14, 2016
Selection of Locally Preferred Alternative (LPA)	October 2016
LPA adopted into New Jersey fiscally constrained long range transportation plan	November 13, 2017
LPA adopted into New York fiscally constrained long range transportation plan	August 9, 2018
Draft EIS	July 7, 2017
FTA is notified PANYNJ will become joint lead agency with NJ TRANSIT for NEPA	Summer 2018
FTA issued a Categorical Exclusion for the Hudson Yards Concrete Casing Phase 3 work	November 20, 2019
Joint FRA/FTA Final EIS/ROD issued	May 28, 2021
GDC notifies FTA it is the project sponsor	October 21, 2022
Project selected for RAISE award	June 30, 2023
FTA approval of Entry into Engineering	July 06, 2023
Section 106 Programmatic Agreement updated to reflect GDC as project sponsor	July 10, 2023
FTA approves RAISE pre-award authority	August 15, 2023
FTA CIG LONP approved for Tonnelles Avenue	August 23, 2023
FTA CIG LONP approved for Hudson River Ground Stabilization	October 6, 2023
Environmental Re-evaluation completed	October 26, 2023
Project selected for FRA FSP award	November 6, 2023
FTA CIG LOI approved for the Project	December 26, 2023
Environmental Re-evaluation completed	April 22, 2024
Environmental Re-evaluation completed	April 24, 2024

**III. FFGA Grant History (Grants Under the FFGA)**

Project Number	Federal Amount	Funding Source	Purpose
NY-2024-014-00	\$25,000,000	FY 2023 Rebuilding American Infrastructure with Sustainability and Equity (RAISE) funding	To convert a portion of Tonnelle Avenue in North Bergen, New Jersey, into a new roadway bridge to provide a railroad right-of-way for the new Hudson River Tunnel

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**Attachment 6**

**Gateway Development Commission  
Hudson Tunnel Project  
Located Between Secaucus, New Jersey and New York, New York**

**Schedule of Federal Funds**

Section 30005 of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58; November 15, 2021) authorizes FTA to award Federal Capital Investment Grants program funds for design and construction of the Hudson Tunnel Project (the Project). In accordance with the Federal transit law at 49 U.S.C. Chapter 53 and FTA Circular 5200.1A, Full Funding Grant Agreements Guidance (December 5, 2002), by the execution of this Agreement the Government is limiting its commitment to provide CIG funding for the Project to those funds that have been or may be appropriated during the term of IIJA and subsequent authorizations. The Government and the Grantee recognize, however, that the period of time necessary to complete the Project may extend beyond the IIJA, as evidenced below and by Attachment 4 of this Agreement (Baseline Schedule). Currently, the Government and the Grantee anticipate that the CIG funds will be provided for the Project as follows:

**Proposed Schedule of Federal Funds  
(Based on Federal Fiscal Year of Appropriation)**

Fiscal Year	Section 5309 New Starts Funds	Other Federal Funding	State/Local Funding	Total
FY 2024 and prior	\$800,000,000	1,458,038,661	\$836,551,888	\$3,094,590,550
FY 2025	\$700,000,000	765,932,390	\$543,094,556	\$2,009,026,946
FY 2026	\$700,000,000	765,932,390	\$543,094,556	\$2,009,026,946
FY 2027	\$668,571,428	765,932,390	\$531,450,987	\$1,965,954,805
FY 2028	\$668,571,428		\$247,690,485	\$916,261,913
FY2029	\$668,571,428		\$247,690,484	\$916,261,912
FY2030	\$668,571,428		\$247,690,484	\$916,261,912
FY 2031	\$668,571,428		\$247,690,484	\$916,261,912
FY2032	\$668,571,428		\$247,690,484	\$916,261,912
FY2033	\$668,571,432		\$247,690,481	\$916,261,913
Total	\$6,880,000,000	\$3,755,835,831	\$3,940,334,889	\$14,576,170,721

\* GDC is obtaining three USDOT Railroad Rehabilitation & Improvement Financing (RRIF) loans for the project, which will be repaid by funds received by GDC from the states of NY and NJ and the PANYNJ. These loans comprise the state/local match.

## **Attachment 7**

### **Gateway Development Commission Hudson Tunnel Project Located Between Secaucus, New Jersey and New York, New York**

#### **Measures to Mitigate Environmental Impacts**

The measures to mitigate the environmental impacts of the Hudson Tunnel Project (Project) are included in the environmental record and include the following documents which are incorporated herein:

1. Draft Environmental Impact Statement (EIS) published – July 7, 2017
2. Final EIS/Record of Decision published --- May 28, 2021
3. Section 106 Programmatic Agreement executed – May 27, 2021 and updated July 10, 2023
4. Categorical exclusion for Hudson Yards Concrete Casing Phase 3 (including LIRR building utility) – November 20, 2019
5. Environmental Re-evaluation completed – October 26, 2023
6. Environmental Re-evaluation completed – April 22, 2024
7. Environmental Re-evaluation completed – April 24, 2024

The mitigation measures and other Project features that reduce adverse environmental and community impacts, to which FTA and the Gateway Development Commission (GDC) committed in the environmental record, may not be eliminated from the Project except by FTA's written consent in accordance with applicable laws and regulations. These mitigation measures include, but are not limited to, commitments in the environmental record to perform further consultation with an agency or community on environmental and related matters.

The GDC will transmit a Mitigation Monitoring Program Report listing the mitigation measures committed to in the documents listed above. This report includes a table which identifies the party responsible for implementing each mitigation measure and indicates the status of the implementation of each measure. The table's purpose is to facilitate monitoring the implementation of the mitigation measures during the Construction Phase of the Project. That table will be periodically revised to add measures from required consultations, permit approvals, and FTA-approved changes, and to update the implementation status of the measures. The table and its quarterly updates are incorporated herein by reference and will be included in quarterly reports to the FTA and its project management oversight contractor (PMOC).

The GDC may propose, and FTA may approve, an alternative method for monitoring the implementation of mitigation commitments.

## **Attachment 8**

### **Gateway Development Commission Hudson Tunnel Project Located Between Secaucus, New Jersey and New York, New York**

#### **Information Collection and Analysis Plan**

The Gateway Development Commission (GDC) will assemble information and conduct analyses to identify the impacts of the Hudson Tunnel Project (Project) on public transportation services and public transportation ridership and evaluate the accuracy of the forecasts prepared during the planning and development of the Project. The GDC will produce a plan that addresses the following requirements and assemble the information and conduct the analyses pursuant to the plan.

#### **I. Information**

The GDC will assemble information on five key characteristics of the Project and its associated transit services in addition to information on the current public transportation system regarding transit services levels and ridership patterns:

1. **Project scope**: The physical components of the Project, including environmental mitigation and other related elements;
2. **Capital cost**: The total Project capital costs in constant dollars, formatted in FTA's Standard Cost Categories, and annual expenditures in year-of-expenditure dollars;
3. **Transit service levels**: The current service levels of the public transportation system in the Project corridor, and the service characteristics of the fixed guideway, feeder bus services, and other bus services in the corridor;
4. **Operation and maintenance (O&M) costs**: O&M costs for the Project and the change in O&M costs for other transit services in the corridor;
5. **Ridership**: Trips on the Project and the change in transit trips in the corridor plus associated impacts on fare box revenues; and

#### **II. Milestones**

The GDC will assemble predictions of Project outcomes at three milestones during development of the Project and will collect data at two milestones during its implementation. At each milestone, the GDC will archive the assembled information, data, and documentation and provide to FTA a copy of the archive.

1. **Entry into Project Development**: Assembly, documentation, and archiving of the predicted outcomes on all five characteristics of the Project at the point when the GDC requested

FTA approval for entry into Project Development;

2. Entry into Engineering: Assembly, documentation, and archiving of the predicted outcomes on all five characteristics of the Project at the point when the GDC requested FTA approval for Entry into Engineering, plus an analysis of any significant differences in the predicted outcomes compared to the predictions at entry into Project Development;
3. Full Funding Grant Agreement: Assembly, documentation, and archiving of the predicted outcomes on all five characteristics of the Project at the signing of the FFGA and an analysis of any significant differences in the predicted outcomes compared to the predictions at Entry into Engineering;
4. Actual Conditions before Project Opening: Collection, documentation, and archiving of data on existing transit services, O&M costs, and transit ridership/revenues immediately prior to any significant changes in transit service levels caused by either the construction or the opening of the Project; and
5. Actual Conditions after Project Opening: Collection, documentation, and archiving of data on the actual outcomes of the Project on all five characteristics for two years after the start of service.

### **III. Final Report**

Within 36 months after Project opening, the GDC will complete a final report that (1) documents the actual outcomes of the Project on all five characteristics and (2) analyzes the accuracy of predictions of those outcomes that were prepared during the Project's development. The body of the final report will highlight findings, conclusions, and lessons learned. To support the findings and conclusions, the GDC will include appendices to document the detailed analysis of each Project outcome.

### **IV. Coordination with FTA**

The GDC will maintain communication with FTA on progress in implementing the plan and provide opportunities for early review and for commenting on draft products. The GDC must obtain approval in advance of any changes in the scope or schedule for the plan approved by FTA.

Adopted - 7/2/24

**EXHIBIT B**

**GATEWAY DEVELOPMENT  
COMMISSION**

**Hudson Tunnel Project  
Project Budget**

*Issued Pursuant to Section 9.01(a) of the  
Project Development Agreement for Hudson Tunnel Project  
Baseline, Version 1*

To align with federal funding agreements, the Project Budget for the Hudson Tunnel Project is divided into two subparts: The Hudson Tunnel Project,<sup>1</sup> and the Hudson Yards Concrete Casing Section 3.

Hudson Tunnel Project (HTP) Budget

FTA Standard Cost Category Code	FTA Standard Cost Category Description	Total (\$000s)
10	Guideway & Track Elements	\$ 6,677,976
30	Support Facilities, Yards, Shops, Admin. Bldgs.	\$ 66,095
40	Sitework & Special Conditions	\$ 485,483
50	Systems	\$ 1,162,561
60	Row, Land, Existing Improvements	\$ 1,032,534
80	Professional Services	\$ 2,807,418
90	Unallocated Contingency	\$ 2,387,975
100	Finance Charges	\$ 1,421,288
		<b>\$ 16,041,331<sup>2</sup></b>

Hudson Yard Concrete Casing Section - 3 (HYCC-3)

FTA Standard Cost Category Code	FTA Standard Cost Category Description	Total (\$000s)
10	Guideway & Track Elements	\$ 507,300
40	Sitework & Special Conditions	\$ 21,900
80	Professional Services	\$ 79,800
90	Unallocated Contingency	\$ 83,700
		<b>\$ 692,700</b>

<sup>1</sup> For purposes of the Project Budget, and consistent with the Federal Transit Administration Full Funding Grant Agreement, the Hudson Tunnel Project is defined as incorporating three elements: 1) the construction of a new Hudson River Tunnel between New York and New Jersey; 2) the rehabilitation of the existing North River Tunnel under the Hudson River; and 3) Long Island Railroad (LIRR) Emergency Services Building (ESB) Utility Relocation Early Work.

<sup>2</sup> The \$16,041,331 (\$000s) total includes costs associated with Public Transportation and Intercity Rail.



The Project Development Agreement between GDC, the National Railroad Passenger Corporation (“Amtrak”), the State of New York and the State of New Jersey executed on February 3, 2023, as amended by First Amendment dated May 24, 2023, and Second Amendment dated March 5, 2024 (“PDA”), requires preparation of a Project Budget. This Project Budget was prepared by GDC and is approved, in accordance with the PDA’s Article 9.01(a) by GDC, the State of New York, State of New Jersey, and Amtrak as indicated by their signatures below.

State of New Jersey approval, by electronic mail from Thomas Holl, dated 6/13/24.

State of New York approval, by electronic mail from Julia Kerson, dated 6/13/24.

Amtrak approval, by electronic mail from Laura Mason, dated 6/13/24.

Gateway Development Commission approval by electronic mail from Chief Executive Officer Kris Kolluri pursuant to Board of Commissioners’ Resolution 0724-01, dated

\_\_\_\_\_.

# GATEWAY DEVELOPMENT COMMISSION

## Hudson Tunnel Project Executive Project Schedule

*Issued Pursuant to Section 5.01(a) of the  
Project Development Agreement for Hudson Tunnel Project*

*Baseline, Version 1*

### Executive Project Schedule Key Milestones (EPS):

Milestone Description	Milestone Date
<b>Hudson Yards Concrete Casing Section - 3 (HYCC-3)<sup>1</sup></b>	
HYCC-3: Notice to Proceed (NTP)	31-Jan-23
HYCC-3: Support of excavation	28-Feb-24
HYCC-3: Excavation (Including Rock)	30-Nov-24
HYCC-3: Tunnel Construction	30-Jun-25
HYCC-3: Yard/Highline Restoration and Demobilization	30-Nov-25
<b>Package EA-1 HRGS<sup>2</sup></b>	
Package EA-1: HRGS - Completion	21-Dec-27
<b>Package 1A - Palisades Tunnels<sup>2</sup></b>	
Package 1A: Package 1A: Palisades Tunnels - Advertise (Issue Request for Qualification)	31-May-23
Package 1A: Package 1A: Palisades Tunnels - Issue Notice to Proceed	10-Jul-24
Package 1A: Package 1A: Palisades Tunnels - Completion	22-Nov-27
<b>Package 1B - Manhattan Tunnels<sup>2</sup></b>	
Package 1B: Manhattan Tunnels - Issue Advertise (Issue Request for Qualification)	31-Aug-23
Package 1B: Real Estate Midpoint (NTP Property Acquisitions Complete)	29-Oct-24
Package 1B: Manhattan Tunnels - Issue Notice to Proceed	1-Nov-24
Package 1B: Manhattan Tunnels - Completion	26-Apr-30
<b>Package 1C - Hudson River Tunnels<sup>2</sup></b>	
Package 1C: Hudson Tunnels - Issue Advertise (Issue Request for Qualification)	16-Aug-24
Package 1C: Real Estate Complete (NTP Property Acquisitions Complete)	21-Sep-25
Package 1C: Hudson Tunnels - Issue Notice to Proceed	21-Oct-25
Package 1C: Midpoint of Construction (Completion of Package 1C)	27-Apr-30

<sup>1</sup> This Executive Project Schedule for HYCC-3 includes original milestone dates as reflected in the Mega Grant application as submitted to USDOT, May 23, 2022.

<sup>2</sup> This Executive Project Schedule for the Hudson Tunnel Project includes the same milestones as those submitted by GDC in connection with the execution of the Full Funding Grant Agreement with FTA.

Executive Project Schedule Key Milestones (EPS) (Cont.):

<b>Milestone Description</b>	<b>Milestone Date</b>
<b>Package 2 - Tunnels &amp; Systems Fit Out<sup>2</sup></b>	
Package 2: Tunnels & Systems Fit Out - 30% Design Complete	2-May-23
Package 2: Tunnels & Systems Fit Out - 60% Design Complete	10-Jun-24
Package 2: Tunnels & Systems Fit Out - 90% Design Complete	30-Dec-24
Package 2: Tunnels & Systems Fit Out - System Testing Complete	2-Sep-32
Package 2: Tunnels & Systems Fit Out - System Acceptance	31-Aug-34
<b>Package 3 - New Jersey Surface Realignment<sup>2</sup></b>	
Package 3: NJ Surface Realignment - Issue Advertise (Issue Request for Qualification)	10-Jun-24
Package 3: NJ Surface Realignment - Issue Notice to Proceed	29-Aug-25
Package 3: NJ Surface Realignment - Completion	1-Sep-29
<b>Package 4 - Tonnelle Avenue Underpass<sup>3</sup></b>	
Package 4: Tonnelle Avenue - Actual Construction Start Date	13-Oct-23
Package 4: Tonnelle Avenue - Planned Stage 2 Completion date (50% Complete)	28-Feb-25
Package 4: Tonnelle Avenue - Planned Construction Substantial Completion (Planned Revenue Service date Tonnelle Avenue)	31-Oct-25
Package 4: Tonnelle Avenue - Planned Construction Contract Close-Out Date	31-Jan-26
Package 4: Tonnelle Avenue - Completion	16-Mar-26
<b>Package 5 - North River Tunnels<sup>2</sup></b>	
Package 5 - North River Tunnels - Completion	25-Jun-38
<b>Additional Milestones<sup>2</sup></b>	
Real Estate Start	3-Apr-23
Revenue Operations Start	9-Nov-40
Pre-award authority	1-Jan-17
Advance Design Start	3-Apr-23
Full Funding Grant Agreement Application	1-Jan-24

<sup>2</sup> This Executive Project Schedule for the Hudson Tunnel Project includes the same milestones as those submitted by GDC in connection with the execution of the Full Funding Grant Agreement with FTA.

<sup>3</sup>This Executive Project Schedule for Tonnelle Avenue Bridge & Utility Relocation Project includes milestones listed in the RAISE Grant Agreement as required by FTA.

The Project Development Agreement between GDC, the National Railroad Passenger Corporation (“Amtrak”), the State of New York and the State of New Jersey executed on February 3, 2023, as amended by First Amendment dated May 24, 2023, and Second Amendment dated March 5, 2024 (“PDA”), requires preparation of an Executive Project Schedule. This Executive Project Schedule was prepared by GDC and is approved, in accordance with the PDA’s Article 5.01(a) by GDC, the State of New York, State of New Jersey, and Amtrak as indicated by their signatures below.

State of New Jersey approval, by electronic mail from Thomas Holl, dated 6/13/24.

State of New York approval, by electronic mail from Julia Kerson, dated 6/13/24.

Amtrak approval, by electronic mail from Laura Mason, dated 6/13/24.

Gateway Development Commission approval by electronic email from Chief Executive Officer Kris Kolluri, pursuant to Board of Commissioners’ Resolution 0724-01, dated \_\_\_\_\_.

**#0724-02: AUTHORIZATION TO ENTER INTO, EXECUTE, AND AMEND RRIF LOAN AGREEMENTS AND RELATED RRIF NOTES BETWEEN THE GATEWAY DEVELOPMENT COMMISSION (GDC AND THE UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT, AND RRIF DIRECT AGREEMENTS AMONG USDOT, GDC, THE TREASURER OF THE STATE OF NEW JERSEY, NEW JERSEY TURNPIKE AUTHORITY, NEW JERSEY TRANSIT CORPORATION, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, AND THE STATE OF NEW YORK, AND AMENDMENT TO RRIF LOCAL FUNDING AGREEMENT WITH PANYNJ**

To help ensure the functionality of intercity and commuter rail infrastructure between New Jersey and New York and throughout the Northeast Corridor, the State of New Jersey ("**New Jersey**") and the State of New York ("**New York**") created the Gateway Development Commission ("**GDC**") through the enactment of parallel legislation by each state codified as the Gateway Development Commission Act (2019 N.Y. Laws, Ch. 108 and N.J.S.A. 32:36-1, et seq.) (collectively, the "**GDC Act**").

The GDC Act empowers GDC to "enter into, execute and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power of the Commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, with any local government thereof, with any agency, instrumentality, department, commission or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them." 2019 N.Y. Laws, Ch. 108, Section 2(7)(e); N.J.S.A. 32:36-8(e).

The GDC Act also empowers GDC to "enter into loan agreements and otherwise borrow funds or incur indebtedness or other future payment obligations for any corporate purpose, including to effectuate full funding" of the Hudson Tunnel Project ("**HTP**"). 2019 N.Y. Laws, Ch. 108, Section 2(7)(j) and N.J.S.A. 32:36-8.j.

By Resolution 0224-08 dated February 28, 2024, the Board approved GDC's entry into the following agreements with each respective partner to support the funding of the HTP, and each such agreement was subsequently executed by each respective partner and GDC: (i) the HTP RRIF Loan Funding Agreement, dated April 8, 2024, between GDC and the Port Authority of New York and New Jersey ("**PANYNJ**"), (ii) the HTP Funding Agreement (RRIF Loan), dated March 31, 2024, between GDC and NJ Transit Corporation ("**NJ TRANSIT**"), and (iii) the Service Contract, dated March 31, 2024, between GDC and the State of New York (each, as amended, a "**RRIF Local Funding Agreement**" and, collectively, the "**RRIF Local Funding Agreements**").

Resolution 0224-08 also authorized the GDC Chief Executive Officer to take any and all actions to make, execute, and deliver in the name of and on behalf of GDC amendments to each RRIF Local Funding Agreement as may be necessary or required for the delivery of the HTP, subject to the concurrence of Build America Bureau ("**BAB**"), NJ TRANSIT, PANYNJ and/or New York, as applicable, on the content of such amendments.

To facilitate the funding of the HTP, each RRIF Local Funding Agreement will support, through back-to-back payments made thereunder, a separate loan agreement between GDC and the United States Department of Transportation (“**USDOT**”), an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (“**BAB**”) under the Railroad Rehabilitation and Improvement Financing (“**RRIF**”) program administered by the USDOT (each a “**RRIF Loan Agreement**” and, collectively, the “**RRIF Loan Agreements**”). The RRIF Loan Agreement between GDC and USDOT supported by the RRIF Local Funding Agreement with PANYNJ provides for a not to exceed aggregate principal amount of \$1,870,000,000 (excluding capitalized interest). The RRIF Loan Agreement between GDC and USDOT supported by the RRIF Local Funding Agreement with NJ TRANSIT provides for an aggregate principal amount of \$703,052,143 (excluding capitalized interest). The RRIF Loan Agreement between GDC and USDOT supported by the RRIF Local Funding Agreement with the State of New York provides for an aggregate principal amount not to exceed \$1,487,018,803 (excluding capitalized interest). The aggregate principal amounts in RRIF Loan Agreements supported by the RRIF Local Funding Agreements with the State of New York and the Treasurer of the State of New Jersey each include a separate tranche of \$487,334,767 (excluding capitalized interest) to provide a cost overrun facility for the HTP, if required. Each loan made by the USDOT to GDC on the terms and conditions set forth in the applicable RRIF Loan Agreement will be evidenced by a promissory note delivered by GDC as set forth in the applicable RRIF Loan Agreement (each such promissory note, a “**RRIF Note**” and, collectively, the “**RRIF Notes**”).

A separate agreement will be entered into in connection with each RRIF Loan Agreement as follows: (1) a Direct Agreement among USDOT, GDC and PANYNJ, including amendments to the PANYNJ RRIF Local Funding Agreement that may be further memorialized in an Amended and Restated PANYNJ RRIF Local Funding Agreement; (2) a Direct Agreement among USDOT, GDC, the Treasurer of the State of New Jersey, the New Jersey Turnpike Authority (“**NJTA**”), and NJ TRANSIT; and (3) a Continuing Covenants and Representations Agreement among USDOT, GDC, and the State of New York (each, a “**RRIF Direct Agreement**” and, collectively, the “**RRIF Direct Agreements**”). The RRIF Loan Agreements, RRIF Notes and RRIF Direct Agreements are collectively referred to herein as the “**RRIF Loan Documents**”, and the transaction pursuant to which all RRIF Loan Documents are executed and delivered is referred to as the “**RRIF Loan Transaction**”.

The RRIF Loan Documents will be entered into concurrently with the entry into a Full Funding Grant Agreement (“**FFGA**”) with the Federal Transit Administration to occur following this Board meeting.

Section 3.06 of the GDC Bylaws provides that “[t]he Board may delegate in whole or in part any power, authority, discretion or obligation to any Officer, in each case to the extent to which the Board deems appropriate.”



Adopted - 7/2/24

In order to enable the efficient and timely effectuation of the HTP, it is necessary to delegate to the Chief Executive Officer the authority to take categories of actions in addition to those delegated in the Bylaws.

Pursuant to the foregoing report, the following resolution was adopted, with Co-Chair Glen, Co-Chair Grewal-Virk, Vice Chair Coscia, Commissioner Barbas, Commissioner Bauer, Commissioner Rosen and Commissioner Dominguez voting in favor:

**RESOLVED**, that the GDC Chief Executive Officer is authorized to enter into each RRIF Loan Agreement and each RRIF Note on behalf of GDC in a form substantially consistent with those attached hereto as Exhibits A, B, and C.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to enter into each RRIF Direct Agreement on behalf of GDC in a form substantially consistent with those attached hereto as Exhibits D, E, and F.

**RESOLVED**, that the GDC Chief Executive Officer, as authorized by Resolution 0224-08, may enter into an Amended and Restated RRIF Local Funding Agreement with PANYNJ on behalf of GDC consistent with the amendments to the RRIF Local Funding Agreement that are set forth in the Direct Agreement with PANYNJ attached hereto as Exhibit F.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions to finalize the terms of each RRIF Loan Document and make, execute, and deliver in the name of and on behalf of GDC each RRIF Loan Document once finalized, and to take all other steps necessary to comply with the terms and conditions of each RRIF Loan Document, once executed.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions to make, execute, and deliver in the name of and on behalf of GDC amendments to each RRIF Loan Document as may be necessary or required, subject to the concurrence of USDOT through BAB, PANYNJ, the Treasurer of the State of New Jersey, NJ TRANSIT, New Jersey Turnpike Authority, and/or New York, as applicable, on the content of such amendments, and to take all other steps necessary to comply with the terms and conditions of amendments to each RRIF Loan Document.

**RESOLVED**, that the GDC Chief Executive Officer, General Counsel, Chief Financial Officer, and Chief Administrative Officer are each authorized to take any and all actions consistent with the RRIF Loan Documents and RRIF Local Funding Agreements, as applicable, and make, execute, and deliver in the name of and on behalf of GDC any other documents and certifications as may be necessary or required in order to achieve a financial closing of the RRIF Loan Transaction.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to approve, create, amend, manage, and administer each of the RRIF Loan Documents on behalf of GDC upon such terms as the Chief Executive Officer may deem proper, and to enter into or execute any such agreements or other documents on behalf of GDC as may be necessary or required in connection with the establishment and maintenance of the RRIF Loan Documents.

Adopted - 7/2/24

**RESOLVED**, that the GDC Chief Executive Officer is authorized to delegate, in writing, the authority to authorize, approve, create, amend, and manage any aspect of the RRIF Loan Documents and execute such other documents as may be required to other officers or employees of GDC provided that the GDC Chief Executive Officer provides notice in writing to the Co-Chairs and Vice Chair of the Board of such delegation.

**RESOLVED**, that the GDC Chief Executive Officer or designee may enter into and execute any agreements and other documents on behalf of GDC in connection with the RRIF Loan Documents in their discretion.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to settle all claims by or against GDC arising out of the RRIF Loan Documents where the total payment or amount of the claim is not in excess of \$500,000. Claims against GDC shall include claims against individuals for which GDC would be responsible under Article VII of GDC's Bylaws ("Defense and Indemnification of Individuals") provided, however, that in the case of claims against individuals for which GDC would be responsible under said Article VII which are covered by insurance purchased by or on behalf of such individuals, GDC shall pay such claims only to the extent that they are in excess of the amount for which insurance carriers are responsible.

**RESOLVED**, that the GDC Chief Executive Officer will report back to the GDC Board of Commissioners upon the closing of the RRIF Loan Transaction, and execution of all RRIF Loan Documents and additional documents related or any amendments thereto.

Adopted - 7/2/24

**EXHIBIT A**

**UNITED STATES  
DEPARTMENT OF TRANSPORTATION**

**RRIF LOAN AGREEMENT**

**For Up to \$703,052,143**

**With**

**GATEWAY DEVELOPMENT COMMISSION**

**For the**

**HUDSON TUNNEL PROJECT**

**(NJT Funding Agreement)(RRIF – 2024-0052)**

**Dated as of July 8, 2024**

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**EXHIBIT H** – Non-Debarment Certification

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**EXHIBIT N** – Employee Protection Arrangements

## RRIF LOAN AGREEMENT

**THIS RRIF LOAN AGREEMENT** (this “**Agreement**”), dated as of July 8, 2024, is by and between **GATEWAY DEVELOPMENT COMMISSION**, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey (the “**State**”) and the State of New York, with an address of 120 Broadway – 10<sup>th</sup> Floor, New York, New York 10271 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**RRIF Lender**”).

### RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has created the Railroad Rehabilitation and Improvement Financing program (“**RRIF**”) codified at 49 U.S.C. §§ 22401-22406 (as amended from time to time, the “**Act**”); and

WHEREAS, Section 22402 of the Act authorizes the RRIF Lender to provide direct loans and loan guarantees to eligible project sponsors; and

WHEREAS, the Borrower has requested that the RRIF Lender make the RRIF Loan (as defined herein), comprised of Tranches (as defined herein), to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for RRIF credit assistance dated May 1, 2024 (the “**Application**”); and

WHEREAS, on June 6, 2024 the Secretary (as defined herein) approved RRIF credit assistance for the Project in the form of the RRIF Loan (as defined herein); and

WHEREAS, the RRIF Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the RRIF Note (as defined herein) in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the RRIF Lender has entered into this Agreement in reliance upon, among other things, the GDC Act, the Fundamental Contracts, and the Direct Agreement (each as defined herein).

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the RRIF Lender as follows:

Section 1. **Definitions.** Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (Definitions) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“**Acceptable Credit Rating**” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than ‘A+’, ‘A1’ or the equivalent rating from at least one (1) Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

“**Account**” has the meaning ascribed to the term “NJ RRIF Account” in the CASA.

“**Act**” means the Act as defined in the recitals hereto.

“**Additional Funding Agreement**” means any additional funding agreement, other than the NJT Funding Agreement, entered into by and between the NJT and the Borrower, pursuant to which the NJT provides funding to the Borrower for the purpose (in whole or in part) of securing the repayment of indebtedness of the Borrower to finance the construction of all or any portion of and relating to the Project.

“**Agreement**” has the meaning provided in the preamble hereto.

“**Amtrak**” means the National Railroad Passenger Corporation (d/b/a Amtrak).

“**Anti-Corruption Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption.

“**Anti-Money Laundering Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“**Anticipated RRIF Loan Disbursement Schedule**” means the schedule set forth in **Exhibit A**, reflecting the anticipated disbursement of proceeds of the RRIF Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (Disbursement Conditions) of this Agreement.

“**Application**” has the meaning provided in the recitals hereto.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1960 and 31 U.S.C. §§ 312, 5311-5313, and 5316-5322), as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**Bankruptcy Related Event**” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of RRIF Debt Service in accordance with the provisions of Section 9 (Payment of Principal and Interest), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law.

“**Base Case Financial Model**” means a financial model prepared by the Borrower that includes (a) for each six (6) month period (commencing on January 1 and July 1, respectively) through the later of (i) the Final Maturity Date and (ii) the latest final maturity date under any Other RRIF Loan Agreement, a forecast of all Contract Payments, all Contract Payments under (and as defined in) each Other Funding Agreement, and all expenditures and funding obligations of the Borrower or related to the Project, (b) for each six (6) month period (commencing on January 1 and July 1, respectively) through the later of (i) the Final Maturity Date and (ii) the latest final maturity date under any Other RRIF Loan Agreement, a forecast of all RRIF Debt Service, all debt service in respect of the Other RRIF Loans, and all debt service in respect of all other Obligations, and (c) the Project Budget, which model, in each case in clauses (a), (b), and (c) above, shall be based upon assumptions and a methodology provided by the Borrower and acceptable to the RRIF Lender as of the Effective Date, and which model shall be provided to the RRIF Lender as a fully functional Microsoft Excel-based financial model or shall use such other format requested by the RRIF Lender.

“**Borrower**” has the meaning provided in the preamble hereto.

“**Borrower Fiscal Year**” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on January 1 of any calendar year and ending on December 31 of such calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior

written notice to the RRIF Lender, as provided in Section 16(d) (*Organizational Documents; Fiscal Year*).

“**Borrower’s Authorized Representative**” means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York.

“**Capital Expenditures**” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.

“**Capitalized Interest Period**” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period.

“**CASA**” means that certain Collateral Accounts and Security Agreement, dated as of the Effective Date, by and among the Borrower, the RRIF Lender, the Collateral Agent, and the Securities Intermediary (as defined therein).

“**CIG**” means that certain Capital Investment Grant awarded by the FTA to the Borrower pursuant to the FFGA.

“**Collateral**” means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (a) the NJT Funding Agreement, including all right, title, and interest of the Borrower in the Contract Payments payable thereunder, (b) the Account, and (c) all Proceeds (as defined in the CASA) and products in whatever form of all or any part of the foregoing items (a) and (b), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments and other funds or amounts on deposit in the Account.

“**Collateral Agent**” means The Bank of New York Mellon, a bank organized under the laws of the state of New York.

“**Congress**” has the meaning provided in the recitals hereto.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

“**Construction-Related Contract Party**” means any Person (other than the Borrower) party to a Construction-Related Contract.

“**Construction-Related Contracts**” means

- (a) Master Services Agreement, Contract No. GDC-24-005-HTP, dated as of March 18, 2024, between the Borrower and MPA Delivery Partners;

- (b) Design-Build Agreement, dated as of March 11, 2024, between the Borrower and Weeks Marine, Inc.;
- (c) Tonelle Avenue Overhead Bridge and Utility Relocations, Contract GDC23-002, dated as of October 12, 2023, between the Borrower and Conti Civil, LLC;
- (d) GDC Agreement GDC-23-001, dated as of September 29, 2023, between the Borrower and Naik Consulting Group, P.C.; and
- (e) each other construction-related contract entered into by the Borrower in connection with the Project from time to time.

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule I**, and (b) any updates thereto included in the Financial Plan most recently submitted to the RRIF Lender pursuant to Section 21(a)(iv)(B) (*Financial Plan*).

“**Contract Payments**” has the meaning set forth in the NJT Funding Agreement.

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “Controlling” and “Controlled by” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2024 as the base period.

“**Credit Risk Premium**” means a nonrefundable fee in the amount of zero dollars (\$0.00) for each disbursement of the RRIF Loan.

“**Debt Service Payment Commencement Date**” means (a) with respect to Tranche A, February 1, 2035, and (b) with respect to Tranche B, February 1, 2035 or, if later, the Semi-Annual Payment Date next occurring after the initial disbursement under Tranche B.

“**Default**” means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“**Default Rate**” means, with respect to each Tranche, an interest rate equal to the sum of (a) the RRIF Interest Rate for such Tranche plus (b) two percent (2.00%).

“**Development Default**” means (a) the Borrower fails to diligently prosecute the work related to the Project and, if a Recovery Plan has been provided in accordance with Section 22(d) (*Recovery Plan*), in accordance with such Recovery Plan, or (b) the Borrower fails to complete the Project by the Projected Substantial Completion Date or, if a Recovery Plan has been provided in



accordance with Section 22(d) (*Recovery Plan*), in accordance with the updated Projected Substantial Completion Date established pursuant to such Recovery Plan.

“**Direct Agreement**” means that certain Direct Agreement (NJS), dated as of the date hereof, among the RRIF Lender, the Borrower, State Treasurer, NJTA and NJT, and acknowledged and agreed to by the Collateral Agent.

“**Effective Date**” means the date of this Agreement.

“**Electronic Signature**” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 *et seq.*), as amended from time to time.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, all of which shall arise from the following:

- (a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or
- (c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction;

provided, however, that Eligible Project Costs must be consistent with the Act and all other applicable federal law.

“**Environmental Laws**” has the meaning provided in Section 13(r) (*Environmental Matters*).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. § 1001 *et seq.*), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

“**Event of Default**” has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

“**Event of Loss**” means any event or series of events that causes any portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Federal Fiscal Year**” or “**FFY**” means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**Federal Government**” means the Federal Government of the United States of America and its departments and agencies.

“**Federal Grant Agreements**” means the FFGA, the FSP Grant Agreement, and the RAISE Grant Agreement.

“**Federal Grants**” means the CIG, the FSP Grant, and the RAISE Grant.

“**FFGA**” means that certain Full Funding Grant Agreement (Hudson Tunnel Project, Project No. NY-2024-015-00), dated as of July 8, 2024, by and between the United States of America, acting through the FTA and the Borrower.

“**Final Maturity Date**” means, for each Tranche, February 1, 2073.

“**Financial Plan**” means the financial plan for each Borrower Fiscal Year to be delivered pursuant to Section 21(a) (*Financial Plan*).

“**Financial Statements**” has the meaning provided in Section 13(w) (*Financial Statements*).

“**Fixed Level Payment**” has the meaning provided in Section 9(c) (*Payment of RRIF Debt Service*).

“**FRA**” means the Federal Railroad Administration, a modal agency of the USDOT.

“**FRA Regional Office**” means the United States Department of Transportation, Federal Railroad Administration, Region II Office.

“**FSP Grant**” means that certain Federal-State Partnership for Intercity Passenger Rail Grant awarded to the Borrower in connection with the Project pursuant to the FSP Grant Agreement.

“**FSP Grant Agreement**” means the agreement, to be entered into between the Borrower and FRA, governing the FSP Grant.

“**FTA**” means the Federal Transit Administration, a modal agency of the USDOT.

**“FTA Project Management Oversight Requirements”** means the requirements and conditions for FTA project management oversight, as set forth in 49 U.S.C. § 5327 and in 49 C.F.R. Part 633.

**“FTA Regional Office”** means the United States Department of Transportation, Federal Transit Administration, Region 2 Office.

**“Fundamental Contract Party”** means any Person (other than the Borrower) party to a Fundamental Contract.

**“Fundamental Contracts”** means the NJT Funding Agreement, the Project Development Agreement and, if and when entered into, each Additional Funding Agreement.

**“Funding Partner”** means NJT.

**“GAAP”** means generally accepted accounting principles as defined by the Governmental Accounting Standards Board, or such other nationally recognized professional body, in effect from time to time in the United States of America.

**“GANs”** means any grant anticipation notes issued by the Borrower after the Effective Date.

**“GDC Act”** means the parallel legislation by the State and the State of New York, codified as the Gateway Development Commission Act (N.J.S.A. 32:36-1, *et seq.* and 2019 N.Y. Laws, Ch. 108).

**“GDC Operations Funding Agreement”** means any agreement entered into between or among the Borrower, the State, the State of New York, and/or Amtrak pursuant to Section 11.01 of the Project Development Agreement to provide funding for the Borrower’s annual operating budget.

**“Government Obligations”** means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition 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, in each case.

**“Governmental Approvals”** means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“**Governmental Authority**” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the states and their respective counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**Indemnitee**” has the meaning provided in Section 17 (*Indemnification*).

“**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“**Level Payment Commencement Date**” means, for each Tranche, August 1, 2038.

“**Level Payment Period**” means, with respect to a Tranche, the period commencing on the Level Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash).

“**Lien**” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“**Loan Amortization Schedule**” means, for each Tranche, the Loan Amortization Schedule reflected in the applicable column for such Tranche set forth in **Exhibit B**, as amended from time to time in accordance with Section 7 (*Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule*).

“**Material Adverse Effect**” means a material adverse effect on (a) the Project (until the Substantial Completion Date) or the Contract Payments, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, (c) the legality, validity or enforceability of any material provision of any RRIF Loan Document or Fundamental Contract, (d) the ability of (1) the Borrower to enter into, perform or comply with any of its material obligations under any RRIF Loan Document or (2) the Funding Partner to enter into, perform, or comply with any of its material obligations under the NJT Funding Agreement, (e) the validity, enforceability or priority of the Liens granted under the CASA on the Collateral in favor of the Collateral Agent (on behalf of the RRIF Lender) or (f) the RRIF Lender’s rights or remedies available under any RRIF Loan Document.

“**Modal Grant Offices**” means the FRA Regional Office and the FTA Regional Office.

“**NEPA**” means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. § 4321 *et seq.*), and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“**NEPA Determination**” means the Record of Decision for the Project issued by the FTA Regional Office and the FRA on May 28, 2021, in accordance with NEPA.

“**New York Funding Agreement**” means that certain Service Contract, dated as of March 31, 2024, by and between the State of New York, acting by and through the Director of the Budget of the State of New York, and the Borrower.

“**NJT**” means the New Jersey Transit Corporation, a body corporate and politic and an instrumentality of the State, organized and existing by virtue of the New Jersey Public Transportation Act of 1979, constituting Chapter 150 of the Laws of New Jersey of 1979, as amended and supplemented (N.J.S.A. 27:25-1 *et seq.*).

“**NJT Funding Agreement**” means that certain Hudson Tunnel Project Funding Agreement (RRIF Loan), dated as of March 31, 2024, by and between the Borrower and the Funding Partner.

“**NJTA**” means the New Jersey Turnpike Authority, a body corporate and politic of the State organized and existing by virtue of the New Jersey Turnpike Authority Act of 1948, constituting Chapter 454 of the Laws of New Jersey of 1948, as amended and supplemented (N.J.S.A. 27:23-1 *et seq.*).

“**NJTA Funding Agreement**” means that certain Amended and Restated State Public Transportation Projects Funding Agreement, dated as of March 31, 2024, by and between NJTA and the State Treasurer.

“**Obligations**” means the RRIF Loan, each Other RRIF Loan, the Working Capital Facility, the GANs, and any other indebtedness for borrowed money of the Borrower.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Organizational Documents**” means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement

of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

**“Other Borrower Financing Documents”** means the indenture, credit agreement or other definitive documents pursuant to which any Obligations (other than the RRIF Loan and the Other RRIF Loans) are issued or incurred, including any other agreement, instrument and document executed and/or delivered pursuant to or in connection with any of the foregoing.

**“Other Funding Agreements”** means, collectively:

- (a) the New York Funding Agreement; and
- (b) the Port Authority Funding Agreement.

**“Other Funding Partner”** means, (i) with respect to the New York Funding Agreement, the State of New York, acting by and through the Director of the Budget of the State of New York, and (ii) with respect to the Port Authority Funding Agreement, the Port Authority.

**“Other RRIF Loan”** means each secured loan made by the RRIF Lender to the Borrower on the terms and conditions set forth in the Other RRIF Loan Agreements.

**“Other RRIF Loan Agreements”** means, collectively:

- (a) the RRIF Loan Agreement (New York Funding Agreement); and
- (b) the RRIF Loan Agreement (Port Authority Funding Agreement).

**“Outstanding RRIF Loan Balance”** means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the RRIF Loan (inclusive of all of the Tranches), as determined in accordance with Section 7 (*Outstanding RRIF Loan Balance, Revisions to Exhibit B and Loan Amortization Schedule*).

**“Patriot Act”** means the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

**“Payment Default”** has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

**“Payment Period”** means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month period ending on the date immediately prior to the first Debt Service Payment Commencement Date.

“**Permitted Investments**” means (with respect to the investment of the proceeds of the RRIF Loan or any construction or reserve account established and maintained pursuant to the CASA):

(a) Government Obligations;

(b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;

(c) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest rating categories (without regard to any refinement or gradation of such rating by a numerical modifier or otherwise) for comparable types of obligations by any Rating Agency; and

(e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Port Authority**” means the Port Authority of New York and New Jersey, a body corporate and politic, created by compact between the State and the State of New York with the consent of Congress.

“**Port Authority Funding Agreement**” means that certain Hudson Tunnel Project RRIF Loan Funding Agreement, dated as of April 8, 2024, between the Borrower and the Port Authority.

“**Project**” means (a) the construction of a new Hudson River Tunnel between New York and New Jersey; (b) the rehabilitation of the existing North River Tunnel under the Hudson River; and (c) Hudson Yards Concrete Casing – Section 3 Long Island Rail Road Emergency Services Building Utility Relocation Early Work associated with the separately funded Hudson Yards Concrete Casing Section 3 project, in each case of clauses (a) through (c) as more fully described in the Federal Grant Agreements.

“**Project Budget**” means the budget for the Project in the aggregate amount of \$[insert Project budget amount] attached to this Agreement as **Schedule I** showing a summary of Total



Project Costs with a breakdown of all Eligible Project Costs for the Project, and the estimated sources and uses of funds for the Project, as amended from time to time subject to the reporting requirements in Section 22(b) (*Monthly Construction Progress Report*).

**“Project Development Agreement”** means that certain Project Development Agreement for Hudson Tunnel Project, dated as of February 3, 2023, by and among Borrower, the State, the State of New York, and Amtrak, as amended by those certain amendments, dated as of May 2, 2023, and as of March 5, 2024.

**“Projected Substantial Completion Date”** means November 9, 2040.

**“RAISE Grant”** means that certain Rebuilding America’s Infrastructure with Sustainability and Equity (RAISE) program grant, awarded to the Borrower in connection with the Project pursuant to the RAISE Grant Agreement.

**“RAISE Grant Agreement”** means that certain Grant Agreement under the Fiscal Year 2023 RAISE Program, dated as of June 4, 2024, by and between FTA and the Borrower.

**“Rating Agency”** means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. § 78c(a)(62)).

**“Recovery Plan”** means a recovery plan with respect to the implementation of the Project that has been prepared by the Borrower in accordance with the FFGA and the FSP Agreement, as applicable, and delivered to the RRIF Lender and the FTA Regional Office on behalf of both Modal Grant Offices.

**“Related Documents”** means the RRIF Loan Documents, the Federal Grant Agreements, and the Fundamental Contracts.

**“Requisition”** has the meaning provided in Section 4(a) (*Disbursement Conditions*).

**“Revised Financial Model”** means an updated version of the Base Case Financial Model, in form and substance satisfactory to the RRIF Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

**“RRIF”** has the meaning provided in the recitals hereto.

**“RRIF Debt Service”** means, with respect to any Semi-Annual Payment Date occurring on or after the first Debt Service Payment Commencement Date, the principal portion of the Outstanding RRIF Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency, or similar proceeding with respect to the Borrower) at the RRIF Interest Rate with respect to the applicable Tranche or, as applicable, the Default Rate with respect to the applicable Tranche, in each case, then due and payable on such Semi-Annual Payment Date in accordance with Section 9(c) (*Payment of RRIF Debt Service*).

“**RRIF Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**RRIF Lender**” has the meaning provided in the preamble hereto.

“**RRIF Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 26 (*RRIF Lender’s Authorized Representative*).

“**RRIF Loan**” means the direct loan made by the RRIF Lender to the Borrower on the terms and conditions set forth herein, in a principal amount not to exceed \$703,052,143 (excluding capitalized interest), pursuant to the Act to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower, divided into the Tranches.

“**RRIF Loan Agreement (New York Funding Agreement)**” means that certain RRIF Loan Agreement (New York Funding Agreement), dated as of the date hereof, between the RRIF Lender and the Borrower, to be supported by certain payments to be provided by the State of New York pursuant to the New York Funding Agreement.

“**RRIF Loan Agreement (Port Authority Funding Agreement)**” means that certain RRIF Loan Agreement (Port Authority Funding Agreement), dated as of the date hereof, between the RRIF Lender and the Borrower, to be supported by certain payments to be provided by the Port Authority pursuant to the Port Authority Funding Agreement.

“**RRIF Loan Documents**” means this Agreement, the RRIF Note, the Direct Agreement, the CASA, the Waiver, and all filings, recordings or registrations required by the RRIF Loan Documents to be filed or made in respect of the CASA.

“**RRIF Note**” means the promissory note delivered by the Borrower substantially in the form of **Exhibit E**.

“**Sanctioned Country**” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

“**Secretary**” means the United States Secretary of Transportation.

“**Semi-Annual Payment Date**” means each February 1 and August 1.

“**SEP Agreement**” means any agreement entered into by the Borrower and any user or operator of any element of the Project, or other governmental entity partnering with the Borrower to support the delivery of any work package associated with the Project.

“**SEP Agreement Party**” means any Person (other than the Borrower) party to a SEP Agreement.

“**Servicer**” means such entity or entities as the RRIF Lender shall designate from time to time to perform, or assist the RRIF Lender in performing, certain duties hereunder.

“**State**” has the meaning provided in the preamble.

“**State Treasurer**” means the Treasurer of the State.

“**Substantial Completion**” means the later to occur of Amtrak or NJT commencing, or having commenced, revenue operations on both of the elements described in clauses (a) and (b) of the definition of “Project”.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**Total Project Costs**” means (a) the costs paid or incurred or to be paid or incurred, either by the Borrower or a SEP Agreement Party, in connection with or incidental to the acquisition, design, construction and equipping of the Project, including (solely in respect of the Borrower) legal, administrative, engineering, planning, design, and insurance costs, and costs of issuance; (b) amounts, if any, required by the Other Borrower Financing Documents to be paid into any fund or account upon the incurrence of any Obligations; (c) without duplication of amounts described in clause (a), payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect of any Obligations (other than the RRIF Loan and each Other RRIF Loan); and (d) furniture, fixtures and equipment, and general administrative expenses and overhead of the Borrower.

“**Tranche**” means the following tranches of the RRIF Loan:

(a) Tranche A, in a maximum principal amount equal to \$215,717,376, to provide a portion of the total financing required for the Project (the “**Construction Tranche**”).

(b) Tranche B, in a maximum principal amount equal to \$487,334,767, to provide a cost overrun facility required for the Project (the “**Cost Overrun Tranche**”).

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not

be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State of New York.

“**USDOT**” means the United States Department of Transportation.

“**Waiver**” means that certain Waiver and Disclaimer, dated as of the date hereof, among the RRIF Lender, the Collateral Agent, the Borrower, Bank of America, N.A., and the other Persons from time to time party thereto.

“**Working Capital Facility**” means the revolving line of credit facility made available by the Working Capital Facility Lender under the Working Capital Facility Documents, the proceeds of which will be applied to the payment of Total Project Costs, and which shall be secured by the proceeds of certain Federal Grants.

“**Working Capital Facility Documents**” means (a) that certain Revolving Credit Agreement, dated as of July 8, 2024, by and between the Borrower and the Working Capital Facility Lender, (b) that certain Pledge and Security Agreement, dated as of July 8, 2024, by and between the Borrower and the Working Capital Facility Lender, and (c) each other agreement entered into by the Borrower and the Working Capital Facility Lender from time to time pursuant to or in connection with the Working Capital Facility.

“**Working Capital Facility Lender**” means Bank of America, N.A., together with its successors and permitted assigns.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof,” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and

schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (*Notices*) and signed by a duly authorized representative of such party.

Section 3. RRIF Loan Amount. The principal amount of the RRIF Loan (excluding interest that is capitalized in accordance with the terms hereof) shall not exceed \$703,052,143, provided, that (a) the principal amount of Tranche A (excluding interest that is capitalized in accordance with the terms hereof) shall not exceed \$215,717,376 and (b) the principal amount of Tranche B (excluding interest that is capitalized in accordance with the terms hereof) shall not exceed \$487,334,767. RRIF Loan proceeds shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 12(b) (*Conditions Precedent to All Disbursements*).

Section 4. Disbursement Conditions

(a) RRIF Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project, and will be divided into the Tranches. Each disbursement of the RRIF Loan may be in respect of all or a portion of one or more Tranches. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower's risk and expense, will not constitute Eligible Project Costs, and no RRIF Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. If the Borrower intends to utilize any RRIF Loan proceeds to make progress payments for the Project construction work, the Borrower shall demonstrate to the satisfaction of the RRIF Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the RRIF Loan shall be made pursuant to a requisition and certification (a "**Requisition**") in the form set forth in **Appendix One** to **Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the RRIF Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 (*Disbursement Conditions*), and the conditions set forth in Section 12(b) (*Conditions Precedent to All Disbursements*); provided, however, that no disbursements of RRIF Loan proceeds shall be made on or after the date that is five (5) years after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the RRIF Lender, the Servicer (if any) and the FTA Regional Office on behalf of both Modal Grant Offices on or before the first (1<sup>st</sup>) Business Day of each month prior to the month for which a disbursement is requested. Subject to Section 4(d) (*Disbursement Conditions*), if the RRIF Lender does not

expressly deny a Requisition, disbursements of funds shall be made on the first (1<sup>st</sup>) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such first (1<sup>st</sup>) day is not a Business Day. Express denial of a Requisition by the RRIF Lender shall be provided substantially in the form attached as **Appendix Two to Exhibit D (Requisition Procedures)**. In no event shall disbursements under this Agreement be made more than once each month.

(c) The Borrower may amend the Anticipated RRIF Loan Disbursement Schedule by submitting a revised version thereof to the RRIF Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4 (Disbursement Conditions), Section 12 (Conditions Precedent) or **Exhibit D (Requisition Procedures)**), in no event shall the RRIF Lender have any obligation to make any disbursement of proceeds of the RRIF Loan to the Borrower if the RRIF Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 5. Term. The term of each Tranche shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash.

Section 6. Interest Rate. The interest rate (the “**RRIF Interest Rate**”) with respect to the outstanding principal balance of each Tranche shall be (a) [ ] percent ([ ]%) per annum for Tranche A, and (b) [ ] percent ([ ]%) per annum for Tranche B. Interest will be computed on the outstanding principal balance of each Tranche (as well as on any past due interest) from time to time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the outstanding principal balance of each Tranche and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the outstanding principal balance of each Tranche and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived in writing by the RRIF Lender and (b) the date the outstanding principal balance of each Tranche and any interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

Section 7. Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule.

(a) The Outstanding RRIF Loan Balance will be (i) increased on each occasion on which the RRIF Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the RRIF Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding RRIF Loan Balance, by the amount of principal so paid. The RRIF Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding RRIF Loan Balance (and the outstanding principal balance of each Tranche) as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit B** from time to time, in accordance with the principles set forth in Section 10(b) (*General Prepayment Instructions*) and in **Exhibit C**, to reflect (i) any change to the Outstanding RRIF Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the RRIF Lender may determine is necessary for administering the RRIF Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the RRIF Lender's determination of such matters as set forth on **Exhibit B** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other RRIF Loan Document. The RRIF Lender shall provide the Borrower with a copy of **Exhibit B**, as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other RRIF Loan Documents.

Section 8. Security and Priority.

(a) As security for the RRIF Loan, the Borrower shall pledge, assign and grant to the Collateral Agent for the benefit of the RRIF Lender, a Lien on the Collateral in accordance with the provisions of the CASA.

(b) The Borrower is the legal and beneficial owner of the Collateral. The filing of the financing statements attached to the CASA as Exhibit C in the filing offices set forth in Schedule I of the CASA and the taking of possession or control by the Collateral Agent of such of the Collateral with respect to which a security interest may be perfected only by possession or control will create a valid, perfected and first priority security interest in the Borrower's rights in the Collateral in favor of the Collateral Agent, subject to no other Liens (other than Permitted Liens, as defined in the CASA) and entitled to all the rights, remedies and priorities and benefits afforded by the Uniform Commercial Code and all other applicable law as enacted in any relevant jurisdiction. The Borrower shall promptly take any and all steps that may be necessary, or that the Collateral Agent may reasonably request (acting on the written instructions of the RRIF Lender) to maintain the validity, perfection and first priority position of the Liens on the Collateral (subject only to Permitted Liens, as defined in the CASA) to enable the Collateral Agent or any designee to exercise and enforce its rights, remedies, powers and privileges under this Agreement with respect to such Liens.



(c) The Borrower shall not use Contract Payments to make any payments or satisfy any obligations other than the payment of RRIF Debt Service and fees, expenses and other amounts due and payable under the RRIF Loan Documents. The Borrower shall not apply any portion of the Contract Payments in contravention of the RRIF Loan Documents. The RRIF Loan will be payable from Contract Payments paid by the Funding Partner and will be the sole obligation of the Borrower secured by or payable from the Contract Payments.

Section 9. Payment of Principal and Interest.

(a) Semi-Annual Payment Dates. The Borrower agrees to pay the principal of and interest on the RRIF Loan by making payments in accordance with the provisions of this Agreement and the CASA on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date with respect to the applicable Tranche, and on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date.

(b) Capitalized Interest Period. No payment of the principal of or interest on the RRIF Loan is required to be made during the Capitalized Interest Period. On each February 1 and August 1 occurring during the Capitalized Interest Period (and on the Semi-Annual Payment Date immediately following the end of the Capitalized Interest Period), interest accrued on the RRIF Loan (including interest accrued at the Default Rate) in the six (6) month period ending immediately prior to such date shall be capitalized and added to the outstanding principal amount of the applicable Tranche. Within thirty (30) days after the end of the Capitalized Interest Period, the RRIF Lender shall give written notice to the Borrower stating the Outstanding RRIF Loan Balance and the outstanding principal amount of each Tranche as of the close of business on the Semi-Annual Payment Date immediately following the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other RRIF Loan Documents.

(c) Payment of RRIF Debt Service.

(i) On each Semi-Annual Payment Date occurring on or after the first Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the Borrower shall pay RRIF Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit B**, as the same may be revised as provided in Section 7 (Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule), which payments shall be made in accordance with Section 9(d) (Manner of Payment).

(ii) On each Semi-Annual Payment Date occurring on or after the Level Payment Commencement Date, the Borrower shall pay RRIF Debt Service in the amounts (each a “**Fixed Level Payment**”), as set forth in respect of such Semi-Annual Payment Date on **Exhibit B**, as the same may be revised as provided in Section 7 (Outstanding RRIF

*Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(d) (*Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement and the RRIF Note shall be made by wire transfer on or before each Semi-Annual Payment Date in immediately available funds in accordance with payment instructions provided by the RRIF Lender pursuant to Section 36 (*Notices*), as modified in writing from time to time by the RRIF Lender. The Borrower may make any such payment or portion thereof (or direct the Collateral Agent to make such payment) with funds then on deposit in the Account.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the outstanding principal amount of each Tranche and any accrued interest thereon shall be due and payable in full on the Final Maturity Date.

(f) RRIF Note. As evidence of the Borrower's obligation to repay the RRIF Loan (and each Tranche), the Borrower shall issue and deliver to the RRIF Lender, on or prior to the Effective Date, the RRIF Note, substantially in the form of **Exhibit E**, having a maximum principal amount (excluding capitalized interest) of \$703,052,143 and bearing interest at the rate for each Tranche set forth in Section 6 (*Interest Rate*).

#### Section 10. Prepayment.

(a) Optional Prepayments. The Borrower may prepay the RRIF Loan at any time without penalty or premium, in whole or in part; provided, that each partial prepayment shall be in a minimum principal amount of \$1,000,000. Each prepayment shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the RRIF Lender, which notice shall also specify the amount of unpaid interest for each Tranche accrued to the date of such prepayment on the amount of principal of each Tranche to be prepaid that the Borrower intends to pay concurrently with such prepayment. Such written notice shall be delivered to the RRIF Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the RRIF Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the RRIF Lender. Anything in this Section 10(a) (*Optional Prepayment*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) General Prepayment Instructions. Upon the RRIF Lender's receipt of confirmation that payment in full of the entire Outstanding RRIF Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of an optional prepayment, the RRIF Lender shall surrender the RRIF Note to the Borrower or its representative at the principal office of the RRIF Lender or certify to the Borrower that the RRIF Note has been destroyed in accordance with the RRIF Lender's procedures. If the Borrower prepays only part of the unpaid balance of principal of the RRIF Loan, such partial prepayments shall be applied to reduce future payments due with respect to each outstanding Tranche ratably (based on the remaining number of Semi-Annual Payment Dates through and including the Final Maturity Date) and allocated to each Tranche based on its relative outstanding principal amount. Absent manifest error, the RRIF

Lender's determination of such matters as set forth on **Exhibit B** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other RRIF Loan Document. Any principal amount of the RRIF Loan that is subject to a voluntary prepayment notice (as described in Section 10(a) (Optional Prepayments)) but that is not so paid on the applicable prepayment date shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate).

Section 11. Compliance with Laws. The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project and all SEP Agreement Parties, to comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including all applicable federal and state laws, rules, regulations and executive orders. The list of federal laws attached as **Exhibit F** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The Modal Grant Offices have oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law and with the Federal Grant Agreements.

Section 12. Conditions Precedent

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the RRIF Lender:

(i) The Borrower shall have duly executed and delivered to the RRIF Lender this Agreement and each other RRIF Loan Document, each in form and substance satisfactory to the RRIF Lender.

(ii) The Borrower shall have delivered to the RRIF Lender certified, complete, and fully executed copies of each Federal Grant Agreement and each Other Borrower Financing Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the RRIF Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived.

(iii) The RRIF Lender shall have received customary legal opinions, each in form and substance satisfactory to the RRIF Lender in its sole discretion, from internal and external counsel to the Borrower (including those opinions set forth on Exhibit G). The RRIF Lender shall also have received customary legal opinions, each in form and substance satisfactory to the RRIF Lender in its sole discretion, from counsel to the Funding Partner, the Treasurer of the State, and NJTA (including those opinions set forth in Exhibit A to the Direct Agreement).

(iv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-

procurement matters substantially in the form attached hereto as **Exhibit H** with respect to the Borrower and its principals (as defined in 2 CFR § 180.995).

(v) The Borrower shall have provided evidence to the RRIF Lender's satisfaction, no more than forty five (45), but no less than fourteen (14), days prior to the Effective Date, of the assignment by a Rating Agency of a public rating to the RRIF Loan, which rating shall not have been reduced, withdrawn or suspended as of the Effective Date.

(vi) The Borrower shall have delivered to the RRIF Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit I** (A) as to the satisfaction of certain conditions precedent set forth in this Section 12(a) (*Conditions Precedent to Effectiveness*) as required by the RRIF Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(vii) The Funding Partner, the NJTA, and the State Treasurer shall have each demonstrated satisfaction of their respective conditions precedent to the effectiveness of the Direct Agreement, including the execution and delivery of all documents required in connection with satisfying such conditions precedent.

(viii) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that the sum of (A) the aggregate principal amount of the RRIF Loan and the Other RRIF Loans, (B) the aggregate amount of the Federal Grants, and (C) the maximum amount committed to the Project by Amtrak, all as reflected in the Base Case Financial Model for the Project and in the Project Budget, are sufficient to pay all Total Project Costs necessary to achieve Substantial Completion, estimated as of the Effective Date.

(ix) The Borrower shall have provided to the RRIF Lender certified, complete, and fully executed copies of the NJTA Funding Agreement, each Fundamental Contract (each in form and substance satisfactory to the RRIF Lender), each Construction-Related Contract in effect as of the Effective Date, and each SEP Agreement in effect as of the Effective Date, in each case under this clause (ix) together with any amendments, waivers or modifications thereto that have been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect.

(x) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that (A) it has obtained all Governmental Approvals necessary to execute and deliver, and perform its obligations under the RRIF Loan Documents to which it is a party, (B) it held all Governmental Approvals needed for work related to the Project that was completed prior to the Effective Date, and (C) that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(xi) The Borrower shall have delivered to the RRIF Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Contract Payments are sufficient to meet the

Loan Amortization Schedule, and (B) otherwise be in form and substance acceptable to the RRIF Lender.

(xii) The Borrower shall have (A) provided evidence satisfactory to the RRIF Lender that the Borrower is authorized, pursuant to the GDC Act, to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the CASA, without the need for notice to any Person, physical delivery, recordation, filing or further act other than as set forth in clause (B), (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Collateral Agent's Lien on the Collateral (for the benefit of the RRIF Lender) to the extent contemplated by the RRIF Loan Documents or the GDC Act, including delivery of a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, that has been filed with the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code, (C) recorded or filed, or caused to be recorded or filed, with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services, a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, and (D) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any RRIF Loan Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xiii) The Borrower shall have paid in full all invoices delivered by the RRIF Lender (or by advisors to the RRIF Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the RRIF Lender's counsel and advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xiv) The Borrower shall have (A) provided evidence satisfactory to the RRIF Lender of compliance with NEPA, and (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the RRIF Lender of such compliance upon request by the RRIF Lender.

(xv) The RRIF Lender shall have delivered its initial RRIF Lender's Authorized Representative certificate.

(xvi) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Unique Entity Identifier number, and (C) registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov)).

(xvii) The Borrower shall have delivered to the RRIF Lender (A) certificates of insurance evidencing (1) that the Borrower, the Construction-Related Contract Parties party to any Construction-Related Contracts in effect as of the Effective Date, and any counterparty to a SEP Agreement to which the obligation to obtain and maintain insurance has been delegated, have in effect as of the Effective Date insurance with respect to the Project that meets the requirements of Section 15(f) (*Insurance; Events of Loss*) and (2) that each liability policy (other than professional liability and workers' compensation insurance) reflects the RRIF Lender as an additional insured and (B) at the RRIF Lender's request, copies of such insurance policies.

(xviii) The Borrower shall have provided to the RRIF Lender evidence that the Borrower is duly organized and validly existing under the laws of its jurisdictions of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted and as contemplated in the Related Documents and the Other Borrower Financing Documents, including the following documents, each certified by the Borrower's Authorized Representative: (A) a copy of its Organizational Documents, as in effect on the Effective Date, which Organizational Documents shall each be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the RRIF Loan Documents, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and any RRIF Loan Documents.

(xix) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and the representations and warranties of each of the Borrower, the Funding Partner, and each other party to the Direct Agreement set forth in each other Related Document and Other Borrower Financing Document to which it is a party shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xx) The Borrower shall have delivered to the RRIF Lender a duly executed certificate from the Collateral Agent in the form attached hereto as **Exhibit J**.

(xxi) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit K** in accordance with 49 CFR §20.100(b).

(xxii) The Borrower shall have provided to the RRIF Lender and the FTA Regional Office on behalf of both Modal Grant Offices records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the RRIF Lender

and in sufficient time prior to the Effective Date to permit the RRIF Lender and to the Modal Grant Offices to review such costs.

(xxiii) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the RRIF Lender, all in form and substance satisfactory to the RRIF Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments).

(xxiv) The RRIF Lender shall have received evidence of compliance with 49 U.S.C. § 5333(b) and the regulations promulgated thereunder with respect to the Project (such evidence being a certification letter from the Department of Labor acceptable to the FTA Regional Office).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the RRIF Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement of RRIF Loan proceeds made under this Agreement) until each of the following conditions precedent has been satisfied or waived in writing by the RRIF Lender:

(i) With respect to any disbursement of the RRIF Loan on or after April 1, 2025, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 21(a) (*Financial Plan*).

(ii) To the extent not previously delivered to the RRIF Lender, the Borrower shall have delivered to the RRIF Lender certified, complete and fully executed copies of any Federal Grant Agreement or Other Borrower Financing Document, including any amendment, modification or supplement thereto, entered into after the Effective Date.

(iii) To the extent not previously delivered to the RRIF Lender, the Borrower shall have provided certified copies of (i) all Construction-Related Contracts and SEP Agreements, in each case, including any amendment, modification or supplement thereto and related performance security instrument, entered into after the Effective Date, (ii) any amendment, modification or supplement to any Fundamental Contract, (iii) the NJTA Funding Agreement, and (iv) any other Related Document.

(iv) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development and construction of the Project have been issued and are in full force and effect.

(v) Each of the insurance policies obtained by the Borrower, the Construction-Related Contract Parties or the SEP Agreement Parties in satisfaction of the conditions in Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.



(vi) At the time of, and immediately after giving effect to, any disbursement of RRIF Loan proceeds then currently requested, (A) no Default or Event of Default hereunder, and no event of default (howsoever described or designated) under any other Related Document shall have occurred and be continuing, and (B) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of the Borrower under any other Related Document, in each case, shall have occurred and be continuing.

(vii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and the representations and warranties of each of the Borrower, the Funding Partner, and each other party to the Direct Agreement set forth in each other Related Document and Other Borrower Financing Document to which it is a party shall be true, correct, and complete as of each date on which any disbursement of the RRIF Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(viii) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the RRIF Lender.

(ix) The Borrower shall have delivered to the RRIF Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the RRIF Lender.

(x) The Borrower shall have paid in full all invoices received from the RRIF Lender (or from advisors to the RRIF Lender that have direct billing arrangements with the Borrower) as of the date of disbursement of the RRIF Loan, for the reasonable fees and expenses of the RRIF Lender's counsel and advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xi) The Borrower shall have paid in full, at least three (3) Business Days prior to the date of disbursement of the RRIF Loan, the Credit Risk Premium in respect of the RRIF Loan proceeds to be disbursed therewith.

(xii) With respect to the disbursement of any RRIF Loan proceeds from Tranche B, the Borrower shall have delivered to the RRIF Lender the written approval thereof by the State's Authorized Representative (as defined in the Direct Agreement).

Section 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (*Officers' Authorization*) and Section 13(k) (*Credit Ratings*), as of each date on which any disbursement of the RRIF Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a body politic and corporate, a public authority and a government sponsored authority established by the State of

New York and the State under the GDC Act and is validly existing under the laws of the State and the State of New York, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the RRIF Note, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents by the Borrower and the fulfillment of or compliance with the terms and conditions of the Related Documents by the Borrower will not (i) conflict with the Borrower's Organizational Documents (including the GDC Act), (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower other than the Liens on the Collateral provided for in the CASA.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents in effect as of any date on which this representation and warranty is made, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by such Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of such Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against

or affecting any element of the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents or the Other Borrower Financing Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting any element of the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting any other party to a Fundamental Contract except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Contract Payments in amounts sufficient to meet the Borrower's payment obligations hereunder. The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The CASA establishes in favor of the Collateral Agent (on behalf of the RRIF Lender) the valid and binding Liens on the Collateral that it purports to create, and no physical delivery, recordation, filing, notice or further act is required to establish such Liens other than the filing of a UCC-1 financing statement with the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code and the taking of possession or control by the Collateral Agent of such of the Collateral with respect to which a security interest may be perfected only by possession or control. Such Liens are in full force and effect and there are no other Liens on or in respect of the Collateral. The Borrower has duly and lawfully taken all actions required under this Agreement, the other RRIF Loan Documents, and applicable laws for the pledge of, and the grant of a security interest in, the Collateral pursuant to the CASA. The Borrower is not in breach of any covenants set forth in Section 15(a) (Securing Liens) or in the RRIF Loan Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments (including the above-referenced UCC-1 financing statement) have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Collateral in favor of the Collateral Agent (on behalf of the RRIF Lender) to the extent contemplated by the RRIF Loan Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any RRIF Loan Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. The Borrower is not aware of any non-compliance by any SEP

Agreement Party or any of its or their contractors or subcontractors on any element of the Project with the applicable requirements of 2 CFR Part 180.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Federal Requirements. The Borrower has complied, with respect to the Project, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(k) Credit Ratings. The RRIF Loan has received a public rating from at least one (1) Rating Agency, and written evidence of such rating has been provided to the RRIF Lender prior to the Effective Date, and such rating has not been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of the Borrower under any Related Document has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals necessary as of any date on which this representation and warranty is made for the then-current stage of development and construction of the Project have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Fundamental Contracts; SEP Agreements; Construction-Related Contracts. Each Fundamental Contract, SEP Agreement and Construction-Related Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each such Fundamental Contract, SEP Agreement, and Construction-Related Contract (other than any notice to proceed under a Construction-Related Contract that, as of the applicable date, is not intended to have been issued by the Borrower in accordance with the terms of such Construction-Related Contract) have been satisfied. The Borrower has delivered to the RRIF Lender a fully executed, complete, and correct copy of each such Fundamental Contract, SEP Agreement and Construction-Related Contract (including, in each case, all exhibits, schedules, and other attachments) that is in effect, including any amendments or modifications thereto. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Fundamental Contract Party, SEP Agreement Party or Construction-Related Contract Party, the right to terminate such Fundamental Contract, SEP Agreement or Construction-Related Contract, as applicable. The Borrower is not in breach of, or in default under, any Fundamental Contract, and is not in breach of, or in default under, any material term in any SEP Agreement or Construction-Related Contract. To the knowledge of the Borrower, no Fundamental Contract Party is in breach of, or in default under, any Fundamental Contract. To the knowledge of the Borrower, no other SEP Agreement Party or Construction-

Related Contract Party is in breach of, or in default under, any material term in any SEP Agreement or Construction-Related Contract, as applicable.

(o) Information. The information furnished by the Borrower to the RRIF Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower nor, to the knowledge of the Borrower, any Construction-Related Contract Party or SEP Agreement Party is a Sanctioned Person.

(ii) None of the Borrower nor, to the knowledge of the Borrower, any Construction-Related Contract Party or SEP Agreement Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal.

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower, Construction-Related Contract Party or SEP Agreement Party, with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the RRIF Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(q) Compliance with Law. The Borrower is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(r) (*Environmental Matters*)), including those set forth on **Exhibit F**, to the extent applicable. To the Borrower's knowledge, each Construction-Related Contract Party and SEP Agreement Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit F**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by (i) the Borrower or (ii) to the Borrower's knowledge, any Construction-Related Contract Party or SEP Agreement Party other than, in each case, notices of violations that are immaterial.

(r) Environmental Matters. Each of the Borrower and, to the Borrower's knowledge, each Construction-Related Contract Party and SEP Agreement Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower with any such Environmental Law or Governmental Approval. The Borrower has provided to the RRIF Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower's or the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(s) Insurance. The Borrower is in compliance with all of its insurance obligations required under each Related Document and each Construction-Related Contract to which it is a party as of any date on which this representation and warranty is made. To the Borrower's knowledge, each SEP Agreement Party and each Construction-Related Contract Party is in compliance with all insurance obligations required under such SEP Agreement or such Construction-Related Contract, as applicable, as of any date on which this representation and warranty is made.

(t) No Liens. Except for the Liens granted pursuant to the CASA, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Collateral.

(u) Intellectual Property. The Borrower owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(v) Investment Company Act. The Borrower is not, and after applying the proceeds of the RRIF Loan will not be, required to register as an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and is not “controlled” by a company required to register as an “investment company” under the Investment Company Act of 1940, as amended.

(w) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the RRIF Lender pursuant to Section 21(b) (Financial Statements) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(x) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

(y) ERISA. Neither the Borrower nor any ERISA Affiliate maintains, sponsors, contributes to (or is required to contribute to) or otherwise has any liability in respect of any plan or other arrangement that is (i) subject to Title IV or Section 302 ERISA, or Section 412 of the Tax Code or (ii) a “multiemployer plan” (within the meaning of Section 3(37) of ERISA).

(z) Sufficient Funds. The aggregate of (i) the undrawn portion of the RRIF Loan, (ii) the undrawn portion of the Other RRIF Loans, (iii) all funds that are undrawn but fully and completely committed under the Other Borrower Financing Documents, and (iv) without duplication of the amounts described in clause (iii), funds committed and/or awarded in respect of each Federal Grant by the applicable Modal Grant Office, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(aa) Sovereign Immunity. (i) Pursuant to (A) Section 6 of the State of New York’s version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced subject to the applicable limitations set forth in such Section 6, and (B) Section 6 of the State of New York’s version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement or any other Related Document in effect from time to time presented in accordance with the applicable provisions set forth in such Section 6 and other applicable laws of the State of New York, including without limitation Section 8 of the New York Court of Claims Act, and (ii) pursuant to (A) Section 23 of the State’s version of the Gateway Development Commission Act (N.J.S.A. 32:36-23), the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced, subject to the limitations set forth in such Section 23, and (B) Section 29 of the State’s version of the Gateway Development Commission Act (N.J.S.A. 32:37-2), sovereign immunity shall not bar an action to enforce a claim based on a breach of this



Agreement or any other Related Document in effect from time to time presented in accordance with such Section 29.

(bb) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

Section 14. Representations and Warranties of RRIF Lender. The RRIF Lender represents and warrants that:

(a) Power and Authority. The RRIF Lender has all requisite power and authority to make the RRIF Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the RRIF Lender, and are legally valid and binding agreements of the RRIF Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the RRIF Lender executing each of the Related Documents to which the RRIF Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the RRIF Lender.

Section 15. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the RRIF Note and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower, unless the RRIF Lender waives compliance in writing:

(a) Securing Liens. The Borrower agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments, powers, assignments, amendments, and documents, and take all further action as the Collateral Agent or the RRIF Lender shall, in their reasonable discretion, deem necessary or appropriate to ensure creation of Liens and to perfect and maintain perfected the Liens created and/or perfected under the CASA and under the other Security Documents (as defined in the CASA), to enable the Collateral Agent and RRIF Lender to enforce their rights and remedies thereunder, and to carry into effect the purposes thereof or better assure and confirm the validity, enforceability and priority of the Liens on the Collateral. Without limiting the generality of the foregoing, the Borrower shall file or refile and/or deliver to the Collateral Agent from time to time, when necessary or requested, financing statements (including UCC-3 financing statements), powers of attorney, certificates, and other assurances or instruments as the Collateral Agent or the RRIF Lender shall reasonably request. All of the foregoing shall be at the sole cost and expense of the Borrower.

(b) Copies of Documents.

(i) At least ninety (90) days prior to the incurrence or issuance of any Obligations that satisfy the requirements of Section 16(a) (Indebtedness), and therefore do not require RRIF Lender consent, the Borrower shall notify the RRIF Lender, unless such issuance consists solely of a refinancing on the same terms and conditions (other than interest rate) as the indebtedness being refinanced, in which case the above-referenced

notice may be provided forty-five (45) days prior to the incurrence or issuance of such Obligations. At least thirty (30) days prior to the incurrence or issuance of any such Obligations, the Borrower shall provide to the RRIF Lender (A) a copy of the Other Borrower Financing Documents (or other comparable transaction or offering documents) applicable to such Obligations and (B) a Revised Financial Model that takes into account the proposed Obligations, which Revised Financial Model shall reflect and be based on the actual amortization schedules for such proposed Obligations and all Obligations then outstanding in accordance with their respective terms and shall otherwise be in form and substance satisfactory to the RRIF Lender. The Borrower shall provide to the RRIF Lender a fully executed or final version of each such Other Borrower Financing Document (or other comparable transaction documentation) within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the RRIF Lender, promptly after the sending or receipt thereof, copies of (A) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project, the RRIF Loan or any other Obligations issued or incurred by the Borrower, (B) all notices and other written communications received by the Borrower from the Collateral Agent, (C) all reports, notices and other written materials required to be sent to the lenders or holders (or any agent or trustee appointed on their behalf) pursuant to the Other Borrower Financing Documents, and (D) all notices delivered by or to the Borrower relating to any of the Fundamental Contracts or to the NJTA Funding Agreement; unless, in each case, the RRIF Lender notifies the Borrower in writing that any such reports, notices and/or other written materials no longer need to be provided.

(iii) Except as otherwise agreed by the RRIF Lender in writing, and without limiting the Borrower's obligations or the RRIF Lender's rights under Section 16(b) (*No Lien Extinguishment; Adverse Amendments*), the Borrower will provide to the RRIF Lender (A) copies of any new Related Document or any proposed amendments, modifications, replacements of, or supplements to any Related Document or any Other Borrower Financing Document (other than proposed amendments, modifications, replacements or supplements that are ministerial in nature and do not change any substantive provision of such Related Document or such Other Borrower Financing Document) at least (1) ninety (90) days in the case of any Additional Funding Agreement, (2) ninety (90) days in the case of any amendment to the NJT Funding Agreement, and (3) thirty (30) days in the case of any other Related Document or amendment thereto (provided that the Borrower shall not be required to deliver copies of draft amendments to any Federal Grant Agreement) or any amendment to an Other Borrower Financing Document, in each case prior to the proposed effective date thereof, and (B) complete, correct and fully executed copies of any such new Related Document or amendment, modification or supplement to, or replacement of, any Related Document or any Other Borrower Financing Document within five (5) Business Days after execution thereof.

(iv) If the Borrower enters into a Construction-Related Contract or SEP Agreement after the Effective Date, the Borrower shall promptly provide to the RRIF

Lender an executed version of such Construction-Related Contract or SEP Agreement, as applicable, together with any related contracts, side letters or other understandings.

(v) Without in any way limiting the requirements of Section 16(d) (Organizational Documents), the Borrower shall provide to the RRIF Lender (A) copies of any proposed amendments, modifications, replacements of, or supplements to (1) the GDC Act, where Borrower has knowledge of such proposed amendment, modification, replacement or supplement, and (2) the bylaws of the Borrower, each at least thirty (30) days prior to the proposed effective date thereof or with respect to (1), such shorter period of time necessary based on when the Borrower became aware thereof, and (B) complete, correct and fully executed copies of any amendment, modification or supplement to, or replacement of, the same within five (5) Business Days after execution thereof.

(vi) The Borrower shall provide to the RRIF Lender copies of (A) its operating budget, as adopted by its board of commissioners, (B) any amendments, modifications, replacements of, or supplements to, such operating budget, and (C) each funding agreement related to its operating budget, in each case of clauses (A) – (C), within five (5) Business Days after execution or adoption thereof, as applicable.

(c) Use of Proceeds. The Borrower shall use the proceeds of the RRIF Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, in compliance with the Project Development Agreement, and in accordance with the highest standards of the design, engineering, and construction industries for projects of similar size and importance as the Project.

(ii) The Borrower shall comply with, and cause each SEP Agreement Party to comply with, 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(e) Operations and Maintenance.

(i) The Borrower shall enforce its rights under the Project Development Agreement (and any other agreement to which the Borrower is a party from time to time with Amtrak that is relevant to the operation or maintenance of the Project) to cause Amtrak to (A) operate and maintain the Project (1) economically and efficiently and in a reasonable and prudent manner and (2) substantially in accordance with all applicable laws, regulations, standards and guidelines, and (B) maintain the Project in good repair, working order and condition and in accordance with the requirements of all applicable laws, regulations, standards and guidelines, including those of FRA.

(ii) The Borrower shall comply, and shall cause Amtrak and NJT to comply, with the requirements of 49 U.S.C. § 22402(h)(1)(A) and (B).

(f) Insurance; Events of Loss.

(i) The Borrower shall at all times maintain insurance with responsible insurers, in amounts and with coverages as are customarily maintained in the United States of America by entities similar to the Borrower, or as is required under any Related Document, Construction-Related Contract or applicable law. During the construction of the Project, the Borrower shall maintain or cause to be maintained appropriate casualty and liability insurance covering the Borrower and the Project, including a builders all-risk policy and pollution and other environmental liability and remediation related coverage. The Borrower shall cause each Construction-Related Contract Party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Construction-Related Contract.

(ii) The Borrower shall cause all liability insurance policies that it maintains and that each Construction-Related Contract Party maintains, other than professional liability and workers' compensation insurance, to reflect the RRIF Lender as an additional insured.

(iii) If an Event of Loss shall occur with respect to the Project or any part thereof prior to the transfer of the Project to Amtrak as contemplated in the Project Development Agreement, the Borrower shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers, Construction-Related Contract Parties, SEP Agreement Parties, and Governmental Authorities, as applicable, in respect of such event and (B) pay or apply all loss proceeds stemming from such event to rebuild, repair or replace the Project in accordance with all applicable laws and within a reasonable time period; provided, however, that loss proceeds must in any event be applied in accordance with all applicable federal disposition rules, including those set forth in the Federal Grant Agreements and 2 CFR Part 200.

(iv) Following the transfer of ownership of the Project to Amtrak, if an Event of Loss shall occur with respect to the Project or any part thereof, the Borrower shall diligently pursue all of its contractual and other rights to cause Amtrak to perform or cause to be performed all necessary repairs to any damaged portions of the Project, to obtain funding to perform such repairs, and to pursue all applicable insurance claims under the insurance policies procured and maintained by Amtrak.

(g) Notices.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the RRIF Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit L**;

(B) Ratings Changes: any change in the rating assigned to the RRIF Loan or any other Obligations (disregarding Other RRIF Loans) by any

Rating Agency that has provided a rating on such indebtedness, the Borrower, or the Contract Payments, provided, that with respect to other Obligations, a single notice shall be provided for purposes of this Agreement and each Other RRIF Loan Agreement (and no notice is required hereunder in respect of any Other RRIF Loan);

(C) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(D) Other Defaults: any default or event of default on the part of the Borrower or any other party under any Related Document, Construction-Related Contract, SEP Agreement or Other Borrower Financing Document, or any termination of the NJTA Funding Agreement;

(E) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect and any material changes in the status of such litigation, suit, action or claim and (2) any judgments against the Borrower that are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or by funds immediately available to the Borrower and set aside for such purpose within the Borrower's operating budget, either individually or in the aggregate;

(F) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(G) Environmental Notices: any notice of material violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(H) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(I) Legislative or Gubernatorial Actions: any actual or prospective failure by the State legislature to appropriate to NJT in the State's annual appropriations act of the amounts received by the State Treasurer from the NJTA as set forth in the NJTA Funding Agreement or any Additional Funding Agreement, or any action or inaction by the Governor of the State that would have

the effect of reducing the amount of the appropriation to NJT in the State's annual appropriations act of the amounts received by the State Treasurer in the NJTA Funding Agreement from the NJTA as set forth in the NJTA Funding Agreement;

(J) Contract Payments: if the Funding Partner has not made any transfer of a Contract Payment to the Collateral Agent that is required under the NJT Funding Agreement by the time required under the NJT Funding Agreement;

(K) Project Changes: any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of forecasted Eligible Project Costs or (2) any change to the schedule for the Project in excess of five percent (5%) of the total number of days reflected in the Construction Schedule;

(L) 2 CFR Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the RRIF Loan as described in 2 CFR § 200.113, and the Borrower shall require its subcontractors to provide it notice of any such violation;

(M) Other Loan Reporting Requirements: copies of notices delivered to any provider of additional Obligations (other than a RRIF Loan) pursuant to the applicable Other Borrower Financing Documents; and

(N) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the RRIF Lender with any further information reasonably requested by the RRIF Lender from time to time concerning the matters described in Section 15(g)(i) (*Notices*).

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(g)(i) (*Notices*) (other than in Section 15(g)(i)(A) (*Substantial Completion*) or Section 15(g)(i)(B) (*Ratings Changes*) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the RRIF Lender setting forth the actions the Borrower proposes to take with respect thereto.

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a body politic and corporate, a public authority and a government sponsored authority established by the State of New York and the State under the GDC Act. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(j) Annual Rating. The Borrower shall, commencing in 2025, no later than the last Business Day of June of each year during the term of the RRIF Note, at no cost to the RRIF Lender, provide to the RRIF Lender a public rating on the RRIF Note, together with the rating report or letter delivered by such Rating Agency in connection with each such rating, in each case prepared no earlier than June 1 of such year.

(k) Accounts; Permitted Investments.

(i) The Borrower shall maintain the Account and any other accounts established pursuant to the CASA or any Other Borrower Financing Document for so long as the Obligations to which any such account relates remains outstanding.

(ii) If any Other Borrower Financing Documents establish reserve accounts and reserve requirements, the Borrower shall cause such reserve accounts to be funded in such amounts and under such conditions as are required by the applicable Other Borrower Financing Documents.

(iii) Amounts on deposit in the Account and in any other accounts described above shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the Account with respect to RRIF Debt Service, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the Account in respect of other amounts payable hereunder, not later than the date such other amounts are due and payable hereunder, (C) with respect to Permitted Investments maintained in an account established under an Other Borrower Financing Document for the repayment of principal or interest with respect to other Obligations, the next date on which principal and/or interest is due and payable with respect to any such Obligations, and (D) with respect to any reserve account or the construction account, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from such account. The Borrower shall, promptly but in any event within five (5) days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(l) Fundamental Contracts. The Borrower shall diligently exercise its rights and enforce its remedies under each Fundamental Contract. The Borrower shall actively monitor the Funding Partner's compliance with the Fundamental Contracts to which it is a party and shall promptly notify the RRIF Lender of any events and circumstances that could reasonably be expected to result in the Funding Partner's failure to perform its material obligations under such Fundamental Contracts to which such Funding Partner is a party. In connection with any potential funding shortfall under the NJT Funding Agreement, the Borrower shall exercise any and all rights under the NJT Funding Agreement to cause the Funding Partner to act to cure or avoid any such funding shortfall, including by means of seeking a supplemental appropriation, if applicable. The Borrower shall cooperate with the RRIF Lender in connection with the RRIF Lender's exercise of its rights and remedies under the Direct Agreement.



(m) Compliance with Law. The Borrower shall comply (i) in all material respects with all applicable federal, State and State of New York laws, including all items set forth in **Exhibit F**, to the extent applicable, and (ii) with the terms and conditions of the Federal Grant Agreements.

(n) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the Collateral or any portion thereof, including the Contract Payments; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(o) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov)) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the RRIF Lender evidence of such active registration status with no active exclusions listed in such registration (a single notification being sufficient for purposes of complying with this Agreement and each Other RRIF Loan Agreement), in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash.

(p) Immunity. Consistent with Section 6 of the State of New York's version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), the Borrower agrees that it is immune from liability under State of New York's law as though it were the State of New York, except to the extent that such immunity is waived by the State of New York under Section 8 of the New York Court of Claims Act, and the Borrower irrevocably agrees that it will not assert immunity from claims made by the RRIF Lender against the Borrower to enforce this Agreement or any other Related Document under New York State law to the extent immunity for such claim is waived pursuant to the Gateway Development Commission Act and Section 8 of the New York Court of Claims Act as though the Borrower were the State of New York and the RRIF Lender has complied with the applicable New York State law. Further, consistent with Section 29 of the State's version of the Gateway Development Commission Act (N.J.S.A. 32:37-2), the Borrower agrees that it is immune from liability in the State in the same manner and to the same extent as is the State under the provisions of the "New Jersey Tort Claims Act", N.J.S. 59:1-1 *et seq.* and the "New Jersey Contractual Liability Act," N.J.S.59:13-1 *et seq.*, and the Borrower irrevocably agrees that it will not assert immunity from claims made by the RRIF Lender against the Borrower to enforce this Agreement or any other Related Document under State law to the extent immunity for such claims is waived in accordance with the State's version of the Gateway Development Commission Act and the New Jersey Contractual Liability Act as though the Borrower were the State and the RRIF Lender has complied with the applicable State law.

(q) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the RRIF Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(r) Cargo Preference Act. Pursuant to 46 CFR Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with RRIF Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States of America or within thirty (30) Business Days following the date of loading for shipments originating outside the United States of America, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the RRIF Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(s) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

(t) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit M** hereto.

(u) Buy America

(i) The Borrower agrees that steel, iron, and manufactured products used in the Project are subject to both 49 U.S.C. § 5323(j), as implemented by FTA, and 49 U.S.C. § 22905, as implemented by FRA. The Borrower acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 5323(j)(1) or 49 U.S.C. § 22905(a)(1) nor a finding under either 49 U.S.C. § 5323(j)(2) or 49 U.S.C. § 22905(a)(2).

(ii) The Borrower agrees that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, FTA, and FRA. The Borrower acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(v) Employee Protection.

(i) In accordance with 49 U.S.C. § 22402(h)(3)(A), the Borrower shall comply with the standards of 49 U.S.C. § 24312 as in effect on September 1, 2002, with respect to the Project in the same manner that Amtrak is required to comply with such standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a).

(ii) In accordance with 49 U.S.C. § 22402(h)(3)(B), the Borrower shall make fair and equitable arrangements, in accordance with 49 U.S.C. § 22404, to protect the interests of any employees who may be adversely affected by actions pursuant to, or as a consequence of, this Agreement, including the arrangements prescribed by the United States Secretary of Labor on July 6, 1976, and set forth on **Exhibit N** hereto.

(w) Direct Agreement. Where in the Direct Agreement a covenant or agreement of the Funding Partner, the NJTA or the State Treasurer is contingent upon a notice or request from the Borrower, the Borrower shall make such notice or request, as applicable, promptly, and in any event within two (2) Business Days, after receipt of notice from the RRIF Lender requesting that the Borrower make such notice or request.

(x) Borrower's Operating Budgets. The Borrower shall include a financing cost line item in each proposed annual operating budget that it submits pursuant to Section 11.01 of the Project Development Agreement, which line item shall be in an amount sufficient to make all payments in respect of indebtedness (including any amounts under the RRIF Loan Documents) that the Borrower reasonably anticipates will or may be paid from amounts made available pursuant to its operating budget.

Section 16. Negative Covenants. The Borrower covenants and agrees as follows until the date the RRIF Note and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower, unless the RRIF Lender waives compliance in writing:

(a) Indebtedness.

(i) The Borrower shall not, without the prior written consent of the RRIF Lender, issue or incur indebtedness of any kind that is secured, in whole or in part, by all or any portion of the Collateral or that is otherwise payable, in whole or in part, from Contract Payments.

(ii) The Borrower shall not issue any Obligations (including (1) any GANs, (2) any extension of any GANs, or (3) any amendment to the Working Capital Facility or any GANs that would increase the principal amount available or outstanding thereunder) without the prior written consent of the RRIF Lender, unless such indebtedness satisfies each of the following conditions:

(A) such indebtedness is secured solely by proceeds of the Federal Grants or other collateral that does not include or impair any portion of the Collateral;

(B) the trustee or agent (on its own behalf and on behalf of the lenders or holders) with respect to such indebtedness shall have executed and delivered to the RRIF Lender a fully executed joinder to the Waiver (in the form attached to the Waiver);

(C) such indebtedness shall not be subject to acceleration, whether following a default or event of default or in other circumstances;

(D) the aggregate sum of (1) the principal of such indebtedness plus (2) the amount, if any, to be set aside in a reserve account to pay interest during construction on such indebtedness shall not exceed the maximum amount of Federal Grants pledged and available to secure repayment of such indebtedness;

(E) if interest thereon is not paid on a current basis from Federal Grant proceeds that have been appropriated and are available to the Borrower or from funds immediately available to the Borrower and set aside for such purpose in the Borrower's then current operating budget, interest accrued on such indebtedness shall either be (1) capitalized until the date on which the Borrower begins receiving payment of the revenues pledged to repay such indebtedness or (2) paid from a capitalized interest reserve funded from the proceeds of such indebtedness; and

(F) the final maturity date for such indebtedness shall not be later than the final payment date for the Federal Grants or such other funds that do not include any portion of the Collateral, in each case that constitute the collateral for, or source of funds for repayment of, such indebtedness.

Notwithstanding the foregoing, the Borrower may extend the Working Capital Facility for one or more time periods but in no event beyond the Substantial Completion Date without the prior written consent of the RRIF Lender, so long as (i) the Waiver at all times remains in full force and effect against each party thereto, (ii) the amount available under the Working Capital Facility during such extension shall not at any time exceed the remaining available amount under the FFGA, and (iii) the terms and conditions of the Working Capital Facility Documents are in all material respects the same as those reflected in the Working Capital Facility Documents as of the Effective Date, other than changes to pricing, tenor (subject the time limitation noted

above), interest rate mechanics, and bank regulatory provisions (including increased costs, tax withholding, indemnification, OFAC, sanctions, anti-money laundering, and “know your customer” provisions).

(iii) The Borrower shall deliver to the RRIF Lender the documentation and information described in Section 15(b)(i) (*Copies of Documents*) by the time set forth in Section 15(b)(i) (*Copies of Documents*), prior to the incurrence or issuance of any indebtedness permitted under this Section 16(a) (*Indebtedness*).

(b) No Lien Extinguishment; Adverse Amendments.

(i) The Borrower shall not, and shall not permit any Person to, without the prior written consent of the RRIF Lender, either extinguish, impair, or transfer the Liens on the Collateral granted pursuant to the CASA.

(ii) The Borrower shall not terminate, assign, amend, modify, replace, or supplement the NJT Funding Agreement without the prior written consent of the RRIF Lender, except to modify the schedule of Contract Payments in accordance with Section 7.08(b) of the NJT Funding Agreement to cause such schedule to reflect changes to **Exhibit B** (*RRIF Debt Service*) implemented by the RRIF Lender. Without prior written consent of the RRIF Lender, the Borrower shall not terminate the Project Development Agreement or assign, amend, modify, replace, or supplement the Project Development Agreement in a manner that could adversely affect (A) the ability of the Borrower to comply with its requirements hereunder or under any other RRIF Loan Document, (B) the ability of any other party to the Project Development Agreement to comply with such party’s requirements under the Project Development Agreement, (C) the ability of the Borrower to complete the Project, or (D) the RRIF Lender (in the RRIF Lender’s determination) in connection with the RRIF Loan.

(c) No Prohibited Liens.

(i) Except for the Liens granted pursuant to the CASA, the Borrower shall not create, incur, assume or permit to exist any Lien on the Collateral or the Borrower’s rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Fundamental Contract and shall not permit a Lien to encumber the Borrower’s rights or privileges under any such Fundamental Contract, except pursuant to the CASA.

(ii) The Borrower shall not (A) create, incur or assume, any Lien on the real property or real property interests included in the Project or (B) create, incur, assume or permit to exist, any Lien on any part of the Project not constituting real property, other than (in the case of clause (B)) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested by the Borrower in good faith by appropriate proceedings and so long as the

Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(iii) The Borrower shall not, without the prior written consent of the RRIF Lender, collaterally assign, pledge, or grant a Lien on any right, title or interest of the Borrower, whether now owned or hereafter acquired or arising, in or to (A) the Project Development Agreement, (B) any GDC Operations Funding Agreement, (C) any amounts paid or payable to the Borrower pursuant to any GDC Operations Funding Agreement, (D) any account in which such payments under any GDC Operations Funding Agreement is or may be deposited, or (E) any proceeds of the foregoing in whatever form; provided, that this Section 16(c) shall not restrict the Borrower from using amounts paid to the Borrower under any GDC Operations Funding Agreement to pay the Working Capital Lender amounts owed with respect to any loans or other amounts under the Working Capital Facility (including any extension thereof in conformance with Section 16(a)(ii)).

(d) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (or, with respect to the GDC Act, propose or support any such amendment or modification), other than any amendment or modification that (A) has been delivered to the RRIF Lender in accordance with Section 15(b)(v) (Copies of Documents) and (B) is not adverse to the interests of the RRIF Lender under the RRIF Loan Documents or in the Collateral, without the prior written consent of the RRIF Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except (with respect to this sub-clause (ii)) with thirty (30) days' prior written notice to the RRIF Lender.

(e) No Payment with Federal Funds. The Borrower shall not pay any portion of RRIF Debt Service nor any other amount to the RRIF Lender or to the Federal Government pursuant to the RRIF Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrower may prepay any Tranche in whole or in part, pursuant to, and in accordance with, Section 10 (Prepayment), with the proceeds of a validly issued federal credit instrument.

(f) Acquisitions; Change in Legal Structure; Sale of Assets; Transactions with Third Parties. The Borrower shall not, and shall not agree to:

(i) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person (excluding purchases or other acquisitions of office inventory or equipment, each in the ordinary course of business);

(ii) reorganize, consolidate with, or merge into another Person;

(iii) sell, lease, or assign its rights in and to the Project or in and to a material portion of the assets constituting the Project; provided, that this clause shall not restrict the Borrower's right or obligation to transfer the Project to Amtrak pursuant to and in accordance with the Project Development Agreement; or

(iv) otherwise engage in a transaction with any other Person (including any other Governmental Authority of or in the State or of or in the State of New York) to the extent such transaction could reasonably be expected to have a Material Adverse Effect.

(g) No Defeasance of RRIF Note. The Borrower shall not defease the RRIF Note without the prior written consent of the RRIF Lender.

(h) OFAC Compliance.

(i) The Borrower shall not:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the RRIF Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement, the other Related Documents and the Construction-Related Contracts; or

(C) make a payment, directly or indirectly, to any Fundamental Contract Party, a SEP Agreement Party, or Construction-Related Contract Party that (1) to the Borrower's knowledge, has violated any of the laws referenced in Section 16(h)(i) (OFAC Compliance) or (2) is a Sanctioned Person.

(ii) The Borrower shall procure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the RRIF Loan or lend to, make any payment to, contribute or otherwise make available any funds to any affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the RRIF Lender, a Fundamental Contract Party, a SEP Agreement Party, or a Construction-Related Contract Party).

(i) Hedging. The Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the RRIF Lender.

(j) Insolvency-Related Activities. The Borrower shall not consent to, provide support for, fail to oppose, or seek approval for any gubernatorial or legislative proposal, bill, statute, or order or other action by any Governmental Authority that would authorize or enable (i) the Borrower to (A) seek the commencement of any voluntary bankruptcy or insolvency proceeding with respect to the Borrower or its assets and liabilities, under any Insolvency Law or (B) file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or (ii) the appointment of a receiver, trustee,

liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for all or a substantial part of the assets of the Borrower.

(k) No Subsidiaries. The Borrower shall not establish any subsidiaries without the prior written consent of the RRIF Lender.

(l) Additional Funding Agreements. The Borrower shall not enter into any Additional Funding Agreement without the prior written consent of the RRIF Lender.

Section 17. Indemnification. The Borrower shall indemnify the RRIF Lender and any official, employee, agent, advisor, or representative of the RRIF Lender (each such Person being herein referred to as an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents or Other Borrower Financing Documents, (b) the RRIF Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project in its entirety; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower’s expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the RRIF Lender shall assert, and each of the Borrower and the RRIF Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, Other Borrower Financing Documents, the other transactions contemplated hereby and thereby, the RRIF Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower’s indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 shall survive the payment or prepayment in full or transfer of the



RRIF Note, the enforcement of any provision of this Agreement, the other Related Documents, or the Other Borrower Financing Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 18. Sale of RRIF Loan. The RRIF Lender shall not sell the RRIF Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the RRIF Lender may sell the RRIF Loan to another entity or reoffer the RRIF Loan into the capital markets only in accordance with the provisions of this Section 18. Any such sale or reoffering shall be on such terms as the RRIF Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the RRIF Lender shall not change the terms and conditions of any RRIF Loan without the prior written consent of the Borrower in accordance with Section 29 (*Amendments and Waivers*). The RRIF Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the RRIF Loan, written notice to the Borrower of the RRIF Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 shall not (x) obligate the RRIF Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the RRIF Lender, for any reason, does not sell the RRIF Loan.

Section 19. Events of Default and Remedies

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay (or cause to be paid) any amount of principal of or interest on the RRIF Loan (including RRIF Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*)) when due and payable (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower or the Funding Partner shall fail to observe or perform any covenant, agreement or obligation of the Borrower or the Funding Partner under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder or thereunder), the RRIF Note or any other RRIF Loan Document to which it is a party (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower or the Funding Partner (as applicable) from the RRIF Lender of written notice thereof, (B) the Borrower's or the Funding Partner's knowledge (as applicable) of such failure, or (C) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii) (*Covenant Default*), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower or the Funding Partner shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and

(y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower or the Funding Partner made in or delivered pursuant to the RRIF Loan Documents (or in any certificates delivered by the Borrower or the Funding Partner in connection with the RRIF Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 19(a)(iv) (*Misrepresentation Default*) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (*No Debarment*), Section 13(j) (*Compliance with Federal Requirements*), Section 13(p) (*OFAC; Anti-Corruption Laws*), or Section 13(bb) (*Patriot Act*);

(C) in the reasonable determination of the RRIF Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the RRIF Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower or the Funding Partner, as applicable, within thirty (30) days from the date on which the Borrower or the Funding Partner, as applicable, first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower (or the Funding Partner, if the applicable misrepresentation is in respect of the Funding Partner) diligently pursues such cure during such thirty (30) day period.

(v) Judgments. One or more judgments for the payment of money that are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) shall be rendered against the Borrower, and the same (or any installment thereof that is due and payable) (A) shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, provided, however, that if such undischarged judgment is capable of being discharged but cannot reasonably be discharged within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this

Section 19(a)(v), and such thirty (30) day cure period shall be extended by up to sixty (60) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to discharge such judgment and (y) such judgment is discharged within ninety (90) days of the date of entry of such judgment, or (B) any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(vi) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a body politic and corporate, a public authority and a government sponsored authority, validly existing under the GDC Act, unless at or prior to the time the Borrower ceases to exist in such form a successor public agency or governing body has been created by the State and the State of New York pursuant to a valid and unchallenged law of the State and of the State of New York and that has succeeded to the assets of the Borrower and has assumed, by operation of law, all of the obligations of the Borrower under the RRIF Loan Documents and the Other Borrower Financing Documents, all on terms and conditions satisfactory to the RRIF Lender.

(vii) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower or (B) a Bankruptcy Related Event shall occur with respect to any Fundamental Contract Party.

(viii) Project Abandonment. (A) The Borrower shall abandon the Project, or (B) following the Substantial Completion Date, Amtrak shall abandon the Project or NJT shall cease commuter rail operations on the Project.

(ix) Invalidity of RRIF Loan Documents. (A) Any RRIF Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower, the Funding Partner, the Treasurer of the State or NJTA contests in any manner the validity or enforceability of any RRIF Loan Document to which it is a party or denies it has any further liability under any RRIF Loan Document to which it is a party, or purports to revoke, terminate or rescind any RRIF Loan Document to which it is a party; or (B) the CASA ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Collateral, including the Borrower's right, title, and interest in and to the Contract Payments, and with the priority purported to be created pursuant to the CASA.

(x) GDC Act. Either statutory element of the GDC Act shall be repealed or shall be amended or modified in such a manner that could reasonably be expected to result in a Material Adverse Effect.

(xi) Fundamental Contract Expiration or Termination. Any Fundamental Contract shall have expired or shall have been terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall have ceased to be in full force and effect.

(b) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, (i) all obligations of the RRIF Lender hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan shall automatically be deemed terminated, and (ii) the Borrower shall immediately repay any unexpended RRIF Loan proceeds disbursed to the Borrower under this Agreement.

(c) Upon the occurrence of any other Event of Default, the RRIF Lender may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan and (ii) demand that the Borrower immediately repay any unexpended RRIF Loan proceeds disbursed to the Borrower under this Agreement, in which event the Borrower shall immediately repay any such unexpended RRIF Loan proceeds to the RRIF Lender.

(d) Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender shall be entitled and empowered to enforce all of its rights and remedies pursuant to the RRIF Loan Documents (directly or through the Collateral Agent) and may institute any actions or proceedings at law or in equity against the Borrower for the collection of any sums due and unpaid hereunder or under the RRIF Note, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the RRIF Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder or under the RRIF Note, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement or the RRIF Note; provided, that acceleration of the payment of the principal of, and interest on, the RRIF Loan (and corresponding RRIF Note) shall not be a remedy hereunder or under any other RRIF Loan Document.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender may suspend or debar the Borrower from further participation in any Federal Government program administered by the RRIF Lender and to notify other departments and agencies of such default.

(f) No action taken pursuant to this Section 19 (Events of Default and Remedies) shall relieve the Borrower from its obligations pursuant to this Agreement, the RRIF Note or the other RRIF Loan Documents, all of which shall survive any such action.

Section 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Contract Payments, and any other revenues attributable to the Project, and RRIF Loan requisitions received and disbursements made with regard to the Project), so that audits may be performed to ensure compliance with and enforcement of this Agreement and each Other RRIF Loan Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the RRIF Loan, accounting of

principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the RRIF Loan or any portion thereof shall remain outstanding and until five (5) years after the RRIF Loan shall have been paid in full, the RRIF Lender shall have the right, upon reasonable prior notice and during normal business hours, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the RRIF Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 20(b) (Inspections) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the RRIF Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the RRIF Lender in connection with the RRIF Lender's exercise of its rights under this Section 20(b) (Inspections) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrower shall maintain and retain all files relating to the Project, the Fundamental Contracts, the Collateral (including the Contract Payments), and the RRIF Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under this Agreement and the RRIF Note (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Collateral, the Contract Payments, each Other RRIF Loan, each Other RRIF Loan Agreement or this Agreement is finally resolved or, if the RRIF Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the RRIF Lender and the Borrower. The Borrower shall provide to the RRIF Lender in a timely manner all records and documentation relating to the Project or the Collateral or the Contract Payments that the RRIF Lender may reasonably request from time to time.

(d) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2024 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the RRIF Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the RRIF Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

## Section 21. Financial Plan; Financial Statements.

(a) Financial Plan. Until the RRIF Loan and each Other RRIF Loan has been repaid in full, the Borrower shall provide to the RRIF Lender and to the FTA Regional Office (on behalf of both Modal Grant Offices) a single annual Financial Plan (which Financial Plan will be used for purposes of this Agreement and each Other RRIF Loan Agreement) in a format to be

agreed upon by the Borrower, the RRIF Lender, FTA, and FRA. The Borrower shall provide the Financial Plan by not later than ninety (90) days after the beginning of each Borrower Fiscal Year. Each Financial Plan shall be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(i) Each Financial Plan shall be prepared in accordance with GAAP and shall meet the FTA Project Management Oversight Requirements, as amended from time to time, to the extent applicable.

(ii) Together with each Financial Plan, the Borrower shall deliver (A) a certificate signed by the Borrower's Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower's knowledge and belief, and (B) an electronic copy of a Revised Financial Model for the period from the Effective Date through the later of (i) the Final Maturity Date and (ii) the latest final maturity date under any Other RRIF Loan Agreement, based upon assumptions and projections with respect to the Contract Payments to be received, expenses and other financial aspects of the Project and the Collateral that shall reflect the prior experience and current status of the Project and the Contract Payments, and the expectations of the Borrower with respect to the Project and the Contract Payments to be received, as of the most recent practicable date prior to the delivery of such Revised Financial Model, together with a change log describing such changes.

(iii) Unless otherwise agreed to by the RRIF Lender, FTA and FRA, each Financial Plan shall:

(A) provide an updated cash flow statement showing, for the Borrower Fiscal Year most recently ended, (1) actual annual cash inflows (Contract Payments and other income) and (2) actual annual outflows (including all operating expenses, Capital Expenditures, replenishment of reserves, and other uses); and

(B) provide a written narrative that (1) confirms that the Governor's Budget Message for the following State fiscal year includes all amounts needed to make all Contract Payments during such State fiscal year; (2) identifies any potential Contract Payment-related or other funding shortfalls; (3) describes any material matters that may affect the future performance by the Borrower of its obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Collateral, the Contract Payments, operational contracts, and third-party transactions; and (4) discusses contingency measures that will or may be taken to address any of the matters reported pursuant to this sub-clause (B).

(iv) Unless otherwise agreed to by the RRIF Lender, FTA and FRA, prior to the Substantial Completion Date, each Financial Plan shall (in addition to the information required in Section 21(a)(iii) above):

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan (in the same format as utilized to report Total Project Costs in the monthly construction progress reports delivered pursuant to Section 22(b) (*Monthly Construction Progress Report*));

(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including an updated Projected Substantial Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule provided in the most recent Financial Plan, and discuss the reasons for any changes to the expected completion of these Project milestones (in the same format as utilized to report milestones in the monthly construction progress reports delivered pursuant to Section 22(b) (*Monthly Construction Progress Report*));

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the most recent prior Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the most recent prior Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of material individual changes, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower's obligations under this Agreement.

(b) Financial Statements. The Borrower shall furnish to the RRIF Lender:

(i) As soon as available, but no later than one hundred twenty (120) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the

audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the RRIF Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(iii) The Borrower shall furnish to the RRIF Lender, together with each delivery of annual audited financial statements of the Borrower pursuant to this Section 21(b), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event that, with the giving of notice or the passage of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

Section 22. Oversight and Monitoring.

(a) Project Development, Design and Construction. Each of the RRIF Lender and each Modal Grant Office shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Borrower shall cooperate in good faith with the RRIF Lender and the Modal Grant Offices in the conduct of such monitoring by promptly providing the RRIF Lender and the Modal Grant Offices with such reports, documentation or other information as shall be requested by the RRIF Lender and the Modal Grant Offices, or its agents, including any consulting engineer reports, documentation or information.

(b) Monthly Construction Progress Report. On or before the thirtieth (30<sup>th</sup>) business day following the end of each calendar month during the Construction Period, the Borrower shall deliver to the RRIF Lender and the FTA Regional Office on behalf of both Modal Grant Offices, a single report that will be used for purposes of this Agreement and each Other RRIF Loan Agreement (in a format to be agreed upon by the Borrower, the RRIF Lender, FTA, and FRA), that:

(i) summarizes key changes, events, or issues that occurred during the prior month and a projection of key milestones and decisions that will occur in the next three (3) months;

(ii) specifies the amount of Total Project Costs expended since the Effective Date as well as during such calendar month and the amount of Total Project Costs estimated to be required to complete the Project and provides a revised Project Budget updated through the end of such calendar month, reflecting any material change orders



granted or pending under the Construction-Related Contracts with respect to any cost increases, any use of contingency and remaining unallocated project contingency;

(iii) demonstrates that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project, taking into account any changes to the amount of Total Project Costs that are reflected in such monthly construction progress report;

(iv) provides (A) an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule; and (B) to the extent there have been any events or occurrences (e.g., delayed equipment deliveries, permit delays, material change orders, etc.), that have had, or are anticipated to have, an adverse impact on the Construction Schedule and the meeting of critical dates thereunder, a detailed narrative description of steps being taken (or proposed to be taken) to address such adverse impacts on the Construction Schedule, including the use of any schedule float or increase in hours worked in a day and the identification of critical path items; and

(v) provides a discussion or analysis of such other matters related to the Project as the RRIF Lender may reasonably request.

(c) Federal Grant Agreement Material Reports. Simultaneously with, or promptly after, delivery to either Modal Grant Office of material reports required under any Federal Grant Agreement, the Borrower shall deliver a copy of such material report to the RRIF Lender in the same form and format as delivered to the applicable Modal Grant Office (to the extent not already delivered to the RRIF Lender).

(d) Recovery Plan. If the monthly construction progress report described in Section 22(b)(i) (*Monthly Construction Progress Report*) or the monthly report issued pursuant to the FTA Project Management Oversight Requirements, as applicable, indicates either a failure to maintain the Construction Schedule, including a failure to achieve Substantial Completion by the Projected Substantial Completion Date or actual or projected Eligible Project Cost in excess of the Eligible Project Costs reflected in the Project Budget, or both, then the Borrower shall notify the RRIF Lender and the FTA Regional Office of such failure and shall, upon request by the RRIF Lender or the FTA Regional Office, provide the RRIF Lender and the FTA Regional Office within forty-five (45) days of receipt of such request (or such later date as may be specified in the request), a Recovery Plan for review by the RRIF Lender and the FTA Regional Office and approval by the FTA Regional Office in consultation with the RRIF Lender.

(e) Requested Information. The Borrower shall, at any time while the RRIF Loan remains outstanding, promptly deliver to the RRIF Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project, the Collateral or the Contract Payments as the RRIF Lender may from time to time reasonably request, including copies of agreements, documentation and other information related thereto requested by the RRIF Lender. The Borrower shall respond, and use commercially reasonable efforts to cause the Fundamental Contract Parties, SEP Agreement counterparties, and

Construction-Related Contract Parties to respond, to the RRIF Lender's inquiries regarding the construction of the Project. The RRIF Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the RRIF Lender and at the Borrower's cost (as provided in Section 28 (Fees and Expenses)), to carry out the provisions of this Section 22(e).

Section 23. No Personal Recourse. No official, employee or agent of the RRIF Lender, the Borrower, the Funding Partner, or any Person executing this Agreement or any of the other RRIF Loan Documents shall be personally liable on this Agreement or such other RRIF Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 24. No Third Party Rights. The parties hereby agree that neither this Agreement or any Other RRIF Loan Agreement creates any third party rights against the Borrower, the Federal Government, the RRIF Lender, FTA, or FRA solely by virtue of the RRIF Loan, and the Borrower agrees to indemnify and hold the RRIF Lender, the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 17 (Indemnification), from any lawsuit or claim arising in law or equity solely by reason of the RRIF Loan, and that no third party creditor or creditors of the Borrower shall have any right against the RRIF Lender with respect to the RRIF Loan or any RRIF Loan Document.

Section 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the RRIF Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 26. RRIF Lender's Authorized Representative.

(a) The RRIF Lender shall at all times have appointed the RRIF Lender's Authorized Representative by designating such Person or Persons from time to time to act on the RRIF Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the RRIF Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016 (the "**Delegation**") by the Executive Director of the Build America Bureau to the Director of the Credit Office of the Build America Bureau, the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the RRIF Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the RRIF Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 27. Servicer. The RRIF Lender may from time to time designate another entity or entities to perform, or assist the RRIF Lender in performing, the duties of the Servicer or specified duties of the RRIF Lender under this Agreement or the RRIF Note. The RRIF Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement or in any other RRIF Loan Document to the RRIF Lender shall be deemed to be a reference to the Servicer with respect to any duties which the RRIF Lender shall have delegated to such Servicer. The RRIF Lender may at any time assume the duties of any Servicer under this Agreement and under each other RRIF Loan Document. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 28. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (“FFY”) 2025 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the RRIF Lender a servicing fee for each Tranche on or before the fifteenth (15<sup>th</sup>) of November. The RRIF Lender shall establish the amount of this annual per-Tranche fee in accordance with this Section 28, and the RRIF Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the per-Tranche fee, the RRIF Lender will adjust the previous year’s base amount in proportion to the percentage change in CPI. For the FFY 2025 calculation, the RRIF Lender will use the FFY 2024 base amount of \$16,500.00, which applies to other RRIF borrowers, as the previous year’s base amount. The RRIF Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year’s base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the RRIF Lender shall round the current year’s base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the RRIF Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the RRIF Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration, and performance of this Agreement and the other RRIF Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other RRIF Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, any Other Borrower Financing Document, or the Collateral, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or Other Borrower Financing Document, or the rights of the RRIF Lender hereunder or thereunder;

(iii) any ongoing oversight and monitoring of the RRIF Loan, the Borrower or the Project by the RRIF Lender as provided for herein or in any other RRIF Loan Document; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other RRIF Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 28 (*Fees and Expenses*) shall survive the payment or prepayment in full or transfer of the RRIF Note, the enforcement of any provision of this Agreement or the other RRIF Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement or any other RRIF Loan Document shall in any event be effective without the written consent of each of the parties hereto or thereto, as applicable.

Section 30. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 31. Severability. In case any provision in or obligation under this Agreement or any other RRIF Loan Document shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 32. Successors and Assigns. This Agreement and each other RRIF Loan Document shall be binding upon the parties hereto and thereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and thereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder or thereunder nor any interest herein or therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the RRIF Lender.

Section 33. Remedies Not Exclusive. No remedy conferred herein or in any other RRIF Loan Document or reserved to the RRIF Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 34. Delay or Omission Not Waiver. No delay or omission of the RRIF Lender to exercise any right or remedy provided hereunder or under any other RRIF Loan Document upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement, each other RRIF Loan Document, or by law to the RRIF Lender may be exercised from time to time, and as often as may be deemed expedient by the RRIF Lender.

Section 35. Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 36 (Notices) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 36. Notices. Notices hereunder and under each other RRIF Loan Document shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to the RRIF Lender:

Build America Bureau  
United States Department of  
Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of Credit  
Programs  
Email: BureauOversight@dot.gov

If to the FTA Regional Office:

Federal Transit Administration Region II Office  
One Bowling Green, Room 429  
New York, NY 10004  
Attention: Michael Culotta, Regional  
Administrator  
Email: Michael.Culotta@dot.gov

If to the Borrower:

Gateway Development Commission  
120 Broadway – 10<sup>th</sup> Floor  
New York, NY 10271  
Attention: General Counsel  
Email: Notices@Gatewayprogram.org

Unless otherwise instructed by the RRIF Lender’s Authorized Representative, all notices to the RRIF Lender should be made by email to the email address noted above for the RRIF Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower’s Authorized Representative, with respect to notices to the Borrower, or by the RRIF Lender’s Authorized Representative, with respect to notices to the RRIF Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 37. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 38. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash of the Outstanding RRIF Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 17 (Indemnification), the reporting and record keeping requirements of Sections 20(b) (Inspections) and (c) (Reports and Records), and the payment requirements of Section 28 (Fees and Expenses) shall survive the termination of this Agreement as provided in such sections.

Section 39. Integration. This Agreement and each other RRIF Loan Document constitute the entire contract between the parties relating to the subject matter hereof and thereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**GATEWAY DEVELOPMENT  
COMMISSION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and  
through the Executive Director of the Build  
America Bureau

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE I**

**PROJECT BUDGET**

[To be provided by Borrower]



## SCHEDULE II

### CONSTRUCTION SCHEDULE

<b>SCHEDULE II</b> <b>Gateway Development Commission</b> <b>Hudson Tunnel Project</b> <b>Project Schedule</b>
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	Start Date	End Date	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
10 Guideway & Track Elements (route miles)	04/01/23	06/25/38												
20 Stations, Stops, Terminals, Intermodal (number)														
30 Support Facilities: Yards, Shops, Admin. Bldgs	10/01/27	01/31/34												
40 Sitemwork & Special Conditions	01/01/17	06/25/38												
50 Systems	01/01/27	06/25/38												
60 ROW, Land, Existing Improvements	01/01/17	01/31/27												
70 Vehicles (number)														
80 Professional Services (applies to Cats. 10-50)	01/01/17	06/25/38												
90 Unallocated Contingency	04/01/23	11/09/40												
100 Finance Charges (CC Only)	01/01/24	06/25/38												
Revenue Operations	06/25/38	11/09/40												
Projected Substantial Completion		11/09/40												

<i>(Con'd from above)</i>	Start Date	End Date	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
10 Guideway & Track Elements (route miles)	04/01/23	06/25/38												
20 Stations, Stops, Terminals, Intermodal (number)														
30 Support Facilities: Yards, Shops, Admin. Bldgs	10/01/27	01/31/34												
40 Sitemwork & Special Conditions	01/01/17	06/25/38												
50 Systems	01/01/27	06/25/38												
60 ROW, Land, Existing Improvements	01/01/17	01/31/27												
70 Vehicles (number)														
80 Professional Services (applies to Cats. 10-50)	01/01/17	06/25/38												
90 Unallocated Contingency	04/01/23	11/09/40												
100 Finance Charges (CC Only)	01/01/24	06/25/38												
Revenue Operations	06/25/38	11/09/40												
Projected Substantial Completion		11/09/40												

**EXHIBIT A**

**ANTICIPATED RRIF LOAN DISBURSEMENT SCHEDULE**

<u>Borrower Fiscal Year</u>	<u>Tranche A Amount</u>	<u>Tranche B Amount</u>
2024	\$7,122,236.28	-
2025	\$22,882,044.62	-
2026	\$36,208,460.87	-
2027	\$31,542,635.03	-
2028	\$18,518,749.92	-
2029	\$17,167,988.34	-
2030	\$17,357,776.73	-
2031	\$5,492,451.26	-
2032	\$3,916,078.07	-
2033	\$2,161,547.91	-
2034	\$10,341,285.68	-
2035	-	-
2036	-	-
2037	\$3,688,505.72	-
2038	\$39,317,615.57	-
<b>Total Disbursement</b>	<b>\$215,717,376</b>	-

**EXHIBIT B**

**RRIF DEBT SERVICE**

[To be provided at closing]

**EXHIBIT C****RRIF LOAN REAMORTIZATION METHODOLOGY****Tranche A**

Period	Semi-Annual Payment Date	Interest	Principal Amount (\$)
Capitalized Interest Period (CAPI)	Financial Close - 8/01/2034	0%	0.00
Interest Only	2/01/2035 – 2/01/2038	100%	0.00
Level Payment Period	8/01/2038 – Final Maturity Date	100%	Fixed Level Payment

**Tranche B**

Period	Semi-Annual Payment Date	Interest	Principal Amount (\$)
Capitalized Interest Period (CAPI)	Financial Close - 8/01/2034	0%	0.00
Interest Only	2/01/2035 – 2/01/2038	100%	0.00
Level Payment Period	8/01/2038 – Maturity	100%	Fixed Level Payment

Note: During the Level Payment Period, (1) prior to the final disbursement of the RRIF Loan, the RRIF Lender shall reamortize the RRIF Loan based on the Outstanding RRIF Loan Balance on the preceding Semi-Annual Payment Date; and (2) after the final disbursement of the RRIF Loan, the RRIF Lender shall reamortize the RRIF Loan based on the Outstanding RRIF Loan Balance on the succeeding Semi-Annual Payment Date after such final disbursement of the RRIF Loan. Any rounding differences shall be applied to the final payment of principal in respect of the RRIF Loan.

## EXHIBIT D

### REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of RRIF Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through Section 4 set out the circumstances in which the RRIF Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the RRIF Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the RRIF Lender under the RRIF Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the RRIF Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under such RRIF Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of RRIF Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the RRIF Lender, in accordance with Section 36 (Notices) of the RRIF Loan Agreement, of a Requisition, in form and substance satisfactory to the RRIF Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as Appendix One to this **Exhibit D**. All supporting documentation related to the requested disbursement, including documentation related to Eligible Project Costs, should be submitted with the requisition.

All disbursement requests must be received by the RRIF Lender at or before 5:00 P.M. (EST) on the first (1<sup>st</sup>) Business Day of a calendar month in order to obtain disbursement by the first (1<sup>st</sup>) day of the following calendar month or, if such day is not a Business Day, the next succeeding Business Day.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the RRIF Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the RRIF Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid.

The RRIF Lender shall promptly send to the Borrower, in accordance with Section 36 (Notices) of the RRIF Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as **Appendix Two** to this **Exhibit D**. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the RRIF Loan

proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the RRIF Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the RRIF Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The RRIF Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of RRIF Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the RRIF Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the highest standards of the Borrower's industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the RRIF Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the RRIF Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the RRIF Loan Agreement; or

(iv) fails to satisfy any condition set forth in Section 4 (Disbursement Conditions), Section 12(b) (Conditions Precedent to All Disbursements) or, if applicable, Section 13(b) (Officers' Authorization) of the RRIF Loan Agreement; or

(v) fails to deliver documentation satisfactory to the RRIF Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the RRIF Loan Agreement; provided, that in such case the RRIF Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Federal Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the RRIF Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of RRIF Loan proceeds and (b) shall have no

obligation to make any disbursement of proceeds of the RRIF Loan to the Borrower (even if such disbursement has been approved by the RRIF Lender), in each case if the RRIF Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

**APPENDIX ONE TO EXHIBIT D**  
**FORM OF REQUISITION**

Build America Bureau

United States Department of Transportation  
c/o Director, Office of Credit Programs  
Room W12-402  
1200 New Jersey Avenue, SE,  
Washington, D.C. 20590

Federal Transit Administration  
Region II  
One Bowling Green, Room 428  
New York, NY 10004  
Attention: Regional Administrator

[Loan Servicer]  
[Address]  
[Attention]

Re: HUDSON TUNNEL PROJECT (NJT FUNDING AGREEMENT) (RRIF – 2024-0052)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the RRIF Loan Agreement (NJT Funding Agreement), dated as of July 8, 2024 (the “**RRIF Loan Agreement**”), each by and between GATEWAY DEVELOPMENT COMMISSION (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”), we hereby request disbursement in the amount of \$[\_\_\_\_\_] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. The requested disbursement is made with respect to the [Construction][Cost Overrun] Tranche.<sup>1</sup> Capitalized terms used but not defined herein have the meaning set forth in the RRIF Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [\_\_\_\_\_].
2. The requested date of disbursement is [\_\_\_\_\_] 20[\_\_\_] (the “**Disbursement Date**”)[, which is the first Business Day following [\_\_\_\_\_] 20[\_\_\_]].
3. The amounts previously disbursed under the RRIF Loan Agreement equal, in the aggregate, \$[\_\_\_\_\_].

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<sup>1</sup> If the requested disbursement amount corresponds to more than one Tranche, specify the amount associated with each applicable Tranche.



4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from RRIF Loan proceeds, proceeds of any other RRIF Loan, or Federal Grants.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the RRIF Loan and the amount of this Requisition, together with all prior Requisitions in respect of the [Construction][Cost Overrun] Tranche, does not exceed the maximum principal amount for such Tranche.<sup>2</sup>
6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified in Section 1 of **Exhibit D** (*Requisition Procedures*) to the RRIF Loan Agreement and complies with the requirements of Section 4(a) (*Disbursement Conditions*) of the RRIF Loan Agreement.
7. All Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval have been obtained and are in full force and effect (and are not subject to any notice of violation, breach or revocation).
8. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the RRIF Lender and the FTA Regional Office and in accordance with the highest standards of the Borrower's industry.
10. The representations and warranties of the Borrower set forth in the RRIF Loan Agreement and the representations and warranties of each of the Borrower, the Funding Partner, and each other party to the Direct Agreement set forth in each other Related Document and Other Borrower Financing Document to which it is a party are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice

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<sup>2</sup> If the requested disbursement corresponds to more than one Tranche, the Borrower must make this certification with respect to each applicable Tranche.

- or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since May 1, 2024 and is continuing.
  13. A copy of the monthly construction progress report pursuant to Section 22(b) (*Monthly Construction Progress Report*) of the RRIF Loan Agreement for the month that ended most recently prior to the date of the applicable Requisition has been delivered to each of the above named addresses.
  14. [With respect to any disbursement of RRIF Loan proceeds from Tranche B, attached hereto is a copy of the written approval of the State's Authorized Representative (as defined in the Direct Agreement) with respect to such disbursement.]<sup>3</sup>
  15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Federal Government deems appropriate.
  16. A copy of this requisition has been delivered to each of the above named addressees.
  17. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

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<sup>3</sup> To be included in connection with any requested disbursement under Tranche B.

[Add wire instructions for Borrower.]

Date: \_\_\_\_\_

GATEWAY DEVELOPMENT  
COMMISSION<sup>4</sup>

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

Name:

Title:

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<sup>4</sup> To be executed by the Borrower's Authorized Representative.

**APPENDIX TWO TO EXHIBIT D**

**DISAPPROVAL OF THE RRIF LENDER  
(To be delivered to the Borrower)**

Requisition Number [●] is [approved in part in the amount of \$[●]] [not approved]<sup>5</sup> by the RRIF Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) the RRIF Loan Agreement (NJT Funding Agreement), dated as of July 8, 2024, each by and between Gateway Development Commission (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”).

Any determination, action or failure to act by the RRIF Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the RRIF Lender’s sole discretion, and in no event shall the RRIF Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and  
through the Executive Director of the Build  
America Bureau

By: \_\_\_\_\_  
RRIF Lender’s Authorized Representative  
Name:  
Title:  
Dated:

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<sup>5</sup> Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

**EXHIBIT A TO APPENDIX TWO TO EXHIBIT D**

**[Insert reasons for any partial or full denial of approval.]**

**EXHIBIT E**

**FORM OF RRIF PROMISSORY NOTE**

**GATEWAY DEVELOPMENT COMMISSION**

**HUDSON TUNNEL PROJECT  
(NJT Funding Agreement)**

**(RRIF Project Number – 2024-0052)**

**RRIF Promissory Note**

	<u>Maximum Principal Amount (excluding capitalized interest)</u>	<u>Interest Rate</u>
<b>Tranche A</b>	\$215,717,376	[ ]%
<b>Tranche B</b>	\$487,334,767	[ ]%

**Effective Date: July 8, 2024**

**Due: February 1, 2073**

**GATEWAY DEVELOPMENT COMMISSION**, a body politic and corporate, a public authority and a government sponsored authority established by the State and the State of New York under the GDC Act (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**RRIF Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the RRIF Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the RRIF Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the RRIF Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the RRIF Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the RRIF Loan Agreement in accordance with Exhibit B to the RRIF Loan Agreement, as revised from time to time in accordance with the RRIF Loan Agreement, until paid in full. The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in Exhibit A to the RRIF Loan Agreement from time to time in accordance with the terms of the RRIF Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the RRIF Lender’s determination of such matters as set forth on Exhibit B to the RRIF Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other RRIF Loan Document.

Payments hereon are to be made in accordance with Section 9(d) (Manner of Payment) of the RRIF Loan Agreement as the same become due. Principal of and interest on this RRIF Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. This RRIF Note has been executed under and pursuant to that certain RRIF Loan Agreement (NJT Funding Agreement), dated as of the date hereof, between the RRIF Lender and the Borrower (the “**RRIF Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the RRIF Loan Agreement to repay the loan made by the RRIF Lender and any other payments of any kind required to be paid by the Borrower under the RRIF Loan Agreement or the other RRIF Loan Documents referred to therein. Reference is made to the RRIF Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this RRIF Note and not defined herein shall have the meanings set forth in the RRIF Loan Agreement. This RRIF Note is not subject to mandatory prepayment.

This RRIF Note may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the RRIF Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000), at any time or from time to time, without penalty or premium, by paying to the RRIF Lender all or part of the principal amount of the RRIF Note in accordance with the RRIF Loan Agreement.

Payment of the obligations of the Borrower under this RRIF Note is secured pursuant to the CASA.

Any delay on the part of the RRIF Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this RRIF Note have happened, exist and have been performed as so required. This RRIF Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, GATEWAY DEVELOPMENT COMMISSION has caused this RRIF Note to be executed in its name and attested by its duly authorized officer, all as of the Effective Date set forth above.

**GATEWAY DEVELOPMENT  
COMMISSION**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary



(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns  
and transfers unto

*(Please Insert Social Security or other identifying number of Assignee(s)):*

the within note and all rights thereunder.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

## EXHIBIT F

### COMPLIANCE WITH LAWS

The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 CFR Part 35; 29 CFR Part 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 CFR Part 21);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 CFR Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), including the environmental mitigation requirements and commitments made by the Borrower that resulted in FTA and FRA's issuance of the NEPA Determination;
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (ix) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (x) 49 U.S.C. § 303;
- (xi) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 CFR Part 1926);
- (xii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 CFR Part 5);
- (xiii) The Buy America requirements set forth in (A) 49 U.S.C. § 5323(j) and implementing regulations (49 CFR Part 661) and (B) 49 U.S.C. § 22905;
- (xiv) The Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52);
- (xv) The requirements of 49 U.S.C. Chapter 53 and 49 CFR Part 600;
- (xvi) The Cargo Preference Act of 1954, as amended (46 U.S.C. § 55305), and implementing regulations (46 CFR Part 381);

- (xvii) The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) and implementing regulations (2 CFR § 200.216); and
- (xviii) The Railroad Retirement Act of 1974 (45 U.S.C. Chapter 9, Subchapter IV), and implementing regulations.

## **EXHIBIT G**

### **OPINIONS REQUIRED FROM COUNSEL TO BORROWER**

Opinions from counsel of the Borrower, dated as of the Effective Date, to the effect that:

1. the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdictions of its organization;
2. the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under, the Related Documents to which it is a party (including granting the security interests in the Collateral);
3. the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational, statutory or regulatory action;
4. the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms;
5. no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;
6. the execution and delivery by the Borrower of, and performance of its obligations under, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America, the State of New York, or of the State of New Jersey, or (iii) conflict with or constitute a breach of or result in a default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject;
7. the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended;
8. to the knowledge of counsel after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending;
9. each RRIF Loan Document is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions;
10. the RRIF Note (i) is secured by the Collateral pledged for the repayment of the RRIF Loan represented by the RRIF Note pursuant to the CASA, (ii) is a RRIF Note entitled to the benefits of a RRIF Note under the RRIF Loan Documents, enforceable under the laws of the State without any further action by the Borrower or any other Person and (iii) is a senior obligation of the Borrower and ranks senior in right of payment and right of security with all other Obligations;

11. the CASA creates the valid and binding grant of a security interest in, and pledge of, the Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the RRIF Note, irrespective of whether any party has notice of the pledge or grant of security interest, as applicable, and except for the filing of a UCC-1 financing statement with the New York State Department of State, no filing, recordation or any other action is necessary to establish and perfect a legal, valid, binding, and enforceable Lien on the Collateral under the New York Uniform Commercial Code in favor of the Collateral Agent for the benefit of the RRIF Lender to the extent contemplated by the RRIF Loan Documents;
12. all actions by the Borrower that are required for the use of Contract Payments as required under the CASA and under the other RRIF Loan Documents have been duly and lawfully made;
13. the CASA is sufficient under State law to lawfully assign and pledge the Collateral and use the Contract Payments as required by the terms of the RRIF Loan Documents and the NJT Funding Agreement;
14. the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; and
15. the Borrower is not entitled to claim governmental immunity in any breach of contract action under any RRIF Loan Document or Fundamental Contract.

**EXHIBIT H**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS—  
PRIMARY COVERED TRANSACTIONS**

The undersigned, on behalf of GATEWAY DEVELOPMENT COMMISSION, hereby certifies that GATEWAY DEVELOPMENT COMMISSION has fully complied with its verification obligations under 2 CFR § 180.320 and hereby further confirms in accordance with 2 CFR § 180.335, that, to its knowledge, the Borrower and its principals (as defined in 2 CFR § 180.995):

(a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);

(b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR § 180.800(a); and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain RRIF Loan Agreement (NJT Funding Agreement), dated as of July 8, 2024 between the RRIF Lender and the Borrower, as the same may be amended from time to time.

Dated: \_\_\_\_\_

**GATEWAY DEVELOPMENT COMMISSION<sup>6</sup>**

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

Name:

Title:

<sup>6</sup> To be executed by Borrower’s Authorized Representative.

## EXHIBIT I

### FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain RRIF Loan Agreement (NJT Funding Agreement), dated as of July 8, 2024 (the "RRIF Loan Agreement"), by and among Gateway Development Commission (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "RRIF Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement.

The undersigned, [\_\_\_\_], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 12(a)(ii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit A are complete and fully executed copies of each Federal Grant Agreement and each Other Borrower Financing Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the RRIF Lender in its sole discretion;
- (b) pursuant to Section 12(a)(vi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 25 (*Borrower's Authorized Representative*) of the RRIF Loan Agreement;
- (c) the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and such funds shall be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion;
- (d) pursuant to Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit C are true, correct and complete copies of the NJTA Funding Agreement, each Fundamental Contract, each SEP Agreement, and each Construction-Related Contract that has been executed on or prior to the Effective Date (as listed below), and each such NJTA Funding Agreement, Fundamental Contract, SEP Agreement and Construction-Related Contract, together with any amendments, waivers or modifications thereto that have been entered into on or prior to the Effective Date, is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of Exhibit C:
  - 1. the Project Development Agreement
  - 2. the NJTA Funding Agreement;

3. the NJT Funding Agreement;
  4. [list each SEP Agreement]; and
  5. [list each Construction-Related Contract]
- (e) the Borrower has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (f) pursuant to Section 12(a)(xi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit D is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Contract Payments are sufficient to meet the Loan Amortization Schedule, and (ii) otherwise be in form and substance acceptable to the RRIF Lender;
- (g) pursuant to Section 12(a)(xii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, the Borrower hereby certifies that (i) the Borrower is authorized, pursuant to the GDC Act, to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the RRIF Loan Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act other than as set forth in clause (ii) hereto, (ii) it has recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Collateral Agent's Lien on the Collateral (for the benefit of the RRIF Lender) to the extent contemplated by the RRIF Loan Documents or the GDC Act, including delivery of a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, that has been filed with the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code, (iii) it has recorded or filed, or caused to be recorded or filed, with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services, a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, and (iv) it has paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any RRIF Loan Document or any instruments, certificates or financing statements in connection with the foregoing;
- (h) pursuant to Section 12(a)(xiv) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, the Borrower hereby certifies that it has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and, if previously requested request by the RRIF Lender, has provided sufficient evidence of such compliance;
- (i) pursuant to Section 12(a)(xiv) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit E is a true, correct and complete copy of the final



NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;

- (j) pursuant to Section 12(a)(xvi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 87-2091167 and attached hereto as Exhibit F-1 is evidence thereof, (ii) the Borrower's Unique Entity Identifier number is L3A1UJSRCT44, and (iii) the Borrower has registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov)), and attached hereto as Exhibit F-2 is evidence of each of (ii) and (iii);
- (k) pursuant to Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit G-1 are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of Section 15(f) (*Insurance; Events of Loss*) of the RRIF Loan Agreement;
- (l) pursuant to Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, (i) attached hereto as (A) Exhibit G-2 is a copy of the Borrower's Organizational Documents, each as in effect on the Effective Date (and certified by the Secretary of State of the State and of the State of New York, to the extent applicable), which Organizational Documents are each in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate, (B) Exhibit G-3 is a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the RRIF Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) as Exhibit G-4 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the RRIF Loan Documents, and (ii) the Borrower certifies that Exhibit G-2, Exhibit G-3, and Exhibit G-4 evidence that the Borrower is duly organized and validly existing under the laws of its jurisdictions of formation, and has full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted and as contemplated in the Related Documents and the Other Borrower Financing Documents;
- (m) the representations and warranties of the Borrower set forth in the RRIF Loan Agreement and the representations and warranties of each of the Borrower, the Funding Partner, and each other party to the Direct Agreement set forth in each other Related Document and Other Borrower Financing Document to which it is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (n) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since May 1, 2024 and is continuing.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

[\_\_\_\_\_]

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

Name:

Title: Chief Executive Officer and  
Authorized Representative

**EXHIBIT B TO EXHIBIT I**

**INCUMBENCY CERTIFICATE**

The undersigned certifies that he/she is the [Secretary] of Gateway Development Commission, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York, (the “Borrower”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the RRIF Loan Documents as the Borrower’s Authorized Representative (each as defined in that certain RRIF Loan Agreement (NJT Funding Agreement), dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of [\_\_\_\_], 2024.

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT J**

**FORM OF CERTIFICATE OF COLLATERAL AGENT**

**GATEWAY DEVELOPMENT COMMISSION**

**Hudson Tunnel Project  
(RRIF Project Number – 2024-0052)**

The undersigned, The Bank of New York Mellon (the “*Collateral Agent*”), by its duly appointed, qualified and acting Vice President, certifies with respect to the above referenced CASA (as defined below) dated as of July 8, 2024, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the CASA):

1. That the Collateral Agent is a bank organized under the laws of the state of New York.
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Collateral Agent of its duties and obligations under the documents pertaining to the issuance of the CASA have been obtained by the Collateral Agent and are in full force and effect.
3. That the CASA was executed by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of the CASA and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute the CASA, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Collateral Agent, to establish and maintain the Account and to accept the Contract Payments that will be conveyed to it under the CASA, shall accept the Contract Payments so conveyed and in so accepting the Contract Payments and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from the bylaws of the Collateral Agent and other applicable documents that evidence the Collateral Agent’s powers to enter into the CASA and to fulfill its obligations under the CASA and the RRIF Loan Agreement and the authority of the officers referred to above to act on behalf of the Collateral Agent; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.
6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Collateral Agent pursuant to that certain

Collateral Accounts and Security Agreement (the “**CASA**”), dated as of July 8, 2024, between Gateway Development Commission (the “**Borrower**”), the RRIF Lender (as defined below), the Collateral Agent, the Securities Intermediary (as defined therein), and the other secured parties party thereto from time to time.

8. That receipt is also acknowledged of the RRIF Loan Agreements, each dated as of July 8, 2024 (the “**RRIF Loan Agreements**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau.
9. That the Collateral Agent also accepts its appointment and agrees to perform the duties and responsibilities of Collateral Agent for and in respect of the CASA as set forth in the CASA and the RRIF Loan Agreement. In accepting such duties and responsibilities, the Collateral Agent shall be entitled to all of the privileges, immunities, rights and protections set forth in Article 3 of the CASA.
10. That the Account has been established as provided in the CASA.

[SIGNATURE PAGE FOLLOWS]

Dated: July 8, 2024

THE BANK OF NEW YORK MELLON

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

Its:

**ANNEX ONE TO EXHIBIT J**  
**OFFICERS OF COLLATERAL AGENT**

**ANNEX TWO TO EXHIBIT J**  
**BYLAWS OF COLLATERAL AGENT**



**EXHIBIT K**

**CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF APPROPRIATED FUNDS FOR LOBBYING**

Reference is made to that certain RRIF Loan Agreement (NJT Funding Agreement), dated as of July 8, 2024 (the “RRIF Loan Agreement”), by and among Gateway Development Commission, (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “RRIF Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement. The undersigned, on behalf of the Borrower, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of the RRIF Loan.

(b) If any funds other than proceeds of the RRIF Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the RRIF Loan, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the RRIF Lender entered into the RRIF Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the RRIF Loan Agreement imposed by Section 1352 of title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: \_\_\_\_\_

**GATEWAY DEVELOPMENT COMMISSION<sup>7</sup>**

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

Name:

Title:

<sup>7</sup> To be executed by Borrower’s Authorized Representative.

**EXHIBIT L**

**FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION**

*[Letterhead of Borrower]*

*[Date]*

Build America Bureau  
United States Department of Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of Credit Programs

**Project: Hudson Tunnel Project (RRIF – 2024-0052)**

Dear Director:

This Notice is provided pursuant to Section 15(g)(i)(A) (*Substantial Completion*) of that certain RRIF Loan Agreement (NJT Funding Agreement) (the “**RRIF Loan Agreement**”), dated as of July 8, 2024 by and between Gateway Development Commission (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the RRIF Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the RRIF Lender that:

- (a) as of on [insert date], Amtrak and NJT have each commenced revenue operations on both elements of the Project included in clauses (a) and (b) of the definition of “Project” and, in so doing, satisfied each of the requirements for Substantial Completion;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) [Substantial Completion, as defined in the RRIF Loan Agreement, has been achieved.]

\_\_\_\_\_  
[Borrower’s Authorized Representative]

\_\_\_\_\_  
Name:

Title:

## EXHIBIT M

### 2 CFR Part 170

#### I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

##### a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

##### 2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

##### b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this RRIF Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received—

(A) eighty percent (80%) or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month of the Effective Date, and annually thereafter.

*c. Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this RRIF Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) eighty percent (80%) or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

*e. Definitions.* For purposes of this **Exhibit M**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

- iii. A domestic or foreign nonprofit organization; and,
- iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR § 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

- i. Receives a subaward from you (the recipient) under this RRIF Loan; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)).

**EXHIBIT N**

**EMPLOYEE PROTECTION ARRANGEMENTS**

[See attached.]

Adopted - 7/2/24

**EXHIBIT B**

**UNITED STATES  
DEPARTMENT OF TRANSPORTATION**

**RRIF LOAN AGREEMENT**

**For Up to \$1,487,018,803**

**With**

**GATEWAY DEVELOPMENT COMMISSION**

**For the**

**HUDSON TUNNEL PROJECT**

**(New York Funding Agreement)  
(RRIF – 2024-0050)**

**Dated as of July 8, 2024**



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**EXHIBIT G** – Opinions Required from Counsel to Borrower

**EXHIBIT H** – Non-Debarment Certification

**EXHIBIT I** – Form of Borrower’s Officer’s Certificate

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**EXHIBIT K** – Certification Regarding Lobbying

**EXHIBIT L** – Form of Certificate of Substantial Completion

**EXHIBIT M** – Reporting Subawards and Executive Compensation

**EXHIBIT N** – Employee Protection Arrangements

## RRIF LOAN AGREEMENT

**THIS RRIF LOAN AGREEMENT** (this “**Agreement**”), dated as of July 8, 2024, is by and between **GATEWAY DEVELOPMENT COMMISSION**, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York (the “**State**”), with an address of 120 Broadway – 10<sup>th</sup> Floor, New York, New York 10271 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**RRIF Lender**”).

### RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has created the Railroad Rehabilitation and Improvement Financing program (“**RRIF**”) codified at 49 U.S.C. §§ 22401-22406 (as amended from time to time, the “**Act**”); and

WHEREAS, Section 22402 of the Act authorizes the RRIF Lender to provide direct loans and loan guarantees to eligible project sponsors; and

WHEREAS, the Borrower has requested that the RRIF Lender make the RRIF Loan (as defined herein), comprised of Tranches (as defined herein), to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for RRIF credit assistance dated May 1, 2024 (the “**Application**”); and

WHEREAS, on June 6, 2024 the Secretary (as defined herein) approved RRIF credit assistance for the Project in the form of the RRIF Loan (as defined herein); and

WHEREAS, the RRIF Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the RRIF Note (as defined herein) in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the RRIF Lender has entered into this Agreement in reliance upon, among other things, the Enabling Legislation, the GDC Act, the Fundamental Contracts, and the Continuing Covenants and Representations Agreement (each as defined herein).

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the RRIF Lender as follows:

Section 1. **Definitions.** Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (Definitions) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

**“Acceptable Credit Rating”** means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than ‘A+’, ‘A1’ or the equivalent rating from at least one (1) Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

**“Account”** has the meaning ascribed to the term “NY RRIF Account” in the CASA.

**“Act”** means the Act as defined in the recitals hereto.

**“Additional Funding Agreement”** means any additional funding agreement, other than the Funding Agreement, entered into by and between the Funding Partner and the Borrower, pursuant to which the Funding Partner provides funding to the Borrower for the purpose (in whole or in part) of securing the repayment of indebtedness of the Borrower to finance the construction of all or any portion of and relating to the Project.

**“Agreement”** has the meaning provided in the preamble hereto.

**“Amtrak”** means the National Railroad Passenger Corporation (d/b/a Amtrak).

**“Anti-Corruption Laws”** means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption.

**“Anti-Money Laundering Laws”** means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

**“Anticipated RRIF Loan Disbursement Schedule”** means the schedule set forth in **Exhibit A**, reflecting the anticipated disbursement of proceeds of the RRIF Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (Disbursement Conditions) of this Agreement.

**“Application”** has the meaning provided in the recitals hereto.

**“Bank Secrecy Act”** means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1960 and 31 U.S.C. §§ 312, 5311-5313, and 5316-5322), as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

**“Bankruptcy Related Event”** means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of RRIF Debt Service in accordance with the provisions of Section 9 (Payment of Principal and Interest), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law.

“**Base Case Financial Model**” means a financial model prepared by the Borrower that includes (a) for each six (6) month period (commencing on January 1 and July 1, respectively) through the later of (i) the Final Maturity Date and (ii) the latest final maturity date under any Other RRIF Loan Agreement, a forecast of all Contract Payments, all Contract Payments under (and as defined in) each Other Funding Agreement, and all expenditures and funding obligations of the Borrower or related to the Project, (b) for each six (6) month period (commencing on January 1 and July 1, respectively) through the later of (i) the Final Maturity Date and (ii) the latest final maturity date under any Other RRIF Loan Agreement, a forecast of all RRIF Debt Service, all debt service in respect of the Other RRIF Loans, and all debt service in respect of all other Obligations, and (c) the Project Budget, which model, in each case in clauses (a), (b), and (c) above, shall be based upon assumptions and a methodology provided by the Borrower and acceptable to the RRIF Lender as of the Effective Date, and which model shall be provided to the RRIF Lender as a fully functional Microsoft Excel-based financial model or shall use such other format requested by the RRIF Lender.

“**Borrower**” has the meaning provided in the preamble hereto.

“**Borrower Fiscal Year**” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on January 1 of any calendar year and ending on December 31 of such calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior

written notice to the RRIF Lender, as provided in Section 16(d) (*Organizational Documents; Fiscal Year*).

“**Borrower’s Authorized Representative**” means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York.

“**Capital Expenditures**” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.

“**Capitalized Interest Period**” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period.

“**CASA**” means that certain Collateral Accounts and Security Agreement, dated as of the Effective Date, by and among the Borrower, the RRIF Lender, the Collateral Agent, and the Securities Intermediary (as defined therein).

“**CIG**” means that certain Capital Investment Grant awarded by the FTA to the Borrower pursuant to the FFGA.

“**Collateral**” means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (a) the Funding Agreement, including all right, title, and interest of the Borrower in the Contract Payments payable thereunder, (b) the Account, and (c) all Proceeds (as defined in the CASA) and products in whatever form of all or any part of the foregoing items (a) and (b), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments and other funds or amounts on deposit in the Account.

“**Collateral Agent**” means The Bank of New York Mellon, , a bank organized under the laws of the state of New York.

“**Congress**” has the meaning provided in the recitals hereto.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

“**Construction-Related Contract Party**” means any Person (other than the Borrower) party to a Construction-Related Contract.

“**Construction-Related Contracts**” means

(a) Master Services Agreement, Contract No. GDC-24-005-HTP, dated as of March 18, 2024, between the Borrower and MPA Delivery Partners;

(b) Design-Build Agreement, dated as of March 11, 2024, between the Borrower and Weeks Marine, Inc.;

(c) Tonnelle Avenue Overhead Bridge and Utility Relocations, Contract GDC23-002, dated as of October 12, 2023, between the Borrower and Conti Civil, LLC;

(d) GDC Agreement GDC-23-001, dated as of September 29, 2023, between the Borrower and Naik Consulting Group, P.C.; and

(e) each other construction-related contract entered into by the Borrower in connection with the Project from time to time.

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule I**, and (b) any updates thereto included in the Financial Plan most recently submitted to the RRIF Lender pursuant to Section 21(a)(iv)(B) (Financial Plan).

“**Continuing Covenants and Representations Agreement**” means that certain Continuing Covenants and Representations Agreement, dated as of the date hereof, among the RRIF Lender, the Borrower and the State, acting by and through the Director of the Budget of the State, and acknowledged and agreed to by the Collateral Agent.

“**Contract Payments**” has the meaning set forth in the Funding Agreement.

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “Controlling” and “Controlled by” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2024 as the base period.

“**Credit Risk Premium**” means a nonrefundable fee in the amount of zero dollars (\$0.00) for each disbursement of the RRIF Loan.

“**Debt Service Payment Commencement Date**” means (a) with respect to Tranche A, December 1, 2034, and (b) with respect to Tranche B, December 1, 2034 or, if later, the Semi-Annual Payment Date next occurring after the initial disbursement under Tranche B.

“**Default**” means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“**Default Rate**” means, with respect to each Tranche, an interest rate equal to the sum of (a) the RRIF Interest Rate for such Tranche plus (b) two percent (2.00%).

“**Development Default**” means (a) the Borrower fails to diligently prosecute the work related to the Project and, if a Recovery Plan has been provided in accordance with Section 22(d) (*Recovery Plan*), in accordance with such Recovery Plan, or (b) the Borrower fails to complete the Project by the Projected Substantial Completion Date, or, if a Recovery Plan has been provided in accordance with Section 22(d) (*Recovery Plan*), in accordance with the updated Projected Substantial Completion Date established pursuant to such Recovery Plan.

“**Effective Date**” means the date of this Agreement.

“**Electronic Signature**” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 *et seq.*), as amended from time to time.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, all of which shall arise from the following:

- (a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or
- (c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction;

provided, however, that Eligible Project Costs must be consistent with the Act and all other applicable federal law.

“**Enabling Legislation**” means Section 58 of the Urban Development Corporation Act, being Chapter 174 of the laws of 1968, as such section may be amended from time to time, which includes the authorization of the Funding Partner, acting by and through the Director of the Budget of the State, to enter into the Funding Agreement in an amount not to exceed the “State Capital Commitment” as defined in the Enabling Legislation.

“**Environmental Laws**” has the meaning provided in Section 13(r) (*Environmental Matters*).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. § 1001 *et seq.*), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code or,



solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

“**Event of Default**” has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

“**Event of Loss**” means any event or series of events that causes any portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“**Event of Non-Appropriation**” means the failure of the State Legislature to appropriate in any given year an amount equal to the amount of the RRIF Debt Service due and payable for such year.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Federal Fiscal Year**” or “**FFY**” means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**Federal Government**” means the Federal Government of the United States of America and its departments and agencies.

“**Federal Grant Agreements**” means the FFGA, the FSP Grant Agreement, and the RAISE Grant Agreement.

“**Federal Grants**” means the CIG, the FSP Grant, and the RAISE Grant.

“**FFGA**” means that certain Full Funding Grant Agreement (Hudson Tunnel Project, Project No. NY-2024-015-00), dated as of July 8, 2024, by and between the United States of America, acting through the FTA and the Borrower.

“**Final Maturity Date**” means, for each Tranche, June 1, 2073.

“**Financial Plan**” means the financial plan for each Borrower Fiscal Year to be delivered pursuant to Section 21(a) (*Financial Plan*).

“**Financial Statements**” has the meaning provided in Section 13(w) (*Financial Statements*).

“**Fixed Level Payment**” has the meaning provided in Section 9(c) (*Payment of RRIF Debt Service*).

“**FRA**” means the Federal Railroad Administration, a modal agency of the USDOT.

“**FRA Regional Office**” means the United States Department of Transportation, Federal Railroad Administration, Region II Office.

“**FSP Grant**” means that certain Federal-State Partnership for Intercity Passenger Rail Grant awarded to the Borrower in connection with the Project pursuant to the FSP Grant Agreement.

“**FSP Grant Agreement**” means the agreement, to be entered into between the Borrower and FRA, governing the FSP Grant.

“**FTA**” means the Federal Transit Administration, a modal agency of the USDOT.

“**FTA Project Management Oversight Requirements**” means the requirements and conditions for FTA project management oversight, as set forth in 49 U.S.C. § 5327 and in 49 C.F.R. Part 633.

“**FTA Regional Office**” means the United States Department of Transportation, Federal Transit Administration, Region 2 Office.

“**Fundamental Contract Party**” means any Person (other than the Borrower) party to a Fundamental Contract.

“**Fundamental Contracts**” means the Funding Agreement, the Project Development Agreement, and, if and when entered into, each Additional Funding Agreement.

“**Funding Agreement**” means that certain Service Contract, dated as of March 31, 2024, by and between the State, acting by and through the Director of the Budget of the State, and the Borrower.

“**Funding Partner**” means the State.

“**GAAP**” means generally accepted accounting principles as defined by the Governmental Accounting Standards Board, or such other nationally recognized professional body, in effect from time to time in the United States of America.

“**GANs**” means any grant anticipation notes issued by the Borrower after the Effective Date.

“**GDC Act**” means the parallel legislation by the State and the State of New Jersey, codified as the Gateway Development Commission Act (2019 N.Y. Laws, Ch. 108 and N.J.S.A. 32:36-1, *et seq.*).

“**GDC Operations Funding Agreement**” means any agreement entered into between or among the Borrower, the State, the State of New Jersey, and/or Amtrak pursuant to Section 11.01 of the Project Development Agreement to provide funding for the Borrower’s annual operating budget.

“**Government Obligations**” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-

Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition 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, in each case.

**“Governmental Approvals”** means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

**“Governmental Authority”** means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the states and their respective counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

**“Indemnitee”** has the meaning provided in Section 17 (*Indemnification*).

**“Insolvency Laws”** means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

**“Level Payment Commencement Date”** means, for each Tranche, December 1, 2038.

**“Level Payment Period”** means, with respect to a Tranche, the period commencing on the Level Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash).

**“Lien”** means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

**“Loan Amortization Schedule”** means, for each Tranche, the Loan Amortization Schedule reflected in the applicable column for such Tranche set forth in **Exhibit B**, as amended from time to time in accordance with Section 7 (*Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule*).

**“Material Adverse Effect”** means a material adverse effect on (a) the Project (until the Substantial Completion Date) or the appropriated Contract Payments, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, (c) the legality, validity or enforceability of any material provision of any RRIF Loan Document or Fundamental Contract, (d) the ability of (1) the Borrower to enter into, perform or comply with any of its material obligations under any RRIF Loan Document, (2) the Borrower to receive the Contract Payments as and when needed to perform its obligations under any RRIF Loan Document, or (3) the Funding Partner to enter into, perform, or comply with any of its material obligations under the Funding Agreement, (e) the validity, enforceability or priority of the Liens granted under the CASA on the Collateral in favor of the Collateral Agent (on behalf of the RRIF Lender) or (f) the RRIF Lender’s rights or remedies available under any RRIF Loan Document.

**“Modal Grant Offices”** means the FRA Regional Office and the FTA Regional Office.

**“NEPA”** means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. § 4321 *et seq.*), and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

**“NEPA Determination”** means the Record of Decision for the Project issued by the FTA Regional Office and the FRA on May 28, 2021, in accordance with NEPA.

**“NJT”** means the New Jersey Transit Corporation, a body corporate and politic and an instrumentality of the State, organized and existing by virtue of the New Jersey Public Transportation Act of 1979, constituting Chapter 150 of the Laws of New Jersey of 1979, as amended and supplemented (N.J.S.A. 27:25-1 *et seq.*).

**“NJT Funding Agreement”** means that certain Hudson Tunnel Project Funding Agreement (RRIF Loan), dated as of March 31, 2024, by and between the Borrower and NJT.

**“Obligations”** means the RRIF Loan, each Other RRIF Loan, the Working Capital Facility, the GANs, and any other indebtedness for borrowed money of the Borrower.

**“OFAC”** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**“Organizational Documents”** means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement

of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

**“Other Borrower Financing Documents”** means the indenture, credit agreement or other definitive documents pursuant to which any Obligations (other than the RRIF Loan and the Other RRIF Loans) are issued or incurred, including any other agreement, instrument and document executed and/or delivered pursuant to or in connection with any of the foregoing.

**“Other Funding Agreements”** means, collectively:

- (a) the NJT Funding Agreement; and
- (b) the Port Authority Funding Agreement.

**“Other Funding Partner”** means, (i) with respect to the NJT Funding Agreement, NJT, and (ii) with respect to the Port Authority Funding Agreement, the Port Authority.

**“Other RRIF Loan”** means each secured loan made by the RRIF Lender to the Borrower on the terms and conditions set forth in the Other RRIF Loan Agreements.

**“Other RRIF Loan Agreements”** means, collectively:

- (a) the RRIF Loan Agreement (NJT Funding Agreement); and
- (b) the RRIF Loan Agreement (Port Authority Funding Agreement).

**“Outstanding RRIF Loan Balance”** means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the RRIF Loan (inclusive of all of the Tranches), as determined in accordance with Section 7 (*Outstanding RRIF Loan Balance, Revisions to Exhibit B and Loan Amortization Schedule*).

**“Patriot Act”** means the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

**“Payment Default”** has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

**“Payment Period”** means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month period ending on the date immediately prior to the first Debt Service Payment Commencement Date.

“**Permitted Investments**” means (with respect to the investment of the proceeds of the RRIF Loan or any construction or reserve account established and maintained pursuant to the CASA):

(a) Government Obligations;

(b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;

(c) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest rating categories (without regard to any refinement or gradation of such rating by a numerical modifier or otherwise) for comparable types of obligations by any Rating Agency; and

(e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Port Authority**” means the Port Authority of New York and New Jersey, a body corporate and politic, created by compact between the State and the State of New Jersey with the consent of Congress.

“**Port Authority Funding Agreement**” means that certain Hudson Tunnel Project RRIF Loan Funding Agreement, dated as of April 8, 2024, between the Borrower and the Port Authority.

“**Project**” means (a) the construction of a new Hudson River Tunnel between New York and New Jersey; (b) the rehabilitation of the existing North River Tunnel under the Hudson River; and (c) Hudson Yards Concrete Casing – Section 3 Long Island Rail Road Emergency Services Building Utility Relocation Early Work associated with the separately funded Hudson Yards Concrete Casing Section 3 project, in each case of clauses (a) through (c) as more fully described in the Federal Grant Agreements.

“**Project Budget**” means the budget for the Project in the aggregate amount of \$[insert Project budget amount] attached to this Agreement as **Schedule I** showing a summary of Total

Project Costs with a breakdown of all Eligible Project Costs for the Project, and the estimated sources and uses of funds for the Project, as amended from time to time subject to the reporting requirements in Section 22(b) (*Monthly Construction Progress Report*).

**“Project Development Agreement”** means that certain Project Development Agreement for Hudson Tunnel Project, dated as of February 3, 2023, by and among Borrower, the State, the State of New Jersey, and Amtrak, as amended by those certain amendments, dated as of May 2, 2023, and as of March 5, 2024.

**“Projected Substantial Completion Date”** means November 9, 2040.

**“RAISE Grant”** means that certain Rebuilding America’s Infrastructure with Sustainability and Equity (RAISE) program grant, awarded to the Borrower in connection with the Project pursuant to the RAISE Grant Agreement.

**“RAISE Grant Agreement”** means that certain Grant Agreement under the Fiscal Year 2023 RAISE Program, dated as of June 4, 2024, by and between FTA and the Borrower.

**“Rating Agency”** means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. § 78c(a)(62)).

**“Recovery Plan”** means a recovery plan with respect to the implementation of the Project that has been prepared by the Borrower in accordance with the FFGA and the FSP Agreement, as applicable, and delivered to the RRIF Lender and the FTA Regional Office on behalf of both Modal Grant Offices.

**“Related Documents”** means the RRIF Loan Documents, the Federal Grant Agreements, and the Fundamental Contracts.

**“Requisition”** has the meaning provided in Section 4(a) (*Disbursement Conditions*).

**“Revised Financial Model”** means an updated version of the Base Case Financial Model, in form and substance satisfactory to the RRIF Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

**“RRIF”** has the meaning provided in the recitals hereto.

**“RRIF Debt Service”** means, with respect to any Semi-Annual Payment Date occurring on or after the first Debt Service Payment Commencement Date, the principal portion of the Outstanding RRIF Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency, or similar proceeding with respect to the Borrower) at the RRIF Interest Rate with respect to the applicable Tranche or, as applicable, the Default Rate with respect to the applicable Tranche, in each case, then due and payable on such Semi-Annual Payment Date in accordance with Section 9(c) (*Payment of RRIF Debt Service*).

“**RRIF Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**RRIF Lender**” has the meaning provided in the preamble hereto.

“**RRIF Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 26 (*RRIF Lender’s Authorized Representative*).

“**RRIF Loan**” means the direct loan made by the RRIF Lender to the Borrower on the terms and conditions set forth herein, in a principal amount not to exceed \$1,487,018,803 (excluding capitalized interest), pursuant to the Act to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower, divided into the Tranches.

“**RRIF Loan Agreement (NJT Funding Agreement)**” means that certain RRIF Loan Agreement (NJT Funding Agreement), dated as of the date hereof, between the RRIF Lender and the Borrower, to be supported by certain payments to be provided by NJT pursuant to the NJT Funding Agreement.

“**RRIF Loan Agreement (Port Authority Funding Agreement)**” means that certain RRIF Loan Agreement (Port Authority Funding Agreement), dated as of the date hereof, between the RRIF Lender and the Borrower, to be supported by certain payments to be provided by the Port Authority pursuant to the Port Authority Funding Agreement.

“**RRIF Loan Documents**” means this Agreement, the RRIF Note, the Continuing Covenants and Representations Agreement, the CASA, the Waiver, and all filings, recordings or registrations required by the RRIF Loan Documents to be filed or made in respect of the CASA.

“**RRIF Note**” means the promissory note delivered by the Borrower substantially in the form of **Exhibit E**.

“**Sanctioned Country**” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

“**Secretary**” means the United States Secretary of Transportation.

“**Semi-Annual Payment Date**” means each June 1 and December 1.



“**SEP Agreement**” means any agreement entered into by the Borrower and any user or operator of any element of the Project, or other governmental entity partnering with the Borrower to support the delivery of any work package associated with the Project.

“**SEP Agreement Party**” means any Person (other than the Borrower) party to a SEP Agreement.

“**Servicer**” means such entity or entities as the RRIF Lender shall designate from time to time to perform, or assist the RRIF Lender in performing, certain duties hereunder.

“**State**” has the meaning provided in the preamble.

“**Substantial Completion**” means the later to occur of Amtrak or NJT commencing, or having commenced, revenue operations on both of the elements described in clauses (a) and (b) of the definition of “Project.”

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**Total Project Costs**” means (a) the costs paid or incurred or to be paid or incurred, either by the Borrower or a SEP Agreement Party, in connection with or incidental to the acquisition, design, construction and equipping of the Project, including (solely in respect of the Borrower) legal, administrative, engineering, planning, design, and insurance costs, and costs of issuance; (b) amounts, if any, required by the Other Borrower Financing Documents to be paid into any fund or account upon the incurrence of any Obligations; (c) without duplication of amounts described in clause (a), payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect of any Obligations (other than the RRIF Loan and each Other RRIF Loan); and (d) furniture, fixtures and equipment, and general administrative expenses and overhead of the Borrower.

“**Tranche**” means the following tranches of the RRIF Loan:

(a) Tranche A, in a maximum principal amount equal to \$999,684,036, to provide a portion of the total financing required for the Project (the “**Construction Tranche**”).

(b) Tranche B, in a maximum principal amount equal to \$487,334,767, to provide a cost overrun facility required for the Project (the “**Cost Overrun Tranche**”).

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or

body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

“**USDOT**” means the United States Department of Transportation.

“**Waiver**” means that certain Waiver and Disclaimer, dated as of the date hereof, among the RRIF Lender, the Collateral Agent, the Borrower, Bank of America, N.A., and the other Persons from time to time party thereto.

“**Working Capital Facility**” means the revolving line of credit facility made available by the Working Capital Facility Lender under the Working Capital Facility Documents, the proceeds of which will be applied to the payment of Total Project Costs, and which shall be secured by the proceeds of certain Federal Grants.

“**Working Capital Facility Documents**” means (a) that certain Revolving Credit Agreement, dated as of July 8, 2024, by and between the Borrower and the Working Capital Facility Lender, (b) that certain Pledge and Security Agreement, dated as of July 8, 2024, by and between the Borrower and the Working Capital Facility Lender, and (c) each other agreement entered into by the Borrower and the Working Capital Facility Lender from time to time pursuant to or in connection with the Working Capital Facility.

“**Working Capital Facility Lender**” means Bank of America, N.A., together with its successors and permitted assigns.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof,” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well

as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (Notices) and signed by a duly authorized representative of such party.

Section 3. RRIF Loan Amount. The principal amount of the RRIF Loan (excluding interest that is capitalized in accordance with the terms hereof) shall not exceed \$1,487,018,803, provided, that (a) the principal amount of Tranche A (excluding interest that is capitalized in accordance with the terms hereof) shall not exceed \$999,684,036 and (b) the principal amount of Tranche B (excluding interest that is capitalized in accordance with the terms hereof) shall not exceed \$487,334,767. RRIF Loan proceeds shall be disbursed from time to time in accordance with Section 4 (Disbursement Conditions) and Section 12(b) (Conditions Precedent to All Disbursements).

Section 4. Disbursement Conditions

(a) RRIF Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project, and will be divided into the Tranches. Each disbursement of the RRIF Loan may be in respect of all or a portion of one or more Tranches. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower's risk and expense, will not constitute Eligible Project Costs, and no RRIF Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. If the Borrower intends to utilize any RRIF Loan proceeds to make progress payments for the Project construction work, the Borrower shall demonstrate to the satisfaction of the RRIF Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the RRIF Loan shall be made pursuant to a requisition and certification (a "**Requisition**") in the form set forth in **Appendix One to Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the RRIF Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 (Disbursement Conditions), and the conditions set forth in Section 12(b) (Conditions Precedent to All Disbursements); provided, however, that no disbursements of RRIF Loan proceeds shall be made on or after the date that is five (5) years after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the RRIF Lender, the Servicer (if any) and the FTA Regional Office on behalf of both Modal Grant Offices on or before the first (1<sup>st</sup>) Business Day of each month prior to the month for which a disbursement is requested. Subject to Section 4(d) (Disbursement Conditions), if the RRIF Lender does not expressly deny a Requisition, disbursements of funds shall be made on the first (1<sup>st</sup>) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if

such first (1<sup>st</sup>) day is not a Business Day. Express denial of a Requisition by the RRIF Lender shall be provided substantially in the form attached as **Appendix Two to Exhibit D (Requisition Procedures)**. In no event shall disbursements under this Agreement be made more than once each month.

(c) The Borrower may amend the Anticipated RRIF Loan Disbursement Schedule by submitting a revised version thereof to the RRIF Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4 (Disbursement Conditions), Section 12 (Conditions Precedent) or **Exhibit D (Requisition Procedures)**), in no event shall the RRIF Lender have any obligation to make any disbursement of proceeds of the RRIF Loan to the Borrower if the RRIF Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 5. Term. The term of each Tranche shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash.

Section 6. Interest Rate. The interest rate (the "**RRIF Interest Rate**") with respect to the outstanding principal balance of each Tranche shall be (a) [\_\_\_\_] percent ([\_\_\_\_]%) per annum for Tranche A, and (b) [\_\_\_\_] percent ([\_\_\_\_]%) per annum for Tranche B. Interest will be computed on the outstanding principal balance of each Tranche (as well as on any past due interest) from time to time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the outstanding principal balance of each Tranche and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the outstanding principal balance of each Tranche and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived in writing by the RRIF Lender and (b) the date the outstanding principal balance of each Tranche and any interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

Section 7. Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule.

(a) The Outstanding RRIF Loan Balance will be (i) increased on each occasion on which the RRIF Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the RRIF Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding RRIF Loan Balance, by the amount of principal so paid. The RRIF Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding RRIF Loan Balance (and the outstanding principal balance of each Tranche) as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit B** from time to time, in accordance with the principles set forth in Section 10(b) (*General Prepayment Instructions*) and in **Exhibit C**, to reflect (i) any change to the Outstanding RRIF Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the RRIF Lender may determine is necessary for administering the RRIF Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the RRIF Lender's determination of such matters as set forth on **Exhibit B** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other RRIF Loan Document. The RRIF Lender shall provide the Borrower with a copy of **Exhibit B**, as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other RRIF Loan Documents.

Section 8. Security and Priority.

(a) As security for the RRIF Loan, the Borrower shall pledge, assign and grant to the Collateral Agent for the benefit of the RRIF Lender, a Lien on the Collateral in accordance with the provisions of the CASA.

(b) The Borrower is the legal and beneficial owner of the Collateral. The filing of the financing statements attached to the CASA as Exhibit C in the filing offices set forth in Schedule I of the CASA and the taking of possession or control by the Collateral Agent of such of the Collateral with respect to which a security interest may be perfected only by possession or control will create a valid, perfected and first priority security interest in the Borrower's rights in the Collateral in favor of the Collateral Agent, subject to no other Liens (other than Permitted Liens, as defined in the CASA) and entitled to all the rights, remedies and priorities and benefits afforded by the Uniform Commercial Code and all other applicable law as enacted in any relevant jurisdiction. The Borrower shall promptly take any and all steps that may be necessary, or that the Collateral Agent may reasonably request (acting on the written instructions of the RRIF Lender) to maintain the validity, perfection and first priority position of the Liens on the Collateral (subject only to Permitted Liens, as defined in the CASA) to enable the Collateral Agent or any designee to exercise and enforce its rights, remedies, powers and privileges under this Agreement with respect to such Liens.

(c) The Borrower shall not use Contract Payments to make any payments or satisfy any obligations other than the payment of RRIF Debt Service and fees, expenses and other amounts due and payable under the RRIF Loan Documents. The Borrower shall not apply any portion of the Contract Payments in contravention of the RRIF Loan Documents. The RRIF Loan will be payable from Contract Payments appropriated by the New York State Legislature and will be the sole obligation of the Borrower secured by or payable from the Contract Payments.

Section 9. Payment of Principal and Interest.

(a) Semi-Annual Payment Dates. The Borrower agrees to pay the principal of and interest on the RRIF Loan by making payments in accordance with the provisions of this Agreement and the CASA on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date with respect to the applicable Tranche, and on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date.

(b) Capitalized Interest Period. No payment of the principal of or interest on the RRIF Loan is required to be made during the Capitalized Interest Period. On each June 1 and December 1 occurring during the Capitalized Interest Period (and on the Semi-Annual Payment Date immediately following the end of the Capitalized Interest Period), interest accrued on the RRIF Loan (including interest accrued at the Default Rate) in the six (6) month period ending immediately prior to such date shall be capitalized and added to the outstanding principal amount of the applicable Tranche. Within thirty (30) days after the end of the Capitalized Interest Period, the RRIF Lender shall give written notice to the Borrower stating the Outstanding RRIF Loan Balance and the outstanding principal amount of each Tranche as of the close of business on the Semi-Annual Payment Date immediately following the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other RRIF Loan Documents.

(c) Payment of RRIF Debt Service.

(i) On each Semi-Annual Payment Date occurring on or after the first Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the Borrower shall pay RRIF Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit B**, as the same may be revised as provided in Section 7 (Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule), which payments shall be made in accordance with Section 9(d) (Manner of Payment).

(ii) On each Semi-Annual Payment Date occurring on or after the Level Payment Commencement Date, the Borrower shall pay RRIF Debt Service in the amounts (each a “**Fixed Level Payment**”), as set forth in respect of such Semi-Annual Payment Date on **Exhibit B**, as the same may be revised as provided in Section 7 (Outstanding RRIF

*Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(d) (*Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement and the RRIF Note shall be made by wire transfer on or before each Semi-Annual Payment Date in immediately available funds in accordance with payment instructions provided by the RRIF Lender pursuant to Section 36 (*Notices*), as modified in writing from time to time by the RRIF Lender. The Borrower may make any such payment or portion thereof (or direct the Collateral Agent to make such payment) with funds then on deposit in the Account.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the outstanding principal amount of each Tranche and any accrued interest thereon shall be due and payable in full on the Final Maturity Date.

(f) RRIF Note. As evidence of the Borrower's obligation to repay the RRIF Loan (and each Tranche), the Borrower shall issue and deliver to the RRIF Lender, on or prior to the Effective Date, the RRIF Note, substantially in the form of **Exhibit E**, having a maximum principal amount (excluding capitalized interest) of \$1,487,018,803 and bearing interest at the rate for each Tranche set forth in Section 6 (*Interest Rate*).

#### Section 10. Prepayment

(a) Optional Prepayments. The Borrower may prepay the RRIF Loan at any time without penalty or premium, in whole or in part; provided, that each partial prepayment shall be in a minimum principal amount of \$1,000,000. Each prepayment shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the RRIF Lender, which notice shall also specify the amount of unpaid interest for each Tranche accrued to the date of such prepayment on the amount of principal of each Tranche to be prepaid that the Borrower intends to pay concurrently with such prepayment. Such written notice shall be delivered to the RRIF Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the RRIF Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the RRIF Lender. Anything in this Section 10(a) (*Optional Prepayment*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) General Prepayment Instructions. Upon the RRIF Lender's receipt of confirmation that payment in full of the entire Outstanding RRIF Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of an optional prepayment, the RRIF Lender shall surrender the RRIF Note to the Borrower or its representative at the principal office of the RRIF Lender or certify to the Borrower that the RRIF Note has been destroyed in accordance with the RRIF Lender's procedures. If the Borrower prepays only part of the unpaid balance of principal of the RRIF Loan, such partial prepayments shall be applied to reduce future payments due with respect to each outstanding Tranche ratably (based on the remaining number of Semi-Annual Payment Dates through and including the Final Maturity Date) and allocated to each Tranche based on its relative outstanding principal amount. Absent manifest error, the RRIF

Lender's determination of such matters as set forth on **Exhibit B** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other RRIF Loan Document. Any principal amount of the RRIF Loan that is subject to a voluntary prepayment notice (as described in Section 10(a) (Optional Prepayments)) but that is not so paid on the applicable prepayment date shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate).

Section 11. Compliance with Laws. The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project and all SEP Agreement Parties, to comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including all applicable federal and state laws, rules, regulations and executive orders. The list of federal laws attached as **Exhibit F** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The Modal Grant Offices have oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law and with the Federal Grant Agreements.

Section 12. Conditions Precedent

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the RRIF Lender:

(i) The Borrower shall have duly executed and delivered to the RRIF Lender this Agreement and each other RRIF Loan Document, each in form and substance satisfactory to the RRIF Lender.

(ii) The Borrower shall have delivered to the RRIF Lender certified, complete, and fully executed copies of each Federal Grant Agreement and each Other Borrower Financing Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the RRIF Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived.

(iii) The RRIF Lender shall have received customary legal opinions, each in form and substance satisfactory to the RRIF Lender in its sole discretion, from internal and external counsel to the Borrower (including those opinions set forth on Exhibit G). The RRIF Lender shall also have received customary legal opinions, each in form and substance satisfactory to the RRIF Lender in its sole discretion, from counsel to the Funding Partner (including those opinions set forth in Exhibit A to the Continuing Covenants and Representations Agreement).

(iv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-



procurement matters substantially in the form attached hereto as **Exhibit H** with respect to the Borrower and its principals (as defined in 2 CFR § 180.995).

(v) The Borrower shall have provided evidence to the RRIF Lender's satisfaction, no more than forty five (45), but no less than fourteen (14), days prior to the Effective Date, of the assignment by a Rating Agency of a public rating to the RRIF Loan, which rating shall not have been reduced, withdrawn or suspended as of the Effective Date.

(vi) The Borrower shall have delivered to the RRIF Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit I** (A) as to the satisfaction of certain conditions precedent set forth in this Section 12(a) (*Conditions Precedent to Effectiveness*) as required by the RRIF Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(vii) The Funding Partner shall have demonstrated satisfaction of each of the conditions precedent to the effectiveness of the Continuing Covenants and Representations Agreement, including the execution and delivery of all documents required in connection with satisfying such conditions precedent.

(viii) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that the sum of (A) the aggregate principal amount of the RRIF Loan and the Other RRIF Loans, (B) the aggregate amount of the Federal Grants, and (C) the maximum amount committed to the Project by Amtrak, all as reflected in the Base Case Financial Model for the Project and in the Project Budget, are sufficient to pay all Total Project Costs necessary to achieve Substantial Completion, estimated as of the Effective Date.

(ix) The Borrower shall have provided to the RRIF Lender certified, complete, and fully executed copies of each Fundamental Contract (each in form and substance satisfactory to the RRIF Lender), each Construction-Related Contract in effect as of the Effective Date, and each SEP Agreement in effect as of the Effective Date, in each case under this clause (ix) together with any amendments, waivers or modifications thereto that have been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect.

(x) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that (A) it has obtained all Governmental Approvals necessary to execute and deliver, and perform its obligations under the RRIF Loan Documents to which it is a party, (B) it held all Governmental Approvals needed for work related to the Project that was completed prior to the Effective Date, and (C) that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(xi) The Borrower shall have delivered to the RRIF Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Contract Payments are sufficient to meet the

Loan Amortization Schedule, and (B) otherwise be in form and substance acceptable to the RRIF Lender.

(xii) The Borrower shall have (A) provided evidence satisfactory to the RRIF Lender that the Borrower is authorized, pursuant to the GDC Act, to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the CASA, without the need for notice to any Person, physical delivery, recordation, filing or further act other than as set forth in clause (B), (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Collateral Agent's Lien on the Collateral (for the benefit of the RRIF Lender) to the extent contemplated by the RRIF Loan Documents or the GDC Act, including delivery of a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, that has been filed with the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code, (C) recorded or filed, or caused to be recorded or filed, with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services, a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, and (D) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any RRIF Loan Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xiii) The Borrower shall have paid in full all invoices delivered by the RRIF Lender (or by advisors to the RRIF Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the RRIF Lender's counsel and advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xiv) The Borrower shall have (A) provided evidence satisfactory to the RRIF Lender of compliance with NEPA, and (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the RRIF Lender of such compliance upon request by the RRIF Lender.

(xv) The RRIF Lender shall have delivered its initial RRIF Lender's Authorized Representative certificate.

(xvi) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Unique Entity Identifier number, and (C) registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov)).

(xvii) The Borrower shall have delivered to the RRIF Lender (A) certificates of insurance evidencing (1) that the Borrower, the Construction-Related Contract Parties party to any Construction-Related Contracts in effect as of the Effective Date, and any counterparty to a SEP Agreement to which the obligation to obtain and maintain insurance has been delegated, have in effect as of the Effective Date insurance with respect to the Project that meets the requirements of Section 15(f) (*Insurance; Events of Loss*) and (2) that each liability policy (other than professional liability and workers' compensation insurance) reflects the RRIF Lender as an additional insured and (B) at the RRIF Lender's request, copies of such insurance policies.

(xviii) The Borrower shall have provided to the RRIF Lender evidence that the Borrower is duly organized and validly existing under the laws of its jurisdictions of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted and as contemplated in the Related Documents and the Other Borrower Financing Documents, including the following documents, each certified by the Borrower's Authorized Representative: (A) a copy of its Organizational Documents, as in effect on the Effective Date, which Organizational Documents shall each be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the RRIF Loan Documents, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and any RRIF Loan Documents.

(xix) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and the representations and warranties of each of the Borrower and the Funding Partner set forth in each other Related Document and Other Borrower Financing Document to which it is a party shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xx) The Borrower shall have delivered to the RRIF Lender a duly executed certificate from the Collateral Agent in the form attached hereto as **Exhibit J**.

(xxi) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit K** in accordance with 49 CFR §20.100(b).

(xxii) The Borrower shall have provided to the RRIF Lender and the FTA Regional Office on behalf of both Modal Grant Offices records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the RRIF Lender

and in sufficient time prior to the Effective Date to permit the RRIF Lender and to the Modal Grant Offices to review such costs.

(xxiii) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the RRIF Lender, all in form and substance satisfactory to the RRIF Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments).

(xxiv) The RRIF Lender shall have received evidence of compliance with 49 U.S.C. § 5333(b) and the regulations promulgated thereunder with respect to the Project (such evidence being a certification letter from the Department of Labor acceptable to the FTA Regional Office).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the RRIF Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement of RRIF Loan proceeds made under this Agreement) until each of the following conditions precedent has been satisfied or waived in writing by the RRIF Lender:

(i) With respect to any disbursement of the RRIF Loan on or after April 1, 2025, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 21(a) (*Financial Plan*).

(ii) To the extent not previously delivered to the RRIF Lender, the Borrower shall have delivered to the RRIF Lender certified, complete and fully executed copies of any Federal Grant Agreement or Other Borrower Financing Document, including any amendment, modification or supplement thereto, entered into after the Effective Date.

(iii) To the extent not previously delivered to the RRIF Lender, the Borrower shall have provided certified copies of (i) all Construction-Related Contracts and SEP Agreements, in each case, including any amendment, modification or supplement thereto and related performance security instrument, entered into after the Effective Date, (ii) any amendment, modification or supplement to any Fundamental Contract, and (iii) any other Related Document.

(iv) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development and construction of the Project have been issued and are in full force and effect.

(v) Each of the insurance policies obtained by the Borrower, the Construction-Related Contract Parties or the SEP Agreement Parties in satisfaction of the conditions in Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vi) At the time of, and immediately after giving effect to, any disbursement of RRIF Loan proceeds then currently requested, (A) no Default or Event of Default hereunder, and no event of default (howsoever described or designated) under any other Related Document shall have occurred and be continuing, and (B) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of the Borrower under any other Related Document, in each case, shall have occurred and be continuing.

(vii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and the representations and warranties of each of the Borrower and the Funding Partner set forth in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the RRIF Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(viii) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the RRIF Lender.

(ix) The Borrower shall have delivered to the RRIF Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the RRIF Lender.

(x) The Borrower shall have paid in full all invoices received from the RRIF Lender (or from advisors to the RRIF Lender that have direct billing arrangements with the Borrower) as of the date of disbursement of the RRIF Loan, for the reasonable fees and expenses of the RRIF Lender's counsel and advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xi) The Borrower shall have paid in full, at least three (3) Business Days prior to the date of disbursement of the RRIF Loan, the Credit Risk Premium in respect of the RRIF Loan proceeds to be disbursed therewith.

(xii) With respect to the disbursement of any RRIF Loan proceeds from Tranche B, the Borrower shall have delivered to the RRIF Lender the written approval thereof by the State's Authorized Representative (as defined in the Continuing Covenants and Representations Agreement).

Section 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (*Officers' Authorization*) and Section 13(k) (*Credit Ratings*), as of each date on which any disbursement of the RRIF Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a body politic and corporate, a public authority and a government sponsored authority established by the State of

New Jersey and the State under the GDC Act and is validly existing under the laws of the State and the State of New Jersey, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the RRIF Note, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents by the Borrower and the fulfillment of or compliance with the terms and conditions of the Related Documents by the Borrower will not (i) conflict with the Borrower's Organizational Documents (including the GDC Act), (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower other than the Liens on the Collateral provided for in the CASA.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents in effect as of any date on which this representation and warranty is made, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by such Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of such Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against

or affecting any element of the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents or the Other Borrower Financing Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting any element of the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting any other party to a Fundamental Contract except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Contract Payments in amounts sufficient to meet the Borrower's payment obligations hereunder. The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The CASA establishes in favor of the Collateral Agent (on behalf of the RRIF Lender) the valid and binding Liens on the Collateral that it purports to create, and no physical delivery, recordation, filing, notice or further act is required to establish such Liens other than the filing of a UCC-1 financing statement with the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code and the taking of possession or control by the Collateral Agent of such of the Collateral with respect to which a security interest may be perfected only by possession or control. Such Liens are in full force and effect and there are no other Liens on or in respect of the Collateral. The Borrower has duly and lawfully taken all actions required under this Agreement, the other RRIF Loan Documents, and applicable laws for the pledge of, and the grant of a security interest in, the Collateral pursuant to the CASA. The Borrower is not in breach of any covenants set forth in Section 15(a) (Securing Liens) or in the RRIF Loan Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments (including the above-referenced UCC-1 financing statement) have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Collateral in favor of the Collateral Agent (on behalf of the RRIF Lender) to the extent contemplated by the RRIF Loan Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any RRIF Loan Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (Conditions Precedent to Effectiveness). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. The Borrower is not aware of any non-compliance by any SEP

Agreement Party or any of its or their contractors or subcontractors on any element of the Project with the applicable requirements of 2 CFR Part 180.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Federal Requirements. The Borrower has complied, with respect to the Project, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(k) Credit Ratings. The RRIF Loan has received a public rating from at least one (1) Rating Agency, and written evidence of such rating has been provided to the RRIF Lender prior to the Effective Date, and such rating has not been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of the Borrower under any Related Document has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals necessary as of any date on which this representation and warranty is made for the then-current stage of development and construction of the Project have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Fundamental Contracts; SEP Agreements; Construction-Related Contracts. Each Fundamental Contract, SEP Agreement and Construction-Related Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each such Fundamental Contract, SEP Agreement, and Construction-Related Contract (other than any notice to proceed under a Construction-Related Contract that, as of the applicable date, is not intended to have been issued by the Borrower in accordance with the terms of such Construction-Related Contract) have been satisfied. The Borrower has delivered to the RRIF Lender a fully executed, complete, and correct copy of each such Fundamental Contract, SEP Agreement and Construction-Related Contract (including, in each case, all exhibits, schedules, and other attachments) that is in effect, including any amendments or modifications thereto. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Fundamental Contract Party, SEP Agreement Party or Construction-Related Contract Party, the right to terminate such Fundamental Contract, SEP Agreement or Construction-Related Contract, as applicable. The Borrower is not in breach of, or in default under, any Fundamental Contract, and is not in breach of, or in default under, any material term in any SEP Agreement or Construction-Related Contract. To the knowledge of the Borrower, no Fundamental Contract Party is in breach of, or in default under, any Fundamental Contract. To the knowledge of the Borrower, no other SEP Agreement Party or Construction-



Related Contract Party is in breach of, or in default under, any material term in any SEP Agreement or Construction-Related Contract, as applicable.

(o) Information. The information furnished by the Borrower to the RRIF Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower nor, to the knowledge of the Borrower, any Construction-Related Contract Party or SEP Agreement Party is a Sanctioned Person.

(ii) None of the Borrower nor, to the knowledge of the Borrower, any Construction-Related Contract Party or SEP Agreement Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal.

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower, Construction-Related Contract Party or SEP Agreement Party, with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the RRIF Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(q) Compliance with Law. The Borrower is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(r) (*Environmental Matters*)), including those set forth on **Exhibit F**, to the extent applicable. To the Borrower's knowledge, each Construction-Related Contract Party and SEP Agreement Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit F**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by (i) the Borrower or (ii) to the Borrower's knowledge, any Construction-Related Contract Party or SEP Agreement Party other than, in each case, notices of violations that are immaterial.

(r) Environmental Matters. Each of the Borrower and, to the Borrower's knowledge, each Construction-Related Contract Party and SEP Agreement Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower with any such Environmental Law or Governmental Approval. The Borrower has provided to the RRIF Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower's or the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(s) Insurance. The Borrower is in compliance with all of its insurance obligations required under each Related Document and each Construction-Related Contract to which it is a party as of any date on which this representation and warranty is made. To the Borrower's knowledge, each SEP Agreement Party and each Construction-Related Contract Party is in compliance with all insurance obligations required under such SEP Agreement or such Construction-Related Contract, as applicable, as of any date on which this representation and warranty is made.

(t) No Liens. Except for the Liens granted pursuant to the CASA, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Collateral.

(u) Intellectual Property. The Borrower owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(v) Investment Company Act. The Borrower is not, and after applying the proceeds of the RRIF Loan will not be, required to register as an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and is not “controlled” by a company required to register as an “investment company” under the Investment Company Act of 1940, as amended.

(w) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the RRIF Lender pursuant to Section 21(b) (Financial Statements) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(x) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

(y) ERISA. Neither the Borrower nor any ERISA Affiliate maintains, sponsors, contributes to (or is required to contribute to) or otherwise has any liability in respect of any plan or other arrangement that is (i) subject to Title IV or Section 302 ERISA, or Section 412 of the Tax Code or (ii) a “multiemployer plan” (within the meaning of Section 3(37) of ERISA).

(z) Sufficient Funds. The aggregate of (i) the undrawn portion of the RRIF Loan, (ii) the undrawn portion of the Other RRIF Loans, (iii) all funds that are undrawn but fully and completely committed under the Other Borrower Financing Documents, and (iv) without duplication of the amounts described in clause (iii), funds committed and/or awarded in respect of each Federal Grant by the applicable Modal Grant Office, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(aa) Sovereign Immunity. (i) Pursuant to (A) Section 6 of the State of New York’s version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced, subject to the applicable limitations set forth in such Section 6, and (B) Section 6 of the State of New York’s version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement or any other Related Document in effect from time to time presented in accordance with the applicable provisions set forth in such Section 6 and other applicable laws of the State of New York, including without limitation Section 8 of the New York Court of Claims Act, and (ii) pursuant to (A) Section 23 of the State of New Jersey’s version of the Gateway Development Commission Act (N.J.S.A. 32:36-23), the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced, subject to the limitations set forth in such Section 23, and (B) Section 29 of the State of New Jersey’s version of the Gateway Development Commission Act (N.J.S.A. 32:37-2), sovereign immunity shall not bar an action to enforce a claim

based on a breach of this Agreement or any other Related Document in effect from time to time presented in accordance with such Section 29.

(bb) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

Section 14. Representations and Warranties of RRIF Lender. The RRIF Lender represents and warrants that:

(a) Power and Authority. The RRIF Lender has all requisite power and authority to make the RRIF Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the RRIF Lender, and are legally valid and binding agreements of the RRIF Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the RRIF Lender executing each of the Related Documents to which the RRIF Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the RRIF Lender.

Section 15. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the RRIF Note and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower, unless the RRIF Lender waives compliance in writing:

(a) Securing Liens. The Borrower agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments, powers, assignments, amendments, and documents, and take all further action as the Collateral Agent or the RRIF Lender shall, in their reasonable discretion, deem necessary or appropriate to ensure creation of Liens and to perfect and maintain perfected the Liens created and/or perfected under the CASA and under the other Security Documents (as defined in the CASA), to enable the Collateral Agent and RRIF Lender to enforce their rights and remedies thereunder, and to carry into effect the purposes thereof or better assure and confirm the validity, enforceability and priority of the Liens on the Collateral. Without limiting the generality of the foregoing, the Borrower shall file or refile and/or deliver to the Collateral Agent from time to time, when necessary or requested, financing statements (including UCC-3 financing statements), powers of attorney, certificates, and other assurances or instruments as the Collateral Agent or the RRIF Lender shall reasonably request. All of the foregoing shall be at the sole cost and expense of the Borrower.

(b) Copies of Documents.

(i) At least ninety (90) days prior to the incurrence or issuance of any Obligations that satisfy the requirements of Section 16(a) (Indebtedness), and therefore do not require RRIF Lender consent, the Borrower shall notify the RRIF Lender unless such issuance consists solely of a refinancing on the same terms and conditions (other than interest rate) as the indebtedness being refinanced, in which case the above-referenced

notice may be provided forty-five (45) days prior to the incurrence or issuance of such Obligations. At least thirty (30) days prior to the incurrence or issuance of any such Obligations, the Borrower shall provide to the RRIF Lender (A) a copy of the Other Borrower Financing Documents (or other comparable transaction or offering documents) applicable to such Obligations and (B) a Revised Financial Model that takes into account the proposed Obligations, which Revised Financial Model shall reflect and be based on the actual amortization schedules for such proposed Obligations and all Obligations then outstanding in accordance with their respective terms and shall otherwise be in form and substance satisfactory to the RRIF Lender. The Borrower shall provide to the RRIF Lender a fully executed or final version of each such Other Borrower Financing Document (or other comparable transaction documentation) within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the RRIF Lender, promptly after the sending or receipt thereof, copies of (A) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project, the RRIF Loan or any other Obligations issued or incurred by the Borrower, (B) all notices and other written communications received by the Borrower from the Collateral Agent, (C) all reports, notices and other written materials required to be sent to the lenders or holders (or any agent or trustee appointed on their behalf) pursuant to the Other Borrower Financing Documents, and (D) all notices delivered by or to the Borrower relating to any of the Fundamental Contracts; unless, in each case, the RRIF Lender notifies the Borrower in writing that any such reports, notices and/or other written materials no longer need to be provided.

(iii) Except as otherwise agreed by the RRIF Lender in writing, and without limiting the Borrower's obligations or the RRIF Lender's rights under Section 16(b) (*No Lien Extinguishment; Adverse Amendments*), the Borrower will provide to the RRIF Lender (A) copies of any new Related Document or any proposed amendments, modifications, replacements of, or supplements to any Related Document or any Other Borrower Financing Document (other than proposed amendments, modifications, replacements or supplements that are ministerial in nature and do not change any substantive provision of such Related Document or such Other Borrower Financing Document) at least (1) ninety (90) days in the case of any Additional Funding Agreements, (2) ninety (90) days in the case of any amendment to the Funding Agreement, and (3) thirty (30) days in the case of any other Related Document or amendment thereto (provided that the Borrower shall not be required to deliver copies of draft amendments to any Federal Grant Agreement) or any amendment to an Other Borrower Financing Document, in each case prior to the proposed effective date thereof, and (B) complete, correct and fully executed copies of any such new Related Document or amendment, modification or supplement to, or replacement of, any Related Document or any Other Borrower Financing Document within five (5) Business Days after execution thereof.

(iv) If the Borrower enters into a Construction-Related Contract or SEP Agreement after the Effective Date, the Borrower shall promptly provide to the RRIF

Lender an executed version of such Construction-Related Contract or SEP Agreement, as applicable, together with any related contracts, side letters or other understandings.

(v) Without in any way limiting the requirements of Section 16(d) (Organizational Documents), the Borrower shall provide to the RRIF Lender (A) copies of any proposed amendments, modifications, replacements of, or supplements to (1) the GDC Act, where Borrower has knowledge of such proposed amendment, modification, replacement or supplement, and (2) the bylaws of the Borrower, each at least thirty (30) days prior to the proposed effective date thereof or with respect to (1), such shorter period of time necessary based on when the Borrower became aware thereof, and (B) complete, correct and fully executed copies of any amendment, modification or supplement to, or replacement of, the same within five (5) Business Days after execution thereof.

(vi) The Borrower shall provide to the RRIF Lender copies of (A) its operating budget, as adopted by its board of commissioners, (B) any amendments, modifications, replacements of, or supplements to, such operating budget, and (C) each funding agreement related to its operating budget, in each case of clauses (A) – (C), within five (5) Business Days after execution or adoption thereof, as applicable.

(c) Use of Proceeds. The Borrower shall use the proceeds of the RRIF Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, in compliance with the Project Development Agreement, and in accordance with the highest standards of the design, engineering, and construction industries for projects of similar size and importance as the Project.

(ii) The Borrower shall comply with, and cause each SEP Agreement Party to comply with, 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(e) Operations and Maintenance.

(i) The Borrower shall enforce its rights under the Project Development Agreement (and any other agreement to which the Borrower is a party from time to time with Amtrak that is relevant to the operation or maintenance of the Project) to cause Amtrak to (A) operate and maintain the Project (1) economically and efficiently and in a reasonable and prudent manner and (2) substantially in accordance with all applicable laws, regulations, standards and guidelines, and (B) maintain the Project in good repair, working order and condition and in accordance with the requirements of all applicable laws, regulations, standards and guidelines, including those of FRA.

(ii) The Borrower shall comply, and shall cause Amtrak and NJT to comply, with the requirements of 49 U.S.C. § 22402(h)(1)(A) and (B).

(f) Insurance; Events of Loss.

(i) The Borrower shall at all times maintain insurance with responsible insurers, in amounts and with coverages as are customarily maintained in the United States of America by entities similar to the Borrower, or as is required under any Related Document, Construction-Related Contract or applicable law. During the construction of the Project, the Borrower shall maintain or cause to be maintained appropriate casualty and liability insurance covering the Borrower and the Project, including a builders all-risk policy and pollution and other environmental liability and remediation related coverage. The Borrower shall cause each Construction-Related Contract Party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Construction-Related Contract.

(ii) The Borrower shall cause all liability insurance policies that it maintains and that each Construction-Related Contract Party maintains, other than professional liability and workers' compensation insurance, to reflect the RRIF Lender as an additional insured.

(iii) If an Event of Loss shall occur with respect to the Project or any part thereof prior to the transfer of the Project to Amtrak as contemplated in the Project Development Agreement, the Borrower shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers, Construction-Related Contract Parties, SEP Agreement Parties, and Governmental Authorities, as applicable, in respect of such event and (B) pay or apply all loss proceeds stemming from such event to rebuild, repair or replace the Project in accordance with all applicable laws and within a reasonable time period; provided, however, that loss proceeds must in any event be applied in accordance with all applicable federal disposition rules, including those set forth in the Federal Grant Agreements and 2 CFR Part 200.

(iv) Following the transfer of ownership of the Project to Amtrak, if an Event of Loss shall occur with respect to the Project or any part thereof, the Borrower shall diligently pursue all of its contractual and other rights to cause Amtrak to perform or cause to be performed all necessary repairs to any damaged portions of the Project, to obtain funding to perform such repairs, and to pursue all applicable insurance claims under the insurance policies procured and maintained by Amtrak.

(g) Notices.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the RRIF Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit L**;

(B) Ratings Changes: any change in the rating assigned to the RRIF Loan or any other Obligations (disregarding Other RRIF Loans) by any

Rating Agency that has provided a rating on such indebtedness, the Borrower, or the Contract Payments, provided, that with respect to other Obligations, a single notice shall be provided for purposes of this Agreement and each Other RRIF Loan Agreement (and no notice is required hereunder in respect of any Other RRIF Loan);

(C) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(D) Other Defaults: any default or event of default on the part of the Borrower or any other party under any Related Document, Construction-Related Contract, SEP Agreement or Other Borrower Financing Document;

(E) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect and any material changes in the status of such litigation, suit, action or claim and (2) any judgments against the Borrower that are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or by funds immediately available to the Borrower and set aside for such purpose within the Borrower's operating budget, either individually or in the aggregate;

(F) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(G) Environmental Notices: any notice of material violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(H) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(I) Changes to Enabling Legislation: any amendment, modification or repeal of the Enabling Legislation;

(J) Legislative Actions: the occurrence of an Event of Non-Appropriation, or any failure by the State to include in the Governor's Executive Budget the full amount of Contract Payments expected to be payable during the next fiscal year of the State;



(K) Contract Payments: if the Funding Partner has not made a Contract Payment to the Account by the time required under the Funding Agreement;

(L) Project Changes: any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of forecasted Eligible Project Costs or (2) any change to the schedule for the Project in excess of five percent (5%) of the total number of days reflected in the Construction Schedule;

(M) 2 CFR Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the RRIF Loan as described in 2 CFR § 200.113, and the Borrower shall require its subcontractors to provide it notice of any such violation;

(N) Other Loan Reporting Requirements: copies of notices delivered to any provider of additional Obligations (other than a RRIF Loan) pursuant to the applicable Other Borrower Financing Documents; and

(O) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the RRIF Lender with any further information reasonably requested by the RRIF Lender from time to time concerning the matters described in Section 15(g)(i) (*Notices*).

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(g)(i) (*Notices*) (other than in Section 15(g)(i)(A) (*Substantial Completion*) or Section 15(g)(i)(B) (*Ratings Changes*) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the RRIF Lender setting forth the actions the Borrower proposes to take with respect thereto.

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State under the GDC Act. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(j) Annual Rating. The Borrower shall, commencing in 2025, no later than the last Business Day of June of each year during the term of the RRIF Note, at no cost to the RRIF Lender, provide to the RRIF Lender a public rating on the RRIF Note, together with the rating

report or letter delivered by such Rating Agency in connection with each such rating, in each case prepared no earlier than June 1 of such year.

(k) Accounts; Permitted Investments.

(i) The Borrower shall maintain the Account and any other accounts established pursuant to the CASA or any Other Borrower Financing Document for so long as the Obligations to which any such account relates remains outstanding.

(ii) If any Other Borrower Financing Documents establish reserve accounts and reserve requirements, the Borrower shall cause such reserve accounts to be funded in such amounts and under such conditions as are required by the applicable Other Borrower Financing Documents.

(iii) Amounts on deposit in the Account and in any other accounts described above shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the Account with respect to RRIF Debt Service, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the Account in respect of other amounts payable hereunder, not later than the date such other amounts are due and payable hereunder, (C) with respect to Permitted Investments maintained in an account established under an Other Borrower Financing Document for the repayment of principal or interest with respect to other Obligations, the next date on which principal and/or interest is due and payable with respect to any such Obligations, and (D) with respect to any reserve account or the construction account, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from such account. The Borrower shall, promptly but in any event within five (5) days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(l) Fundamental Contracts. The Borrower shall diligently exercise its rights and enforce its remedies under each Fundamental Contract. The Borrower shall actively monitor the Funding Partner's compliance with the Fundamental Contracts to which it is a party and shall promptly notify the RRIF Lender of any events and circumstances that could reasonably be expected to result in the Funding Partner's failure to perform its material obligations under such Fundamental Contracts to which such Funding Partner is a party. In connection with any potential funding shortfall under the Funding Agreement, the Borrower shall exercise any and all rights under the Funding Agreement to cause the Funding Partner to act to cure or avoid any such funding shortfall, including by means of seeking a supplemental appropriation, if applicable. The Borrower shall cooperate with the RRIF Lender in connection with the RRIF Lender's exercise of its rights and remedies under the Continuing Covenants and Representations Agreement.

(m) Compliance with Law. The Borrower shall comply (i) in all material respects with all applicable federal, State and State of New Jersey laws, including all items set forth in **Exhibit F**, to the extent applicable, and (ii) with the terms and conditions of the Federal Grant Agreements.

(n) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the Collateral or any portion thereof, including the Contract Payments; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(o) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the RRIF Lender evidence of such active registration status with no active exclusions listed in such registration (a single notification being sufficient for purposes of complying with this Agreement and each Other RRIF Loan Agreement), in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash.

(p) Immunity. Consistent with Section 6 of the State of New York's version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), the Borrower agrees that it is immune from liability under State law as though it were the State of New York, except to the extent that such immunity is waived by the State of New York under Section 8 of the New York Court of Claims Act, and the Borrower irrevocably agrees that it will not assert immunity from claims made by the RRIF Lender against the Borrower to enforce this Agreement or any other Related Document under New York State law to the extent immunity for such claim is waived pursuant to the Gateway Development Commission Act and Section 8 of the New York Court of Claims Act as though the Borrower were the State of New York and the RRIF Lender has complied with the applicable New York State law. Further, consistent with Section 29 of the State of New Jersey's version of the Gateway Development Commission Act (N.J.S.A. 32:37-2), the Borrower agrees that it is immune from liability in the State of New Jersey in the same manner and to the same extent as is the State of New Jersey under the provisions of the "New Jersey Tort Claims Act", N.J.S. 59:1-1 et seq. and the "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq., and the Borrower irrevocably agrees that it will not assert immunity from claims made by the RRIF Lender against the Borrower to enforce this Agreement or any other Related Document under New Jersey State law to the extent immunity for such claims is waived in accordance with the State of New Jersey's version of the Gateway Development Commission Act and the New Jersey Contractual Liability Act as though the Borrower were the State of New Jersey and the RRIF Lender has complied with the applicable New Jersey State law.

(q) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the RRIF Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(r) Cargo Preference Act. Pursuant to 46 CFR Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with RRIF Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States of America or within thirty (30) Business Days following the date of loading for shipments originating outside the United States of America, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the RRIF Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(s) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

(t) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit M** hereto.

(u) Buy America

(i) The Borrower agrees that steel, iron, and manufactured products used in the Project are subject to both 49 U.S.C. § 5323(j), as implemented by FTA, and 49 U.S.C. § 22905, as implemented by FRA. The Borrower acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 5323(j)(1) or 49 U.S.C. § 22905(a)(1) nor a finding under either 49 U.S.C. § 5323(j)(2) or 49 U.S.C. § 22905(a)(2).

(ii) The Borrower agrees that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, FTA, and FRA. The Borrower acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(v) Employee Protection.

(i) In accordance with 49 U.S.C. § 22402(h)(3)(A), the Borrower shall comply with the standards of 49 U.S.C. § 24312 as in effect on September 1, 2002, with respect to the Project in the same manner that Amtrak is required to comply with such standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a).

(ii) In accordance with 49 U.S.C. § 22402(h)(3)(B), the Borrower shall make fair and equitable arrangements, in accordance with 49 U.S.C. § 22404, to protect the interests of any employees who may be adversely affected by actions pursuant to, or as a consequence of, this Agreement, including the arrangements prescribed by the United States Secretary of Labor on July 6, 1976, and set forth on **Exhibit N** hereto.

(w) Continuing Covenants and Representations Agreement. Where in the Continuing Covenants and Representations Agreement a covenant or agreement of the Funding Partner is contingent upon a notice or request from the Borrower, the Borrower shall make such notice or request, as applicable, promptly, and in any event within two (2) Business Days, after receipt of notice from the RRIF Lender requesting that the Borrower make such notice or request.

(x) Borrower's Operating Budgets. The Borrower shall include a financing cost line item in each proposed annual operating budget that it submits pursuant to Section 11.01 of the Project Development Agreement, which line item shall be in an amount sufficient to make all payments in respect of indebtedness (including any amounts under the RRIF Loan Documents) that the Borrower reasonably anticipates will or may be paid from amounts made available pursuant to its operating budget.

Section 16. Negative Covenants. The Borrower covenants and agrees as follows until the date the RRIF Note and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower, unless the RRIF Lender waives compliance in writing:

(a) Indebtedness.

(i) The Borrower shall not, without the prior written consent of the RRIF Lender, issue or incur indebtedness of any kind that is secured, in whole or in part, by all or any portion of the Collateral or that is otherwise payable, in whole or in part, from Contract Payments.

(ii) The Borrower shall not issue any Obligations (including (1) any GANs, (2) any extension of any GANs, or (3) any amendment to the Working Capital Facility or any GANs that would increase the principal amount available or outstanding thereunder) without the prior written consent of the RRIF Lender, unless such indebtedness satisfies each of the following conditions:

(A) such indebtedness is secured solely by proceeds of the Federal Grants or other collateral that does not include or impair any portion of the Collateral;

(B) the trustee or agent (on its own behalf and on behalf of the lenders or holders) with respect to such indebtedness shall have executed and delivered to the RRIF Lender a fully executed joinder to the Waiver (in the form attached to the Waiver);

(C) such indebtedness shall not be subject to acceleration, whether following a default or event of default or in other circumstances;

(D) the aggregate sum of (1) the principal of such indebtedness plus (2) the amount, if any, to be set aside in a reserve account to pay interest during construction on such indebtedness shall not exceed the maximum amount of Federal Grants pledged and available to secure repayment of such indebtedness;

(E) if interest thereon is not paid on a current basis from Federal Grant proceeds that have been appropriated and are available to the Borrower or from funds immediately available to the Borrower and set aside for such purpose in the Borrower's then current operating budget, interest accrued on such indebtedness shall either be (1) capitalized until the date on which the Borrower begins receiving payment of the revenues pledged to repay such indebtedness or (2) paid from a capitalized interest reserve funded from the proceeds of such indebtedness; and

(F) the final maturity date for such indebtedness shall not be later than the final payment date for the Federal Grants or such other funds that do not include any portion of the Collateral, in each case that constitute the collateral for, or source of funds for repayment of, such indebtedness.

Notwithstanding the foregoing, the Borrower may extend the Working Capital Facility for one or more time periods but in no event beyond the Substantial Completion Date without the prior written consent of the RRIF Lender, so long as (i) the Waiver at all times remains in full force and effect against each party thereto, (ii) the amount available under the Working Capital Facility during such extension shall not at any time exceed the remaining available amount under the FFGA, and (iii) the terms and conditions of the Working Capital Facility Documents are in all material respects the same as those reflected in the Working Capital Facility Documents as of the Effective Date, other than changes to pricing, tenor (subject the time limitation noted above), interest rate mechanics, and bank regulatory provisions (including increased costs, tax withholding, indemnification, OFAC, sanctions, anti-money laundering, and "know your customer" provisions).

(iii) The Borrower shall deliver to the RRIF Lender the documentation and information described in Section 15(b)(i) (*Copies of Documents*) by the time set forth in Section 15(b)(i) (*Copies of Documents*), prior to the incurrence or issuance of any indebtedness permitted under this Section 16(a) (*Indebtedness*).

(b) No Lien Extinguishment; Adverse Amendments.

(i) The Borrower shall not, and shall not permit any Person to, without the prior written consent of the RRIF Lender, either extinguish, impair, or transfer the Liens on the Collateral granted pursuant to the CASA.

(ii) The Borrower shall not terminate, assign, amend, modify, replace, or supplement the Funding Agreement without the prior written consent of the RRIF Lender, except to modify the schedule of Contract Payments in accordance with Section 2.01(f) of the Funding Agreement to cause such schedule to reflect changes to **Exhibit B (RRIF Debt Service)** implemented by the RRIF Lender. Without prior written consent of the RRIF Lender, the Borrower shall not terminate the Project Development Agreement or assign, amend, modify, replace, or supplement the Project Development Agreement in a manner that could adversely affect (A) the ability of the Borrower to comply with its requirements hereunder or under any other RRIF Loan Document, (B) the ability of any other party to the Project Development Agreement to comply with such party's requirements under the Project Development Agreement, (C) the ability of the Borrower to complete the Project, or (D) the RRIF Lender (in the RRIF Lender's determination) in connection with the RRIF Loan.

(c) No Prohibited Liens.

(i) Except for the Liens granted pursuant to the CASA, the Borrower shall not create, incur, assume or permit to exist any Lien on the Collateral or the Borrower's rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Fundamental Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any such Fundamental Contract, except pursuant to the CASA.

(ii) The Borrower shall not (A) create, incur, or assume, any Lien on the real property or real property interests included in the Project or (B) create, incur, assume, or permit to exist, any Lien on any part of the Project not constituting real property, other than (in the case of clause (B)) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(iii) The Borrower shall not, without the prior written consent of the RRIF Lender, collaterally assign, pledge, or grant a Lien on any right, title or interest of the Borrower, whether now owned or hereafter acquired or arising, in or to (A) the Project Development Agreement, (B) any GDC Operations Funding Agreement, (C) any amounts paid or payable to the Borrower pursuant to any GDC Operations Funding Agreement, (D) any account in which such payments under any GDC Operations Funding Agreement is or may be deposited, or (E) any proceeds of the foregoing in whatever form; provided, that this Section 16(c) shall not restrict the Borrower from using amounts paid to the Borrower

under any GDC Operations Funding Agreement to pay the Working Capital Lender amounts owed with respect to any loans or other amounts under the Working Capital Facility (including any extension thereof in conformance with Section 16(a)(ii)).

(d) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (or, with respect to the GDC Act, propose or support any such amendment or modification), other than any amendment or modification that (A) has been delivered to the RRIF Lender in accordance with Section 15(b)(v) (Copies of Documents) and (B) is not adverse to the interests of the RRIF Lender under the RRIF Loan Documents or in the Collateral, without the prior written consent of the RRIF Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except (with respect to this sub-clause (ii)) with thirty (30) days' prior written notice to the RRIF Lender.

(e) No Payment with Federal Funds. The Borrower shall not pay any portion of RRIF Debt Service nor any other amount to the RRIF Lender or to the Federal Government pursuant to the RRIF Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrower may prepay any Tranche in whole or in part, pursuant to, and in accordance with, Section 10 (Prepayment), with the proceeds of a validly issued federal credit instrument.

(f) Acquisitions; Change in Legal Structure; Sale of Assets; Transactions with Third Parties. The Borrower shall not, and shall not agree to:

(i) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person (excluding purchases or other acquisitions of office inventory or equipment, each in the ordinary course of business);

(ii) reorganize, consolidate with, or merge into another Person;

(iii) sell, lease, or assign its rights in and to the Project or in and to a material portion of the assets constituting the Project; provided, that this clause shall not restrict the Borrower's right or obligation to transfer the Project to Amtrak pursuant to and in accordance with the Project Development Agreement; or

(iv) otherwise engage in a transaction with any other Person (including any other Governmental Authority of or in the State or of or in the State of New Jersey) to the extent such transaction could reasonably be expected to have a Material Adverse Effect.

(g) No Defeasance of RRIF Note. The Borrower shall not defease the RRIF Note without the prior written consent of the RRIF Lender.

(h) OFAC Compliance.

(i) The Borrower shall not:



(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the RRIF Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement, the other Related Documents and the Construction-Related Contracts; or

(C) make a payment, directly or indirectly, to any Fundamental Contract Party, a SEP Agreement Party, or Construction-Related Contract Party that (1) to the Borrower's knowledge, has violated any of the laws referenced in Section 16(h)(i) (OFAC Compliance) or (2) is a Sanctioned Person.

(ii) The Borrower shall procure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the RRIF Loan or lend to, make any payment to, contribute or otherwise make available any funds to any affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the RRIF Lender, a Fundamental Contract Party, a SEP Agreement Party, or a Construction-Related Contract Party).

(i) Hedging. The Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the RRIF Lender.

(j) Insolvency-Related Activities. The Borrower shall not consent to, provide support for, fail to oppose, or seek approval for any gubernatorial or legislative proposal, bill, statute, or order or other action by any Governmental Authority that would authorize or enable (i) the Borrower to (A) seek the commencement of any voluntary bankruptcy or insolvency proceeding with respect to the Borrower or its assets and liabilities, under any Insolvency Law or (B) file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for all or a substantial part of the assets of the Borrower.

(k) No Subsidiaries. The Borrower shall not establish any subsidiaries without the prior written consent of the RRIF Lender.

(l) Additional Funding Agreements. The Borrower shall not enter into any Additional Funding Agreement without the prior written consent of the RRIF Lender.

Section 17. Indemnification. The Borrower shall indemnify the RRIF Lender and any official, employee, agent, advisor, or representative of the RRIF Lender (each such Person being

herein referred to as an “**Indemnatee**”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents or Other Borrower Financing Documents, (b) the RRIF Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project in its entirety; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnatee has the right to retain its own counsel, at the Borrower’s expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 17 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law, neither the Borrower nor the RRIF Lender shall assert, and each of the Borrower and the RRIF Lender hereby waives, any claim against any Indemnatee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, Other Borrower Financing Documents, the other transactions contemplated hereby and thereby, the RRIF Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower’s indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee under this Section 17 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 shall survive the payment or prepayment in full or transfer of the RRIF Note, the enforcement of any provision of this Agreement, the other Related Documents, or the Other Borrower Financing Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 18. Sale of RRIF Loan. The RRIF Lender shall not sell the RRIF Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the RRIF Lender may sell the RRIF Loan to another entity or reoffer the RRIF Loan into the capital markets only in accordance with the provisions of this Section 18. Any such sale or reoffering shall be on such terms as the RRIF Lender shall deem acceptable in its sole discretion. However, in making

such sale or reoffering the RRIF Lender shall not change the terms and conditions of any RRIF Loan without the prior written consent of the Borrower in accordance with Section 29 (Amendments and Waivers). The RRIF Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the RRIF Loan, written notice to the Borrower of the RRIF Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 shall not (x) obligate the RRIF Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the RRIF Lender, for any reason, does not sell the RRIF Loan.

Section 19. Events of Default and Remedies

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay (or cause to be paid) any amount of principal of or interest on the RRIF Loan (including RRIF Debt Service required to have been paid pursuant to the provisions of Section 9 (Payment of Principal and Interest)) when due and payable (each such failure, a “**Payment Default**”).

(ii) Covenant Default. (A) The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder or thereunder) or the RRIF Note (other than in the case of any Payment Default by the Borrower or any Development Default), or (B) the Borrower or the Funding Partner shall fail to observe or perform any covenant, agreement or obligation of the Borrower or the Funding Partner, as applicable, under any other RRIF Loan Document to which it is a party, and in either case of clauses (A) or (B), such failure shall not be cured within thirty (30) days after the earlier to occur of (x) receipt by the Borrower or the Funding Partner (as applicable) from the RRIF Lender of written notice thereof, (y) the Borrower's or the Funding Partner's knowledge (as applicable) of such failure, or (z) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii) (Covenant Default), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (1) within such thirty (30) day cure period the Borrower or the Funding Partner shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (2) such failure is cured within one hundred eighty (180) days of the date specified in either (x) or (y) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower or the Funding Partner made in or delivered pursuant to

the RRIF Loan Documents (or in any certificates delivered by the Borrower or the Funding Partner in connection with the RRIF Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 19(a)(iv) (*Misrepresentation Default*) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (*No Debarment*), Section 13(j) (*Compliance with Federal Requirements*), Section 13(p) (*OFAC; Anti-Corruption Laws*), or Section 13(bb) (*Patriot Act*);

(C) in the reasonable determination of the RRIF Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the RRIF Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower or the Funding Partner, as applicable, within thirty (30) days from the date on which the Borrower or the Funding Partner, as applicable, first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower (or the Funding Partner, if the applicable misrepresentation is in respect of the Funding Partner) diligently pursues such cure during such thirty (30) day period.

(v) Judgments. One or more judgments for the payment of money that are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) shall be rendered against the Borrower, and the same (or any installment thereof that is due and payable) (A) shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, provided, however, that if such undischarged judgment is capable of being discharged but cannot reasonably be discharged within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(v), and such thirty (30) day cure period shall be extended by up to sixty (60) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to discharge such judgment and (y) such judgment is discharged within ninety (90) days of the date of entry of such judgment, or (B) any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(vi) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a body politic and corporate, a public authority and a government sponsored

authority, validly existing under the GDC Act, unless at or prior to the time the Borrower ceases to exist in such form a successor public agency or governing body has been created by the State and the State of New Jersey pursuant to a valid and unchallenged law of the State and of the State of New Jersey and that has succeeded to the assets of the Borrower and has assumed, by operation of law, all of the obligations of the Borrower under the RRIF Loan Documents and the Other Borrower Financing Documents, all on terms and conditions satisfactory to the RRIF Lender.

(vii) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower or (B) a Bankruptcy Related Event shall occur with respect to any Fundamental Contract Party.

(viii) Project Abandonment. (A) The Borrower shall abandon the Project, or (B) following the Substantial Completion Date, Amtrak shall abandon the Project or NJT shall cease commuter rail operations on the Project.

(ix) Invalidity of RRIF Loan Documents. (A) Any RRIF Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower or the Funding Partner contests in any manner the validity or enforceability of any RRIF Loan Document to which it is a party or denies it has any further liability under any RRIF Loan Document to which it is a party, or purports to revoke, terminate or rescind any RRIF Loan Document to which it is a party; or (B) the CASA ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Collateral, including the Borrower's right, title, and interest in and to the Contract Payments, and with the priority purported to be created pursuant to the CASA.

(x) Enabling Legislation; GDC Act. The Enabling Legislation or either statutory element of the GDC Act shall be repealed or shall be amended or modified in such a manner that could reasonably be expected to result in a Material Adverse Effect.

(xi) Fundamental Contract Expiration or Termination. Any Fundamental Contract shall have expired or shall have been terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall have ceased to be in full force and effect.

(b) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, (i) all obligations of the RRIF Lender hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan shall automatically be deemed terminated, and (ii) the Borrower shall immediately repay any unexpended RRIF Loan proceeds disbursed to the Borrower under this Agreement.

(c) Upon the occurrence of any other Event of Default, the RRIF Lender may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan and (ii) demand that the Borrower immediately repay any unexpended RRIF Loan proceeds disbursed to the Borrower under this Agreement, in which event

the Borrower shall immediately repay any such unexpended RRIF Loan proceeds to the RRIF Lender.

(d) Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender shall be entitled and empowered to enforce all of its rights and remedies pursuant to the RRIF Loan Documents (directly or through the Collateral Agent) and may institute any actions or proceedings at law or in equity against the Borrower for the collection of any sums due and unpaid hereunder or under the RRIF Note, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the RRIF Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder or under the RRIF Note, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement or the RRIF Note; provided, that acceleration of the payment of the principal of, and interest on, the RRIF Loan (and corresponding RRIF Note) shall not be a remedy hereunder or under any other RRIF Loan Document.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender may suspend or debar the Borrower from further participation in any Federal Government program administered by the RRIF Lender and to notify other departments and agencies of such default.

(f) No action taken pursuant to this Section 19 (Events of Default and Remedies) shall relieve the Borrower from its obligations pursuant to this Agreement, the RRIF Note or the other RRIF Loan Documents, all of which shall survive any such action.

Section 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Contract Payments, and any other revenues attributable to the Project, and RRIF Loan requisitions received and disbursements made with regard to the Project), so that audits may be performed to ensure compliance with and enforcement of this Agreement and each Other RRIF Loan Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the RRIF Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the RRIF Loan or any portion thereof shall remain outstanding and until five (5) years after the RRIF Loan shall have been paid in full, the RRIF Lender shall have the right, upon reasonable prior notice and during normal business hours, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the RRIF Lender the

affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 20(b) (Inspections) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the RRIF Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the RRIF Lender in connection with the RRIF Lender's exercise of its rights under this Section 20(b) (Inspections) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrower shall maintain and retain all files relating to the Project, the Fundamental Contracts, the Collateral (including the Contract Payments), and the RRIF Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under this Agreement and the RRIF Note (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Collateral, the Contract Payments, each Other RRIF Loan, each Other RRIF Loan Agreement or this Agreement is finally resolved or, if the RRIF Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the RRIF Lender and the Borrower. The Borrower shall provide to the RRIF Lender in a timely manner all records and documentation relating to the Project or the Collateral or the Contract Payments that the RRIF Lender may reasonably request from time to time.

(d) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2024 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the RRIF Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the RRIF Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 21. Financial Plan; Financial Statements.

(a) Financial Plan. Until the RRIF Loan and each Other RRIF Loan has been repaid in full, the Borrower shall provide to the RRIF Lender and to the FTA Regional Office (on behalf of both Modal Grant Offices) a single annual Financial Plan (which Financial Plan will be used for purposes of this Agreement and each Other RRIF Loan Agreement) in a format to be agreed upon by the Borrower, the RRIF Lender, FTA, and FRA. The Borrower shall provide the Financial Plan by not later than ninety (90) days after the beginning of each Borrower Fiscal Year. Each Financial Plan shall be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(i) Each Financial Plan shall be prepared in accordance with GAAP and shall meet the FTA Project Management Oversight Requirements, as amended from time to time, to the extent applicable.

(ii) Together with each Financial Plan, the Borrower shall deliver (A) a certificate signed by the Borrower's Authorized Representative to the effect that the

Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower's knowledge and belief, and (B) an electronic copy of a Revised Financial Model for the period from the Effective Date through the later of (i) the Final Maturity Date and (ii) the latest final maturity date under any Other RRIF Loan Agreement, based upon assumptions and projections with respect to the Contract Payments to be received, expenses and other financial aspects of the Project and the Collateral that shall reflect the prior experience and current status of the Project and the Contract Payments, and the expectations of the Borrower with respect to the Project and the Contract Payments to be received, as of the most recent practicable date prior to the delivery of such Revised Financial Model, together with a change log describing such changes.

(iii) Unless otherwise agreed to by the RRIF Lender, FTA and FRA, each Financial Plan shall:

(A) provide an updated cash flow statement showing, for the Borrower Fiscal Year most recently ended, (1) actual annual cash inflows (Contract Payments and other income) and (2) actual annual outflows (including all operating expenses, Capital Expenditures, replenishment of reserves, and other uses); and

(B) provide a written narrative that (1) confirms that the Executive Budget of the State for the following State fiscal year includes an appropriation for all amounts needed to make all Contract Payments during such State fiscal year; (2) confirms whether any changes have been proposed to the "State Capital Commitment" (as defined in the Enabling Legislation) in the Executive Budget for the following State fiscal year or in any other proposed legislation; (3) describes any material matters that may affect the future performance by the Borrower of its obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Collateral, the Contract Payments, operational contracts, and third-party transactions; and (4) discusses contingency measures that will or may be taken to address any of the matters reported pursuant to this sub-clause (B).

(iv) Unless otherwise agreed to by the RRIF Lender, FTA and FRA, prior to the Substantial Completion Date, each Financial Plan shall (in addition to the information required in Section 21(a)(iii) above):

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan (in the same format as utilized to report Total Project Costs in the monthly construction progress reports delivered pursuant to Section 22(b) (*Monthly Construction Progress Report*));



(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including an updated Projected Substantial Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule provided in the most recent Financial Plan, and discuss the reasons for any changes to the expected completion of these Project milestones (in the same format as utilized to report milestones in the monthly construction progress reports delivered pursuant to Section 22(b) (*Monthly Construction Progress Report*));

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the most recent prior Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the most recent prior Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of material individual changes, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower's obligations under this Agreement.

(b) Financial Statements. The Borrower shall furnish to the RRIF Lender:

(i) As soon as available, but no later than one hundred twenty (120) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the RRIF Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(iii) The Borrower shall furnish to the RRIF Lender, together with each delivery of annual audited financial statements of the Borrower pursuant to this Section

21(b), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event that, with the giving of notice or the passage of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

Section 22. Oversight and Monitoring.

(a) Project Development, Design and Construction. Each of the RRIF Lender and each Modal Grant Office shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Borrower shall cooperate in good faith with the RRIF Lender and the Modal Grant Offices in the conduct of such monitoring by promptly providing the RRIF Lender and the Modal Grant Offices with such reports, documentation or other information as shall be requested by the RRIF Lender and the Modal Grant Offices, or its agents, including any consulting engineer reports, documentation or information.

(b) Monthly Construction Progress Report. On or before the thirtieth (30<sup>th</sup>) business day following the end of each calendar month during the Construction Period, the Borrower shall deliver to the RRIF Lender and the FTA Regional Office on behalf of both Modal Grant Offices, a single report that will be used for purposes of this Agreement and each Other RRIF Loan Agreement (in a format to be agreed upon by the Borrower, the RRIF Lender, FTA, and FRA), that:

(i) summarizes key changes, events, or issues that occurred during the prior month and a projection of key milestones and decisions that will occur in the next three (3) months;

(ii) specifies the amount of Total Project Costs expended since the Effective Date as well as during such calendar month and the amount of Total Project Costs estimated to be required to complete the Project and provides a revised Project Budget updated through the end of such calendar month, reflecting any material change orders granted or pending under the Construction-Related Contracts with respect to any cost increases, any use of contingency and remaining unallocated project contingency;

(iii) demonstrates that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project, taking into account any changes to the amount of Total Project Costs that are reflected in such monthly construction progress report;

(iv) provides (A) an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule; and (B) to the

extent there have been any events or occurrences (e.g., delayed equipment deliveries, permit delays, material change orders, etc.), that have had, or are anticipated to have, an adverse impact on the Construction Schedule and the meeting of critical dates thereunder, a detailed narrative description of steps being taken (or proposed to be taken) to address such adverse impacts on the Construction Schedule, including the use of any schedule float or increase in hours worked in a day and the identification of critical path items; and

(v) provides a discussion or analysis of such other matters related to the Project as the RRIF Lender may reasonably request.

(c) Federal Grant Agreement Material Reports. Simultaneously with, or promptly after, delivery to either Modal Grant Office of material reports required under any Federal Grant Agreement, the Borrower shall deliver a copy of such material report to the RRIF Lender in the same form and format as delivered to the applicable Modal Grant Office (to the extent not already delivered to the RRIF Lender).

(d) Recovery Plan. If the monthly construction progress report described in Section 22(b)(i) (Monthly Construction Progress Report) or the monthly report issued pursuant to the FTA Project Management Oversight Requirements, as applicable, indicates either a failure to maintain the Construction Schedule, including a failure to achieve Substantial Completion by the Projected Substantial Completion Date or actual or projected Eligible Project Cost in excess of the Eligible Project Costs reflected in the Project Budget, or both, then the Borrower shall notify the RRIF Lender and the FTA Regional Office of such failure and shall, upon request by the RRIF Lender or the FTA Regional Office, provide the RRIF Lender and the FTA Regional Office within forty-five (45) days of receipt of such request (or such later date as may be specified in the request), a Recovery Plan for review by the RRIF Lender and the FTA Regional Office and approval by the FTA Regional Office in consultation with the RRIF Lender.

(e) Requested Information. The Borrower shall, at any time while the RRIF Loan remains outstanding, promptly deliver to the RRIF Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project, the Collateral or the Contract Payments as the RRIF Lender may from time to time reasonably request, including copies of agreements, documentation and other information related thereto requested by the RRIF Lender. The Borrower shall respond, and use commercially reasonable efforts to cause the Fundamental Contract Parties, SEP Agreement counterparties, and Construction-Related Contract Parties to respond, to the RRIF Lender's inquiries regarding the construction of the Project. The RRIF Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the RRIF Lender and at the Borrower's cost (as provided in Section 28 (Fees and Expenses)), to carry out the provisions of this Section 22(e).

Section 23. No Personal Recourse. No official, employee or agent of the RRIF Lender, the Borrower, the Funding Partner, or any Person executing this Agreement or any of the other RRIF Loan Documents shall be personally liable on this Agreement or such other RRIF Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 24. No Third Party Rights. The parties hereby agree that neither this Agreement or any Other RRIF Loan Agreement creates any third party rights against the Borrower, the Federal

Government, the RRIF Lender, FTA, or FRA solely by virtue of the RRIF Loan, and the Borrower agrees to indemnify and hold the RRIF Lender, the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 17 (Indemnification), from any lawsuit or claim arising in law or equity solely by reason of the RRIF Loan, and that no third party creditor or creditors of the Borrower shall have any right against the RRIF Lender with respect to the RRIF Loan or any RRIF Loan Document.

Section 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the RRIF Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 26. RRIF Lender's Authorized Representative.

(a) The RRIF Lender shall at all times have appointed the RRIF Lender's Authorized Representative by designating such Person or Persons from time to time to act on the RRIF Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the RRIF Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016 (the "**Delegation**") by the Executive Director of the Build America Bureau to the Director of the Credit Office of the Build America Bureau, the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the RRIF Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the RRIF Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 27. Servicer. The RRIF Lender may from time to time designate another entity or entities to perform, or assist the RRIF Lender in performing, the duties of the Servicer or specified duties of the RRIF Lender under this Agreement or the RRIF Note. The RRIF Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement or in any other RRIF Loan Document to the RRIF Lender shall be deemed to be a reference to the Servicer with respect to any duties which the RRIF Lender shall have delegated to such Servicer. The RRIF Lender may at any time assume the duties of any Servicer under this Agreement and under each other RRIF Loan Document. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 28. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (“FFY”) 2025 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the RRIF Lender a servicing fee for each Tranche on or before the fifteenth (15<sup>th</sup>) of November. The RRIF Lender shall establish the amount of this annual per-Tranche fee in accordance with this Section 28, and the RRIF Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the per-Tranche fee, the RRIF Lender will adjust the previous year’s base amount in proportion to the percentage change in CPI. For the FFY 2025 calculation, the RRIF Lender will use the FFY 2024 base amount of \$16,500.00, which applies to other RRIF borrowers, as the previous year’s base amount. The RRIF Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year’s base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the RRIF Lender shall round the current year’s base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the RRIF Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the RRIF Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration, and performance of this Agreement and the other RRIF Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other RRIF Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, any Other Borrower Financing Document, or the Collateral, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or Other Borrower Financing Document, or the rights of the RRIF Lender hereunder or thereunder;

(iii) any ongoing oversight and monitoring of the RRIF Loan, the Borrower or the Project by the RRIF Lender as provided for herein or in any other RRIF Loan Document; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other RRIF Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 28 (Fees and Expenses) shall survive the payment or prepayment in full or transfer of the RRIF Note, the enforcement of any provision of this Agreement or the other RRIF Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement or any other RRIF Loan Document shall in any event be effective without the written consent of each of the parties hereto or thereto, as applicable.

Section 30. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 31. Severability. In case any provision in or obligation under this Agreement or any other RRIF Loan Document shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 32. Successors and Assigns. This Agreement and each other RRIF Loan Document shall be binding upon the parties hereto and thereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and thereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder or thereunder nor any interest herein or therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the RRIF Lender.

Section 33. Remedies Not Exclusive. No remedy conferred herein or in any other RRIF Loan Document or reserved to the RRIF Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 34. Delay or Omission Not Waiver. No delay or omission of the RRIF Lender to exercise any right or remedy provided hereunder or under any other RRIF Loan Document upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement, each other RRIF Loan Document, or by law to the RRIF Lender may be exercised from time to time, and as often as may be deemed expedient by the RRIF Lender.

Section 35. Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate

counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 36 (Notices) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 36. Notices. Notices hereunder and under each other RRIF Loan Document shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to the RRIF Lender: Build America Bureau  
United States Department of Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of Credit Programs  
Email: BureauOversight@dot.gov

If to the FTA Regional Office: Federal Transit Administration  
Region II Office  
One Bowling Green, Room 429  
New York, NY 10004  
Attention: Michael Culotta, Regional Administrator  
Email: Michael.Culotta@dot.gov

If to the Borrower: Gateway Development Commission  
120 Broadway – 10<sup>th</sup> Floor  
New York, NY 10271  
Attention: General Counsel  
Email: Notices@Gatewayprogram.org

Unless otherwise instructed by the RRIF Lender’s Authorized Representative, all notices to the RRIF Lender should be made by email to the email address noted above for the RRIF Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower’s Authorized Representative, with respect to notices to the Borrower, or by the RRIF Lender’s Authorized Representative, with

respect to notices to the RRIF Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 37. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 38. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash of the Outstanding RRIF Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 17 (Indemnification), the reporting and record keeping requirements of Sections 20(b) (Inspections) and (c) (Reports and Records), and the payment requirements of Section 28 (Fees and Expenses) shall survive the termination of this Agreement as provided in such sections.

Section 39. Integration. This Agreement and each other RRIF Loan Document constitute the entire contract between the parties relating to the subject matter hereof and thereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**GATEWAY DEVELOPMENT  
COMMISSION**

By: \_\_\_\_\_  
Name:  
Title:

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and  
through the Executive Director of the Build  
America Bureau

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE I**

**PROJECT BUDGET**

[To be provided by Borrower]

## SCHEDULE II

### CONSTRUCTION SCHEDULE

**SCHEDULE II**  
**Gateway Development Commission**  
**Hudson Tunnel Project**  
**Project Schedule**

	Start Date	End Date	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
10 Guideway & Track Elements (route miles)	04/01/23	06/25/38												
20 Stations, Stops, Terminals, Intermodal (number)														
30 Support Facilities: Yards, Shops, Admin. Bldgs	10/01/27	01/31/34												
40 Sitework & Special Conditions	01/01/17	06/25/38												
50 Systems	01/01/27	06/25/38												
60 ROW, Land, Existing Improvements	01/01/17	01/31/27												
70 Vehicles (number)														
80 Professional Services (applies to Cats. 10-50)	01/01/17	06/25/38												
90 Unallocated Contingency	04/01/23	11/09/40												
100 Finance Charges (CC Only)	01/01/24	06/25/38												
Revenue Operations	06/25/38	11/09/40												
Projected Substantial Completion		11/09/40												

<i>(Cont'd from above)</i>	Start Date	End Date	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
10 Guideway & Track Elements (route miles)	04/01/23	06/25/38												
20 Stations, Stops, Terminals, Intermodal (number)														
30 Support Facilities: Yards, Shops, Admin. Bldgs	10/01/27	01/31/34												
40 Sitework & Special Conditions	01/01/17	06/25/38												
50 Systems	01/01/27	06/25/38												
60 ROW, Land, Existing Improvements	01/01/17	01/31/27												
70 Vehicles (number)														
80 Professional Services (applies to Cats. 10-50)	01/01/17	06/25/38												
90 Unallocated Contingency	04/01/23	11/09/40												
100 Finance Charges (CC Only)	01/01/24	06/25/38												
Revenue Operations	06/25/38	11/09/40												
Projected Substantial Completion		11/09/40												

**EXHIBIT A**

**ANTICIPATED RRIF LOAN DISBURSEMENT SCHEDULE**

<b>EXHIBIT A</b>		
<b>Gateway Development Commission</b>		
<b>Hudson Tunnel Project</b>		
<b>New York Funding Agreement RRIF 2024-0050</b>		
<b>Anticipated RRIF Loan Disbursement Schedule</b>		
<b>Year</b>	<b>Tranche A Amount</b>	<b>Tranche B Amount</b>
2024	33,006,092.54	-
2025	106,040,694.85	-
2026	167,798,394.69	-
2027	146,175,876.84	-
2028	85,820,176.39	-
2029	79,560,434.36	-
2030	80,439,957.73	-
2031	25,453,291.06	-
2032	18,148,012.61	-
2033	10,017,113.51	-
2034	47,923,913.04	-
2035	-	-
2036	-	-
2037	17,093,389.87	-
2038	182,206,688.51	-
<b>Total</b>	<b>999,684,036.00</b>	<b>-</b>
<b>Disbursement</b>		

**EXHIBIT B**

**RRIF DEBT SERVICE**

[To be provided at closing]

**EXHIBIT C****RRIF LOAN REAMORTIZATION METHODOLOGY****Tranche A**

<b>Period</b>	<b>Semi-Annual Payment Date</b>	<b>Interest</b>	<b>Principal Amount (\$)</b>
Capitalized Interest Period (CAPI)	Financial Close - 6/01/2034	0%	0.00
Interest Only	12/01/2034 – 6/01/2038	100%	0.00
Level Payment Period	12/01/2038 – Final Maturity Date	100%	Fixed Level Payment

**Tranche B**

<b>Period</b>	<b>Semi-Annual Payment Date</b>	<b>Interest</b>	<b>Principal Amount (\$)</b>
Capitalized Interest Period (CAPI)	Financial Close - 6/01/2034	0%	0.00
Interest Only	12/01/2034 – 6/01/2038	100%	0.00
Level Payment Period	12/01/2038 – Final Maturity Date	100%	Fixed Level Payment

Note: During the Level Payment Period, (1) prior to the final disbursement of the RRIF Loan, the RRIF Lender shall reamortize the RRIF Loan based on the Outstanding RRIF Loan Balance on the preceding Semi-Annual Payment Date; and (2) after the final disbursement of the RRIF Loan, the RRIF Lender shall reamortize the RRIF Loan based on the Outstanding RRIF Loan Balance on the succeeding Semi-Annual Payment Date after such final disbursement of the RRIF Loan. Any rounding differences shall be applied to the final payment of principal in respect of the RRIF Loan.

## EXHIBIT D

### REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of RRIF Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through Section 4 set out the circumstances in which the RRIF Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the RRIF Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the RRIF Lender under the RRIF Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the RRIF Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under such RRIF Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of RRIF Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the RRIF Lender, in accordance with Section 36 (Notices) of the RRIF Loan Agreement, of a Requisition, in form and substance satisfactory to the RRIF Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as Appendix One to this **Exhibit D**. All supporting documentation related to the requested disbursement, including documentation related to Eligible Project Costs, should be submitted with the requisition.

All disbursement requests must be received by the RRIF Lender at or before 5:00 P.M. (EST) on the first (1<sup>st</sup>) Business Day of a calendar month in order to obtain disbursement by the first (1<sup>st</sup>) day of the following calendar month or, if such day is not a Business Day, the next succeeding Business Day.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the RRIF Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the RRIF Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid.

The RRIF Lender shall promptly send to the Borrower, in accordance with Section 36 (Notices) of the RRIF Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as **Appendix Two** to this **Exhibit D**. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be resubmitted in proper

form in order to be considered for approval. If a Requisition exceeds the balance of the RRIF Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the RRIF Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the RRIF Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The RRIF Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of RRIF Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the RRIF Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the highest standards of the Borrower's industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the RRIF Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the RRIF Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the RRIF Loan Agreement; or

(iv) fails to satisfy any condition set forth in Section 4 (Disbursement Conditions), Section 12(b) (Conditions Precedent to All Disbursements) or, if applicable, Section 13(b) (Officers' Authorization) of the RRIF Loan Agreement; or

(v) fails to deliver documentation satisfactory to the RRIF Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the RRIF Loan Agreement; provided, that in such case the RRIF Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Federal Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the RRIF Lender (a) shall be entitled to withhold approval of any



pending or subsequent requests for the disbursement of RRIF Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the RRIF Loan to the Borrower (even if such disbursement has been approved by the RRIF Lender), in each case if the RRIF Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

**APPENDIX ONE TO EXHIBIT D**  
**FORM OF REQUISITION**

Build America Bureau

United States Department of Transportation  
c/o Director, Office of Credit Programs  
Room W12-402  
1200 New Jersey Avenue, SE,  
Washington, D.C. 20590

Federal Transit Administration  
Region II  
One Bowling Green, Room 428  
New York, NY 10004  
Attention: Regional Administrator

[Loan Servicer]  
[Address]  
[Attention]

Re: HUDSON TUNNEL PROJECT (NEW YORK FUNDING AGREEMENT) (RRIF – 2024-0050)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the RRIF Loan Agreement (New York Funding Agreement), dated as of July 8, 2024 (the “**RRIF Loan Agreement**”), each by and between GATEWAY DEVELOPMENT COMMISSION (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”), we hereby request disbursement in the amount of \$[\_\_\_\_\_] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. The requested disbursement is made with respect to the [Construction][Cost Overrun] Tranche.<sup>1</sup> Capitalized terms used but not defined herein have the meaning set forth in the RRIF Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [\_\_\_\_\_].
2. The requested date of disbursement is [\_\_\_\_\_], 20[\_\_\_] (the “**Disbursement Date**”)[, which is the first Business Day following [\_\_\_\_\_], 20[\_\_\_\_\_]].

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<sup>1</sup> If the requested disbursement amount corresponds to more than one Tranche, specify the amount associated with each applicable Tranche.

3. The amounts previously disbursed under the RRIF Loan Agreement equal, in the aggregate, \$[\_\_\_\_\_].
4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from RRIF Loan proceeds, proceeds of any other RRIF Loan, or Federal Grants.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the RRIF Loan and the amount of this Requisition, together with all prior Requisitions in respect of the [Construction][Cost Overrun] Tranche, does not exceed the maximum principal amount for such Tranche.<sup>2</sup>
6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified in Section 1 of **Exhibit D** (*Requisition Procedures*) to the RRIF Loan Agreement and complies with the requirements of Section 4(a) (*Disbursement Conditions*) of the RRIF Loan Agreement.
7. All Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval have been obtained and are in full force and effect (and are not subject to any notice of violation, breach or revocation).
8. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the RRIF Lender and the FTA Regional Office and in accordance with the highest standards of the Borrower's industry.
10. The representations and warranties of the Borrower set forth in the RRIF Loan Agreement and the representations and warranties of the Borrower and the Funding Partner set forth in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), (i) no Event of Default or event of

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<sup>2</sup> If the requested disbursement corresponds to more than one Tranche, the Borrower must make this certification with respect to each applicable Tranche.

- default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since May 1, 2024 and is continuing.
  13. A copy of the monthly construction progress report pursuant to Section 22(b) (*Monthly Construction Progress Report*) of the RRIF Loan Agreement for the month that ended most recently prior to the date of the applicable Requisition has been delivered to each of the above named addresses.
  14. [With respect to any disbursement of RRIF Loan proceeds from Tranche B, attached hereto is a copy of the written approval of the State's Authorized Representative (as defined in the Continuing Covenants and Representations Agreement) with respect to such disbursement.]<sup>3</sup>
  15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1)(1), to the extent the Federal Government deems appropriate.
  16. A copy of this requisition has been delivered to each of the above named addressees.
  17. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

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<sup>3</sup> To be included in connection with any requested disbursement under Tranche B.

[Add wire instructions for Borrower.]

Date: \_\_\_\_\_

GATEWAY DEVELOPMENT  
COMMISSION<sup>4</sup>

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

Name:

Title:

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<sup>4</sup> To be executed by the Borrower's Authorized Representative.

**APPENDIX TWO TO EXHIBIT D**

**DISAPPROVAL OF THE RRIF LENDER  
(To be delivered to the Borrower)**

Requisition Number [●] is [approved in part in the amount of \$[●]] [not approved]<sup>5</sup> by the RRIF Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) the RRIF Loan Agreement (New York Funding Agreement), dated as of July 8, 2024, each by and between Gateway Development Commission (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”).

Any determination, action or failure to act by the RRIF Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the RRIF Lender’s sole discretion, and in no event shall the RRIF Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and  
through the Executive Director of the Build  
America Bureau

By: \_\_\_\_\_  
RRIF Lender’s Authorized Representative  
Name:  
Title:  
Dated:

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<sup>5</sup> Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

**EXHIBIT A TO APPENDIX TWO TO EXHIBIT D**

**[Insert reasons for any partial or full denial of approval.]**

**EXHIBIT E**

**FORM OF RRIF PROMISSORY NOTE**

**GATEWAY DEVELOPMENT COMMISSION**

**HUDSON TUNNEL PROJECT  
(New York Funding Agreement)**

**(RRIF Project Number – 2024-0050)**

**RRIF Promissory Note**

	<u>Maximum Principal Amount (excluding capitalized interest)</u>	<u>Interest Rate</u>
<b>Tranche A</b>	\$999,684,036	[ ]%
<b>Tranche B</b>	\$487,334,767	[ ]%

**Effective Date: July 8, 2024**

**Due: June 1, 2073**

**GATEWAY DEVELOPMENT COMMISSION**, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York under the GDC Act (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**RRIF Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the RRIF Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the RRIF Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the RRIF Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the RRIF Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the RRIF Loan Agreement in accordance with Exhibit B to the RRIF Loan Agreement, as revised from time to time in accordance with the RRIF Loan Agreement, until paid in full. The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in Exhibit A to the RRIF Loan Agreement from time to time in accordance with the terms of the RRIF Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the RRIF Lender’s determination of such matters as set forth on Exhibit B to the RRIF Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other RRIF Loan Document.



Payments hereon are to be made in accordance with Section 9(d) (Manner of Payment) of the RRIF Loan Agreement as the same become due. Principal of and interest on this RRIF Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. This RRIF Note has been executed under and pursuant to that certain RRIF Loan Agreement (New York Funding Agreement), dated as of the date hereof, between the RRIF Lender and the Borrower (the “**RRIF Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the RRIF Loan Agreement to repay the loan made by the RRIF Lender and any other payments of any kind required to be paid by the Borrower under the RRIF Loan Agreement or the other RRIF Loan Documents referred to therein. Reference is made to the RRIF Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this RRIF Note and not defined herein shall have the meanings set forth in the RRIF Loan Agreement. This RRIF Note is not subject to mandatory prepayment.

This RRIF Note may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the RRIF Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000), at any time or from time to time, without penalty or premium, by paying to the RRIF Lender all or part of the principal amount of the RRIF Note in accordance with the RRIF Loan Agreement.

Payment of the obligations of the Borrower under this RRIF Note is secured pursuant to the CASA.

Any delay on the part of the RRIF Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this RRIF Note have happened, exist and have been performed as so required. This RRIF Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, GATEWAY DEVELOPMENT COMMISSION has caused this RRIF Note to be executed in its name and attested by its duly authorized officer, all as of the Effective Date set forth above.

**GATEWAY DEVELOPMENT  
COMMISSION**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns  
and transfers unto

*(Please Insert Social Security or other identifying number of Assignee(s)):*

the within note and all rights thereunder.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

## EXHIBIT F

### COMPLIANCE WITH LAWS

The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 CFR Part 35; 29 CFR Part 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 CFR Part 21);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 CFR Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), including the environmental mitigation requirements and commitments made by the Borrower that resulted in FTA and FRA's issuance of the NEPA Determination;
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (ix) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (x) 49 U.S.C. § 303;
- (xi) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 CFR Part 1926);
- (xii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 CFR Part 5);
- (xiii) The Buy America requirements set forth in (A) 49 U.S.C. § 5323(j) and implementing regulations (49 CFR Part 661) and (B) 49 U.S.C. § 22905;
- (xiv) The Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52);
- (xv) The requirements of 49 U.S.C. Chapter 53 and 49 CFR Part 600;
- (xvi) The Cargo Preference Act of 1954, as amended (46 U.S.C. § 55305), and implementing regulations (46 CFR Part 381);

- (xvii) The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) and implementing regulations (2 CFR § 200.216); and
- (xviii) The Railroad Retirement Act of 1974 (45 U.S.C. Chapter 9, Subchapter IV), and implementing regulations.

## **EXHIBIT G**

### **OPINIONS REQUIRED FROM COUNSEL TO BORROWER**

Opinions from counsel of the Borrower, dated as of the Effective Date, to the effect that:

1. the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdictions of its organization;
2. the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under, the Related Documents to which it is a party (including granting the security interests in the Collateral);
3. the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational, statutory or regulatory action;
4. the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms;
5. no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;
6. the execution and delivery by the Borrower of, and performance of its obligations under, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America, the State of New York, or of the State of New Jersey, or (iii) conflict with or constitute a breach of or result in a default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject;
7. the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended;
8. to the knowledge of counsel after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending;
9. each RRIF Loan Document is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions;
10. the RRIF Note (i) is secured by the Collateral pledged for the repayment of the RRIF Loan represented by the RRIF Note pursuant to the CASA, (ii) is a RRIF Note entitled to the benefits of a RRIF Note under the RRIF Loan Documents, enforceable under the laws of the State without any further action by the Borrower or any other Person and (iii) is a senior obligation of the Borrower and ranks senior in right of payment and right of security with all other Obligations;

11. the CASA creates the valid and binding grant of a security interest in, and pledge of, the Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the RRIF Note, irrespective of whether any party has notice of the pledge or grant of security interest, as applicable, and except for the filing of a UCC-1 financing statement with the New York State Department of State, no filing, recordation or any other action is necessary to establish and perfect a legal, valid, binding, and enforceable Lien on the Collateral under the New York Uniform Commercial Code in favor of the Collateral Agent for the benefit of the RRIF Lender to the extent contemplated by the RRIF Loan Documents;
12. all actions by the Borrower that are required for the use of Contract Payments as required under the CASA and under the other RRIF Loan Documents have been duly and lawfully made;
13. the CASA is sufficient under State law to lawfully assign and pledge the Collateral and use the Contract Payments as required by the terms of the RRIF Loan Documents and the Funding Agreement;
14. the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; and
15. the Borrower is not entitled to claim governmental immunity in any breach of contract action under any RRIF Loan Document or Fundamental Contract.

**EXHIBIT H**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS—  
PRIMARY COVERED TRANSACTIONS**

The undersigned, on behalf of GATEWAY DEVELOPMENT COMMISSION, hereby certifies that GATEWAY DEVELOPMENT COMMISSION has fully complied with its verification obligations under 2 CFR § 180.320 and hereby further confirms in accordance with 2 CFR § 180.335, that, to its knowledge, the Borrower and its principals (as defined in 2 CFR § 180.995):

(a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);

(b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR § 180.800(a); and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain RRIF Loan Agreement (New York Funding Agreement), dated as of July 8, 2024 between the RRIF Lender and the Borrower, as the same may be amended from time to time.

Dated: \_\_\_\_\_

**GATEWAY DEVELOPMENT COMMISSION<sup>6</sup>**

By: \_\_\_\_\_  
Name:  
Title:

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<sup>6</sup> To be executed by Borrower’s Authorized Representative.



## EXHIBIT I

### FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain RRIF Loan Agreement (New York Funding Agreement), dated as of July 8, 2024 (the "RRIF Loan Agreement"), by and among Gateway Development Commission (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "RRIF Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement.

The undersigned, [\_\_\_\_], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 12(a)(ii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit A are complete and fully executed copies of each Federal Grant Agreement and each Other Borrower Financing Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the RRIF Lender in its sole discretion;
- (b) pursuant to Section 12(a)(vi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 25 (*Borrower's Authorized Representative*) of the RRIF Loan Agreement;
- (c) the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and such funds shall be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion;
- (d) pursuant to Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit C are true, correct and complete copies of each Fundamental Contract, each SEP Agreement, and each Construction-Related Contract that has been executed on or prior to the Effective Date (as listed below), and each such Fundamental Contract, SEP Agreement and Construction-Related Contract, together with any amendments, waivers or modifications thereto that have been entered into on or prior to the Effective Date, is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of Exhibit C:
  - 1. the Project Development Agreement;
  - 2. the Funding Agreement;

3. [list each SEP Agreement]; and
  4. [list each Construction-Related Contract]
- (e) the Borrower has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (f) pursuant to Section 12(a)(xi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit D is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Contract Payments are sufficient to meet the Loan Amortization Schedule and (ii) otherwise be in form and substance acceptable to the RRIF Lender;
- (g) pursuant to Section 12(a)(xii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, the Borrower hereby certifies that (i) the Borrower is authorized, pursuant to the GDC Act, to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the RRIF Loan Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act other than as set forth in clause (ii) hereto, (ii) it has recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Collateral Agent's Lien on the Collateral (for the benefit of the RRIF Lender) to the extent contemplated by the RRIF Loan Documents or the GDC Act, including delivery of a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, that has been filed with the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code, (iii) it has recorded or filed, or caused to be recorded or filed, with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services, a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, and (iv) it has paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any RRIF Loan Document or any instruments, certificates or financing statements in connection with the foregoing;
- (h) pursuant to Section 12(a)(xiv) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, the Borrower hereby certifies that it has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and, if previously requested request by the RRIF Lender, has provided sufficient evidence of such compliance;
- (i) pursuant to Section 12(a)(xiv) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit E is a true, correct and complete copy of the final

NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;

- (j) pursuant to Section 12(a)(xvi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 87-2091167 and attached hereto as Exhibit F-1 is evidence thereof, (ii) the Borrower's Unique Entity Identifier number is L3A1UJSRCT44, and (iii) the Borrower has registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov)), and attached hereto as Exhibit F-2 is evidence of each of (ii) and (iii);
- (k) pursuant to Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit G-1 are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of Section 15(f) (*Insurance; Events of Loss*) of the RRIF Loan Agreement;
- (l) pursuant to Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, (i) attached hereto as (A) Exhibit G-2 is a copy of the Borrower's Organizational Documents, each as in effect on the Effective Date (and certified by the Secretary of State of the State and of the State of New Jersey, to the extent applicable), which Organizational Documents are each in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate, (B) Exhibit G-3 is a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the RRIF Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) as Exhibit G-4 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the RRIF Loan Documents, and (ii) the Borrower certifies that Exhibit G-2, Exhibit G-3, and Exhibit G-4 evidence that the Borrower is duly organized and validly existing under the laws of its jurisdictions of formation, and has full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted and as contemplated in the Related Documents and the Other Borrower Financing Documents;
- (m) the representations and warranties of the Borrower set forth in the RRIF Loan Agreement and the representations and warranties of each of the Borrower and the Funding Partner set forth in each other Related Document and Other Borrower Financing Document to which it is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (n) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since May 1, 2024 and is continuing.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

[\_\_\_\_\_]

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

Name:

Title: Chief Executive Officer and  
Authorized Representative

**EXHIBIT B TO EXHIBIT I**

**INCUMBENCY CERTIFICATE**

The undersigned certifies that he/she is the [Secretary] of Gateway Development Commission, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York, (the “Borrower”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the RRIF Loan Documents as the Borrower’s Authorized Representative (each as defined in that certain RRIF Loan Agreement (New York Funding Agreement), dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of [\_\_\_\_], 2024.

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT J**

**FORM OF CERTIFICATE OF COLLATERAL AGENT**

**GATEWAY DEVELOPMENT COMMISSION**

**Hudson Tunnel Project  
(RRIF Project Number – 2024-0050)**

The undersigned, The Bank of New York Mellon (the “*Collateral Agent*”), by its duly appointed, qualified and acting Vice President, certifies with respect to the above referenced CASA (as defined below) dated as of July 8, 2024, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the CASA):

1. That the Collateral Agent is a bank organized under the laws of the state of New York.
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Collateral Agent of its duties and obligations under the documents pertaining to the issuance of the CASA have been obtained by the Collateral Agent and are in full force and effect.
3. That the CASA was executed by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of the CASA and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute the CASA, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Collateral Agent, to establish and maintain the Account and to accept the Contract Payments that will be conveyed to it under the CASA, shall accept the Contract Payments so conveyed and in so accepting the Contract Payments and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from the bylaws of the Collateral Agent and other applicable documents that evidence the Collateral Agent’s powers to enter into the CASA and to fulfill its obligations under the CASA and the RRIF Loan Agreement and the authority of the officers referred to above to act on behalf of the Collateral Agent; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.
6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Collateral Agent pursuant to that certain Collateral Accounts and Security Agreement (the “CASA”), dated as of July 8, 2024,

between Gateway Development Commission (the “**Borrower**”), the RRIF Lender (as defined below), the Collateral Agent, the Securities Intermediary (as defined therein), and the other secured parties party thereto from time to time.

8. That receipt is also acknowledged of the RRIF Loan Agreements, each dated as of July 8, 2024 (the “**RRIF Loan Agreements**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau.
9. That the Collateral Agent also accepts its appointment and agrees to perform the duties and responsibilities of Collateral Agent for and in respect of the CASA as set forth in the CASA and the RRIF Loan Agreement. In accepting such duties and responsibilities, the Collateral Agent shall be entitled to all of the privileges, immunities, rights and protections set forth in Article 3 of the CASA.
10. That the Account has been established as provided in the CASA.

[SIGNATURE PAGE FOLLOWS]

Dated: July 8, 2024

THE BANK OF NEW YORK MELLON

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

Its:



**ANNEX ONE TO EXHIBIT J**  
**OFFICERS OF COLLATERAL AGENT**

**ANNEX TWO TO EXHIBIT J**  
**BYLAWS OF COLLATERAL AGENT**

**EXHIBIT K**

**CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF APPROPRIATED FUNDS FOR LOBBYING**

Reference is made to that certain RRIF Loan Agreement (New York Funding Agreement), dated as of July 8, 2024 (the “RRIF Loan Agreement”), by and among Gateway Development Commission, (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “RRIF Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement. The undersigned, on behalf of the Borrower, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of the RRIF Loan.

(b) If any funds other than proceeds of the RRIF Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the RRIF Loan, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the RRIF Lender entered into the RRIF Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the RRIF Loan Agreement imposed by Section 1352 of title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: \_\_\_\_\_

**GATEWAY DEVELOPMENT COMMISSION<sup>7</sup>**

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

Name:

Title:

<sup>7</sup> To be executed by Borrower’s Authorized Representative.

**EXHIBIT L**

**FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION**

*[Letterhead of Borrower]*

*[Date]*

Build America Bureau  
United States Department of Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of Credit Programs

**Project: Hudson Tunnel Project (RRIF – 2024-0050)**

Dear Director:

This Notice is provided pursuant to Section 15(g)(i)(A) (*Substantial Completion*) of that certain RRIF Loan Agreement (New York Funding Agreement) (the “**RRIF Loan Agreement**”), dated as of July 8, 2024 by and between Gateway Development Commission (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the RRIF Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the RRIF Lender that:

- (a) as of on *[insert date]*, Amtrak and NJT have each commenced revenue operations on both elements of the Project included in clauses (a) and (b) of the definition of “Project” and, in so doing, satisfied each of the requirements for Substantial Completion;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) *[Substantial Completion, as defined in the RRIF Loan Agreement, has been achieved.]*

\_\_\_\_\_  
[Borrower’s Authorized Representative]

\_\_\_\_\_  
Name:

Title:

## EXHIBIT M

### 2 CFR Part 170

#### I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

##### a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

##### 2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

##### b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this RRIF Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received—

(A) eighty percent (80%) or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month of the Effective Date, and annually thereafter.

*c. Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this RRIF Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) eighty percent (80%) or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

*e. Definitions.* For purposes of this **Exhibit M**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

- iii. A domestic or foreign nonprofit organization; and,
- iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR § 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

- i. Receives a subaward from you (the recipient) under this RRIF Loan; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)).

**EXHIBIT N**

**EMPLOYEE PROTECTION ARRANGEMENTS**

[See attached.]



Adopted - 7/2/24

**EXHIBIT C**

**UNITED STATES  
DEPARTMENT OF TRANSPORTATION**

**RRIF LOAN AGREEMENT**

**For Up to \$1,870,000,000**

**With**

**GATEWAY DEVELOPMENT COMMISSION**

**For the**

**HUDSON TUNNEL PROJECT**

**(Port Authority Funding Agreement)  
(RRIF – 2024-0051)**

**Dated as of July 8, 2024**

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**EXHIBIT N** – Employee Protection Arrangements

## RRIF LOAN AGREEMENT

**THIS RRIF LOAN AGREEMENT** (this “**Agreement**”), dated as of July 8, 2024, is by and between **GATEWAY DEVELOPMENT COMMISSION**, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York, with an address of 120 Broadway – 10<sup>th</sup> Floor, New York, New York 10271 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**RRIF Lender**”).

### RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has created the Railroad Rehabilitation and Improvement Financing program (“**RRIF**”) codified at 49 U.S.C. §§ 22401-22406 (as amended from time to time, the “**Act**”); and

WHEREAS, Section 22402 of the Act authorizes the RRIF Lender to provide direct loans and loan guarantees to eligible project sponsors; and

WHEREAS, the Borrower has requested that the RRIF Lender make the RRIF Loan (as defined herein), to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for RRIF credit assistance dated May 1, 2024 (the “**Application**”); and

WHEREAS, on June 6, 2024 the Secretary (as defined herein) approved RRIF credit assistance for the Project in the form of the RRIF Loan (as defined herein); and

WHEREAS, the RRIF Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the RRIF Note (as defined herein) in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the RRIF Lender has entered into this Agreement in reliance upon, among other things, the GDC Act, the Fundamental Contracts, and the Direct Agreement (each as defined herein).

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the RRIF Lender as follows:

Section 1. **Definitions.** Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (Definitions) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“**Acceptable Credit Rating**” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than ‘A+’, ‘A1’ or the equivalent rating from at least one (1) Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

“**Account**” has the meaning ascribed to the term “PANYNJ RRIF Account” in the CASA.

“**Act**” means the Act as defined in the recitals hereto.

“**Agreement**” has the meaning provided in the preamble hereto.

“**Amtrak**” means the National Railroad Passenger Corporation (d/b/a Amtrak).

“**Anti-Corruption Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption.

“**Anti-Money Laundering Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“**Anticipated RRIF Loan Disbursement Schedule**” means the schedule set forth in **Exhibit A**, reflecting the anticipated disbursement of proceeds of the RRIF Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (Disbursement Conditions) of this Agreement.

“**Application**” has the meaning provided in the recitals hereto.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1960 and 31 U.S.C. §§ 312, 5311-5313, and 5316-5322), as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**Bankruptcy Related Event**” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall

continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of RRIF Debt Service in accordance with the provisions of Section 9 (Payment of Principal and Interest), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law.

**“Base Case Financial Model”** means a financial model prepared by the Borrower that includes (a) for each six (6) month period (commencing on January 1 and July 1, respectively) through the later of (i) the Final Maturity Date and (ii) the latest final maturity date under any Other RRIF Loan Agreement, a forecast of all Contract Payments, all Contract Payments under (and as defined in) each Other Funding Agreement, and all expenditures and funding obligations of the Borrower or related to the Project, (b) for each six (6) month period (commencing on January 1 and July 1, respectively) through the later of (i) the Final Maturity Date and (ii) the latest final maturity date under any Other RRIF Loan Agreement, a forecast of all RRIF Debt Service, all debt service in respect of the Other RRIF Loans, and all debt service in respect of all other Obligations, and (c) the Project Budget, which model, in each case in clauses (a), (b), and (c) above, shall be based upon assumptions and a methodology provided by the Borrower and acceptable to the RRIF Lender as of the Effective Date, and which model shall be provided to the RRIF Lender as a fully functional Microsoft Excel-based financial model or shall use such other format requested by the RRIF Lender.

**“Borrower”** has the meaning provided in the preamble hereto.

**“Borrower Default Rate Incremental Amount”** means the amount of any interest, included in any amount of RRIF Debt Service due on a Semi-Annual Payment Date or capitalized pursuant to Section 9(b) (*Capitalized Interest Period*), that (a) has accrued and is in excess of the interest that accrued at the RRIF Interest Rate as a result of the application of the Default Rate and (b) is not payable by the Funding Partner in accordance with the Funding Agreement.

**“Borrower Fiscal Year”** means (a) as of the Effective Date, a fiscal year of the Borrower commencing on January 1 of any calendar year and ending on December 31 of such calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior

written notice to the RRIF Lender, as provided in Section 16(d) (*Organizational Documents; Fiscal Year*).

“**Borrower’s Authorized Representative**” means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State of New York are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York.

“**Capital Expenditures**” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.

“**Capitalized Interest Period**” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period.

“**CASA**” means that certain Collateral Accounts and Security Agreement, dated as of the Effective Date, by and among the Borrower, the RRIF Lender, the Collateral Agent, and the Securities Intermediary (as defined therein).

“**CIG**” means that certain Capital Investment Grant awarded by the FTA to the Borrower pursuant to the FFGA.

“**Collateral**” means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (a) the Funding Agreement, including all right, title, and interest of the Borrower in the Contract Payments payable thereunder, (b) the Account, and (c) all Proceeds (as defined in the CASA) and products in whatever form of all or any part of the foregoing items (a) and (b), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments and other funds or amounts on deposit in the Account.

“**Collateral Agent**” means The Bank of New York Mellon, a bank organized under the laws of the state of New York.

“**Congress**” has the meaning provided in the recitals hereto.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

“**Construction-Related Contract Party**” means any Person (other than the Borrower) party to a Construction-Related Contract.

“**Construction-Related Contracts**” means

(a) Master Services Agreement, Contract No. GDC-24-005-HTP, dated as of March 18, 2024, between the Borrower and MPA Delivery Partners;



(b) Design-Build Agreement, dated as of March 11, 2024, between the Borrower and Weeks Marine, Inc.;

(c) Tonnelle Avenue Overhead Bridge and Utility Relocations, Contract GDC23-002, dated as of October 12, 2023, between the Borrower and Conti Civil, LLC;

(d) GDC Agreement GDC-23-001, dated as of September 29, 2023, between the Borrower and Naik Consulting Group, P.C.; and

(e) each other construction-related contract entered into by the Borrower in connection with the New Tunnel from time to time.

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule I**, and (b) any updates thereto included in the Financial Plan most recently submitted to the RRIF Lender pursuant to Section 21(a)(iv)(B) (Financial Plan).

“**Contract Payments**” has the meaning set forth in the Funding Agreement.

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “Controlling” and “Controlled by” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2024 as the base period.

“**Credit Risk Premium**” means a nonrefundable fee in the amount of zero dollars (\$0.00) for each disbursement of the RRIF Loan.

“**Debt Service Payment Commencement Date**” means October 15, 2034.

“**Default**” means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“**Default Rate**” means an interest rate equal to the sum of (a) the RRIF Interest Rate plus (b) two percent (2.00%).

“**Development Default**” means (a) the Borrower fails to diligently prosecute the work related to the Project and, if a Recovery Plan has been provided in accordance with Section 22(d) (Recovery Plan), in accordance with such Recovery Plan, or (b) the Borrower fails to complete the Project by the Projected Substantial Completion Date or, if a Recovery Plan has been provided in accordance with Section 22(d) (Recovery Plan), in accordance with the updated Projected Substantial Completion Date established pursuant to such Recovery Plan.

“**Direct Agreement**” means that certain Direct Agreement (PANYNJ), dated as of the date hereof, among the RRIF Lender, the Borrower and the Funding Partner, and acknowledged and agreed to by the Collateral Agent.

“**Effective Date**” means the date of this Agreement.

“**Electronic Signature**” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 *et seq.*), as amended from time to time.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, all of which shall arise from the following:

(a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or

(c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction;

provided, however, that Eligible Project Costs must be consistent with the Act and all other applicable federal law.

“**Environmental Laws**” has the meaning provided in Section 13(r) (*Environmental Matters*).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. § 1001 *et seq.*), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

“**Event of Default**” has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

“**Event of Loss**” means any event or series of events that causes any portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Federal Fiscal Year**” or “**FFY**” means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**Federal Government**” means the Federal Government of the United States of America and its departments and agencies.

“**Federal Grant Agreements**” means the FFGA, the FSP Grant Agreement, and the RAISE Grant Agreement.

“**Federal Grants**” means the CIG, the FSP Grant, and the RAISE Grant.

“**FFGA**” means that certain Full Funding Grant Agreement (Hudson Tunnel Project, Project No. NY-2024-015-00), dated as of July 8, 2024, by and between the United States of America, acting through the FTA and the Borrower.

“**Final Maturity Date**” means April 15, 2069.

“**Financial Plan**” means the financial plan for each Borrower Fiscal Year to be delivered pursuant to Section 21(a) (*Financial Plan*).

“**Financial Statements**” has the meaning provided in Section 13(w) (*Financial Statements*).

“**Fixed Level Payment**” has the meaning provided in Section 9(c) (*Payment of RRIF Debt Service*).

“**FRA**” means the Federal Railroad Administration, a modal agency of the USDOT.

“**FRA Regional Office**” means the United States Department of Transportation, Federal Railroad Administration, Region II Office.

“**FSP Grant**” means that certain Federal-State Partnership for Intercity Passenger Rail Grant awarded to the Borrower in connection with the Project pursuant to the FSP Grant Agreement.

“**FSP Grant Agreement**” means the agreement, to be entered into between the Borrower and FRA, governing the FSP Grant.

“**FTA**” means the Federal Transit Administration, a modal agency of the USDOT.

“**FTA Project Management Oversight Requirements**” means the requirements and conditions for FTA project management oversight, as set forth in 49 U.S.C. § 5327 and in 49 C.F.R. Part 633.

“**FTA Regional Office**” means the United States Department of Transportation, Federal Transit Administration, Region 2 Office.

“**Fundamental Contract Party**” means any Person (other than the Borrower) party to a Fundamental Contract.

“**Fundamental Contracts**” means the Funding Agreement and the Project Development Agreement.

“**Funding Agreement**” means that certain Hudson Tunnel Project RRIF Loan Funding Agreement, dated as of April 8, 2024, by and between the Funding Partner and the Borrower.

“**Funding Partner**” means the Port Authority of New York and New Jersey, a body corporate and politic, created by compact between the State of New York and the State of New Jersey with the consent of Congress.

“**Funding Partner Default Rate Incremental Amount**” means the amount of any interest, included in any amount of RRIF Debt Service to be capitalized pursuant to Section 9(b) (*Capitalized Interest Period*), that (a) has accrued and is in excess of the interest that accrued at the RRIF Interest Rate as a result of the application of the Default Rate and (b) is payable by the Funding Partner in accordance with the Funding Agreement.

“**GAAP**” means generally accepted accounting principles as defined by the Governmental Accounting Standards Board, or such other nationally recognized professional body, in effect from time to time in the United States of America.

“**GANs**” means any grant anticipation notes issued by the Borrower after the Effective Date.

“**GDC Act**” means the parallel legislation by the State of New York and the State of New Jersey, codified as the Gateway Development Commission Act (2019 N.Y. Laws, Ch. 108 and N.J.S.A. 32:36-1, *et seq.*).

“**GDC Operations Funding Agreement**” means any agreement entered into between or among the Borrower, the State of New York, the State of New Jersey, and/or Amtrak pursuant to Section 11.01 of the Project Development Agreement to provide funding for the Borrower’s annual operating budget.

“**Government Obligations**” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition 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, in each case.

“**Governmental Approvals**” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“**Governmental Authority**” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the states and their respective counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**Indemnitee**” has the meaning provided in Section 17 (*Indemnification*).

“**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“**Level Payment Commencement Date**” means October 15, 2039.

“**Level Payment Period**” means the period commencing on the Level Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash).

“**Lien**” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“**Loan Amortization Schedule**” means the Loan Amortization Schedule set forth in **Exhibit B**, as amended from time to time in accordance with Section 7 (*Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule*).

“**Material Adverse Effect**” means a material adverse effect on (a) the Project (until the Substantial Completion Date) or the Contract Payments, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, (c) the legality, validity or enforceability of any material provision of any RRIF Loan Document or Fundamental Contract, (d) the ability of (1) the Borrower to enter into, perform or comply with any of its material obligations under any RRIF Loan Document or (2) the Funding Partner to enter into, perform, or comply with any of its material obligations under the Funding Agreement, (e) the validity, enforceability or priority of the Liens granted under the CASA on the Collateral in favor of the Collateral Agent (on behalf of the RRIF Lender) or (f) the RRIF Lender’s rights or remedies available under any RRIF Loan Document.

“**Modal Grant Offices**” means the FRA Regional Office and the FTA Regional Office.

“**NEPA**” means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. § 4321 *et seq.*), and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“**NEPA Determination**” means the Record of Decision for the Project issued by the FTA Regional Office and the FRA on May 28, 2021, in accordance with NEPA.

“**New Tunnel**” means the portions of the Project, as defined herein, described in clause (a) of the definition thereof.

“**New York Funding Agreement**” means that certain Service Contract, dated as of March 31, 2024, by and between the State of New York, acting by and through the Director of the Budget of the State of New York, and the Borrower.

“**NJT**” means the New Jersey Transit Corporation, a body corporate and politic and an instrumentality of the State, organized and existing by virtue of the New Jersey Public Transportation Act of 1979, constituting Chapter 150 of the Laws of New Jersey of 1979, as amended and supplemented (N.J.S.A. 27:25-1 *et seq.*).

“**NJT Funding Agreement**” means that certain Hudson Tunnel Project Funding Agreement (RRIF Loan), dated as of March 31, 2024, by and between the Borrower and NJT.

“**Obligations**” means the RRIF Loan, each Other RRIF Loan, the Working Capital Facility, the GANs, and any other indebtedness for borrowed money of the Borrower.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Organizational Documents**” means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“**Other Borrower Financing Documents**” means the indenture, credit agreement or other definitive documents pursuant to which any Obligations (other than the RRIF Loan and the Other

RRIF Loans) are issued or incurred, including any other agreement, instrument and document executed and/or delivered pursuant to or in connection with any of the foregoing.

**“Other Funding Agreements”** means, collectively:

- (a) the NJT Funding Agreement; and
- (b) the New York Funding Agreement.

**“Other Funding Partner”** means (i) with respect to the New York Funding Agreement, the State of New York, acting by and through the Director of the Budget of the State of New York, and (ii) with respect to the NJT Funding Agreement, NJT.

**“Other RRIF Loan”** means each secured loan made by the RRIF Lender to the Borrower on the terms and conditions set forth in the Other RRIF Loan Agreements.

**“Other RRIF Loan Agreements”** means, collectively:

- (a) the RRIF Loan Agreement (NJT Funding Agreement); and
- (b) the RRIF Loan Agreement (New York Funding Agreement).

**“Outstanding RRIF Loan Balance”** means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the RRIF Loan, as determined in accordance with Section 7 (*Outstanding RRIF Loan Balance, Revisions to Exhibit B and Loan Amortization Schedule*).

**“Patriot Act”** means the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

**“Payment Default”** has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

**“Payment Period”** means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

**“Permitted Investments”** means (with respect to the investment of the proceeds of the RRIF Loan or any construction or reserve account established and maintained pursuant to the CASA):

- (a) Government Obligations;
- (b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as

escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;

(c) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest rating categories (without regard to any refinement or gradation of such rating by a numerical modifier or otherwise) for comparable types of obligations by any Rating Agency; and

(e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Project**” means (a) the construction of a new Hudson River Tunnel between New York and New Jersey; (b) the rehabilitation of the existing North River Tunnel under the Hudson River; and (c) Hudson Yards Concrete Casing – Section 3 Long Island Rail Road Emergency Services Building Utility Relocation Early Work associated with the separately funded Hudson Yards Concrete Casing Section 3 project, in each case of clauses (a) through (c) as more fully described in the Federal Grant Agreements.

“**Project Budget**” means the budget for the Project in the aggregate amount of \$[*insert Project budget amount*] attached to this Agreement as **Schedule I** showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs for the Project and the estimated sources and uses of funds for the Project, as amended from time to time subject to the reporting requirements in Section 22(b) (*Monthly Construction Progress Report*).

“**Project Development Agreement**” means that certain Project Development Agreement for Hudson Tunnel Project, dated as of February 3, 2023, by and among Borrower, the State of New York, the State of New Jersey, and Amtrak, as amended by those certain amendments, dated as of May 2, 2023, and as of March 5, 2024.

“**Projected Substantial Completion Date**” means November 9, 2040.

“**RAISE Grant**” means that certain Rebuilding America’s Infrastructure with Sustainability and Equity (RAISE) program grant, awarded to the Borrower in connection with the Project pursuant to the RAISE Grant Agreement.



“**RAISE Grant Agreement**” means that certain Grant Agreement under the Fiscal Year 2023 RAISE Program, dated as of June 4, 2024, by and between FTA and the Borrower.

“**Rating Agency**” means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. § 78c(a)(62)).

“**Recovery Plan**” means a recovery plan with respect to the implementation of the Project that has been prepared by the Borrower in accordance with the FFGA and the FSP Agreement, as applicable, and delivered to the RRIF Lender and the FTA Regional Office on behalf of both Modal Grant Offices.

“**Related Documents**” means the RRIF Loan Documents, the Federal Grant Agreements, and the Fundamental Contracts.

“**Requisition**” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

“**Revised Financial Model**” means an updated version of the Base Case Financial Model, in form and substance satisfactory to the RRIF Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

“**RRIF**” has the meaning provided in the recitals hereto.

“**RRIF Debt Service**” means, with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding RRIF Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency, or similar proceeding with respect to the Borrower) at the RRIF Interest Rate or, as applicable, the Default Rate, in each case, then due and payable on such Semi-Annual Payment Date in accordance with Section 9(c) (*Payment of RRIF Debt Service*).

“**RRIF Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**RRIF Lender**” has the meaning provided in the preamble hereto.

“**RRIF Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 26 (*RRIF Lender’s Authorized Representative*).

“**RRIF Loan**” means the direct loan made by the RRIF Lender to the Borrower on the terms and conditions set forth herein, in a principal amount not to exceed \$1,870,000,000 (excluding capitalized interest), pursuant to the Act to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

“**RRIF Loan Agreement (New York Funding Agreement)**” means that certain RRIF Loan Agreement (New York Funding Agreement), dated as of the date hereof, between the RRIF

Lender and the Borrower, to be supported by certain payments to be provided by the State of New York pursuant to the New York Funding Agreement.

“**RRIF Loan Agreement (NJT Funding Agreement)**” means that certain RRIF Loan Agreement (NJT Funding Agreement), dated as of the date hereof, between the RRIF Lender and the Borrower, to be supported by certain payments to be provided by NJT pursuant to the NJT Funding Agreement.

“**RRIF Loan Documents**” means this Agreement, the RRIF Note, the Direct Agreement, the CASA, the Waiver, and all filings, recordings or registrations required by the RRIF Loan Documents to be filed or made in respect of the CASA.

“**RRIF Note**” means the promissory note delivered by the Borrower substantially in the form of **Exhibit E**.

“**Sanctioned Country**” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

“**Secretary**” means the United States Secretary of Transportation.

“**Semi-Annual Payment Date**” means each April 15 and October 15.

“**SEP Agreement**” means any agreement entered into by the Borrower and any user or operator of any element of the Project, or other governmental entity partnering with the Borrower to support the delivery of any work package associated with the Project.

“**SEP Agreement Party**” means any Person (other than the Borrower) party to a SEP Agreement.

“**Servicer**” means such entity or entities as the RRIF Lender shall designate from time to time to perform, or assist the RRIF Lender in performing, certain duties hereunder.

“**Substantial Completion**” means the later to occur of Amtrak or NJT commencing, or having commenced, revenue operations on both of the elements described in clauses (a) and (b) of the definition of “Project.”

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**Total Project Costs**” means (a) the costs paid or incurred or to be paid or incurred, either by the Borrower or a SEP Agreement Party, in connection with or incidental to the acquisition, design, construction and equipping of the Project, including (solely in respect of the Borrower) legal, administrative, engineering, planning, design, and insurance costs, and costs of issuance; (b) amounts, if any, required by the Other Borrower Financing Documents to be paid into any fund or account upon the incurrence of any Obligations; (c) without duplication of amounts described in clause (a), payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect of any Obligations (other than the RRIF Loan and each Other RRIF Loan); and (d) furniture, fixtures and equipment, and general administrative expenses and overhead of the Borrower.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State of New York.

“**USDOT**” means the United States Department of Transportation.

“**Waiver**” means that certain Waiver and Disclaimer, dated as of the date hereof, among the RRIF Lender, the Collateral Agent, the Borrower, Bank of America, N.A., and the other Persons from time to time party thereto.

“**Working Capital Facility**” means the revolving line of credit facility made available by the Working Capital Facility Lender under the Working Capital Facility Documents, the proceeds of which will be applied to the payment of Total Project Costs, and which shall be secured by the proceeds of certain Federal Grants.

“**Working Capital Facility Documents**” means (a) that certain Revolving Credit Agreement, dated as of July 8, 2024, by and between the Borrower and the Working Capital Facility Lender, (b) that certain Pledge and Security Agreement, dated as of July 8, 2024, by and between the Borrower and the Working Capital Facility Lender, and (c) each other agreement entered into by the Borrower and the Working Capital Facility Lender from time to time pursuant to or in connection with the Working Capital Facility.

**“Working Capital Facility Lender”** means Bank of America, N.A., together with its successors and permitted assigns.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof,” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (Notices) and signed by a duly authorized representative of such party.

Section 3. RRIF Loan Amount. The principal amount of the RRIF Loan (excluding interest that is capitalized in accordance with the terms hereof) shall not exceed \$1,870,000,000. RRIF Loan proceeds shall be disbursed from time to time in accordance with Section 4 (Disbursement Conditions) and Section 12(b) (Conditions Precedent to All Disbursements).

Section 4. Disbursement Conditions

(a) RRIF Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower’s risk and expense, will not constitute Eligible Project Costs, and no RRIF Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. If the Borrower intends to utilize any RRIF Loan proceeds to make progress payments for the Project construction work, the Borrower shall demonstrate to the satisfaction of the RRIF Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the

RRIF Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** to **Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the RRIF Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 (*Disbursement Conditions*), and the conditions set forth in Section 12(b) (*Conditions Precedent to All Disbursements*); provided, however, that no disbursements of RRIF Loan proceeds shall be made on or after the date that is five (5) years after the Substantial Completion Date. The amount of each disbursement of the RRIF Loan, together with all prior disbursements of the RRIF Loan, shall not exceed the amount of the RRIF Loan and shall not exceed the “Maximum Cumulative Drawn Amount” set forth in **Exhibit A** (*Anticipated RRIF Loan Disbursement Schedule*) and corresponding to the date of such disbursement.

(b) The Borrower shall deliver copies of each Requisition to the RRIF Lender, the Servicer (if any) and the FTA Regional Office on behalf of both Modal Grant Offices on or before the first (1<sup>st</sup>) Business Day of each month prior to the month for which a disbursement is requested. Subject to Section 4(d) (*Disbursement Conditions*), if the RRIF Lender does not expressly deny a Requisition, disbursements of funds shall be made on the first (1<sup>st</sup>) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such first (1<sup>st</sup>) day is not a Business Day. Express denial of a Requisition by the RRIF Lender shall be provided substantially in the form attached as **Appendix Two** to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements under this Agreement be made more than once each month.

(c) The Borrower shall not amend the Anticipated RRIF Loan Disbursement Schedule in any manner that would result in a disbursement of RRIF Loan amounts in any month that exceeds the amount reflected in the “Maximum Cumulative Drawn Amount” column for such month in the Anticipated RRIF Loan Disbursement Schedule. The Borrower may amend the Anticipated RRIF Loan Disbursement Schedule to delay any disbursement of the RRIF Loan to a later date than reflected in the then current version of the Anticipated RRIF Loan Disbursement Schedule.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4 (*Disbursement Conditions*), Section 12 (*Conditions Precedent*) or **Exhibit D** (*Requisition Procedures*)), in no event shall the RRIF Lender have any obligation to make any disbursement of proceeds of the RRIF Loan to the Borrower if the RRIF Lender’s ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 5. Term. The term of the RRIF Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash.

Section 6. Interest Rate. The interest rate (the “**RRIF Interest Rate**”) with respect to the outstanding principal balance of the RRIF Loan shall be [\_\_\_\_\_] percent ([\_\_\_\_\_]%) per annum. Interest will be computed on the outstanding principal balance (as well as on any past due interest) from time to time on the basis of a 365-day or 366-day year, as appropriate, for the actual number

of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the outstanding principal balance and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the outstanding principal balance of the RRIF Loan and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived in writing by the RRIF Lender and (b) the date the outstanding principal balance of the RRIF Loan and any interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

Section 7. Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule.

(a) The Outstanding RRIF Loan Balance will be (i) increased on each occasion on which the RRIF Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the RRIF Loan is capitalized pursuant to the provisions of Section 9(b) (Capitalized Interest Period), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding RRIF Loan Balance, by the amount of principal so paid. The RRIF Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding RRIF Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit B** from time to time, in accordance with the principles set forth in Section 10(b) (General Prepayment Instructions) and in **Exhibit C**, to reflect (i) any change to the Outstanding RRIF Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the RRIF Lender may determine is necessary for administering the RRIF Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the RRIF Lender's determination of such matters as set forth on **Exhibit B** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other RRIF Loan Document. The RRIF Lender shall provide the Borrower with a copy of **Exhibit B**, as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other RRIF Loan Documents.

Section 8. Security and Priority.

(a) As security for the RRIF Loan, the Borrower shall pledge, assign and grant to the Collateral Agent for the benefit of the RRIF Lender, a Lien on the Collateral in accordance with the provisions of the CASA.

(b) The Borrower is the legal and beneficial owner of the Collateral. The filing of the financing statements attached to the CASA as Exhibit C in the filing offices set forth in Schedule I of the CASA and the taking of possession or control by the Collateral Agent of such of the Collateral with respect to which a security interest may be perfected only by possession or control will create a valid, perfected and first priority security interest in the Borrower's rights in the Collateral in favor of the Collateral Agent, subject to no other Liens (other than Permitted Liens, as defined in the CASA) and entitled to all the rights, remedies and priorities and benefits afforded by the Uniform Commercial Code and all other applicable law as enacted in any relevant jurisdiction. The Borrower shall promptly take any and all steps that may be necessary, or that the Collateral Agent may reasonably request (acting on the written instructions of the RRIF Lender) to maintain the validity, perfection and first priority position of the Liens on the Collateral (subject only to Permitted Liens, as defined in the CASA) to enable the Collateral Agent or any designee to exercise and enforce its rights, remedies, powers and privileges under this Agreement with respect to such Liens.

(c) The Borrower shall not use Contract Payments to make any payments or satisfy any obligations other than the payment of RRIF Debt Service and fees, expenses and other amounts due and payable under the RRIF Loan Documents. The Borrower shall not apply any portion of the Contract Payments in contravention of the RRIF Loan Documents. The RRIF Loan will be payable from Contract Payments and will be the sole obligation of the Borrower secured by or payable from the Contract Payments.

Section 9. Payment of Principal and Interest.

(a) Semi-Annual Payment Dates. The Borrower agrees to pay the principal of and interest on the RRIF Loan by making payments in accordance with the provisions of this Agreement and the CASA on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date.

(b) Capitalized Interest Period.

(i) Except as expressly provided in Section 9(b)(ii) and Section 9(b)(iii), no payment of the principal of or interest on the RRIF Loan is required to be made during the Capitalized Interest Period. On each April 15 and October 15 occurring during the Capitalized Interest Period (and on the Semi-Annual Payment Date immediately following the end of the Capitalized Interest Period), interest accrued on the RRIF Loan (including interest accrued at the Default Rate) in the six (6) month period ending immediately prior to such date shall be capitalized and added to the outstanding principal amount of the RRIF Loan. Within thirty (30) days after the end of the Capitalized Interest Period, the RRIF Lender shall give written notice to the Borrower stating the Outstanding RRIF Loan Balance as of the close of business on the Semi-Annual Payment Date

immediately following the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other RRIF Loan Documents.

(ii) The Borrower may elect to pay all or a portion of the Funding Partner Default Rate Incremental Amount that would otherwise be capitalized pursuant to Section 9(b)(i) above, which payment shall be made on the Semi-Annual Payment Date as of which such Funding Partner Default Rate Incremental Amount would otherwise be capitalized. The Borrower shall provide written notice to the RRIF Lender at least fifteen (15) days prior to the date on which it makes any such payment (or, if the date on which the Funding Partner becomes liable for the Funding Partner Default Rate Incremental Amount is fewer than fifteen (15) days prior to the next Semi-Annual Payment Date, the date on which the Borrower becomes so liable), which written notice shall specify the amount of the Funding Partner Default Rate Incremental Amount to be paid on such Semi-Annual Payment Date. At any time between delivery of such written notice and the applicable Semi-Annual Payment Date, the Borrower may, without penalty or premium, rescind its announced optional payment by further written notice to the RRIF Lender. Anything in this Section 9(b) to the contrary notwithstanding, the failure by the Borrower to make any optional payment shall not constitute a breach or default under this Agreement.

(iii) Notwithstanding Section 9(b)(i), the Borrower shall pay the amount of any Borrower Default Rate Incremental Amount that would otherwise be capitalized pursuant to Section 9(b)(i) above, which payment shall be made on the Semi-Annual Date as of which such Borrower Default Rate Incremental Amount would otherwise be capitalized pursuant to Section 9(b)(i) above. The Borrower shall provide written notice to the RRIF Lender at least fifteen (15) days prior to the date on which it makes any such payment (or, if the date on which the Borrower becomes liable for the Borrower Default Rate Incremental Amount is fewer than fifteen (15) days prior to the next Semi-Annual Payment Date, the date on which the Borrower becomes so liable), which written notice shall specify the amount of the Borrower Default Rate Incremental Amount to be paid on such Semi-Annual Payment Date; provided, that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's obligation to make any such payment as and when the circumstances requiring such payment have occurred. Each payment pursuant to this Section 9(b)(iii) shall be accompanied by a certificate signed by the Borrower's Authorized Representative containing a calculation in reasonable detail of the amount of such payment.

(c) Payment of RRIF Debt Service.

(i) On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the Borrower shall pay RRIF Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit B**, as the same may be revised as provided in Section 7 (Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization



*Schedule*), which payments shall be made in accordance with Section 9(d) (*Manner of Payment*).

(ii) On each Semi-Annual Payment Date occurring on or after the Level Payment Commencement Date, the Borrower shall pay RRIF Debt Service in the amounts (each a “**Fixed Level Payment**”), as set forth in respect of such Semi-Annual Payment Date on **Exhibit B**, as the same may be revised as provided in Section 7 (*Outstanding RRIF Loan Balance; Revisions to Exhibit B and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(d) (*Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement and the RRIF Note shall be made by wire transfer on or before each Semi-Annual Payment Date in immediately available funds in accordance with payment instructions provided by the RRIF Lender pursuant to Section 36 (*Notices*), as modified in writing from time to time by the RRIF Lender. The Borrower may make any such payment or portion thereof (or direct the Collateral Agent to make such payment) with funds then on deposit in the Account.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the outstanding principal amount of the RRIF Loan and any accrued interest thereon shall be due and payable in full on the Final Maturity Date.

(f) RRIF Note. As evidence of the Borrower’s obligation to repay the RRIF Loan, the Borrower shall issue and deliver to the RRIF Lender, on or prior to the Effective Date, the RRIF Note, substantially in the form of **Exhibit E**, having a maximum principal amount (excluding capitalized interest) of \$1,870,000,000 and bearing interest at the rate set forth in Section 6 (*Interest Rate*).

#### Section 10. Prepayment

(a) Optional Prepayments. The Borrower may prepay the RRIF Loan at any time without penalty or premium, in whole or in part; provided, that each partial prepayment shall be in a minimum principal amount of \$1,000,000. Each prepayment shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the RRIF Lender, which notice shall also specify the amount of unpaid interest accrued to the date of such prepayment on the amount of principal to be prepaid that the Borrower intends to pay concurrently with such prepayment. Such written notice shall be delivered to the RRIF Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the RRIF Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the RRIF Lender. Anything in this Section 10(a) (*Optional Prepayment*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) General Prepayment Instructions. Upon the RRIF Lender’s receipt of confirmation that payment in full of the entire Outstanding RRIF Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of an optional prepayment, the RRIF Lender shall surrender the RRIF Note to the Borrower or its representative at the principal office

of the RRIF Lender or certify to the Borrower that the RRIF Note has been destroyed in accordance with the RRIF Lender's procedures. If the Borrower prepays only part of the unpaid balance of principal of the RRIF Loan, such partial prepayments shall be applied to reduce future payments due with respect to the RRIF Loan ratably (based on the remaining number of Semi-Annual Payment Dates through and including the Final Maturity Date). Absent manifest error, the RRIF Lender's determination of such matters as set forth on **Exhibit B** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other RRIF Loan Document. Any principal amount of the RRIF Loan that is subject to a voluntary prepayment notice (as described in Section 10(a) (Optional Prepayment)) but that is not so paid on the applicable prepayment date shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 11. Compliance with Laws. The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project and all SEP Agreement Parties, to comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including all applicable federal and state laws, rules, regulations and executive orders. The list of federal laws attached as **Exhibit F** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The Modal Grant Offices have oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law and with the Federal Grant Agreements.

Section 12. Conditions Precedent

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the RRIF Lender:

(i) The Borrower shall have duly executed and delivered to the RRIF Lender this Agreement and each other RRIF Loan Document, each in form and substance satisfactory to the RRIF Lender.

(ii) The Borrower shall have delivered to the RRIF Lender certified, complete, and fully executed copies of each Federal Grant Agreement and each Other Borrower Financing Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the RRIF Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived.

(iii) The RRIF Lender shall have received customary legal opinions, each in form and substance satisfactory to the RRIF Lender in its sole discretion, from internal and external counsel to the Borrower (including those opinions set forth on Exhibit G). The RRIF Lender shall also have received customary legal opinions, each in form and substance satisfactory to the RRIF Lender in its sole discretion, from counsel to the Funding Partner (including those opinions set forth in Exhibit A to the Direct Agreement).

(iv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit H** with respect to the Borrower and its principals (as defined in 2 CFR § 180.995).

(v) The Borrower shall have provided evidence to the RRIF Lender's satisfaction, no more than forty five (45), but no less than fourteen (14), days prior to the Effective Date, of the assignment by a Rating Agency of a public rating to the RRIF Loan, which rating shall not have been reduced, withdrawn or suspended as of the Effective Date.

(vi) The Borrower shall have delivered to the RRIF Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit I (A)** as to the satisfaction of certain conditions precedent set forth in this Section 12(a) (Conditions Precedent to Effectiveness) as required by the RRIF Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(vii) The Borrower and the Funding Partner shall have each demonstrated satisfaction of their respective conditions precedent to the effectiveness of the Direct Agreement, including the execution and delivery of all documents required in connection with satisfying such conditions precedent.

(viii) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that the sum of (A) the aggregate principal amount of the RRIF Loan and the Other RRIF Loans, (B) the aggregate amount of the Federal Grants, and (C) the maximum amount committed to the Project by Amtrak, all as reflected in the Base Case Financial Model for the Project and in the Project Budget, are sufficient to pay all Total Project Costs necessary to achieve Substantial Completion, estimated as of the Effective Date.

(ix) The Borrower shall have provided to the RRIF Lender certified, complete, and fully executed copies of each Fundamental Contract (each in form and substance satisfactory to the RRIF Lender), each Construction-Related Contract in effect as of the Effective Date, and each SEP Agreement in effect as of the Effective Date, in each case under this clause (ix) together with any amendments, waivers or modifications thereto that have been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect.

(x) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that (A) it has obtained all Governmental Approvals necessary to execute and deliver, and perform its obligations under the RRIF Loan Documents to which it is a party, (B) it held all Governmental Approvals needed for work related to the Project that was completed prior to the Effective Date, and (C) that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(xi) The Borrower shall have delivered to the RRIF Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Contract Payments are sufficient to meet the Loan Amortization Schedule, and (B) otherwise be in form and substance acceptable to the RRIF Lender.

(xii) The Borrower shall have (A) provided evidence satisfactory to the RRIF Lender that the Borrower is authorized, pursuant to the GDC Act, to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the CASA, without the need for notice to any Person, physical delivery, recordation, filing or further act other than as set forth in clause (B), (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Collateral Agent's Lien on the Collateral (for the benefit of the RRIF Lender) to the extent contemplated by the RRIF Loan Documents or the GDC Act, including delivery of a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, that has been filed with the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code, (C) recorded or filed, or caused to be recorded or filed, with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services, a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, and (D) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any RRIF Loan Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xiii) The Borrower shall have paid in full all invoices delivered by the RRIF Lender (or by advisors to the RRIF Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the RRIF Lender's counsel and advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xiv) The Borrower shall have (A) provided evidence satisfactory to the RRIF Lender of compliance with NEPA, and (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the RRIF Lender of such compliance upon request by the RRIF Lender.

(xv) The RRIF Lender shall have delivered its initial RRIF Lender's Authorized Representative certificate.

(xvi) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Unique Entity Identifier number, and (C) registered with, and obtained confirmation as of the Effective Date of active registration status with

no active exclusions listed in such registration from, the federal System for Award Management (www.SAM.gov).

(xvii) The Borrower shall have delivered to the RRIF Lender (A) certificates of insurance evidencing (1) that the Borrower, the Construction-Related Contract Parties party to any Construction-Related Contracts in effect as of the Effective Date, and any counterparty to a SEP Agreement to which the obligation to obtain and maintain insurance has been delegated, have in effect as of the Effective Date insurance with respect to the Project that meets the requirements of Section 15(f) (*Insurance; Events of Loss*) and (2) that each liability policy (other than professional liability and workers' compensation insurance) reflects the RRIF Lender as an additional insured and (B) at the RRIF Lender's request, copies of such insurance policies.

(xviii) The Borrower shall have provided to the RRIF Lender evidence that the Borrower is duly organized and validly existing under the laws of its jurisdictions of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted and as contemplated in the Related Documents and the Other Borrower Financing Documents, including the following documents, each certified by the Borrower's Authorized Representative: (A) a copy of its Organizational Documents, as in effect on the Effective Date, which Organizational Documents shall each be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the RRIF Loan Documents, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and any RRIF Loan Documents.

(xix) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and the representations and warranties of each of the Borrower and the Funding Partner set forth in each other Related Document and Other Borrower Financing Document to which it is a party shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xx) The Borrower shall have delivered to the RRIF Lender a duly executed certificate from the Collateral Agent in the form attached hereto as **Exhibit J**.

(xxi) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit K** in accordance with 49 CFR §20.100(b).

(xxii) The Borrower shall have provided to the RRIF Lender and the FTA Regional Office on behalf of both Modal Grant Offices records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the RRIF Lender and in sufficient time prior to the Effective Date to permit the RRIF Lender and to the Modal Grant Offices to review such costs.

(xxiii) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the RRIF Lender, all in form and substance satisfactory to the RRIF Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments).

(xxiv) The RRIF Lender shall have received evidence of compliance with 49 U.S.C. § 5333(b) and the regulations promulgated thereunder with respect to the Project (such evidence being a certification letter from the Department of Labor acceptable to the FTA Regional Office).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the RRIF Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement of RRIF Loan proceeds made under this Agreement) until each of the following conditions precedent has been satisfied or waived in writing by the RRIF Lender:

(i) With respect to any disbursement of the RRIF Loan on or after April 1, 2025, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 21(a) (*Financial Plan*).

(ii) To the extent not previously delivered to the RRIF Lender, the Borrower shall have delivered to the RRIF Lender certified, complete and fully executed copies of any Federal Grant Agreement or Other Borrower Financing Document, including any amendment, modification or supplement thereto, entered into after the Effective Date.

(iii) To the extent not previously delivered to the RRIF Lender, the Borrower shall have provided certified copies of (i) all Construction-Related Contracts and SEP Agreements, in each case, including any amendment, modification or supplement thereto and related performance security instrument, entered into after the Effective Date, (ii) any amendment, modification or supplement to any Fundamental Contract, and (iii) any other Related Document.

(iv) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development and construction of the Project have been issued and are in full force and effect.

(v) Each of the insurance policies obtained by the Borrower, the Construction-Related Contract Parties or the SEP Agreement Parties in satisfaction of the conditions in Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) is in full force

and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vi) At the time of, and immediately after giving effect to, any disbursement of RRIF Loan proceeds then currently requested, (A) no Default or Event of Default hereunder, and no event of default (howsoever described or designated) under any other Related Document shall have occurred and be continuing, and (B) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of the Borrower under any other Related Document, in each case, shall have occurred and be continuing.

(vii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and the representations and warranties of each of the Borrower and the Funding Partner set forth in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the RRIF Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(viii) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the RRIF Lender.

(ix) The Borrower shall have delivered to the RRIF Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the RRIF Lender.

(x) The Borrower shall have paid in full all invoices received from the RRIF Lender (or from advisors to the RRIF Lender that have direct billing arrangements with the Borrower) as of the date of disbursement of the RRIF Loan, for the reasonable fees and expenses of the RRIF Lender's counsel and advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xi) The Borrower shall have paid in full, at least three (3) Business Days prior to the date of disbursement of the RRIF Loan, the Credit Risk Premium in respect of the RRIF Loan proceeds to be disbursed therewith.

Section 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (*Officers' Authorization*) and Section 13(k) (*Credit Ratings*), as of each date on which any disbursement of the RRIF Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York under the GDC Act and is validly existing under the laws of the State of New York and the State of New Jersey, has full legal right, power and authority to

enter into the Related Documents then in existence, to execute and deliver the RRIF Note, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents by the Borrower and the fulfillment of or compliance with the terms and conditions of the Related Documents by the Borrower will not (i) conflict with the Borrower's Organizational Documents (including the GDC Act), (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower other than the Liens on the Collateral provided for in the CASA.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents in effect as of any date on which this representation and warranty is made, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by such Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of such Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting any element of the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents or the Other Borrower Financing Documents.



As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting any element of the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting any other party to a Fundamental Contract except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Contract Payments in amounts sufficient to meet the Borrower's payment obligations hereunder. The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The CASA establishes in favor of the Collateral Agent (on behalf of the RRIF Lender) the valid and binding Liens on the Collateral that it purports to create, and no physical delivery, recordation, filing, notice or further act is required to establish such Liens other than the filing of a UCC-1 financing statement with the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code and the taking of possession or control by the Collateral Agent of such of the Collateral with respect to which a security interest may be perfected only by possession or control. Such Liens are in full force and effect and there are no other Liens on or in respect of the Collateral. The Borrower has duly and lawfully taken all actions required under this Agreement, the other RRIF Loan Documents, and applicable laws for the pledge of, and the grant of a security interest in, the Collateral pursuant to the CASA. The Borrower is not in breach of any covenants set forth in Section 15(a) (*Securing Liens*) or in the RRIF Loan Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments (including the above-referenced UCC-1 financing statement) have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Collateral in favor of the Collateral Agent (on behalf of the RRIF Lender) to the extent contemplated by the RRIF Loan Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any RRIF Loan Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. The Borrower is not aware of any non-compliance by any SEP Agreement Party or any of its or their contractors or subcontractors on any element of the Project with the applicable requirements of 2 CFR Part 180.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Federal Requirements. The Borrower has complied, with respect to the Project, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(k) Credit Ratings. The RRIF Loan has received a public rating from at least one (1) Rating Agency, and written evidence of such rating has been provided to the RRIF Lender prior to the Effective Date, and such rating has not been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of the Borrower under any Related Document has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals necessary as of any date on which this representation and warranty is made for the then-current stage of development and construction of the Project have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Fundamental Contracts; SEP Agreements; Construction-Related Contracts. Each Fundamental Contract, SEP Agreement and Construction-Related Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each such Fundamental Contract, SEP Agreement, and Construction-Related Contract (other than any notice to proceed under a Construction-Related Contract that, as of the applicable date, is not intended to have been issued by the Borrower in accordance with the terms of such Construction-Related Contract) have been satisfied. The Borrower has delivered to the RRIF Lender a fully executed, complete, and correct copy of each such Fundamental Contract, SEP Agreement and Construction-Related Contract (including, in each case, all exhibits, schedules, and other attachments) that is in effect, including any amendments or modifications thereto. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Fundamental Contract Party, SEP Agreement Party or Construction-Related Contract Party, the right to terminate such Fundamental Contract, SEP Agreement or Construction-Related Contract, as applicable. The Borrower is not in breach of, or in default under, any Fundamental Contract, and is not in breach of, or in default under, any material term in any SEP Agreement or Construction-Related Contract. To the knowledge of the Borrower, no Fundamental Contract Party is in breach of, or in default under, any Fundamental Contract. To the knowledge of the Borrower, no other SEP Agreement Party or Construction-Related Contract Party is in breach of, or in default under, any material term in any SEP Agreement or Construction-Related Contract, as applicable.

(o) Information. The information furnished by the Borrower to the RRIF Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower nor, to the knowledge of the Borrower, any Construction-Related Contract Party or SEP Agreement Party is a Sanctioned Person.

(ii) None of the Borrower nor, to the knowledge of the Borrower, any Construction-Related Contract Party or SEP Agreement Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal.

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower, Construction-Related Contract Party or SEP Agreement Party, with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the RRIF Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(q) Compliance with Law. The Borrower is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(r) (*Environmental Matters*)), including those set forth on **Exhibit F**, to the extent applicable. To the Borrower's knowledge, each Construction-Related Contract Party and SEP Agreement Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit F**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by (i) the Borrower or (ii) to the Borrower's knowledge, any Construction-Related Contract Party or SEP Agreement Party other than, in each case, notices of violations that are immaterial.

(r) Environmental Matters. Each of the Borrower and, to the Borrower's knowledge, each Construction-Related Contract Party and SEP Agreement Party is in compliance

with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice “Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects,” 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> (“**Environmental Laws**”). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower with any such Environmental Law or Governmental Approval. The Borrower has provided to the RRIF Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower’s or the Project’s compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(s) Insurance. The Borrower is in compliance with all of its insurance obligations required under each Related Document and each Construction-Related Contract to which it is a party as of any date on which this representation and warranty is made. To the Borrower’s knowledge, each SEP Agreement Party and each Construction-Related Contract Party is in compliance with all insurance obligations required under such SEP Agreement or such Construction-Related Contract, as applicable, as of any date on which this representation and warranty is made.

(t) No Liens. Except for the Liens granted pursuant to the CASA, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Collateral.

(u) Intellectual Property. The Borrower owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower’s knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available “off-the-shelf” software, to the Borrower’s knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(v) Investment Company Act. The Borrower is not, and after applying the proceeds of the RRIF Loan will not be, required to register as an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and is not “controlled” by a company required to register as an “investment company” under the Investment Company Act of 1940, as amended.

(w) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the RRIF Lender pursuant to Section 21(b) (Financial Statements) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(x) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

(y) ERISA. Neither the Borrower nor any ERISA Affiliate maintains, sponsors, contributes to (or is required to contribute to) or otherwise has any liability in respect of any plan or other arrangement that is (i) subject to Title IV or Section 302 ERISA, or Section 412 of the Tax Code or (ii) a “multiemployer plan” (within the meaning of Section 3(37) of ERISA).

(z) Sufficient Funds. The aggregate of (i) the undrawn portion of the RRIF Loan, (ii) the undrawn portion of the Other RRIF Loans, (iii) all funds that are undrawn but fully and completely committed under the Other Borrower Financing Documents, and (iv) without duplication of the amounts described in clause (iii), funds committed and/or awarded in respect of each Federal Grant by the applicable Modal Grant Office, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(aa) Sovereign Immunity. (i) Pursuant to (A) Section 6 of the State of New York’s version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced, subject to the applicable limitations set forth in such Section 6, and (B) Section 6 of the State of New York’s version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement or any other Related Document in effect from time to time presented in accordance with the applicable provisions set forth in such Section 6 and other applicable laws of the State of New York, including without limitation Section 8 of the New York Court of Claims Act, and (ii) pursuant to (A) Section 23 of the State of New Jersey’s version of the Gateway Development Commission Act (N.J.S.A. 32:36-23), the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced, subject to the limitations set forth in such Section 23, and (B) Section 29 of the State of New Jersey’s version of the Gateway Development Commission Act (N.J.S.A. 32:37-2), sovereign immunity shall not bar an action to enforce a claim

based on a breach of this Agreement or any other Related Document in effect from time to time presented in accordance with such Section 29.

(bb) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

Section 14. Representations and Warranties of RRIF Lender. The RRIF Lender represents and warrants that:

(a) Power and Authority. The RRIF Lender has all requisite power and authority to make the RRIF Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the RRIF Lender, and are legally valid and binding agreements of the RRIF Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the RRIF Lender executing each of the Related Documents to which the RRIF Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the RRIF Lender.

Section 15. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the RRIF Note and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower, unless the RRIF Lender waives compliance in writing:

(a) Securing Liens. The Borrower agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments, powers, assignments, amendments, and documents, and take all further action as the Collateral Agent or the RRIF Lender shall, in their reasonable discretion, deem necessary or appropriate to ensure creation of Liens and to perfect and maintain perfected the Liens created and/or perfected under the CASA and under the other Security Documents (as defined in the CASA), to enable the Collateral Agent and RRIF Lender to enforce their rights and remedies thereunder, and to carry into effect the purposes thereof or better assure and confirm the validity, enforceability and priority of the Liens on the Collateral. Without limiting the generality of the foregoing, the Borrower shall file or refile and/or deliver to the Collateral Agent from time to time, when necessary or requested, financing statements (including UCC-3 financing statements), powers of attorney, certificates, and other assurances or instruments as the Collateral Agent or the RRIF Lender shall reasonably request. All of the foregoing shall be at the sole cost and expense of the Borrower.

(b) Copies of Documents.

(i) At least ninety (90) days prior to the incurrence or issuance of any Obligations that satisfy the requirements of Section 16(a) (Indebtedness), and therefore do not require RRIF Lender consent, the Borrower shall notify the RRIF Lender unless such issuance consists solely of a refinancing on the same terms and conditions (other than interest rate) as the indebtedness being refinanced, in which case the above-referenced

notice may be provided forty-five (45) days prior to the incurrence or issuance of such Obligations. At least thirty (30) days prior to the incurrence or issuance of any such Obligations, the Borrower shall provide to the RRIF Lender (A) a copy of the Other Borrower Financing Documents (or other comparable transaction or offering documents) applicable to such Obligations and (B) a Revised Financial Model that takes into account the proposed Obligations, which Revised Financial Model shall reflect and be based on the actual amortization schedules for such proposed Obligations and all Obligations then outstanding in accordance with their respective terms and shall otherwise be in form and substance satisfactory to the RRIF Lender. The Borrower shall provide to the RRIF Lender a fully executed or final version of each such Other Borrower Financing Document (or other comparable transaction documentation) within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the RRIF Lender, promptly after the sending or receipt thereof, copies of (A) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project, the RRIF Loan or any other Obligations issued or incurred by the Borrower, (B) all notices and other written communications received by the Borrower from the Collateral Agent, (C) all reports, notices and other written materials required to be sent to the lenders or holders (or any agent or trustee appointed on their behalf) pursuant to the Other Borrower Financing Documents, and (D) all notices delivered by or to the Borrower relating to any of the Fundamental Contracts; unless, in each case, the RRIF Lender notifies the Borrower in writing that any such reports, notices and/or other written materials no longer need to be provided.

(iii) Except as otherwise agreed by the RRIF Lender in writing, and without limiting the Borrower's obligations or the RRIF Lender's rights under Section 16(b) (*No Lien Extinguishment; Adverse Amendments*), the Borrower will provide to the RRIF Lender (A) copies of any new Related Document or any proposed amendments, modifications, replacements of, or supplements to any Related Document or any Other Borrower Financing Document (other than proposed amendments, modifications, replacements or supplements that are ministerial in nature and do not change any substantive provision of such Related Document or such Other Borrower Financing Document) at least (1) ninety (90) days in the case of any amendment to the Funding Agreement and (2) thirty (30) days in the case of any other Related Document or amendment thereto (provided that the Borrower shall not be required to deliver copies of draft amendments to any Federal Grant Agreement) or any amendment to an Other Borrower Financing Document, in each case prior to the proposed effective date thereof, and (B) complete, correct and fully executed copies of any such new Related Document or amendment, modification or supplement to, or replacement of, any Related Document or any Other Borrower Financing Document within five (5) Business Days after execution thereof.

(iv) If the Borrower enters into a Construction-Related Contract or SEP Agreement after the Effective Date, the Borrower shall promptly provide to the RRIF

Lender an executed version of such Construction-Related Contract or SEP Agreement, as applicable, together with any related contracts, side letters or other understandings.

(v) Without in any way limiting the requirements of Section 16(d) (Organizational Documents), the Borrower shall provide to the RRIF Lender (A) copies of any proposed amendments, modifications, replacements of, or supplements to (1) the GDC Act, where Borrower has knowledge of such proposed amendment, modification, replacement or supplement, and (2) the bylaws of the Borrower, each at least thirty (30) days prior to the proposed effective date thereof or with respect to (1), such shorter period of time necessary based on when the Borrower became aware thereof, and (B) complete, correct and fully executed copies of any amendment, modification or supplement to, or replacement of, the same within five (5) Business Days after execution thereof.

(vi) The Borrower shall provide to the RRIF Lender copies of (A) its operating budget, as adopted by its board of commissioners, (B) any amendments, modifications, replacements of, or supplements to, such operating budget, and (C) each funding agreement related to its operating budget, in each case of clauses (A) – (C), within five (5) Business Days after execution or adoption thereof, as applicable.

(c) Use of Proceeds. The Borrower shall use the proceeds of the RRIF Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents. The Borrower shall use proceeds of the RRIF Loan solely to fund costs of the New Tunnel.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, in compliance with the Project Development Agreement, and in accordance with the highest standards of the design, engineering, and construction industries for projects of similar size and importance as the Project.

(ii) The Borrower shall comply with, and cause each SEP Agreement Party to comply with, 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(e) Operations and Maintenance.

(i) The Borrower shall enforce its rights under the Project Development Agreement (and any other agreement to which the Borrower is a party from time to time with Amtrak that is relevant to the operation or maintenance of the Project) to cause Amtrak to (A) operate and maintain the Project (1) economically and efficiently and in a reasonable and prudent manner and (2) substantially in accordance with all applicable laws, regulations, standards and guidelines, and (B) maintain the Project in good repair, working order and condition and in accordance with the requirements of all applicable laws, regulations, standards and guidelines, including those of FRA.



(ii) The Borrower shall comply, and shall cause Amtrak and NJT to comply, with the requirements of 49 U.S.C. § 22402(h)(1)(A) and (B).

(f) Insurance; Events of Loss.

(i) The Borrower shall at all times maintain insurance with responsible insurers, in amounts and with coverages as are customarily maintained in the United States of America by entities similar to the Borrower, or as is required under any Related Document, Construction-Related Contract or applicable law. During the construction of the Project, the Borrower shall maintain or cause to be maintained appropriate casualty and liability insurance covering the Borrower and the Project, including a builders all-risk policy and pollution and other environmental liability and remediation related coverage. The Borrower shall cause each Construction-Related Contract Party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Construction-Related Contract.

(ii) The Borrower shall cause all liability insurance policies that it maintains and that each Construction-Related Contract Party maintains, other than professional liability and workers' compensation insurance, to reflect the RRIF Lender as an additional insured.

(iii) If an Event of Loss shall occur with respect to the Project or any part thereof prior to the transfer of the Project to Amtrak as contemplated in the Project Development Agreement, the Borrower shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers, Construction-Related Contract Parties, SEP Agreement Parties, and Governmental Authorities, as applicable, in respect of such event and (B) pay or apply all loss proceeds stemming from such event to rebuild, repair or replace the Project in accordance with all applicable laws and within a reasonable time period; provided, however, that loss proceeds must in any event be applied in accordance with all applicable federal disposition rules, including those set forth in the Federal Grant Agreements and 2 CFR Part 200.

(iv) Following the transfer of ownership of the Project to Amtrak, if an Event of Loss shall occur with respect to the Project or any part thereof, the Borrower shall diligently pursue all of its contractual and other rights to cause Amtrak to perform or cause to be performed all necessary repairs to any damaged portions of the Project, to obtain funding to perform such repairs, and to pursue all applicable insurance claims under the insurance policies procured and maintained by Amtrak.

(g) Notices.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the RRIF Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit L**;

(B) Ratings Changes: any change in the rating assigned to the RRIF Loan or any other Obligations (disregarding Other RRIF Loans) by any Rating Agency that has provided a rating on such indebtedness, the Borrower, or the Contract Payments, provided, that with respect to other Obligations, a single notice shall be provided for purposes of this Agreement and each Other RRIF Loan Agreement (and no notice is required hereunder in respect of any Other RRIF Loan);

(C) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(D) Other Defaults: any default or event of default on the part of the Borrower or any other party under any Related Document, Construction-Related Contract, SEP Agreement or Other Borrower Financing Document;

(E) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect and any material changes in the status of such litigation, suit, action or claim and (2) any judgments against the Borrower that are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or by funds immediately available to the Borrower and set aside for such purpose within the Borrower's operating budget, either individually or in the aggregate;

(F) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(G) Environmental Notices: any notice of material violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(H) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(I) Contract Payments: if the Funding Partner has not made any transfer of a Contract Payment to the Collateral Agent that is required under the Funding Agreement by the time required under the Funding Agreement;

(J) **Project Changes:** any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of forecasted Eligible Project Costs or (2) any change to the schedule for the Project in excess of five percent (5%) of the total number of days reflected in the Construction Schedule;

(K) **2 CFR Notices:** (1) that any of the information set forth in the certificate provided pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the RRIF Loan as described in 2 CFR § 200.113, and the Borrower shall require its subcontractors to provide it notice of any such violation;

(L) **Other Loan Reporting Requirements:** copies of notices delivered to any provider of additional Obligations (other than a RRIF Loan) pursuant to the applicable Other Borrower Financing Documents; and

(M) **Other Adverse Events:** the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the RRIF Lender with any further information reasonably requested by the RRIF Lender from time to time concerning the matters described in Section 15(g)(i) (*Notices*).

(h) **Remedial Action.** Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(g)(i) (*Notices*) (other than in Section 15(g)(i)(A) (*Substantial Completion*) or Section 15(g)(i)(B) (*Ratings Changes*) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the RRIF Lender setting forth the actions the Borrower proposes to take with respect thereto.

(i) **Maintain Legal Structure.** The Borrower shall maintain its existence as a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York under the GDC Act. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(j) **Annual Rating.** The Borrower shall, commencing in 2025, no later than the last Business Day of June of each year during the term of the RRIF Note, at no cost to the RRIF Lender, provide to the RRIF Lender a public rating on the RRIF Note, together with the rating report or letter delivered by such Rating Agency in connection with each such rating, in each case prepared no earlier than June 1 of such year.

(k) **Accounts; Permitted Investments.**

(i) The Borrower shall maintain the Account and any other accounts established pursuant to the CASA or any Other Borrower Financing Document for so long as the Obligations to which any such account relates remains outstanding.

(ii) If any Other Borrower Financing Documents establish reserve accounts and reserve requirements, the Borrower shall cause such reserve accounts to be funded in such amounts and under such conditions as are required by the applicable Other Borrower Financing Documents.

(iii) Amounts on deposit in the Account and in any other accounts described above shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the Account with respect to RRIF Debt Service, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the Account in respect of other amounts payable hereunder, not later than the date such other amounts are due and payable hereunder, (C) with respect to Permitted Investments maintained in an account established under an Other Borrower Financing Document for the repayment of principal or interest with respect to other Obligations, the next date on which principal and/or interest is due and payable with respect to any such Obligations, and (D) with respect to any reserve account or the construction account, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from such account. The Borrower shall, promptly but in any event within five (5) days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(l) Fundamental Contracts. The Borrower shall diligently exercise its rights and enforce its remedies under each Fundamental Contract. The Borrower shall actively monitor the Funding Partner's compliance with the Funding Agreement and shall promptly notify the RRIF Lender of any events and circumstances that could reasonably be expected to result in the Funding Partner's failure to perform its material obligations under the Funding Agreement. In connection with any potential funding shortfall under the Funding Agreement, the Borrower shall exercise any and all rights under the Funding Agreement to cause the Funding Partner to act to cure or avoid any such funding shortfall. The Borrower shall cooperate with the RRIF Lender in connection with the RRIF Lender's exercise of its rights and remedies under the Direct Agreement.

(m) Compliance with Law. The Borrower shall comply (i) in all material respects with all applicable federal, State of New York and State of New Jersey laws, including all items set forth in **Exhibit F**, to the extent applicable, and (ii) with the terms and conditions of the Federal Grant Agreements.

(n) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the Collateral or any portion thereof, including the Contract

Payments; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(o) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the RRIF Lender evidence of such active registration status with no active exclusions listed in such registration (a single notification being sufficient for purposes of complying with this Agreement and each Other RRIF Loan Agreement), in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash.

(p) Immunity. Consistent with Section 6 of the State of New York's version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), the Borrower agrees that it is immune from liability under the law of the State of New York as though it were the State of New York, except to the extent that such immunity is waived by the State of New York under Section 8 of the New York Court of Claims Act, and the Borrower irrevocably agrees that it will not assert immunity from claims made by the RRIF Lender against the Borrower to enforce this Agreement or any other Related Document under New York State law to the extent immunity for such claim is waived pursuant to the Gateway Development Commission Act and Section 8 of the New York Court of Claims Act as though the Borrower were the State of New York and the RRIF Lender has complied with the applicable New York State law. Further, consistent with Section 29 of the State of New Jersey's version of the Gateway Development Commission Act (N.J.S.A. 32:37-2), the Borrower agrees that it is immune from liability in the State of New Jersey in the same manner and to the same extent as is the State of New Jersey under the provisions of the "New Jersey Tort Claims Act", N.J.S. 59:1-1 et seq. and the "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq., and the Borrower irrevocably agrees that it will not assert immunity from claims made by the RRIF Lender against the Borrower to enforce this Agreement or any other Related Document under New Jersey State law to the extent immunity for such claims is waived in accordance with the State of New Jersey's version of the Gateway Development Commission Act and the New Jersey Contractual Liability Act as though the Borrower were the State of New Jersey and the RRIF Lender has complied with the applicable New Jersey State law.

(q) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the RRIF Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(r) Cargo Preference Act. Pursuant to 46 CFR Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with RRIF Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States of America or within thirty (30) Business Days following the date of loading for shipments originating outside the United States of America, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the RRIF Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(s) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

(t) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit M** hereto.

(u) Buy America

(i) The Borrower agrees that steel, iron, and manufactured products used in the Project are subject to both 49 U.S.C. § 5323(j), as implemented by FTA, and 49 U.S.C. § 22905, as implemented by FRA. The Borrower acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 5323(j)(1) or 49 U.S.C. § 22905(a)(1) nor a finding under either 49 U.S.C. § 5323(j)(2) or 49 U.S.C. § 22905(a)(2).

(ii) The Borrower agrees that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, FTA, and FRA. The Borrower acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(v) Employee Protection.

(i) In accordance with 49 U.S.C. § 22402(h)(3)(A), the Borrower shall comply with the standards of 49 U.S.C. § 24312 as in effect on September 1, 2002, with respect to the Project in the same manner that Amtrak is required to comply with such standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a).

(ii) In accordance with 49 U.S.C. § 22402(h)(3)(B), the Borrower shall make fair and equitable arrangements, in accordance with 49 U.S.C. § 22404, to protect the interests of any employees who may be adversely affected by actions pursuant to, or as a consequence of, this Agreement, including the arrangements prescribed by the United States Secretary of Labor on July 6, 1976, and set forth on **Exhibit N** hereto.

(w) Direct Agreement. Where in the Direct Agreement a covenant or agreement of the Funding Partner is contingent upon a notice or request from the Borrower, the Borrower shall make such notice or request, as applicable, promptly, and in any event within two (2) Business Days, after receipt of notice from the RRIF Lender requesting that the Borrower make such notice or request.

(x) Borrower's Operating Budgets.

(i) The Borrower shall include a financing cost line item in each proposed annual operating budget that it submits pursuant to Section 11.01 of the Project Development Agreement, which line item shall be in an amount sufficient to make all payments in respect of indebtedness (including any amounts under the RRIF Loan Documents) that the Borrower reasonably anticipates will or may be paid from amounts made available pursuant to its operating budget.

(ii) Upon the occurrence of any Event of Default that results in, or that is reasonably expected to result in, a Borrower Default Rate Incremental Amount, the Borrower shall (A) if necessary, take all steps necessary or desirable to cause its then current operating budget to be amended to include any Borrower Default Rate Incremental Amount payable or reasonably expected to become payable in such Borrower Fiscal Year as a result of such Event of Default, (B) if applicable, include in its proposed operating budget for the succeeding Borrower Fiscal Year any Borrower Default Rate Incremental Amount payable or reasonably expected to become payable in such Borrower Fiscal Year and take all steps necessary or desirable to obtain the approval of its board of commissioners for such proposed budget amount, and (C) provide written notice to the RRIF Lender regarding any action taken by its board of commissioners in respect of the foregoing.

Section 16. Negative Covenants. The Borrower covenants and agrees as follows until the date the RRIF Note and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower, unless the RRIF Lender waives compliance in writing:

(a) Indebtedness.

(i) The Borrower shall not, without the prior written consent of the RRIF Lender, issue or incur indebtedness of any kind that is secured, in whole or in part, by all or any portion of the Collateral or that is otherwise payable, in whole or in part, from Contract Payments.

(ii) The Borrower shall not issue any Obligations (including (1) any GANs, (2) any extension of any GANs, or (3) any amendment to the Working Capital Facility or any GANs that would increase the principal amount available or outstanding thereunder) without the prior written consent of the RRIF Lender, unless such indebtedness satisfies each of the following conditions:

(A) such indebtedness is secured solely by proceeds of the Federal Grants or other collateral that does not include or impair any portion of the Collateral;

(B) the trustee or agent (on its own behalf and on behalf of the lenders or holders) with respect to such indebtedness shall have executed and delivered to the RRIF Lender a fully executed joinder to the Waiver (in the form attached to the Waiver);

(C) such indebtedness shall not be subject to acceleration, whether following a default or event of default or in other circumstances;

(D) the aggregate sum of (1) the principal of such indebtedness plus (2) the amount, if any, to be set aside in a reserve account to pay interest during construction on such indebtedness shall not exceed the maximum amount of Federal Grants pledged and available to secure repayment of such indebtedness;

(E) if interest thereon is not paid on a current basis from Federal Grant proceeds that have been appropriated and are available to the Borrower or from funds immediately available to the Borrower and set aside for such purpose in the Borrower's then current operating budget, interest accrued on such indebtedness shall either be (1) capitalized until the date on which the Borrower begins receiving payment of the revenues pledged to repay such indebtedness or (2) paid from a capitalized interest reserve funded from the proceeds of such indebtedness; and

(F) the final maturity date for such indebtedness shall not be later than the final payment date for the Federal Grants or such other funds that do not include any portion of the Collateral, in each case that constitute the collateral for, or source of funds for repayment of, such indebtedness.

Notwithstanding the foregoing, the Borrower may extend the Working Capital Facility for one or more time periods but in no event beyond the Substantial Completion Date without the prior written consent of the RRIF Lender, so long as (i) the Waiver at all times remains in full force and effect against each party thereto, (ii) the amount available under the Working Capital Facility during such extension shall not at any time exceed the remaining available amount under the FFGA, and (iii) the terms and conditions of the



Working Capital Facility Documents are in all material respects the same as those reflected in the Working Capital Facility Documents as of the Effective Date, other than changes to pricing, tenor (subject the time limitation noted above), interest rate mechanics, and bank regulatory provisions (including increased costs, tax withholding, indemnification, OFAC, sanctions, anti-money laundering, and “know your customer” provisions).

(iii) The Borrower shall deliver to the RRIF Lender the documentation and information described in Section 15(b)(i) (Copies of Documents) by the time set forth in Section 15(b)(i) (Copies of Documents), prior to the incurrence or issuance of any indebtedness permitted under this Section 16(a) (Indebtedness).

(b) No Lien Extinguishment; Adverse Amendments.

(i) The Borrower shall not, and shall not permit any Person to, without the prior written consent of the RRIF Lender, either extinguish, impair, or transfer the Liens on the Collateral granted pursuant to the CASA.

(ii) The Borrower shall not terminate, assign, amend, modify, replace, or supplement the Funding Agreement without the prior written consent of the RRIF Lender, except (1) to modify the schedule of Contract Payments in accordance with Section 2.01(g) of the Funding Agreement to cause such schedule to reflect changes to **Exhibit B (RRIF Debt Service)** implemented by the RRIF Lender and (2) to amend and restate the Funding Agreement to reflect the changes (and only the changes) set forth in Section 6.1 of the Direct Agreement. Without prior written consent of the RRIF Lender, the Borrower shall not terminate the Project Development Agreement or assign, amend, modify, replace, or supplement the Project Development Agreement in a manner that could adversely affect (A) the ability of the Borrower to comply with its requirements hereunder or under any other RRIF Loan Document, (B) the ability of any other party to the Project Development Agreement to comply with such party’s requirements under the Project Development Agreement, (C) the ability of the Borrower to complete the Project, or (D) the RRIF Lender (in the RRIF Lender’s determination) in connection with the RRIF Loan.

(c) No Prohibited Liens.

(i) Except for the Liens granted pursuant to the CASA, the Borrower shall not create, incur, assume or permit to exist any Lien on the Collateral or the Borrower’s rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Fundamental Contract and shall not permit a Lien to encumber the Borrower’s rights or privileges under any such Fundamental Contract, except pursuant to the CASA.

(ii) The Borrower shall not (A) create, incur, or assume any Lien on the real property or real property interests included in the Project or (B) create, incur, assume or permit to exist, any Lien on any part of the Project not constituting real property, other

than (in the case of clause (B)) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(iii) The Borrower shall not, without the prior written consent of the RRIF Lender, collaterally assign, pledge, or grant a Lien on any right, title or interest of the Borrower, whether now owned or hereafter acquired or arising, in or to (A) the Project Development Agreement, (B) any GDC Operations Funding Agreement, (C) any amounts paid or payable to the Borrower pursuant to any GDC Operations Funding Agreement, (D) any account in which such payments under any GDC Operations Funding Agreement is or may be deposited, or (E) any proceeds of the foregoing in whatever form; provided, that this Section 16(c) shall not restrict the Borrower from using amounts paid to the Borrower under any GDC Operations Funding Agreement to pay the Working Capital Lender amounts owed with respect to any loans or other amounts under the Working Capital Facility (including any extension thereof in conformance with Section 16(a)(ii)).

(d) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (or, with respect to the GDC Act, propose or support any such amendment or modification), other than any amendment or modification that (A) has been delivered to the RRIF Lender in accordance with Section 15(b)(v) (*Copies of Documents*) and (B) is not adverse to the interests of the RRIF Lender under the RRIF Loan Documents or in the Collateral, without the prior written consent of the RRIF Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except (with respect to this sub-clause (ii)) with thirty (30) days' prior written notice to the RRIF Lender.

(e) No Payment with Federal Funds. The Borrower shall not pay any portion of RRIF Debt Service nor any other amount to the RRIF Lender or to the Federal Government pursuant to the RRIF Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrower may prepay the RRIF Loan in whole or in part, pursuant to, and in accordance with, Section 10 (Prepayment), with the proceeds of a validly issued federal credit instrument.

(f) Acquisitions; Change in Legal Structure; Sale of Assets; Transactions with Third Parties. The Borrower shall not, and shall not agree to:

(i) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person (excluding purchases or other acquisitions of office inventory or equipment, each in the ordinary course of business);

(ii) reorganize, consolidate with, or merge into another Person;

(iii) sell, lease, or assign its rights in and to the Project or in and to a material portion of the assets constituting the Project; provided, that this clause shall not

restrict the Borrower's right or obligation to transfer the Project to Amtrak pursuant to and in accordance with the Project Development Agreement; or

(iv) otherwise engage in a transaction with any other Person (including any other Governmental Authority of or in the State of New York or of or in the State of New Jersey) to the extent such transaction could reasonably be expected to have a Material Adverse Effect.

(g) No Defeasance of RRIF Note. The Borrower shall not defease the RRIF Note without the prior written consent of the RRIF Lender.

(h) OFAC Compliance.

(i) The Borrower shall not:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the RRIF Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement, the other Related Documents and the Construction-Related Contracts; or

(C) make a payment, directly or indirectly, to any Fundamental Contract Party, a SEP Agreement Party, or Construction-Related Contract Party that (1) to the Borrower's knowledge, has violated any of the laws referenced in Section 16(h)(i) (*OFAC Compliance*) or (2) is a Sanctioned Person.

(ii) The Borrower shall procure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the RRIF Loan or lend to, make any payment to, contribute or otherwise make available any funds to any affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the RRIF Lender, a Fundamental Contract Party, a SEP Agreement Party, or a Construction-Related Contract Party).

(i) Hedging. The Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the RRIF Lender.

(j) Insolvency-Related Activities. The Borrower shall not consent to, provide support for, fail to oppose, or seek approval for any gubernatorial or legislative proposal, bill, statute, or order or other action by any Governmental Authority that would authorize or enable (i)

the Borrower to (A) seek the commencement of any voluntary bankruptcy or insolvency proceeding with respect to the Borrower or its assets and liabilities, under any Insolvency Law or (B) file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for all or a substantial part of the assets of the Borrower.

(k) No Subsidiaries. The Borrower shall not establish any subsidiaries without the prior written consent of the RRIF Lender.

Section 17. Indemnification. The Borrower shall indemnify the RRIF Lender and any official, employee, agent, advisor, or representative of the RRIF Lender (each such Person being herein referred to as an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents or Other Borrower Financing Documents, (b) the RRIF Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project in its entirety; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower’s expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the RRIF Lender shall assert, and each of the Borrower and the RRIF Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, Other Borrower Financing Documents, the other transactions contemplated hereby and thereby, the RRIF Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower’s indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 shall be payable promptly upon demand therefor. The obligations of the

Borrower under this Section 17 shall survive the payment or prepayment in full or transfer of the RRIF Note, the enforcement of any provision of this Agreement, the other Related Documents, or the Other Borrower Financing Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 18. Sale of RRIF Loan. The RRIF Lender shall not sell the RRIF Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the RRIF Lender may sell the RRIF Loan to another entity or reoffer the RRIF Loan into the capital markets only in accordance with the provisions of this Section 18. Any such sale or reoffering shall be on such terms as the RRIF Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the RRIF Lender shall not change the terms and conditions of any RRIF Loan without the prior written consent of the Borrower in accordance with Section 29 (*Amendments and Waivers*). The RRIF Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the RRIF Loan, written notice to the Borrower of the RRIF Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 shall not (x) obligate the RRIF Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the RRIF Lender, for any reason, does not sell the RRIF Loan.

Section 19. Events of Default and Remedies

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay (or cause to be paid) any amount of principal of or interest on the RRIF Loan (including RRIF Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*)) when due and payable (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower or the Funding Partner shall fail to observe or perform any covenant, agreement or obligation of the Borrower or the Funding Partner under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder or thereunder), the RRIF Note or any other RRIF Loan Document to which it is a party (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower or the Funding Partner (as applicable) from the RRIF Lender of written notice thereof, (B) the Borrower's or the Funding Partner's knowledge (as applicable) of such failure, or (C) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii) (*Covenant Default*), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower or the Funding Partner shall commence actions reasonably designed

to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower or the Funding Partner made in or delivered pursuant to the RRIF Loan Documents (or in any certificates delivered by the Borrower or the Funding Partner in connection with the RRIF Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 19(a)(iv) (Misrepresentation Default) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (No Debarment), Section 13(j) (Compliance with Federal Requirements), Section 13(p) (OFAC; Anti-Corruption Laws), or Section 13(bb) (Patriot Act);

(C) in the reasonable determination of the RRIF Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the RRIF Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower or the Funding Partner, as applicable, within thirty (30) days from the date on which the Borrower or the Funding Partner, as applicable, first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower (or the Funding Partner, if the applicable misrepresentation is in respect of the Funding Partner) diligently pursues such cure during such thirty (30) day period.

(v) Judgments. One or more judgments for the payment of money that are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) shall be rendered against the Borrower, and the same (or any installment thereof that is due and payable) (A) shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, provided, however, that if such undischarged judgment is capable of being discharged but cannot reasonably be discharged within such thirty (30) day cure period,

then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(v), and such thirty (30) day cure period shall be extended by up to sixty (60) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to discharge such judgment and (y) such judgment is discharged within ninety (90) days of the date of entry of such judgment, or (B) any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(vi) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a body politic and corporate, a public authority and a government sponsored authority validly existing under the GDC Act, unless at or prior to the time the Borrower ceases to exist in such form a successor public agency or governing body has been created by the State of New York and the State of New Jersey pursuant to a valid and unchallenged law of the State of New York and of the State of New Jersey and that has succeeded to the assets of the Borrower and has assumed, by operation of law, all of the obligations of the Borrower under the RRIF Loan Documents and the Other Borrower Financing Documents, all on terms and conditions satisfactory to the RRIF Lender.

(vii) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower or (B) a Bankruptcy Related Event shall occur with respect to any Fundamental Contract Party.

(viii) Project Abandonment. (A) The Borrower shall abandon the Project, or (B) following the Substantial Completion Date, Amtrak shall abandon the Project or NJT shall cease commuter rail operations on the Project.

(ix) Invalidity of RRIF Loan Documents. (A) Any RRIF Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower or the Funding Partner contests in any manner the validity or enforceability of any RRIF Loan Document to which it is a party or denies it has any further liability under any RRIF Loan Document to which it is a party, or purports to revoke, terminate or rescind any RRIF Loan Document to which it is a party; or (B) the CASA ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Collateral, including the Borrower's right, title, and interest in and to the Contract Payments, and with the priority purported to be created pursuant to the CASA.

(x) GDC Act. Either statutory element of the GDC Act shall be repealed or shall be amended or modified in such a manner that could reasonably be expected to result in a Material Adverse Effect.

(xi) Fundamental Contract Expiration or Termination. Any Fundamental Contract shall have expired or shall have been terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall have ceased to be in full force and effect.

(b) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, (i) all obligations of the RRIF Lender hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan shall automatically be deemed terminated, and (ii) the Borrower shall immediately repay any unexpended RRIF Loan proceeds disbursed to the Borrower under this Agreement.

(c) Upon the occurrence of any other Event of Default, the RRIF Lender may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan and (ii) demand that the Borrower immediately repay any unexpended RRIF Loan proceeds disbursed to the Borrower under this Agreement, in which event the Borrower shall immediately repay any such unexpended RRIF Loan proceeds to the RRIF Lender.

(d) Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender shall be entitled and empowered to enforce all of its rights and remedies pursuant to the RRIF Loan Documents (directly or through the Collateral Agent) and may institute any actions or proceedings at law or in equity against the Borrower for the collection of any sums due and unpaid hereunder or under the RRIF Note, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the RRIF Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder or under the RRIF Note, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement or the RRIF Note; provided, that acceleration of the payment of the principal of, and interest on, the RRIF Loan (and corresponding RRIF Note) shall not be a remedy hereunder or under any other RRIF Loan Document.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender may suspend or debar the Borrower from further participation in any Federal Government program administered by the RRIF Lender and to notify other departments and agencies of such default.

(f) No action taken pursuant to this Section 19 (Events of Default and Remedies) shall relieve the Borrower from its obligations pursuant to this Agreement, the RRIF Note or the other RRIF Loan Documents, all of which shall survive any such action.

Section 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Contract Payments, and any other revenues attributable to the Project, and RRIF Loan requisitions received and disbursements made with regard to the Project), so that audits may be performed to ensure compliance with and enforcement of this Agreement and each Other RRIF Loan Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the RRIF Loan, accounting of



principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the RRIF Loan or any portion thereof shall remain outstanding and until five (5) years after the RRIF Loan shall have been paid in full, the RRIF Lender shall have the right, upon reasonable prior notice and during normal business hours, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the RRIF Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 20(b) (Inspections) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the RRIF Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the RRIF Lender in connection with the RRIF Lender's exercise of its rights under this Section 20(b) (Inspections) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrower shall maintain and retain all files relating to the Project, the Fundamental Contracts, the Collateral (including the Contract Payments), and the RRIF Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under this Agreement and the RRIF Note (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Collateral, the Contract Payments, each Other RRIF Loan, each Other RRIF Loan Agreement or this Agreement is finally resolved or, if the RRIF Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the RRIF Lender and the Borrower. The Borrower shall provide to the RRIF Lender in a timely manner all records and documentation relating to the Project or the Collateral or the Contract Payments that the RRIF Lender may reasonably request from time to time.

(d) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2024 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the RRIF Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the RRIF Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

## Section 21. Financial Plan; Financial Statements.

(a) Financial Plan. Until the RRIF Loan and each Other RRIF Loan has been repaid in full, the Borrower shall provide to the RRIF Lender and to the FTA Regional Office (on behalf of both Modal Grant Offices) a single annual Financial Plan (which Financial Plan will be used for purposes of this Agreement and each Other RRIF Loan Agreement) in a format to be

agreed upon by the Borrower, the RRIF Lender, FTA, and FRA. The Borrower shall provide the Financial Plan by not later than ninety (90) days after the beginning of each Borrower Fiscal Year. Each Financial Plan shall be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(i) Each Financial Plan shall be prepared in accordance with GAAP and shall meet the FTA Project Management Oversight Requirements, as amended from time to time, to the extent applicable.

(ii) Together with each Financial Plan, the Borrower shall deliver (A) a certificate signed by the Borrower's Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower's knowledge and belief, and (B) an electronic copy of a Revised Financial Model for the period from the Effective Date through the later of (i) the Final Maturity Date and (ii) the latest final maturity date under any Other RRIF Loan Agreement, based upon assumptions and projections with respect to the Contract Payments to be received, expenses and other financial aspects of the Project and the Collateral that shall reflect the prior experience and current status of the Project and the Contract Payments, and the expectations of the Borrower with respect to the Project and the Contract Payments to be received, as of the most recent practicable date prior to the delivery of such Revised Financial Model, together with a change log describing such changes.

(iii) Unless otherwise agreed to by the RRIF Lender, FTA and FRA, each Financial Plan shall:

(A) provide an updated cash flow statement showing, for the Borrower Fiscal Year most recently ended, (1) actual annual cash inflows (Contract Payments and other income) and (2) actual annual outflows (including all operating expenses, Capital Expenditures, replenishment of reserves, and other uses); and

(B) provide a written narrative that (1) describes any material matters that may affect the future performance by the Borrower of its obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Collateral, the Contract Payments, operational contracts, and third-party transactions; and (2) discusses contingency measures that will or may be taken to address any of the matters reported pursuant to this sub-clause (B).

(iv) Unless otherwise agreed to by the RRIF Lender, FTA and FRA, prior to the Substantial Completion Date, each Financial Plan shall (in addition to the information required in Section 21(a)(iii) above):

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of

Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan (in the same format as utilized to report Total Project Costs in the monthly construction progress reports delivered pursuant to Section 22(b) (*Monthly Construction Progress Report*));

(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including an updated Projected Substantial Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule provided in the most recent Financial Plan, and discuss the reasons for any changes to the expected completion of these Project milestones (in the same format as utilized to report milestones in the monthly construction progress reports delivered pursuant to Section 22(b) (*Monthly Construction Progress Report*));

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the most recent prior Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the most recent prior Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of material individual changes, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower's obligations under this Agreement.

(b) Financial Statements. The Borrower shall furnish to the RRIF Lender:

(i) As soon as available, but no later than one hundred twenty (120) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the RRIF Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP

applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(iii) The Borrower shall furnish to the RRIF Lender, together with each delivery of annual audited financial statements of the Borrower pursuant to this Section 21(b), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event that, with the giving of notice or the passage of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

Section 22. Oversight and Monitoring.

(a) Project Development, Design and Construction. Each of the RRIF Lender and each Modal Grant Office shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Borrower shall cooperate in good faith with the RRIF Lender and the Modal Grant Offices in the conduct of such monitoring by promptly providing the RRIF Lender and the Modal Grant Offices with such reports, documentation or other information as shall be requested by the RRIF Lender and the Modal Grant Offices, or its agents, including any consulting engineer reports, documentation or information.

(b) Monthly Construction Progress Report. On or before the thirtieth (30<sup>th</sup>) business day following the end of each calendar month during the Construction Period, the Borrower shall deliver to the RRIF Lender and the FTA Regional Office on behalf of both Modal Grant Offices, a single report that will be used for purposes of this Agreement and each Other RRIF Loan Agreement (in a format to be agreed upon by the Borrower, the RRIF Lender, FTA, and FRA), that:

(i) summarizes key changes, events, or issues that occurred during the prior month and a projection of key milestones and decisions that will occur in the next three (3) months;

(ii) specifies the amount of Total Project Costs expended since the Effective Date as well as during such calendar month and the amount of Total Project Costs estimated to be required to complete the Project and provides a revised Project Budget updated through the end of such calendar month, reflecting any material change orders granted or pending under the Construction-Related Contracts with respect to any cost increases, any use of contingency and remaining unallocated project contingency;

(iii) demonstrates that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project,

taking into account any changes to the amount of Total Project Costs that are reflected in such monthly construction progress report;

(iv) provides (A) an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule; and (B) to the extent there have been any events or occurrences (e.g., delayed equipment deliveries, permit delays, material change orders, etc.), that have had, or are anticipated to have, an adverse impact on the Construction Schedule and the meeting of critical dates thereunder, a detailed narrative description of steps being taken (or proposed to be taken) to address such adverse impacts on the Construction Schedule, including the use of any schedule float or increase in hours worked in a day and the identification of critical path items; and

(v) provides a discussion or analysis of such other matters related to the Project as the RRIF Lender may reasonably request.

(c) Federal Grant Agreement Material Reports. Simultaneously with, or promptly after, delivery to either Modal Grant Office of material reports required under any Federal Grant Agreement, the Borrower shall deliver a copy of such material report to the RRIF Lender in the same form and format as delivered to the applicable Modal Grant Office (to the extent not already delivered to the RRIF Lender).

(d) Recovery Plan. If the monthly construction progress report described in Section 22(b)(i) (*Monthly Construction Progress Report*) or the monthly report issued pursuant to the FTA Project Management Oversight Requirements, as applicable, indicates either a failure to maintain the Construction Schedule, including a failure to achieve Substantial Completion by the Projected Substantial Completion Date or actual or projected Eligible Project Cost in excess of the Eligible Project Costs reflected in the Project Budget, or both, then the Borrower shall notify the RRIF Lender and the FTA Regional Office of such failure and shall, upon request by the RRIF Lender or the FTA Regional Office, provide the RRIF Lender and the FTA Regional Office within forty-five (45) days of receipt of such request (or such later date as may be specified in the request), a Recovery Plan for review by the RRIF Lender and the FTA Regional Office and approval by the FTA Regional Office in consultation with the RRIF Lender.

(e) Requested Information. The Borrower shall, at any time while the RRIF Loan remains outstanding, promptly deliver to the RRIF Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project, the Collateral or the Contract Payments as the RRIF Lender may from time to time reasonably request, including copies of agreements, documentation and other information related thereto requested by the RRIF Lender. The Borrower shall respond, and use commercially reasonable efforts to cause the Fundamental Contract Parties, SEP Agreement counterparties, and Construction-Related Contract Parties to respond, to the RRIF Lender's inquiries regarding the construction of the Project. The RRIF Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the RRIF Lender and at the Borrower's cost (as provided in Section 28 (*Fees and Expenses*)), to carry out the provisions of this Section 22(e).

Section 23. No Personal Recourse. No official, employee or agent of the RRIF Lender, the Borrower, the Funding Partner, or any Person executing this Agreement or any of the other RRIF Loan Documents shall be personally liable on this Agreement or such other RRIF Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 24. No Third Party Rights. The parties hereby agree that neither this Agreement or any Other RRIF Loan Agreement creates any third party rights against the Borrower, the Federal Government, the RRIF Lender, FTA, or FRA solely by virtue of the RRIF Loan, and the Borrower agrees to indemnify and hold the RRIF Lender, the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 17 (Indemnification), from any lawsuit or claim arising in law or equity solely by reason of the RRIF Loan, and that no third party creditor or creditors of the Borrower shall have any right against the RRIF Lender with respect to the RRIF Loan or any RRIF Loan Document.

Section 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the RRIF Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 26. RRIF Lender's Authorized Representative.

(a) The RRIF Lender shall at all times have appointed the RRIF Lender's Authorized Representative by designating such Person or Persons from time to time to act on the RRIF Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the RRIF Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016 (the "**Delegation**") by the Executive Director of the Build America Bureau to the Director of the Credit Office of the Build America Bureau, the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the RRIF Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the RRIF Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 27. Servicer. The RRIF Lender may from time to time designate another entity or entities to perform, or assist the RRIF Lender in performing, the duties of the Servicer or specified duties of the RRIF Lender under this Agreement or the RRIF Note. The RRIF Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer

and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement or in any other RRIF Loan Document to the RRIF Lender shall be deemed to be a reference to the Servicer with respect to any duties which the RRIF Lender shall have delegated to such Servicer. The RRIF Lender may at any time assume the duties of any Servicer under this Agreement and under each other RRIF Loan Document. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 28. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (“FFY”) 2025 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the RRIF Lender a servicing fee on or before the fifteenth (15<sup>th</sup>) of November. The RRIF Lender shall establish the amount of this annual fee in accordance with this Section 28, and the RRIF Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the fee, the RRIF Lender will adjust the previous year’s base amount in proportion to the percentage change in CPI. For the FFY 2025 calculation, the RRIF Lender will use the FFY 2024 base amount of \$16,500.00, which applies to other RRIF borrowers, as the previous year’s base amount. The RRIF Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year’s base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the RRIF Lender shall round the current year’s base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the RRIF Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the RRIF Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration, and performance of this Agreement and the other RRIF Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other RRIF Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, any Other Borrower Financing Document, or the

Collateral, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or Other Borrower Financing Document, or the rights of the RRIF Lender hereunder or thereunder;

(iii) any ongoing oversight and monitoring of the RRIF Loan, the Borrower or the Project by the RRIF Lender as provided for herein or in any other RRIF Loan Document; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other RRIF Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 28 (Fees and Expenses) shall survive the payment or prepayment in full or transfer of the RRIF Note, the enforcement of any provision of this Agreement or the other RRIF Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement or any other RRIF Loan Document shall in any event be effective without the written consent of each of the parties hereto or thereto, as applicable.

Section 30. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State of New York, if and to the extent such federal laws are not applicable.

Section 31. Severability. In case any provision in or obligation under this Agreement or any other RRIF Loan Document shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 32. Successors and Assigns. This Agreement and each other RRIF Loan Document shall be binding upon the parties hereto and thereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and thereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder or thereunder nor any interest herein or therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the RRIF Lender.

Section 33. Remedies Not Exclusive. No remedy conferred herein or in any other RRIF Loan Document or reserved to the RRIF Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 34. Delay or Omission Not Waiver. No delay or omission of the RRIF Lender to exercise any right or remedy provided hereunder or under any other RRIF Loan Document upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement, each other RRIF Loan Document, or by law to the



RRIF Lender may be exercised from time to time, and as often as may be deemed expedient by the RRIF Lender.

Section 35. Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 36 (Notices) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 36. Notices. Notices hereunder and under each other RRIF Loan Document shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to the RRIF Lender:

Build America Bureau  
United States Department of  
Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of Credit  
Programs  
Email: BureauOversight@dot.gov

If to the FTA Regional Office:

Federal Transit Administration  
Region II Office  
One Bowling Green, Room 429  
New York, NY 10004  
Attention: Michael Culotta, Regional  
Administrator  
Email: Michael.Culotta@dot.gov

If to the Borrower:

Gateway Development Commission  
120 Broadway – 10<sup>th</sup> Floor  
New York, NY 10271  
Attention: General Counsel  
Email: Notices@Gatewayprogram.org

Unless otherwise instructed by the RRIF Lender's Authorized Representative, all notices to the RRIF Lender should be made by email to the email address noted above for the RRIF Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the RRIF Lender's Authorized Representative, with respect to notices to the RRIF Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 37. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 38. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash of the Outstanding RRIF Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 17 (Indemnification), the reporting and record keeping requirements of Sections 20(b) (Inspections) and (c) (Reports and Records), and the payment requirements of Section 28 (Fees and Expenses) shall survive the termination of this Agreement as provided in such sections.

Section 39. Integration. This Agreement and each other RRIF Loan Document constitute the entire contract between the parties relating to the subject matter hereof and thereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**GATEWAY DEVELOPMENT  
COMMISSION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and  
through the Executive Director of the Build  
America Bureau

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE I**

**PROJECT BUDGET**

[To be provided by Borrower]

## SCHEDULE II

### CONSTRUCTION SCHEDULE

<b>SCHEDULE II</b> <b>Gateway Development Commission</b> <b>Hudson Tunnel Project</b> <b>Project Schedule</b>
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	Start Date	End Date	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
10 Guideway & Track Elements (route miles)	04/01/23	06/25/38												
20 Stations, Stops, Terminals, Intermodal (number)														
30 Support Facilities: Yards, Shops, Admin. Bldgs	10/01/27	01/31/34												
40 Sitework & Special Conditions	01/01/17	06/25/38												
50 Systems	01/01/27	06/25/38												
60 ROW, Land, Existing Improvements	01/01/17	01/31/27												
70 Vehicles (number)														
80 Professional Services (applies to Cats. 10-50)	01/01/17	06/25/38												
90 Unallocated Contingency	04/01/23	11/09/40												
100 Finance Charges (CC Only)	01/01/24	06/25/38												
Revenue Operations	06/25/38	11/09/40												
Projected Substantial Completion		11/09/40												

<i>(Cont'd from above)</i>	Start Date	End Date	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
10 Guideway & Track Elements (route miles)	04/01/23	06/25/38												
20 Stations, Stops, Terminals, Intermodal (number)														
30 Support Facilities: Yards, Shops, Admin. Bldgs	10/01/27	01/31/34												
40 Sitework & Special Conditions	01/01/17	06/25/38												
50 Systems	01/01/27	06/25/38												
60 ROW, Land, Existing Improvements	01/01/17	01/31/27												
70 Vehicles (number)														
80 Professional Services (applies to Cats. 10-50)	01/01/17	06/25/38												
90 Unallocated Contingency	04/01/23	11/09/40												
100 Finance Charges (CC Only)	01/01/24	06/25/38												
Revenue Operations	06/25/38	11/09/40												
Projected Substantial Completion		11/09/40												

**EXHIBIT A**

**ANTICIPATED RRIF LOAN DISBURSEMENT SCHEDULE**

<b>EXHIBIT A</b> <b>Gateway Development Commission</b> <b>Hudson Tunnel Project</b> <b>Port Authority Funding Agreement RRIF 2024-0051</b> <b>Anticipated RRIF Loan Disbursement Schedule</b>		
Month	Amount	Maximum Cumulative Drawn Amount <sup>1</sup>
Aug 2024	44,000,000.00	44,000,000.00
Sep 2024	50,920,263.87	94,920,263.87
Oct 2024	13,571,971.76	108,492,235.63
Nov 2024	9,139,729.39	117,631,965.02
Dec 2024	1,668,301.06	119,300,266.08
Jan 2025	1,793,265.28	121,093,531.36
Feb 2025	6,561,154.70	127,654,686.06
Mar 2025	17,310,644.68	144,965,330.74
Apr 2025	18,586,589.04	163,551,919.78
May 2025	19,450,994.76	183,002,914.54
Jun 2025	20,067,867.10	203,070,781.64
Jul 2025	20,625,183.98	223,695,965.62
Aug 2025	22,531,006.11	246,226,971.73
Sep 2025	30,768,307.70	276,995,279.43
Oct 2025	25,765,950.24	302,761,229.67
Nov 2025	25,480,896.49	328,242,126.16
Dec 2025	32,979,916.27	361,222,042.43
Jan 2026	28,437,422.75	389,659,465.18
Feb 2026	32,956,735.55	422,616,200.73
Mar 2026	40,389,069.64	463,005,270.37
Apr 2026	31,656,426.06	494,661,696.43
May 2026	37,711,906.74	532,373,603.17
Jun 2026	32,674,946.05	565,048,549.22
Jul 2026	32,996,433.36	598,044,982.58
Aug 2026	37,410,324.61	635,455,307.19

<sup>1</sup> Maximum Cumulative Drawn Amount cannot be amended.

Sep 2026	33,375,115.03	668,830,422.22
Oct 2026	28,469,147.12	697,299,569.34
Nov 2026	29,714,551.29	727,014,120.63
Dec 2026	17,024,026.23	744,038,146.86
Jan 2027	27,264,500.75	771,302,647.61
Feb 2027	27,268,809.24	798,571,456.85
Mar 2027	35,676,812.20	834,248,269.05
Apr 2027	24,920,110.05	859,168,379.10
May 2027	24,693,450.24	883,861,829.34
Jun 2027	24,371,779.94	908,233,609.28
Jul 2027	24,052,225.41	932,285,834.69
Aug 2027	23,703,021.10	955,988,855.79
Sep 2027	23,323,492.63	979,312,348.42
Oct 2027	22,912,740.60	1,002,225,089.02
Nov 2027	22,470,127.89	1,024,695,216.91
Dec 2027	52,829,313.03	1,077,524,529.94
Jan 2028	19,561,437.55	1,097,085,967.49
Feb 2028	18,210,096.25	1,115,296,063.74
Mar 2028	17,984,779.86	1,133,280,843.60
Apr 2028	17,701,866.56	1,150,982,710.16
May 2028	17,369,100.02	1,168,351,810.18
Jun 2028	16,994,715.19	1,185,346,525.37
Jul 2028	16,587,121.44	1,201,933,646.81
Aug 2028	16,154,587.20	1,218,088,234.01
Sep 2028	15,704,995.60	1,233,793,229.61
Oct 2028	15,245,638.35	1,249,038,867.96
Nov 2028	14,783,068.81	1,263,821,936.77
Dec 2028	9,493,176.62	1,273,315,113.39
Jan 2029	13,870,334.62	1,287,185,448.01
Feb 2029	13,429,011.00	1,300,614,459.01
Mar 2029	13,002,184.60	1,313,616,643.61
Apr 2029	12,592,207.92	1,326,208,851.53
May 2029	12,200,710.91	1,338,409,562.44
Jun 2029	11,828,684.98	1,350,238,247.42
Jul 2029	11,476,566.25	1,361,714,813.67
Aug 2029	11,144,306.59	1,372,859,120.26
Sep 2029	47,897,883.07	1,420,757,003.33
Oct 2029	14,093,090.54	1,434,850,093.87
Nov 2029	13,560,189.67	1,448,410,283.54
Dec 2029	6,414,406.32	1,454,824,689.86
Jan 2030	8,538,166.78	1,463,362,856.64

Feb 2030	12,116,828.62	1,475,479,685.26
Mar 2030	11,686,216.71	1,487,165,901.97
Apr 2030	11,279,232.22	1,498,445,134.19
May 2030	102,892,411.23	1,601,337,545.42
Jun 2030	6,150,892.05	1,607,488,437.47
Jul 2030	6,171,082.62	1,613,659,520.09
Aug 2030	6,181,094.89	1,619,840,614.98
Sep 2030	6,180,808.58	1,626,021,423.56
Oct 2030	6,170,174.05	1,632,191,597.61
Nov 2030	6,149,217.73	1,638,340,815.34
Dec 2030	-	1,638,340,815.34
Jan 2031	1,522,018.81	1,639,862,834.15
Feb 2031	6,025,798.75	1,645,888,632.90
Mar 2031	5,965,296.45	1,651,853,929.35
Apr 2031	5,895,692.77	1,657,749,622.12
May 2031	5,817,428.02	1,663,567,050.14
Jun 2031	5,730,992.38	1,669,298,042.52
Jul 2031	5,636,924.96	1,674,934,967.48
Aug 2031	5,535,800.84	1,680,470,768.32
Sep 2031	5,428,227.14	1,685,898,995.46
Oct 2031	5,314,830.91	1,691,213,826.37
Nov 2031	5,196,255.64	1,696,410,082.01
Dec 2031	-	1,696,410,082.01
Jan 2032	-	1,696,410,082.01
Feb 2032	4,162,421.27	1,700,572,503.28
Mar 2032	4,683,107.73	1,705,255,611.01
Apr 2032	4,548,269.42	1,709,803,880.43
May 2032	4,412,012.55	1,714,215,892.98
Jun 2032	4,274,892.81	1,718,490,785.79
Jul 2032	4,137,435.50	1,722,628,221.29
Aug 2032	4,000,130.56	1,726,628,351.85
Sep 2032	3,863,434.13	1,730,491,785.98
Oct 2032	3,727,763.43	1,734,219,549.41
Nov 2032	3,593,500.18	1,737,813,049.59
Dec 2032	-	1,737,813,049.59
Jan 2033	-	1,737,813,049.59
Feb 2033	-	1,737,813,049.59
Mar 2033	2,397,917.64	1,740,210,967.23
Apr 2033	2,954,038.13	1,743,165,005.36
May 2033	2,834,175.82	1,745,999,181.18
Jun 2033	2,717,392.92	1,748,716,574.10



Jul 2033	2,603,801.77	1,751,320,375.87
Aug 2033	2,493,492.18	1,753,813,868.05
Sep 2033	2,386,528.72	1,756,200,396.77
Oct 2033	2,282,953.93	1,758,483,350.70
Nov 2033	2,182,792.21	1,760,666,142.91
Dec 2033	-	1,760,666,142.91
Jan 2034	-	1,760,666,142.91
Feb 2034	-	1,760,666,142.91
Mar 2034	1,248,888.08	1,761,915,030.99
Apr 2034	1,459,843.35	1,763,374,874.34
May 2034	1,396,163.21	1,764,771,037.55
Jun 2034	1,334,797.49	1,766,105,835.04
Jul 2034	1,275,708.84	1,767,381,543.88
Aug 2034	1,218,855.72	1,768,600,399.60
Sep 2034	101,399,600.40	1,870,000,000.00
Oct 2034	-	1,870,000,000.00
<b>Total Disbursement</b>	<b>1,870,000,000</b>	

**EXHIBIT B**

**RRIF DEBT SERVICE**

[To be provided at closing]

**EXHIBIT C**

**RRIF LOAN REAMORTIZATION METHODOLOGY**

Period	Semi-Annual Payment Date	Interest	Principal Amount (\$)
Capitalized Interest Period (CAPI)	Financial Close - 4/15/2034	0%	0.00
Interest Only	10/15/2034 – 4/15/2039	100%	0.00
Level Payment Period	10/15/2039 – Final Maturity Date	100%	Fixed Level Payment

Note: During the Level Payment Period, (1) prior to the final disbursement of the RRIF Loan, the RRIF Lender shall reamortize the RRIF Loan based on the Outstanding RRIF Loan Balance on the preceding Semi-Annual Payment Date; and (2) after the final disbursement of the RRIF Loan, the RRIF Lender shall reamortize the RRIF Loan based on the Outstanding RRIF Loan Balance on the succeeding Semi-Annual Payment Date after such final disbursement of the RRIF Loan. Any rounding differences shall be applied to the final payment of principal in respect of the RRIF Loan.

## EXHIBIT D

### REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of RRIF Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through Section 4 set out the circumstances in which the RRIF Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the RRIF Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the RRIF Lender under the RRIF Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the RRIF Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under such RRIF Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of RRIF Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the RRIF Lender, in accordance with Section 36 (Notices) of the RRIF Loan Agreement, of a Requisition, in form and substance satisfactory to the RRIF Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as Appendix One to this **Exhibit D**. All supporting documentation related to the requested disbursement, including documentation related to Eligible Project Costs, should be submitted with the requisition.

All disbursement requests must be received by the RRIF Lender at or before 5:00 P.M. (EST) on the first (1<sup>st</sup>) Business Day of a calendar month in order to obtain disbursement by the first (1<sup>st</sup>) day of the following calendar month or, if such day is not a Business Day, the next succeeding Business Day.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the RRIF Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the RRIF Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid.

The RRIF Lender shall promptly send to the Borrower, in accordance with Section 36 (Notices) of the RRIF Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as **Appendix Two** to this **Exhibit D**. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the RRIF Loan

proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the RRIF Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the RRIF Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The RRIF Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of RRIF Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the RRIF Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the highest standards of the Borrower's industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the RRIF Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the RRIF Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the RRIF Loan Agreement; or

(iv) fails to satisfy any condition set forth in Section 4 (Disbursement Conditions), Section 12(b) (Conditions Precedent to All Disbursements) or, if applicable, Section 13(b) (Officers' Authorization) of the RRIF Loan Agreement; or

(v) fails to deliver documentation satisfactory to the RRIF Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the RRIF Loan Agreement; provided, that in such case the RRIF Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Federal Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the RRIF Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of RRIF Loan proceeds and (b) shall have no

obligation to make any disbursement of proceeds of the RRIF Loan to the Borrower (even if such disbursement has been approved by the RRIF Lender), in each case if the RRIF Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

**APPENDIX ONE TO EXHIBIT D**  
**FORM OF REQUISITION**

Build America Bureau

United States Department of Transportation  
c/o Director, Office of Credit Programs  
Room W12-402  
1200 New Jersey Avenue, SE,  
Washington, D.C. 20590

Federal Transit Administration  
Region II  
One Bowling Green, Room 428  
New York, NY 10004  
Attention: Regional Administrator

[Loan Servicer]  
[Address]  
[Attention]

Re: HUDSON TUNNEL PROJECT (PORT AUTHORITY FUNDING AGREEMENT) (RRIF – 2024-0051)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the RRIF Loan Agreement (Port Authority Funding Agreement), dated as of July 8, 2024 (the “**RRIF Loan Agreement**”), each by and between GATEWAY DEVELOPMENT COMMISSION (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”), we hereby request disbursement in the amount of \$[\_\_\_\_\_] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the RRIF Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [\_\_\_\_\_].
2. The requested date of disbursement is [\_\_\_\_\_] 20[\_\_\_] (the “**Disbursement Date**”)[, which is the first Business Day following [\_\_\_\_\_] 20[\_\_\_]].
3. The amounts previously disbursed under the RRIF Loan Agreement equal, in the aggregate, \$[\_\_\_\_\_].
4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs incurred as part of the New Tunnel, and have not been

- paid for or reimbursed by any previous disbursement from RRIF Loan proceeds, proceeds of any other RRIF Loan, or Federal Grants.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the RRIF Loan and does not exceed the Maximum Drawn Amount in **Exhibit A** (*Anticipated RRIF Loan Disbursement Schedule*) of the RRIF Loan Agreement for such requisition date.
  6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified in Section 1 of **Exhibit D** (*Requisition Procedures*) to the RRIF Loan Agreement and complies with the requirements of Section 4(a) (*Disbursement Conditions*) of the RRIF Loan Agreement.
  7. All Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval have been obtained and are in full force and effect (and are not subject to any notice of violation, breach or revocation).
  8. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
  9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the RRIF Lender and the FTA Regional Office and in accordance with the highest standards of the Borrower's industry.
  10. The representations and warranties of the Borrower set forth in the RRIF Loan Agreement and the representations and warranties of each of the Borrower and the Funding Partner set forth in each other Related Documents are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
  11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
  12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since May 1, 2024 and is continuing.
  13. A copy of the monthly construction progress report pursuant to Section 22(b) (*Monthly Construction Progress Report*) of the RRIF Loan Agreement for the month that ended most



recently prior to the date of the applicable Requisition has been delivered to each of the above named addresses.

14. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1)(1), to the extent the Federal Government deems appropriate.
15. A copy of this requisition has been delivered to each of the above named addressees.
16. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Borrower.]

Date: \_\_\_\_\_

GATEWAY DEVELOPMENT  
COMMISSION<sup>2</sup>

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

Name:

Title:

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<sup>2</sup> To be executed by the Borrower's Authorized Representative.

**APPENDIX TWO TO EXHIBIT D**

**DISAPPROVAL OF THE RRIF LENDER  
(To be delivered to the Borrower)**

Requisition Number [●] is [approved in part in the amount of \$[●]] [not approved]<sup>3</sup> by the RRIF Lender (as defined herein) pursuant to Section 4 (Disbursement Conditions) the RRIF Loan Agreement (Port Authority Funding Agreement), dated as of July 8, 2024, each by and between Gateway Development Commission (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”).

Any determination, action or failure to act by the RRIF Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the RRIF Lender’s sole discretion, and in no event shall the RRIF Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and  
through the Executive Director of the Build  
America Bureau

By: \_\_\_\_\_  
RRIF Lender’s Authorized Representative  
Name:  
Title:  
Dated:

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<sup>3</sup> Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

**EXHIBIT A TO APPENDIX TWO TO EXHIBIT D**

**[Insert reasons for any partial or full denial of approval.]**

**EXHIBIT E**

**FORM OF RRIF PROMISSORY NOTE**

**GATEWAY DEVELOPMENT COMMISSION**

**HUDSON TUNNEL PROJECT  
(Port Authority Funding Agreement)**

**(RRIF Project Number – 2024-0051)**

**RRIF Promissory Note**

**Maximum Principal Amount  
(excluding capitalized interest)**

\$1,870,000,000

**Interest Rate**

[ ]%

**Effective Date: July 8, 2024**

**Due: April 15, 2069**

**GATEWAY DEVELOPMENT COMMISSION**, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York under the GDC Act (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**RRIF Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the RRIF Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the RRIF Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the RRIF Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the RRIF Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the RRIF Loan Agreement in accordance with Exhibit B to the RRIF Loan Agreement, as revised from time to time in accordance with the RRIF Loan Agreement, until paid in full. The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in Exhibit A to the RRIF Loan Agreement from time to time in accordance with the terms of the RRIF Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the RRIF Lender’s determination of such matters as set forth on Exhibit B to the RRIF Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other RRIF Loan Document.

Payments hereon are to be made in accordance with Section 9(d) (Manner of Payment) of the RRIF Loan Agreement as the same become due. Principal of and interest on this RRIF Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. This RRIF Note has been executed under and pursuant to that certain RRIF Loan Agreement (Port Authority Funding Agreement), dated as of the date hereof, between the RRIF Lender and the Borrower (the “**RRIF Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the RRIF Loan Agreement to repay the loan made by the RRIF Lender and any other payments of any kind required to be paid by the Borrower under the RRIF Loan Agreement or the other RRIF Loan Documents referred to therein. Reference is made to the RRIF Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this RRIF Note and not defined herein shall have the meanings set forth in the RRIF Loan Agreement. This RRIF Note is not subject to mandatory prepayment.

This RRIF Note may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the RRIF Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000), at any time or from time to time, without penalty or premium, by paying to the RRIF Lender all or part of the principal amount of the RRIF Note in accordance with the RRIF Loan Agreement.

Payment of the obligations of the Borrower under this RRIF Note is secured pursuant to the CASA.

Any delay on the part of the RRIF Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State of New York and State of New Jersey to happen, exist, and be performed precedent to and in the issuance of this RRIF Note have happened, exist and have been performed as so required. This RRIF Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State of New York shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, GATEWAY DEVELOPMENT COMMISSION has caused this RRIF Note to be executed in its name and attested by its duly authorized officer, all as of the Effective Date set forth above.

**GATEWAY DEVELOPMENT  
COMMISSION**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns  
and transfers unto

*(Please Insert Social Security or other identifying number of Assignee(s)):*

the within note and all rights thereunder.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.



## EXHIBIT F

### COMPLIANCE WITH LAWS

The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 CFR Part 35; 29 CFR Part 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 CFR Part 21);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 CFR Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), including the environmental mitigation requirements and commitments made by the Borrower that resulted in FTA and FRA's issuance of the NEPA Determination;
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (ix) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (x) 49 U.S.C. § 303;
- (xi) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 CFR Part 1926);
- (xii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 CFR Part 5);
- (xiii) The Buy America requirements set forth in (A) 49 U.S.C. § 5323(j) and implementing regulations (49 CFR Part 661) and (B) 49 U.S.C. § 22905;
- (xiv) The Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52);
- (xv) The requirements of 49 U.S.C. Chapter 53 and 49 CFR Part 600;
- (xvi) The Cargo Preference Act of 1954, as amended (46 U.S.C. § 55305), and implementing regulations (46 CFR Part 381);

- (xvii) The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) and implementing regulations (2 CFR § 200.216); and
- (xviii) The Railroad Retirement Act of 1974 (45 U.S.C. Chapter 9, Subchapter IV), and implementing regulations.

## **EXHIBIT G**

### **OPINIONS REQUIRED FROM COUNSEL TO BORROWER**

Opinions from counsel of the Borrower, dated as of the Effective Date, to the effect that:

1. the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdictions of its organization;
2. the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under, the Related Documents to which it is a party (including granting the security interests in the Collateral);
3. the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational, statutory or regulatory action;
4. the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms;
5. no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America, State of New Jersey, or the State of New York is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;
6. the execution and delivery by the Borrower of, and performance of its obligations under, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America, the State of New York, or of the State of New Jersey, or (iii) conflict with or constitute a breach of or result in a default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject;
7. the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended;
8. to the knowledge of counsel after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending;
9. each RRIF Loan Document is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions;
10. the RRIF Note (i) is secured by the Collateral pledged for the repayment of the RRIF Loan represented by the RRIF Note pursuant to the CASA, (ii) is a RRIF Note entitled to the benefits of a RRIF Note under the RRIF Loan Documents, enforceable under the laws of the State without any further action by the Borrower or any other Person and (iii) is a senior obligation of the Borrower and ranks senior in right of payment and right of security with all other Obligations;

11. the CASA creates the valid and binding grant of a security interest in, and pledge of, the Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the RRIF Note, irrespective of whether any party has notice of the pledge or grant of security interest, as applicable, and except for the filing of a UCC-1 financing statement with the New York State Department of State, no filing, recordation or any other action is necessary to establish and perfect a legal, valid, binding, and enforceable Lien on the Collateral under the New York Uniform Commercial Code in favor of the Collateral Agent for the benefit of the RRIF Lender to the extent contemplated by the RRIF Loan Documents;
12. all actions by the Borrower that are required for the use of Contract Payments as required under the CASA and under the other RRIF Loan Documents have been duly and lawfully made;
13. the CASA is sufficient under State law to lawfully assign and pledge the Collateral and use the Contract Payments as required by the terms of the RRIF Loan Documents and the Funding Agreement;
14. the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; and
15. the Borrower is not entitled to claim governmental immunity in any breach of contract action under any RRIF Loan Document or Fundamental Contract.

**EXHIBIT H**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS—  
PRIMARY COVERED TRANSACTIONS**

The undersigned, on behalf of GATEWAY DEVELOPMENT COMMISSION, hereby certifies that GATEWAY DEVELOPMENT COMMISSION has fully complied with its verification obligations under 2 CFR § 180.320 and hereby further confirms in accordance with 2 CFR § 180.335, that, to its knowledge, the Borrower and its principals (as defined in 2 CFR § 180.995):

(a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);

(b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR § 180.800(a); and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain RRIF Loan Agreement (Port Authority Funding Agreement), dated as of July 8, 2024 between the RRIF Lender and the Borrower, as the same may be amended from time to time.

Dated: \_\_\_\_\_

**GATEWAY DEVELOPMENT COMMISSION<sup>4</sup>**

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

Name:

Title:

<sup>4</sup> To be executed by Borrower’s Authorized Representative.

## EXHIBIT I

### FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain RRIF Loan Agreement (Port Authority Funding Agreement), dated as of July 8, 2024 (the "RRIF Loan Agreement"), by and among Gateway Development Commission (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "RRIF Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement.

The undersigned, [\_\_\_\_], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 12(a)(ii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit A are complete, and fully executed copies of each Federal Grant Agreement and each Other Borrower Financing Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the RRIF Lender in its sole discretion;
- (b) pursuant to Section 12(a)(vi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 25 (*Borrower's Authorized Representative*) of the RRIF Loan Agreement;
- (c) the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and such funds shall be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion;
- (d) pursuant to Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit C are true, correct and complete copies of each Fundamental Contract, each SEP Agreement, and each Construction-Related Contract that has been executed on or prior to the Effective Date (as listed below), and each such Fundamental Contract, SEP Agreement and Construction-Related Contract, together with any amendments, waivers or modifications thereto that have been entered into on or prior to the Effective Date, is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of Exhibit B:
  - 1. the Project Development Agreement;
  - 2. the Funding Agreement;

3. [list each SEP Agreement]; and
  4. [list each Construction-Related Contract]
- (e) the Borrower has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appellable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (f) pursuant to Section 12(a)(xi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit D is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Contract Payments are sufficient to meet the Loan Amortization Schedule, and (ii) otherwise be in form and substance acceptable to the RRIF Lender;
- (g) pursuant to Section 12(a)(xii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, the Borrower hereby certifies that (i) the Borrower is authorized, pursuant to the GDC Act, to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the RRIF Loan Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act other than as set forth in clause (ii) hereto, (ii) it has recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Collateral Agent's Lien on the Collateral (for the benefit of the RRIF Lender) to the extent contemplated by the RRIF Loan Documents or the GDC Act, including delivery of a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, that has been filed with the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code, (iii) it has recorded or filed, or caused to be recorded or filed, with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services, a time-stamped UCC-1 financing statement, in form and substance satisfactory to the RRIF Lender and the Collateral Agent, and (iv) it has paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any RRIF Loan Document or any instruments, certificates or financing statements in connection with the foregoing
- (h) pursuant to Section 12(a)(xiv) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, the Borrower hereby certifies that it has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and, if previously requested request by the RRIF Lender, has provided sufficient evidence of such compliance;
- (i) pursuant to Section 12(a)(xiv) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit E is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;

- (j) pursuant to Section 12(a)(xvi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 87-2091167 and attached hereto as Exhibit F-1 is evidence thereof, (ii) the Borrower's Unique Entity Identifier number is L3A1UJSRCT44, and (iii) the Borrower has registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov)), and attached hereto as Exhibit F-2 is evidence of each of (ii) and (iii);
- (k) pursuant to Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Exhibit G-1 are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of Section 15(f) (*Insurance; Events of Loss*) of the RRIF Loan Agreement;
- (l) pursuant to Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, (i) attached hereto as (A) Exhibit G-2 is a copy of the Borrower's Organizational Documents, each as in effect on the Effective Date (and certified by the Secretary of State of the State of New York and of the State of New Jersey, to the extent applicable), which Organizational Documents are each in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate, (B) Exhibit G-3 is a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the RRIF Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) as Exhibit G-4 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the RRIF Loan Documents, and (ii) the Borrower certifies that Exhibit G-2, Exhibit G-3, and Exhibit G-4 evidence that the Borrower is duly organized and validly existing under the laws of its jurisdictions of formation, and has full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted and as contemplated in the Related Documents and the Other Borrower Financing Documents;
- (m) the representations and warranties of the Borrower set forth in the RRIF Loan Agreement and the representations and warranties of each of the Borrower and the Funding Partner set forth in each other Related Document and Other Borrower Financing Document to which it is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (n) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since May 1, 2024 and is continuing.



IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

[\_\_\_\_\_]

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

Name:

Title: Chief Executive Officer and  
Authorized Representative

**EXHIBIT B TO EXHIBIT I**

**INCUMBENCY CERTIFICATE**

The undersigned certifies that he/she is the [Secretary] of Gateway Development Commission, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York (the “Borrower”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the RRIF Loan Documents as the Borrower’s Authorized Representative (each as defined in that certain RRIF Loan Agreement (Port Authority Funding Agreement), dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of [\_\_\_\_], 2024.

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT J**

**FORM OF CERTIFICATE OF COLLATERAL AGENT**

**GATEWAY DEVELOPMENT COMMISSION**

**Hudson Tunnel Project  
(RRIF Project Number – 2024-0051)**

The undersigned, The Bank of New York Mellon (the “*Collateral Agent*”), by its duly appointed, qualified and acting Vice President, certifies with respect to the above referenced CASA (as defined below) dated as of July 8, 2024, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the CASA):

1. That the Collateral Agent is a bank organized under the laws of the state of New York.
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Collateral Agent of its duties and obligations under the documents pertaining to the issuance of the CASA have been obtained by the Collateral Agent and are in full force and effect.
3. That the CASA was executed by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of the CASA and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute the CASA, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Collateral Agent, to establish and maintain the Account and to accept the Contract Payments that will be conveyed to it under the CASA, shall accept the Contract Payments so conveyed and in so accepting the Contract Payments and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from the bylaws of the Collateral Agent and other applicable documents that evidence the Collateral Agent’s powers to enter into the CASA and to fulfill its obligations under the CASA and the RRIF Loan Agreement and the authority of the officers referred to above to act on behalf of the Collateral Agent; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.
6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Collateral Agent pursuant to that certain Collateral Accounts and Security Agreement (the “CASA”), dated as of July 8, 2024,

between Gateway Development Commission (the “**Borrower**”), the RRIF Lender (as defined below), the Collateral Agent, the Securities Intermediary (as defined therein), and the other secured parties party thereto from time to time.

8. That receipt is also acknowledged of the RRIF Loan Agreements, each dated as of July 8, 2024 (the “**RRIF Loan Agreements**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau.
9. That the Collateral Agent also accepts its appointment and agrees to perform the duties and responsibilities of Collateral Agent for and in respect of the CASA as set forth in the CASA and the RRIF Loan Agreement. In accepting such duties and responsibilities, the Collateral Agent shall be entitled to all of the privileges, immunities, rights and protections set forth in Article 3 of the CASA.
10. That the Account has been established as provided in the CASA.

[SIGNATURE PAGE FOLLOWS]

Dated: July 8, 2024

THE BANK OF NEW YORK MELLON

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

Its:

**ANNEX ONE TO EXHIBIT J**  
**OFFICERS OF COLLATERAL AGENT**

**ANNEX TWO TO EXHIBIT J  
BYLAWS OF COLLATERAL AGENT**

**EXHIBIT K**

**CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF APPROPRIATED FUNDS FOR LOBBYING**

Reference is made to that certain RRIF Loan Agreement (Port Authority Funding Agreement), dated as of July 8, 2024 (the “RRIF Loan Agreement”), by and among Gateway Development Commission, (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “RRIF Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement. The undersigned, on behalf of the Borrower, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of the RRIF Loan.

(b) If any funds other than proceeds of the RRIF Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the RRIF Loan, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the RRIF Lender entered into the RRIF Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the RRIF Loan Agreement imposed by Section 1352 of title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: \_\_\_\_\_

**GATEWAY DEVELOPMENT COMMISSION<sup>5</sup>**

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

Name:

Title:

<sup>5</sup> To be executed by Borrower’s Authorized Representative.



**EXHIBIT L**

**FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION**

*[Letterhead of Borrower]*

*[Date]*

Build America Bureau  
United States Department of Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of Credit Programs

**Project: Hudson Tunnel Project (RRIF – 2024-0051)**

Dear Director:

This Notice is provided pursuant to Section 15(g)(i)(A) (*Substantial Completion*) of that certain RRIF Loan Agreement (Port Authority Funding Agreement) (the “**RRIF Loan Agreement**”), dated as of July 8, 2024 by and between Gateway Development Commission (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the RRIF Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the RRIF Lender that:

- (a) as of on *[insert date]*, Amtrak and NJT have each commenced revenue operations on both elements of the Project included in clauses (a) and (b) of the definition of “Project” and, in so doing, satisfied each of the requirements for Substantial Completion;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) *[Substantial Completion, as defined in the RRIF Loan Agreement, has been achieved.]*

\_\_\_\_\_  
[Borrower’s Authorized Representative]

\_\_\_\_\_  
Name:

Title:

## EXHIBIT M

### 2 CFR Part 170

#### I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

##### a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

##### 2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

##### b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this RRIF Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received—

(A) eighty percent (80%) or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month of the Effective Date, and annually thereafter.

*c. Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this RRIF Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) eighty percent (80%) or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

*e. Definitions.* For purposes of this **Exhibit M**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and,

iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR § 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this RRIF Loan; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)).

**EXHIBIT N**

**EMPLOYEE PROTECTION ARRANGEMENTS**

[See attached.]

Adopted - 7/2/24

**EXHIBIT D**

## **DIRECT AGREEMENT (NJS)**

This **DIRECT AGREEMENT** (this “**Agreement**”) dated as of July 8, 2024 (the “**Effective Date**”), is made by and among (i) NEW JERSEY TURNPIKE AUTHORITY, a body corporate and politic of the State of New Jersey (the “**NJTA**”); (ii) NEW JERSEY TRANSIT CORPORATION, a body corporate and politic of the State of New Jersey (the “**NJT**”); (iii) TREASURER OF THE STATE OF NEW JERSEY (the “**State Treasurer**”); (iv) GATEWAY DEVELOPMENT COMMISSION, a body politic and corporate, a public authority and a government sponsored authority established by the State and the State of New York (the “**Borrower**”); and (v) UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”); and acknowledged and agreed to by The Bank of New York Mellon, a bank organized under the laws of the state of New York (the “**Collateral Agent**”).

### **RECITALS**

#### **WHEREAS:**

(1) the NJTA and the State Treasurer have entered into that certain Amended and Restated State Public Transportation Projects Funding Agreement for New Jersey, dated as of March 31, 2024 (the “**NJTA-State Treasurer Funding Agreement**”), relating to the State’s share of the Project;

(2) the NJT and the Borrower have entered into that certain Hudson Tunnel Project Funding Agreement (RRIF Loan), dated as of March 31, 2024 (the “**NJT-Borrower Funding Agreement**”), relating to the Project;

(3) any Additional Funding Agreement (as defined below) that may be entered into from time to time; and

(4) the State (as defined below), the Borrower, the State of New York, and the National Railroad Passenger Corporation have entered into that certain Project Development Agreement, dated as of February 3, 2023, as amended as of May 2, 2023, and as of March 5, 2024 (the “**Project Development Agreement**”).

The foregoing agreements in paragraphs (1), (2) and (3) above (each as amended, amended and restated, supplemented or otherwise modified from time to time) are herein collectively referred to as the “**NJS Funding Agreements**” and each, individually, is an “**NJS Funding Agreement**”.

**WHEREAS**, in reliance on the support for the Project provided by the NJTA, the State Treasurer and the NJT pursuant to the NJS Funding Agreements, the Borrower and the RRIF Lender have entered into that certain RRIF Loan Agreement (NJT Funding Agreement), dated as of the date hereof (the “**RRIF Loan Agreement**”), pursuant to which the RRIF Lender will (subject to the terms and conditions thereof) make a loan in a principal amount not to exceed \$703,052,143 (excluding interest that is capitalized), comprised of two tranches (Tranche A in a maximum principal amount (excluding capitalized interest) equal to \$215,717,376, and Tranche B in a maximum principal amount (excluding capitalized interest) equal to \$487,334,767), which loan shall be repaid by the Borrower from Contract Payments made by the NJT, subject to and in accordance with the terms of the NJT-Borrower Funding Agreement;

**WHEREAS**, the RRIF Lender, the Borrower and the Collateral Agent have entered into that certain Collateral Accounts and Security Agreement (the “**CASA**”), dated as of the date hereof, as may be modified or amended from time to time in accordance with its terms.

**WHEREAS**, it is a condition to the consummation of the transactions contemplated under the RRIF Loan Agreement that the NJTA, the NJT, the State Treasurer and the Borrower each enter into this Agreement and that each provide certain assurances and agreements, as further described below, in connection with the NJS Funding Agreements and the transactions contemplated thereby.

**NOW, THEREFORE**, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the NJTA, the NJT, the State Treasurer, the Borrower, and the RRIF Lender (each, a “**Party**” and, collectively, the “**Parties**”) hereby agree as follows:

## ARTICLE I

### **DEFINED TERMS; INTERPRETATION**

**Section 1.1** Capitalized Terms. All capitalized terms not defined herein shall have the meanings given to them in the RRIF Loan Agreement.

**Section 1.2** Defined Terms. The following terms shall have the meanings specified below.

“**Additional Funding Agreement**” means any additional funding agreement, other than the NJT-Borrower Funding Agreement, entered into by and between the NJT and the Borrower, pursuant to which the NJT provides funding to the Borrower for the purpose (in whole or in part) of securing the repayment of indebtedness of the Borrower to finance the construction of all or any portion of and relating to the Project.

“**Agreement**” has the meaning given to such term in the preamble.

“**Borrower**” has the meaning given to such term in the preamble.

“**CASA**” has the meaning given to such term in the recitals.



“**Collateral**” means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (a) the NJT-Borrower Funding Agreement, including all right, title, and interest of the Borrower in the Contract Payments payable thereunder, (b) the NJ RRIF Account (as defined in the CASA), and (c) all Proceeds (as defined in the CASA) and products in whatever form of all or any part of the foregoing items (a) and (b), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments (as defined in the RRIF Loan Agreement) and other funds or amounts on deposit in the NJ RRIF Account.

“**Collateral Agent**” has the meaning given to such term in the preamble.

“**Effective Date**” has the meaning given to such term in the preamble.

“**NJS Funding Agreements**” has the meaning given to such term in the recitals.

“**NJT**” has the meaning given to such term in the preamble.

“**NJT-Borrower Funding Agreement**” has the meaning given to such term in the recitals.

“**NJTA**” has the meaning given to such term in the preamble.

“**NJTA-State Treasurer Funding Agreement**” has the meaning given to such term in the recitals.

“**Party**” has the meaning given to such term in the recitals.

“**Project Development Agreement**” has the meaning given to such term in the recitals.

“**RRIF Lender**” has the meaning given to such term in the preamble.

“**RRIF Loan**” means the loan made by the RRIF Lender to the Borrower pursuant to the RRIF Loan Agreement.

“**RRIF Loan Agreement**” has the meaning given to such term in the recitals.

“**State**” means the State of New Jersey.

“**State’s Authorized Representative**” has the meaning given to such term in Section 8.3(a).

**Section 1.3 Interpretation.** Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the NJTA’s, NJT’s or State Treasurer’s knowledge, respectively, is implicated in this Agreement or the phrases “to the

NJTA's knowledge;" "to the NJT's knowledge;" or "to the State Treasurer's knowledge" or a similar phrase is used in this Agreement, the NJTA's knowledge, the NJT's knowledge or the State Treasurer's knowledge, respectively or such phrase(s) shall be interpreted to mean to the best of the NJTA's knowledge, the NJT's knowledge or the State Treasurer's knowledge, respectively, after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person's successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any Party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 8.1 and signed by a duly authorized representative of such Party.

## ARTICLE II

### CONDITIONS PRECEDENT

**Section 2.1** Conditions Precedent. Notwithstanding anything herein to the contrary, this Agreement and the RRIF Loan Agreement shall not become effective until each of the following conditions precedent shall have been satisfied:

(a) Legal Opinion. Legal counsel to the NJTA, the NJT and the State Treasurer shall have delivered to the RRIF Lender legal opinions satisfactory to the RRIF Lender in its sole discretion (including those opinions set forth on Exhibit A).

(b) Incumbency. The NJTA, the NJT and the State Treasurer shall each deliver a completed and executed incumbency certificate in the form of Exhibit B.

(c) Other Requested Documentation. The NJTA, the NJT, and the State Treasurer shall have delivered such other agreements, documents, instruments, opinions and other items reasonably required by the Borrower to provide to the RRIF Lender, all in form and substance satisfactory to the RRIF Lender.

### ARTICLE III

#### **ACKNOWLEDGMENTS AND UNDERTAKINGS;** **NO LIABILITY FOR RRIF LOANS**

**Section 3.1** Acknowledgment of Pledge and Assignment. The NJT hereby acknowledges the pledge and assignment to the Collateral Agent and the RRIF Lender of, and the grant to the Collateral Agent and the RRIF Lender of a lien on and security interest in the Collateral, pursuant to the terms and conditions of the CASA, as security for all of the obligations of the Borrower pursuant to the RRIF Loan Documents.

**Section 3.2** Sovereign Immunity.

(a) The NJTA acknowledges and agrees that this Agreement and the NJTA-State Treasurer Funding Agreement in effect from time to time constitute legal, valid, and binding obligations of the NJTA, enforceable against the NJTA in accordance with their terms, except as enforceability may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, and (ii) principles of equity, whether considered at law or in equity. The NJTA further acknowledges and agrees that it is subject to suit pursuant to N.J.S.A. 27:23-5 and subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 *et seq.*

(b) The NJT acknowledges and agrees that this Agreement and the NJT-Borrower Funding Agreement in effect from time to time constitute legal, valid, and binding obligations of the NJT, enforceable against the NJT in accordance with their terms, except as enforceability may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, and (ii) principles of equity, whether considered at law or in equity. The NJT further acknowledges and agrees that it is subject to suit pursuant to N.J.S.A. 27:25-5 and subject to N.J.S.A. 27:25-19.

(c) The State Treasurer acknowledges and agrees that this Agreement and the NJTA-State Treasurer Funding Agreement in effect from time to time constitute legal, valid, and binding obligations of the State Treasurer, enforceable against the State Treasurer in accordance with their terms, except as enforceability may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity. The State Treasurer further acknowledges and agrees that it is subject to suit pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 *et seq.*, and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.*

**Section 3.3** Cooperation.

(a) The NJTA, the NJT and the State Treasurer, as applicable, shall fully cooperate with the Borrower and perform all additional acts reasonably requested by the RRIF Lender to effect the purposes of this Agreement. The NJTA, the NJT and the State Treasurer, as applicable and the Borrower agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the RRIF Lender may reasonably request to effectuate the terms of this Agreement.

(b) The Borrower shall coordinate with the NJTA, the NJT and the State Treasurer to promptly procure and provide to the RRIF Lender with such reports, documentation or other information as shall be required to be provided: (i) to the RRIF Lender under this Agreement, and (ii) as may be otherwise requested by the RRIF Lender, or its agents, including any independent or consulting engineer reports, documentation or information.

**Section 3.4** No Liability for RRIF Loan. Nothing in this Agreement shall be construed to mean that the NJT, the NJTA or the State Treasurer are liable under the RRIF Loan Agreement for any debt of the Borrower thereunder.

## ARTICLE IV

### **REPRESENTATIONS AND WARRANTIES**

**Section 4.1** Representations and Warranties of the NJTA, the NJT and the State Treasurer. The NJTA, the NJT and the State Treasurer hereby represents and warrants as of the Effective Date:

(a) Power and Authority.

(i) The NJTA has full legal right, power and authority to enter into this Agreement and the NJTA-State Treasurer Funding Agreement and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery, and performance of this Agreement and the NJTA-State Treasurer Funding Agreement.

(ii) The NJT has full legal right, power and authority to enter into this Agreement and the NJT-Borrower Funding Agreement and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery, and performance of this Agreement and the NJT-Borrower Funding Agreement.

(iii) The State Treasurer has full legal right, power and authority to enter into this Agreement and the NJTA-State Treasurer Funding Agreement and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery, and performance of this Agreement and the NJTA-State Treasurer Funding Agreement.

(b) Officers' Authorization.

(i) As of the Effective Date, the officers of the NJTA executing (or that previously executed) this Agreement and the NJTA-State Treasurer Funding Agreement in effect as of the Effective Date, and any certifications or instruments related thereto, are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(ii) As of the Effective Date, the officers of the NJT executing (or that previously executed) this Agreement and the NJT-Borrower Funding Agreement in effect as of the Effective Date, and any certifications or instruments related thereto, are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(iii) As of the Effective Date, the State Treasurer executing (or that previously executed) this Agreement and the NJTA-State Treasurer Funding Agreement in effect as of the Effective Date, and any certifications or instruments related thereto, is (or was at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability.

(i) This Agreement and the NJTA-State Treasurer Funding Agreement in effect as of the Effective Date, has been duly authorized, executed and delivered by the NJTA and constitutes the legal, valid, and binding agreement of the NJTA enforceable in accordance with its terms, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (B) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(ii) This Agreement and the NJT-Borrower Funding Agreement in effect as of the Effective Date, has been duly authorized, executed and delivered by the NJT and constitutes the legal, valid, and binding agreement of the NJT enforceable in accordance with its terms, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (B) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law); provided that all payments from NJT to the Borrower under the NJT-Borrower Funding Agreement are subject to appropriation by the legislature of the State.

(iii) This Agreement and the NJTA-State Treasurer Funding Agreement in effect as of the Effective Date, has been duly authorized, executed and delivered by the State Treasurer and constitutes the legal, valid, and binding agreement of the State Treasurer enforceable in accordance with its terms, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (B) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law); provided that all payments from the State Treasurer to NJT from amounts received from the NJTA under the NJTA-State Treasurer Funding Agreement are subject to appropriation by the legislature of the State.

(d) Non-Contravention.

(i) The execution and delivery by the NJTA of this Agreement and the NJTA-State Treasurer Funding Agreement in effect as of the Effective Date, the consummation of the transactions contemplated herein and therein by the NJTA and the fulfillment of or compliance with the terms and conditions hereof and thereof by NJTA do not (A) conflict with the N.J.S.A. 27:23-1 *et seq.*, or any constitution, statute, regulation or other law or administrative rule, or with any judgment, ruling, decree, or order of any court or judicial or administrative body, in each case applicable to the NJTA or (B) conflict with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) under any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the NJTA is a party and/or signatory or by which it or its properties or assets are otherwise subject or bound.

(ii) The execution and delivery by the NJT of this Agreement and the NJT-Borrower Funding Agreement in effect as of the Effective Date, the consummation of the transactions contemplated herein and therein by the NJT and the fulfillment of or compliance with the terms and conditions hereof and thereof by NJT do not (A) conflict with the N.J.S.A. 27:25-1 *et seq.*, or any constitution, statute, regulation or other law or administrative rule, or with any judgment, ruling, decree, or order of any court or judicial or administrative body, in each case applicable to the NJT or (B) conflict with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) under any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the NJT is a party and/or signatory or by which it or its properties or assets are otherwise subject or bound.

(iii) The execution and delivery by the State Treasurer of this Agreement and the NJTA-State Treasurer Funding Agreement in effect as of the Effective Date, the consummation of the transactions contemplated herein and therein by the State Treasurer and the fulfillment of or compliance with the terms and conditions hereof and thereof by the State Treasurer do not (A) conflict with the N.J.S.A. 27:23-5.8(b), or any constitution, statute, regulation or other law or administrative rule, or with any judgment, ruling, decree, or order of any court or judicial or administrative body, in each case applicable to the State Treasurer or (B) conflict with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) under any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the State Treasurer is a party and/or signatory or by which it or its properties or assets are otherwise subject or bound.

(e) Consents and Approvals.

(i) No consent or approval of any trustee, holder of any indebtedness of the NJTA or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (A) the execution and delivery by the NJTA of this Agreement and the NJTA-State Treasurer Funding Agreement then in effect, except as have been obtained or made and as are in full force and effect, or (B) (I) the consummation of any transaction contemplated by this Agreement or the NJTA-State Treasurer Funding Agreement then in effect or (II) the fulfillment of or compliance by the NJTA with the terms and conditions of this Agreement and the NJTA-State Treasurer Funding Agreement then in effect, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(ii) No consent or approval of any trustee, holder of any indebtedness of the NJT or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (A) the execution and delivery by the NJT of this Agreement and the NJT-Borrower Funding Agreement then in effect, except as have been obtained or made and as are in full force and effect, or (B) (I) the consummation of any transaction contemplated by this Agreement or the NJT-Borrower Funding Agreement then in effect or (II) the fulfillment of or compliance by the NJT with the terms and conditions of this Agreement and the NJT-Borrower Funding Agreement then in effect, except as have been obtained or made and as are in full force and effect or as are ministerial in

nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(iii) No consent or approval of any trustee, or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (A) the execution and delivery by the State Treasurer of this Agreement and the NJTA-State Treasurer Funding Agreement then in effect, except as have been obtained or made and as are in full force and effect, or (B) (I) the consummation of any transaction contemplated by this Agreement or the NJTA-State Treasurer Funding Agreement then in effect or (II) the fulfillment of or compliance by the State Treasurer with the terms and conditions of this Agreement and the NJTA-State Treasurer Funding Agreement then in effect, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation; Adverse Legislation.

(i) As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the NJTA, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the NJTA, threatened against or affecting the Project or the ability of the NJTA to execute, deliver and perform its obligations under this Agreement or the NJTA-State Treasurer Funding Agreement then in effect. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the NJTA, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the NJTA, threatened against or affecting the Project or the NJTA's contributions to, or other activities related to, the Borrower or the Project, that in any case could reasonably be expected to result in a Material Adverse Effect.

(ii) As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the NJT, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the NJT, threatened against or affecting the Project or the ability of the NJT to execute, deliver and perform its obligations under this Agreement or the NJT-Borrower Funding Agreement then in effect. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the NJT, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the NJT, threatened against or affecting the Project or the NJT's contributions to, or other activities related to, the Borrower or the Project, that in any case could reasonably be expected to result in a Material Adverse Effect.

(iii) As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the State Treasurer, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the State Treasurer, threatened against or affecting the Project or the ability of the State Treasurer to execute, deliver and perform its obligations under this Agreement or the NJTA-State Treasurer Funding Agreement then in effect. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the State Treasurer, any inquiry or investigation before or by any court or other Governmental

Authority pending, or to the knowledge of the State Treasurer, threatened against or affecting the Project that in any case could reasonably be expected to result in a Material Adverse Effect.

(iv) As of the Effective Date, there is no proposed State statute, rule, regulation or any other law, threatening or adversely affecting in any material respect the Project, the Borrower or the ability of the NJTA, the NJT or the State Treasurer to execute, deliver and perform its obligations under this Agreement and, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, and with respect to the NJT, the NJT-Borrower Funding Agreement.

(g) Accuracy of Representations and Warranties. The representations, warranties and certifications of the NJTA, the NJT and the State Treasurer set forth in this Agreement and, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding, and with respect to the NJT, the NJT-Borrower Funding Agreement, in effect as of the Effective Date are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(h) No Defaults. The NJTA, the NJT and the State Treasurer are not in default under the terms of this Agreement or, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, and with respect to the NJT, the NJT-Borrower Funding Agreement, in effect as of the Effective Date, and no event has occurred or condition exists that, with the giving of notice or the passage of time or both, would constitute an event of default under this Agreement or, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, and with respect to the NJT, the NJT-Borrower Funding Agreement, in effect as of any date on which this representation and warranty is made. To the NJTA's knowledge, no other party to the NJTA-State Treasurer Funding Agreement is in breach of, or in default under, any material term of the NJTA-State Treasurer Funding Agreement. To State Treasurer's knowledge, no other party to the NJTA-State Treasurer Funding is in breach of, or in default under, any material term of the NJTA-State Treasurer Funding Agreement. To the NJT's knowledge, no other party to the NJT-Borrower Funding Agreement is in breach of, or in default under, any material term of the NJT-Borrower Funding Agreement.

(i) Governmental Approvals.

(i) All Governmental Approvals required as of the Effective Date for the NJTA's, the NJT's, and the State Treasurer's performance of their obligations hereunder and under, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, and with respect to the NJT, the NJT-Borrower Funding Agreement, then in effect have been obtained or effected by the NJTA, the NJT, and the State Treasurer, respectively, and are in full force and effect, and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(ii) Neither of the NJTA, the NJT, nor the State Treasurer are in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.



(j) NJTA-State Treasurer Funding Agreement. The NJTA-State Treasurer Funding Agreement is in full force and effect as of the Effective Date and all conditions precedent to the obligations of the respective parties under the NJTA-State Treasurer Funding Agreement have been satisfied. No event has occurred that gives the NJTA or the State Treasurer the right to terminate the NJTA-State Treasurer Funding Agreement.

(k) NJT-Borrower Funding Agreement. The NJT-Borrower Funding Agreement is in full force and effect as of the Effective Date and all conditions precedent to the obligations of the respective parties under the NJT-Borrower Funding Agreement have been satisfied. No event has occurred that gives the NJT, or to the knowledge of the NJT, the Borrower the right to terminate the NJT-Borrower Funding Agreement.

(l) Information. The information furnished by the NJTA, the NJT, and the State Treasurer to the RRIF Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the Effective Date; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the NJTA, the NJT, and the State Treasurer.

(m) Compliance with Law.

(i) The NJTA is in compliance in all material respects with all applicable laws relevant to the execution, delivery and/or performance of its obligations under this Agreement and the NJTA-State Treasurer Funding Agreement. No notices of violation of any applicable law have been issued, entered or received by the NJTA or, to the knowledge of the NJTA, any other party to the NJTA-State Treasurer Funding Agreement, in respect of the Project, this Agreement or the NJTA-State Treasurer Funding Agreement other than, in each case, notices of violation that are immaterial.

(ii) The NJT is in compliance in all material respects with all applicable laws relevant to the execution, delivery and/or performance of its obligations under this Agreement and the NJT-Borrower Funding Agreement. No notices of violation of any applicable law have been issued, entered or received by the NJT or, to the knowledge of the NJT, any other party to the NJT-Borrower Funding Agreement, in respect of the Project, this Agreement or the NJT-Borrower Funding Agreement other than, in each case, notices of violation that are immaterial.

(iii) The State Treasurer is in compliance in all material respects with all applicable laws relevant to the execution, delivery and/or performance of its obligations under this Agreement and the NJTA-State Treasurer Funding Agreement. No notices of violation of any applicable law have been issued, entered or received by the State Treasurer or, to the knowledge of the State Treasurer, any other party to the NJTA-State Treasurer Funding Agreement, in respect of the Project, this Agreement or the NJTA-State Treasurer Funding Agreement other than, in each case, notices of violation that are immaterial.

(n) No Liens. Neither the NJTA, the NJT nor the State Treasurer has created, and is under any obligation to create, and has entered into any transaction or agreement that would

result in the imposition of, any Lien on the Project or the properties or assets in relation to the Project.

**Section 4.2** Representations and Warranties of the RRIF Lender. The RRIF Lender hereby makes the following representations and warranties as of the Effective Date:

(a) The RRIF Lender has all requisite power and authority to perform all transactions contemplated by this Agreement and the RRIF Loan Agreement.

(b) This Agreement and the RRIF Loan Agreement have been duly authorized, executed and delivered by the RRIF Lender, and each is a legally valid and binding agreement of the RRIF Lender, enforceable in accordance with its terms.

(c) The officer of the RRIF Lender executing this Agreement and the RRIF Loan Agreement is duly and properly in office and fully authorized to execute the same on behalf of the RRIF Lender.

## ARTICLE V

### COVENANTS

**Section 5.1** Affirmative Covenants. The NJTA, the NJT and the State Treasurer covenant and agree as follows until the date the RRIF Loan and the obligations of the Borrower under the RRIF Loan Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower under the RRIF Loan Agreement, unless the RRIF Lender waives such compliance in writing:

(a) Copies of Documents. Without limiting the consent rights of the RRIF Lender set forth in Section 5.2(c), the NJT shall provide written notice to the Borrower, copied to the RRIF Lender of the NJT's intent to enter into any Additional Funding Agreement and shall provide drafts of any such Additional Funding Agreement at least ninety (90) days prior to the proposed effective date thereof, together with any related contracts, side letters or other understandings. If the RRIF Lender provides its consent to an Additional Funding Agreement, the NJT shall provide a complete and fully executed version of each Additional Funding Agreement to the Borrower, copied to the RRIF Lender, together with any related contracts, side letters or other understandings, within ten (10) days following execution or completion thereof.

(b) Compliance with NJS Funding Agreements.

(i) The NJT agrees to take all action necessary to comply with its obligations, covenants and responsibilities set forth in the NJT-Borrower Funding Agreement and any Additional Funding Agreement then in effect. The NJT shall make the Contract Payments under the NJT-Borrower Funding Agreement either on a *pari passu* basis with, or on a priority basis to, the payments it makes under any Additional Funding Agreement and the NJT shall not in any event subordinate the Contract Payments under the NJT-Borrower Funding Agreement to the payments that the NJT makes pursuant to any Additional Funding Agreement to which it is a party from time to time.

(ii) The NJTA and the State Treasurer agree to take all actions necessary to comply with their obligations, covenants and responsibilities set forth in the NJTA-State Treasurer Funding Agreement.

(c) Compliance with Law. The NJTA, the NJT and the State Treasurer, as applicable shall comply in all material respects with all applicable laws relevant to the execution, delivery and/or performance of their respective obligations under this Agreement and, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, and with respect to the NJT, the NJT-Borrower Funding Agreement.

(d) Notices.

(i) The NJTA, the NJT and the State Treasurer, as applicable, within five (5) Business Days after the either of the NJTA, the NJT or the State Treasurer, as applicable, learns of the occurrence (unless another time period is required pursuant to this Section 5.1(d)(i)), give the Borrower, with a copy to the RRIF Lender, written notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event and including any relevant and significant documentation:

(A) Litigation: (1) the filing of any inquiry, investigation, litigation, suit or action, or the commencement of any proceeding, against the NJTA, the NJT or the State Treasurer, as applicable, before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the NJTA, the NJT or the State Treasurer, as applicable, in writing of any threat of inquiry, investigation, litigation, suit, action, or proceeding, or of any claim against the NJTA, the NJT or the State Treasurer, as applicable, with respect to the Project, the Project Development Agreement, or any NJS Funding Agreement, as applicable, that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such inquiry, investigation litigation, suit, action or claim, and (2) any judgments against the NJTA, the NJT or the State Treasurer with respect to the Project;

(B) Amendments: copies of (1) any proposed amendments to any NJS Funding Agreement or any Additional Funding Agreement at least ninety (90) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

(C) Defaults: any actual or, to the knowledge of the NJTA, the NJT or the State Treasurer, as applicable, prospective event of default hereunder or under any, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, and with respect to the NJT, the NJT-Borrower Funding Agreement, which notice shall specify the actual or prospective event of default;

(D) Statutory Changes: any amendment or proposed amendment to the GDC Act;

(E) Legislative or Gubernatorial Actions: any actual or prospective failure by the State legislature to appropriate to NJT in the State's annual appropriations act of the amounts received by the State Treasurer from the NJTA as set forth in the NJTA-State Treasurer Funding Agreement, or any action or inaction by the Governor of the State that would have the effect of reducing the amount of the appropriation to NJT in the State's annual appropriations act of the amounts received by the State Treasurer in the NJTA-State Treasurer Funding Agreement from the NJTA as set forth in the NJTA-State Treasurer Funding Agreement; and

(F) NJT Actions: any actual or prospective action by the NJT to remove or reduce the amount of the Contract Payments paid to the Borrower under the NJT-Borrower Funding Agreement or any Additional Funding Agreements; and

(G) Other Adverse Events: the occurrence of any projected or actual revenue deficiency with respect to funding sources intended for use for payment of Contract Payments under the NJT-Borrower Funding Agreement or payment under the NJTA-State Treasurer Funding Agreement or any Additional Funding Agreement.

(ii) The NJTA, the NJT or the State Treasurer, as applicable, shall provide the RRIF Lender, with any further information reasonably requested by the RRIF Lender from time to time concerning the matters described in this Section 5.1(d).

(iii) Remedial Action. Within thirty (30) calendar days after the NJTA, the NJT or the State Treasurer, as applicable learn of the occurrence of an event specified in Section 5.1(d)(i) (*Notices*) (other than in Section 5.1(d)(i)(B) (*Amendments*)), the State's Authorized Representative shall provide a statement to the RRIF Lender setting forth the actions the NJTA, the NJT or the State Treasurer, as applicable, proposes to take with respect thereto.

(e) Budgeting and Appropriations.

(i) In each fiscal year of the State during which the RRIF Loan Agreement remains in effect, the State Treasurer shall submit a request to the Governor for inclusion of an appropriation to NJT in the Governor's Budget Message to the State Legislature of the amount necessary to pay for the State's share of the costs of the Project (as described in Sections 2.1(a) and 2.1(b) of the NJTA-State Treasurer Funding Agreement).

(ii) If in any year NJTA fails, in its annual budget, to make all budgetary and other provisions or appropriations necessary to satisfy all of its obligations in subsections 2.1(a) and (b) of the NJTA-State Treasurer Funding Agreement, upon delivery of the NJTA's budget to the State, the State Treasurer shall submit a request to the Governor for inclusion of an appropriation to NJT in the Governor's Budget Message to the State Legislature of the amount necessary to pay for the State's share of the costs of the HTP project (as described in subsection 2.1(a) of the NJTA-State Treasurer Funding Agreement) and the Borrower's operating budget (as described in subsection 2.1(b) of the NJTA-State Treasurer Funding Agreement). In addition, if

the NJTA has failed, in whole or in part, to make the semi-annual payment described in Section 2.1(a) of the NJTA-State Treasurer Funding Agreement that was due on February 1 of the current calendar year, the State Treasurer shall submit a request to the Governor for inclusion of an appropriation to NJT in the Governor's Budget Message to the State Legislature of the unpaid amount.

(iii) If at any time following passage of the annual budget of the NJTA, the NJTA determines that it will be, or is reasonably likely to be, unable to make any payment required under the NJTA-State Treasurer Funding Agreement, the NJTA shall provide written notice to the State Treasurer and the State Treasurer shall submit a request to the Governor of the State for an appropriation to the NJT to be submitted to the State Legislature in the amount necessary to cover any shortfall described in the NJTA's written notice.

(f) Additional NJTA Covenants.

(i) NJTA shall notify the RRIF Lender of any shortfalls in General Reserve Fund balances that may result in the State Treasurer needing to submit a request to the Governor for to include a recommended an appropriation in the Governor's Budget Message or a supplemental appropriation from the State Legislature.

(ii) NJTA shall include in its annual budget, in each year, the payment amounts needed to fund (A) the State's share of the Project, as described in subsections 2.1(a) and (b) of the NJTA-State Treasurer Funding Agreement, and (B) the Borrower's operating budget for such year, in each case subject to availability of funds in the General Reserve Fund.

(g) Additional NJT Covenants.

(i) NJT shall include the HTP amounts in its Annual Capital Plan and also in its budget request that its President and CEO approves and submits to the New Jersey Department of the Treasury's Office of Management and Budget and to New Jersey Department of Transportation in early January of each year.

(ii) NJT shall provide written notice to NJTA and to the State Treasurer, in sufficient time for NJTA to include such amounts in its annual budget request to the State Treasurer, the projected amounts of (A) RRIF Debt Service Payments, (B) Credit Risk Premium Payments, (C) Issuance Costs, (D) Administrative Fees and (E) other Contract Payments payable or expected to be payable by NJT under the NJT-Borrower Funding Agreement during the following year.

(iii) NJT shall, at all times while the elements of the Project described in clauses (a) and (b) of the definition of the "Project" are available for revenue operations, utilize such elements of the Project as part of its commuter rail operations.

**Section 5.2** Negative Covenants. The NJTA, the NJT and the State Treasurer covenants and agrees as follows until the date the obligations of the Borrower under the RRIF Loan Agreement and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any

commitment to make disbursements to the Borrower under the RRIF Loan Agreement, unless the RRIF Lender waives compliance in writing:

(a) No Adverse Amendments. Neither the NJTA, the NJT nor the State Treasurer shall terminate, assign, amend, modify, replace, or supplement, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement and with respect to the NJT, the NJT-Borrower Funding Agreement (except as expressly permitted in Section 7.08(b) therein) or any Additional Funding Agreement, without the prior written consent of the RRIF Lender.

(b) No Prohibited Liens. Neither the NJTA, the NJT nor the State Treasurer shall create, incur, assume or, except as contemplated in Section 3.1 (Acknowledgment of Pledge and Assignment), permit to exist any Lien on the Project. The NJT shall not create, incur, assume or, except as contemplated in Section 3.1 (Acknowledgment of Pledge and Assignment), permit to exist any Lien on the Contract Payments. Neither the NJTA nor the State Treasurer shall create, incur, assume or, permit to exist any Lien on the payments made/to be made by NJTA to the State Treasurer under the NJTA-State Treasurer Funding Agreement. Neither the NJTA, the NJT nor the State Treasurer shall collaterally assign any of its rights under or pursuant to, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, and with respect to the NJT, the NJT-Borrower Funding Agreement and any Additional Funding Agreement.

(c) Additional Funding Agreements. The NJT shall not, without the prior written consent of the RRIF Lender, enter into any Additional Funding Agreement. If the RRIF Lender determines in its reasonable discretion that such Additional Funding Agreement contains terms and conditions that are more favorable to the Borrower than the terms contained in the NJT-Borrower Funding Agreement, the RRIF Lender may require, as a condition to the RRIF Lender's consent to any such Additional Funding Agreement under this Section 5.2(c), that the NJT and the Borrower amend or modify the NJT-Borrower Funding Agreement to incorporate such more favorable terms, such amendment or modification to be in form and substance satisfactory to the RRIF Lender.

(d) No Adverse Action. Neither the NJTA, the NJT nor the State Treasurer shall in any way impair the rights and remedies of the RRIF Lender under the RRIF Loan Documents in connection with any action or proceedings brought by or on behalf of the RRIF Lender in connection therewith.

(e) Payments by NJT. NJT shall not remove or reduce the HTP amounts received from NJTA or the State Treasurer pursuant to the NJTA-State Treasurer Funding Agreement and shall transmit the HTP amounts to the Borrower in accordance with the terms of the NJT-Borrower Funding Agreement.

(f) Payments under NJTA-State Treasurer Funding Agreement. NJTA shall not take any discretionary action that would negatively impact its ability to make required payments under in the NJTA-State Treasurer Funding Agreement.

### **Section 5.3** Records and Reporting.

(a) Records. The NJTA, the NJT and the State Treasurer, as applicable, shall maintain and retain all files relating to this Agreement and, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, with respect to the NJT, and the NJT-Borrower Funding Agreement and any Additional Funding Agreements, until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the RRIF Loan Agreement (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, this Agreement, the NJS Funding Agreements or any Additional Funding Agreements in which the RRIF Lender is involved is finally resolved or, if the RRIF Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the RRIF Lender and the NJTA, the NJT or the State Treasurer, as applicable. The NJT, the NJTA and the State Treasurer shall provide to the RRIF Lender in a timely manner all records and documentation relating to the NJS Funding Agreements that the Borrower, with a copy to the RRIF Lender, may reasonably request from time to time.

(b) Reporting. Until the RRIF Loan has been irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower under the RRIF Loan Agreement, the NJTA, the NJT and the State Treasurer, as applicable, shall provide the information described below, to the RRIF Lender and the Borrower, as applicable, in the form and substance satisfactory to the RRIF Lender.

(i) State Treasurer.

A. The State Treasurer shall provide to the Borrower such information concerning (I) the State Treasurer, and the operations and finances of the State Treasurer (including other funding agreement-supported indebtedness), and (II) the State Treasurer's other obligations hereunder and under the NJTA-State Treasurer Funding Agreement, in each case of clauses (I), and (II) above as the Borrower considers necessary to enable the Borrower to meet its reporting obligations under the RRIF Loan Documents.

B. The State Treasurer shall deliver to the Borrower, with a copy to the RRIF Lender, a copy of the annual Appropriations Act for each State fiscal year while the RRIF Loan to the Borrower is outstanding and shall provide written notice to the Borrower of (1) any exercise by the Governor of the State of the line item veto power with respect to any items in the annual Appropriations Act that could reasonably be expected to have an adverse affect on NJT's ability to pay in full any of the Contract Payments scheduled or expected to be paid during the following State fiscal year or, as applicable, and (2) the ultimate resolution of the issues and matters that presaged such line item veto, whether by legislative override or otherwise.

C. The State Treasurer shall provide to the Borrower, with a copy to the RRIF Lender, within seven (7) Business Days after becoming available to the public, the Annual Comprehensive Financial Report of the State.

(ii) NJTA.

A. The NJTA shall provide to the Borrower such information concerning (I) the NJTA, and the operations and finances of the NJTA (including other funding

agreement-supported indebtedness), (II) the payments to be made by the NJTA as provided in the NJTA-State Treasurer Funding Agreement, and (III) the NJTA's other obligations hereunder and under the NJTA-State Treasurer Funding Agreement, in each case of clauses (I), (II) and (III) above as the Borrower considers necessary to enable the Borrower to meet its reporting obligations under the RRIF Loan Documents.

B. NJTA shall provide to the RRIF Lender, in form and substance satisfactory to the RRIF Lender, the following items:

- (I) Audited financial statements,
- (II) Authority Budget, when delivered to the State,
- (III) Revenues, expenditures and debt service coverage calculations for the prior fiscal year and the current fiscal year, along with projections of such information for the five following fiscal years (similar to the spread sheet labeled "Gateway Financial Plan Excel – 2022-2028" in data room),
- (IV) Traffic studies when updated, and
- (V) All final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any Rating Agency that has provided, or is being requested to provide, a rating with respect to any NJTA bonds, promptly following the delivery or publication of such presentations, notices, reports or other written materials.

(iii) NJT.

A. The NJT shall provide to the Borrower such information concerning (I) the NJT, and the operations and finances of the NJT (including other funding agreement-supported indebtedness), (II) the payments to be made by the NJT as provided in the NJT-Borrower Funding Agreement, and (III) the NJT's other obligations hereunder and under the NJT-Borrower Funding Agreement, in each case of clauses (I), (II) and (III) above as the Borrower considers necessary to enable the Borrower to meet its reporting obligations under the RRIF Loan Documents.

B. The NJT shall provide to the RRIF Lender within ten (10) Business Days after becoming available to the public, the annual report for the NJT.

(iv) If the NJTA, the NJT or the State Treasurer (individually, the "Disclosing Party") discloses any of the information described in clauses (i) to (iv) above, as applicable, on the 'Electronic Municipal Marketplace Access' operated by the Municipal Securities Rulemaking Board, the Disclosing Party's investor's guide website, or any similar website, as an alternative means of delivery, the Disclosing Party may deliver such information to the Borrower by means of a written notice to the Borrower, with a copy to the RRIF Lender, specifying the information that has been posted and a link to where such information may be accessed. If, for any reason, the Disclosing Party ceases to make such information publicly



available on any such website, the Disclosing Party shall deliver such information directly to the Borrower, with a copy to the RRIF Lender.

**Section 5.4 Contract Payments.** NJT shall make each payment to the Borrower described in the NJT-Borrower Funding Agreement in accordance with the NJT-Borrower Funding Agreement and, with respect to each RRIF Debt Service Payment, no later than fifteen (15) days prior to each Semi-Annual Date, commencing with the Debt Service Payment Commencement Date. Notwithstanding anything to the contrary in the Funding Agreement, the NJT shall, unless directed otherwise by the Borrower, at the request of the RRIF Lender, deposit all amounts payable by it under the NJT-Borrower Funding Agreement into the NJ RRIF Account held by the Collateral Agent, using the payment instructions below (or such other payment instructions notified to the NJT from time to time by the RRIF Lender or the Collateral Agent).

Payment Instructions:

Bank Name	The Bank of New York Mellon
A.B.A. Number	[REDACTED]
Swift Code	N/A
For Credit to Account	[REDACTED]

**Section 5.5 Project Monitoring.** The NJT acknowledges that the RRIF Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Modal Grant Offices have oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. The NJT agrees to cooperate in good faith with the RRIF Lender and the Modal Grant Offices in the conduct of such monitoring by providing the RRIF Lender and the Modal Grant Offices with such reports, documentation or other information available to NJT as shall be requested by the RRIF Lender and the Modal Grant Offices, or their agents.

**ARTICLE VI**

**CLARIFICATIONS**

**Section 6.1 Conflicts between Project Development Agreement and any Funding Agreement.** Neither the NJTA, the NJT nor the State Treasurer shall raise, as a defense to any of its obligations hereunder, under, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, and with respect to the NJT, the NJT-Borrower Funding Agreement, or under any Additional Funding Agreement, that any term or provision hereunder or thereunder conflicts with the terms or conditions of the Project Development Agreement. Each of the NJTA, the NJT and the State Treasurer acknowledges that disputes with respect to this Agreement are not subject to the Project Development Agreement and agrees that it shall not commence any dispute resolution proceedings under the Project Development Agreement as a defense to, or to frustrate, any of its obligations hereunder, under, with respect to the NJTA and the State Treasurer, the NJTA-State Treasurer Funding Agreement, and with respect to the NJT, the NJT-Borrower Funding Agreement or under any Additional Funding Agreement,

and all such claims and defenses are hereby waived with respect to any such dispute, action, or proceeding.

**Section 6.2** Third Party Beneficiary Rights. The Parties acknowledge and agree that (a) each of the RRIF Lender and the Collateral Agent is and shall be a third party beneficiary under the NJTA-State Treasurer Funding Agreement, the NJT-Borrower Funding Agreement and each Additional Funding Agreement, in each case with the right to enforce the terms and conditions thereunder as though it were a signatory and party thereto and (b) the Collateral Agent is an intended beneficiary of the rights and remedies of the RRIF Lender under this Agreement, with the right to enforce the terms and conditions hereunder, as though it were signatory and party hereto.

**Section 6.3** No Effect on RRIF Loan Documents. The Parties acknowledge and agree that the NJS Funding Agreements do not and shall not alter the terms or conditions of the RRIF Loan Agreement, the CASA, any other agreement, certificate or document entered into or issued in connection with the foregoing, or any rights, remedies, or interests of the RRIF Lender or the Collateral Agent under any of the foregoing.

## ARTICLE VII

### RRIF LENDER RIGHTS AND PROTECTIONS

**Section 7.1** Specific Performance. The RRIF Lender may seek specific performance of this Agreement, whether or not the Borrower shall have complied with any of the provisions hereof or of any NJS Funding Agreement applicable to it, at any time when either the NJTA, the NJT or the State Treasurer, as applicable, shall have failed to comply with any of the provisions of this Agreement applicable to it. Notice of such demand for specific performance shall be made concurrently to each Party.

**Section 7.2** Remedies Not Exclusive. No remedy conferred herein or reserved to the RRIF Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 7.3** Delay or Omission Not Waiver. No waiver by the RRIF Lender of any breach by any Party of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or omission of the RRIF Lender to exercise any right or remedy provided hereunder upon a default of the Party (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the RRIF Lender may be exercised from time to time, and as often as may be deemed expedient by the RRIF Lender.

**Section 7.4** No Third Party Rights. The Parties hereby agree that this Agreement creates no third party rights against the United States Federal Government or the RRIF Lender solely by virtue of this Agreement.

**ARTICLE VIII**

**MISCELLANEOUS**

**Section 8.1** Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to RRIF Lender: Build America Bureau  
United States Department of Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of  
Credit Programs  
Email: BureauOversight@dot.gov

If to the NJTA: Executive Director  
New Jersey Turnpike Authority  
1 Turnpike Plaza  
P.O. Box 5042  
Woodbridge, New Jersey 07095

If to the NJT: President and CEO  
NJ TRANSIT  
One Penn Plaza East  
Newark, New Jersey 07105

With a copy to:  
Office of the General Counsel  
NJ TRANSIT  
One Penn Plaza East  
Newark, New Jersey 07105

If to the  
State Treasurer: Treasurer, State of New Jersey  
New Jersey Department of the Treasury  
P.O. Box 002  
Trenton, New Jersey 08625-0002  
Attention: Deputy State Treasurer

If to Borrower: Gateway Development Commission  
120 Broadway – 10<sup>th</sup> Floor  
New York, NY 10271  
Attention: General Counsel  
Email: Notices@Gatewayprogram.org

Unless otherwise instructed by the RRIF Lender’s Authorized Representative, all notices to the RRIF Lender should be made by email to the email address noted above for the RRIF Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower’s Authorized Representative, with respect to notices to the Borrower, by the State’s Authorized Representative, with respect to notices to the NJTA, the NJT and the State Treasurer, by the Collateral Agent with respect to notices to the Collateral Agent, or by the RRIF Lender’s Authorized Representative, with respect to notices to the RRIF Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

**Section 8.2** No Personal Recourse. No official, employee or agent of the RRIF Lender, the Borrower, the NJTA, the NJT or the State Treasurer, or any person executing this Agreement shall be personally liable under this Agreement by reason of the issuance, delivery, execution or performance hereof.

**Section 8.3** Authorized Representatives.

(a) State’s Authorized Representative. The NJTA, the NJT and the State Treasurer shall at all times have appointed an authorized representative by designating such person or persons from time to time to act on the NJTA’s, the NJT’s and the State Treasurer’s behalf pursuant to a written certificate furnished to the RRIF Lender and the Servicer, if any, containing the specimen signature or signatures of such person or persons and signed by the person so designated by the NJTA, the NJT and the State Treasurer (each such person, “**State’s Authorized Representative**”).

(b) RRIF Lender’s Authorized Representative. The RRIF Lender shall at all times have appointed the RRIF Lender’s Authorized Representative by designating such Person or Persons from time to time to act on the RRIF Lender’s behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the RRIF Lender.

**Section 8.4** Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Agreement shall in any event be effective without the written consent of the Parties.

**Section 8.5** Governing Law. This Agreement shall be governed by the federal laws of the United States if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

**Section 8.6** Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**Section 8.7** Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall inure to the benefit of the Parties hereto and the successors and assigns of the RRIF Lender. Neither the NJTA, the NJT, the State Treasurer nor the Borrower may sell, assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the RRIF Lender.

**Section 8.8** Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the Parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Each Party agrees that the transaction consisting of this Agreement may be conducted by electronic means. Each Party agrees, and acknowledges that it is such Party's intent, that if such Party signs this Agreement using an electronic signature, it is signing, adopting, and accepting this Agreement and that signing this Agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Agreement on paper. Each Party acknowledges that it is being provided with an electronic or paper copy of this Agreement in a usable format.

**Section 8.9** Effectiveness. This Agreement shall be effective as of the Effective Date and shall remain in effect until all amounts borrowed under the RRIF Loan has been irrevocably paid in full, together with any interest accrued thereon, by the Borrower and all other amounts and other obligations under the RRIF Loan Agreement have been satisfied in full.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**GATEWAY DEVELOPMENT COMMISSION**

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

Name:

Title:

**NEW JERSEY TURNPIKE AUTHORITY**

By: \_\_\_\_\_  
Name: James Carone  
Title: Executive Director

**NEW JERSEY TRANSIT CORPORATION**

By: \_\_\_\_\_  
Name: Kevin Corbett  
Title: President and Chief Executive Officer

**TREASURER, STATE OF NEW JERSEY**

By: \_\_\_\_\_  
Name: Elizabeth Maher Muoio  
Title: State Treasurer

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and through the  
Executive Director of the Build America Bureau

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

Name: Dr. Morteza Farajian

Title: Executive Director



**ACKNOWLEDGED AND AGREED TO:**

**THE BANK OF NEW YORK MELLON,**  
as Collateral Agent

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

Name:

Title:

## **EXHIBIT A**

### **OPINIONS REQUIRED OF COUNSEL TO THE NEW JERSEY PARTIES**

An opinion of the counsel from each of the NJTA, the NJT and the State Treasurer, dated as of the Effective Date, to the effect that: (a) the respective Party has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Direct Agreement, the NJTA-State Treasurer Funding Agreement and the NJT-Borrower Funding Agreement, as applicable; (b) the execution and delivery by the respective Party of, and the performance of its respective obligations under, the Direct Agreement, the NJTA-State Treasurer Funding Agreement and the NJT-Borrower Funding Agreement, as applicable, have been duly authorized by all necessary organizational or regulatory action; (c) the respective Party has duly executed and delivered the Direct Agreement, the NJTA-State Treasurer Funding Agreement and the NJT-Borrower Funding Agreement, as applicable, and each such document constitutes the legal, valid and binding obligation of the respective Party, enforceable against the respective Party in accordance with their respective terms; (d) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the respective Party for the execution and delivery by the respective Party of, and the performance of the respective Party under, the Direct Agreement, the NJTA-State Treasurer Funding Agreement and the NJT-Borrower Funding Agreement, as applicable, other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the respective Party; (e) the execution and delivery by the respective Party of, and compliance with the provisions of, the Direct Agreement, the NJTA-State Treasurer Funding Agreement and the NJT-Borrower Funding Agreement, as applicable, in each case do not (i) violate the law of the State, (ii) violate the laws of the United States of America, or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the respective Party is a party, or any court order, consent decree, statute, rule, regulation or any other law to which the respective Party is subject; (f) to counsel's knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the respective Party or any other party by or before any court, arbitrator or any other governmental authority in connection with the Direct Agreement, the NJTA-State Treasurer Funding Agreement and the NJT-Borrower Funding Agreement, as applicable, or the Project that are pending; and (g) pursuant to Section 6 of the State's version of the GDC Act, the State has consented to suits, actions or proceedings of any form or nature at law, in equity, or otherwise (including proceedings to enforce arbitration agreements), against the Borrower, and to appeals therefrom and reviews thereof, except as expressly provided in the State's version of the GDC Act, and consider the State of New York's passage of its version of the GDC Act to constitute the concurrence of the State of New York referenced in Section 23 of the State's version of the GDC Act.

**EXHIBIT B**

**INCUMBENCY CERTIFICATE (STATE TREASURER)**

The undersigned certifies that he/she is the Treasurer of the State of New Jersey (the “State Treasurer”) and as such is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the State Treasurer in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. The undersigned further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the RRIF Loan Documents (as defined in that certain RRIF Loan Agreement (NJT Funding Agreement) dated as of the date hereof) as the State Treasurer’s Authorized Representative:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Aaron Binder	Deputy State Treasurer	_____
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of July, 2024.

TREASURER, STATE OF NEW JERSEY

By: \_\_\_\_\_  
Name: Elizabeth Maher Muoio  
Title: State Treasurer

**INCUMBENCY CERTIFICATE (NJTA)**

The undersigned certifies that she is the Secretary to the New Jersey Turnpike Authority and, as such, is authorized to execute this certificate and further certifies that the following person has been elected or appointed, is qualified, and is now acting as an officer or authorized person of the New Jersey Turnpike Authority in the capacity or capacities indicated below, and that the signature set forth opposite their name is their true and genuine signature. She further certifies that the officer listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the RRIF Loan Documents (as defined in that certain RRIF Loan Agreement (NJT Funding Agreement) dated as of the date hereof) as the New Jersey Turnpike Authority’s Authorized Representative:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
James Carone	Executive Director	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of July, 2024.

New Jersey Turnpike Authority

By: \_\_\_\_\_  
Jennifer Kanski,  
Secretary to the New Jersey Turnpike Authority

**INCUMBENCY CERTIFICATE (NJT)**

The undersigned certifies that she is the Board Secretary of New Jersey Transit Corporation (the “Board Secretary”) and as such is authorized to execute this certificate and further certifies that the following person has been elected or appointed, is qualified, and is now acting as officer or authorized person of the New Jersey Transit Corporation in the capacity or capacities indicated below, and that the signature set forth opposite his name is his true and genuine signature. The undersigned further certifies that the officer listed below is authorized to sign agreements and give written instructions regarding any matters pertaining to the RRIF Loan Documents (as defined in that certain RRIF Loan Agreement (NJT Funding Agreement) dated as of the date hereof) as the New Jersey Transit Corporation’s Authorized Representative:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Kevin Corbett	President & CEO	_____
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____
[ _____ ]	[ _____ ]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of July, 2024.

BOARD SECRETARY, NEW JERSEY TRANSIT CORPORATION

By: \_\_\_\_\_  
Name: Meghan Clark Umukoro  
Title: Board Secretary

Adopted - 7/2/24

**EXHIBIT E**

## CONTINUING COVENANTS AND REPRESENTATIONS AGREEMENT

This **CONTINUING COVENANTS AND REPRESENTATIONS AGREEMENT** (this “**Agreement**”) dated as of July 8, 2024 (the “**Effective Date**”), is made by and among (i) THE PEOPLE OF THE STATE OF NEW YORK, acting by and through the Budget Director (as defined herein); (ii) GATEWAY DEVELOPMENT COMMISSION, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York (the “**Borrower**”); and (iii) UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”), and acknowledged and agreed to by The Bank of New York Mellon, a bank organized under the laws of the state of New York (the “**Collateral Agent**”).

### RECITALS

#### WHEREAS:

(1) the State and the Borrower have entered into that certain Service Contract, dated as of March 31, 2024 (the “**Funding Agreement**”), relating to the Project; and

(2) any Additional Funding Agreement (as defined below) entered into by the State and the Borrower from time to time.

The foregoing agreements in paragraphs (1) and (2) above (each as amended, amended and restated, supplemented or otherwise modified from time to time) are herein collectively referred to as the “**NYS Funding Agreements**” and each, individually, is an “**NYS Funding Agreement**”.

**WHEREAS**, in reliance on the support for the Project provided by the State pursuant to the NYS Funding Agreements, the Borrower and the RRIF Lender have entered into that certain RRIF Loan Agreement (New York Funding Agreement), dated as of the date hereof (the “**RRIF Loan Agreement**”), pursuant to which the RRIF Lender will (subject to the terms and conditions thereof) make a loan in a principal amount not to exceed \$1,487,018,803 (excluding interest that is capitalized), comprised of two tranches (Tranche A in a maximum principal amount (excluding capitalized interest) equal to \$999,684,036, and Tranche B in a maximum principal amount (excluding capitalized interest) equal to \$487,334,767), which loan shall be repaid by the Borrower from Contract Payments made by the State, subject to and in accordance with the terms of the Funding Agreement;

**WHEREAS**, the RRIF Lender, the Borrower and the Collateral Agent have entered into that certain Collateral Accounts and Security Agreement (the “**CASA**”), dated as of the date hereof, as may be modified or amended from time to time in accordance with its terms.

**WHEREAS**, it is a condition to the consummation of the transactions contemplated under the RRIF Loan Agreement that the State and the Borrower each enter into this Agreement

and that each provide certain assurances and agreements, as further described below, in connection with the NYS Funding Agreements and the transactions contemplated thereby.

**NOW, THEREFORE**, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the State, the Borrower, and the RRIF Lender (each, a “**Party**” and, collectively, the “**Parties**”) hereby agree as follows:

## ARTICLE I

### **DEFINED TERMS; INTERPRETATION**

**Section 1.1** Capitalized Terms. All capitalized terms not defined herein shall have the meanings given to them in the RRIF Loan Agreement.

**Section 1.2** Defined Terms. The following terms shall have the meanings specified below.

“**Additional Funding Agreement**” means any additional agreement, other than the Funding Agreement, entered into by and between the State and the Borrower, pursuant to which the State provides funding to the Borrower for the purpose (in whole or in part) of securing the repayment of indebtedness of the Borrower to finance the construction of all or any portion of and relating to the Project.

“**Agreement**” has the meaning given to such term in the preamble.

“**Borrower**” has the meaning given to such term in the preamble.

“**Budget Director**” means the Budget Director of the State.

“**CASA**” has the meaning given to such term in the recitals.

“**Collateral**” means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (a) the Funding Agreement, including all right, title, and interest of the Borrower in the Contract Payments payable thereunder, (b) the NY RRIF Account (as defined in the CASA), and (c) all Proceeds (as defined in the CASA) and products in whatever form of all or any part of the foregoing items (a) and (b), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments (as defined in the RRIF Loan Agreement) and other funds or amounts on deposit in the NY RRIF Account.

“**Collateral Agent**” has the meaning given to such term in the preamble.

“**Effective Date**” has the meaning given to such term in the preamble.

“**Enabling Legislation**” means Section 58 of the Urban Development Corporation Act, being Chapter 174 of the laws of 1968, as such section may be amended from time to time, which includes the authorization of the State, acting by and through the Budget Director, to enter



into the Funding Agreement in an amount not to exceed the “State Capital Commitment” as defined in such Enabling Legislation.

“**Event of Non-Appropriation**” means the failure by the legislature of the State to appropriate for payment under the Funding Agreement, for any given fiscal year of the State, an amount at least equal to the total amount of Contract Payments payable under the Funding Agreement during such fiscal year of the State.

“**Funding Agreement**” has the meaning given to such term in the recitals.

“**General Debt Service Fund**” means the general debt service fund of the State.

“**Governmental Authority**” means any nation, state, sovereign or government, any federal, regional, state or local government or political subdivision thereof or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Person or matters in question.

“**NYS Funding Agreements**” has the meaning given to such term in the recitals.

“**Party**” has the meaning given to such term in the recitals.

“**Project Development Agreement**” means that certain Project Development Agreement for Hudson Tunnel Project, dated as of February 3, 2023, by and among Borrower, the State, the State of New Jersey, and Amtrak, as amended by those certain amendments, dated as of May 2, 2023, and as of March 5, 2024.

“**RRIF Lender**” has the meaning given to such term in the preamble.

“**RRIF Loan**” means the loan made by the RRIF Lender to the Borrower pursuant to the RRIF Loan Agreement.

“**RRIF Loan Agreement**” has the meaning given to such term in the recitals.

“**State**” shall generally mean the people of the State of New York, acting by and through the Budget Director; unless the context of any provision herein shall mean the comptroller of the State or the New York State Office of the Attorney General, in which case “State” shall mean the comptroller of the State or the New York State Office of the Attorney General, as applicable.

“**State’s Authorized Representative**” has the meaning given to such term in Section 8.3(a).

**Section 1.3 Interpretation.** Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the State’s knowledge is implicated in this Agreement or the phrase “to the State’s knowledge” or a similar phrase is used in this

Agreement, the State's knowledge or such phrase(s) shall be interpreted to mean to the best of the Budget Director's knowledge after due inquiry, including, where appropriate, consultation with the office of the attorney general of the State and the office of the comptroller of the State. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person's successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 8.1 and signed by a duly authorized representative of such party.

## ARTICLE II

### CONDITIONS PRECEDENT

**Section 2.1** Conditions Precedent. Notwithstanding anything herein to the contrary, this Agreement and the RRIF Loan Agreement shall not become effective until each of the following conditions precedent shall have been satisfied:

(a) Legal Opinion. Legal counsel to the State shall have delivered to the RRIF Lender legal opinions satisfactory to the RRIF Lender in its sole discretion (including those opinions set forth on Exhibit A).

(b) Approval of RRIF Loan Agreement. The State shall have delivered to the RRIF Lender the written approval of the State and the comptroller of the State relating to the RRIF Loan Agreement pursuant to Section 7.13 of the Funding Agreement, which approvals shall each be in form and substance satisfactory to the RRIF Lender.

(c) Other Requested Documentation. The State shall have delivered such other agreements, documents, instruments, opinions and other items reasonably relating to this Agreement, the Project Development Agreement, or the Funding Agreement required by the RRIF Lender, all in form and substance satisfactory to the RRIF Lender.

### ARTICLE III

#### **STATE ACKNOWLEDGMENTS AND UNDERTAKINGS; NO LIABILITY FOR RRIF LOANS**

**Section 3.1** Acknowledgment of Pledge and Assignment. As contemplated in Section 4.01 of the Funding Agreement, the State hereby acknowledges the Borrower's pledge and assignment of the Contract Payments to the Collateral Agent on behalf of the RRIF Lender and the Borrower's grant to the Collateral Agent on behalf of the RRIF Lender of a lien on and security interest in the Collateral, pursuant to the terms and conditions of the CASA, as security for all of the obligations of the Borrower pursuant to the RRIF Loan Documents.

**Section 3.2** Sovereign Immunity.

(a) The State neither waives nor abrogates its sovereign immunity, in part or in whole, in any manner, under any theory, hereunder. Notwithstanding the foregoing, the State acknowledges and agrees that sovereign immunity shall not bar an action to enforce a claim by the Borrower, the RRIF Lender or the Collateral Agent on behalf of the RRIF Lender based on a breach of this Agreement or any NYS Funding Agreement presented in accordance with the laws of the State.

(b) Pursuant to Section 6 of the State's version of the GDC Act, the State has consented to suits, actions or proceedings of any form or nature at law, in equity, or otherwise (including proceedings to enforce arbitration agreements), against the Borrower, and to appeals therefrom and reviews thereof, except as expressly provided in the State's version of the GDC Act. The State of New Jersey's passage of its version of the GDC Act constitute the concurrence of the State of New Jersey referenced in Section 6 of the State's version of the GDC Act.

**Section 3.3** Cooperation. The State agrees to cooperate with the RRIF Lender to effect the purposes of this Agreement. The State and the Borrower each agree that it shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the RRIF Lender may reasonably request to effectuate the terms of this Agreement.

**Section 3.4** No Liability for RRIF Loan. Nothing in this Agreement shall be construed to mean that the State (i) is liable under the RRIF Loan Agreement for any debt of the Borrower thereunder, or (ii) has incurred any financial obligation hereunder or thereunder.

### ARTICLE IV

#### **REPRESENTATIONS AND WARRANTIES**

**Section 4.1** Representations and Warranties of the State. The State hereby represents and warrants as of the Effective Date:

(a) Power and Authority. The State has (and, as applicable, had) full legal right, power and authority to enter into this Agreement and the Funding Agreement and to carry out and

consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery, and performance of this Agreement and the Funding Agreement.

(b) State's Officers' Authorization. As of the Effective Date, the individuals of the State executing (or that previously executed) this Agreement, the Funding Agreement, and any certifications or instruments related hereto or thereto, are (or were at the time of such execution) duly and properly in their positions and fully authorized to execute the same.

(c) Due Execution; Enforceability. This Agreement and the Funding Agreement each has been duly authorized, executed and delivered by the State and constitutes the legal, valid, and binding agreement of the State enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law); provided that all payments from the State under the Funding Agreement are subject to appropriation by the State legislature.

(d) Non-Contravention. The execution and delivery by the State of this Agreement and the Funding Agreement, the consummation of the transactions contemplated herein and therein and the fulfillment of or compliance with the terms and conditions hereof and thereof do not (i) conflict with the Enabling Legislation, or the New York State Constitution, or any statute, regulation or other law or administrative rule, or with any judgment, ruling, decree, or order of any court or judicial or administrative body, in each case applicable to the State or (ii) conflict with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) under any contract or other agreement or instrument to which the State is a party and/or signatory or by which it or its properties or assets are otherwise subject or bound.

(e) Consents and Approvals. No consent or approval of any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the State of this Agreement and the Funding Agreement, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Agreement or the Funding Agreement or (B) the fulfillment of or compliance by the State with the terms and conditions of this Agreement and the Funding Agreement, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation; Adverse Legislation.

(i) As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the State, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the State, threatened against or affecting the ability of the State to execute, deliver and perform its obligations under this Agreement or the Funding Agreement. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the State, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the State, threatened against or adversely affecting the

State's contributions to, or other activities related to, the Borrower or the Project, that in any case could reasonably be expected to result in a Material Adverse Effect.

(ii) As of the Effective Date, there is no proposed State statute, rule, regulation or any other law, threatening or adversely affecting in any material respect the Project, the Borrower, or the ability of the State to execute, deliver and perform its obligations under this Agreement and under the Funding Agreement.

(g) Accuracy of Representations and Warranties. The representations, warranties and certifications of the State set forth in this Agreement and in the Funding Agreement are true, correct, and complete as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(h) No Defaults. The State is not in default under the terms of this Agreement or the Funding Agreement and no event has occurred or condition exists that, with the giving of notice or the passage of time or both, would constitute an event of default by the State under this Agreement or the Funding Agreement. To the State's knowledge, no other party to the Funding Agreement is in breach of, or in default under, any material term of the Funding Agreement. The State is not in default under the terms of any other service contract then in effect related to any State supported indebtedness or State related indebtedness.

(i) Governmental Approvals.

(i) All Governmental Approvals, if any, required as of the Effective Date for the State's performance of its obligations hereunder and under the Funding Agreement have been obtained or effected by the State and are in full force and effect, and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(ii) The State is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(j) Funding Agreement. The Funding Agreement is in full force and effect as of the Effective Date and all conditions precedent to the obligations of the respective parties under the Funding Agreement (except, the future annual appropriation of Contract Payment amounts by the State legislature) have been satisfied. No event has occurred that gives the State or, to the knowledge of the State, any counterparty thereto the right to terminate the Funding Agreement.

(k) Information. The information furnished by the State to the RRIF Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the Effective Date; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the State.

(l) Compliance with Law. The State is in compliance in all material respects with all applicable laws relevant to the execution, delivery and/or performance of obligations under this Agreement and the Funding Agreement. No notices of violation of any applicable law have been issued, entered or received by the State or, to the knowledge of the State, any other party to the Funding Agreement, in respect of the Project, this Agreement or the Funding Agreement other than, in each case, notices of violation that are immaterial.

(m) No Liens. The State has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Project or the properties or assets in relation to the Project.

**Section 4.2** Representations and Warranties of the RRIF Lender. The RRIF Lender hereby makes the following representations and warranties as of the Effective Date:

(a) The RRIF Lender has all requisite power and authority to perform all transactions contemplated by this Agreement and the RRIF Loan Agreement.

(b) This Agreement and the RRIF Loan Agreement have each been duly authorized, executed and delivered by the RRIF Lender, and each is a legally valid and binding agreement of the RRIF Lender, enforceable in accordance with its terms.

(c) The officer of the RRIF Lender executing this Agreement and the RRIF Loan Agreement is duly and properly in office and fully authorized to execute the same on behalf of the RRIF Lender.

## ARTICLE V

### STATE COVENANTS

**Section 5.1** State Affirmative Covenants. The State covenants and agrees as follows until the date the RRIF Loan and the obligations of the Borrower under the RRIF Loan Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower under the RRIF Loan Agreement, unless the RRIF Lender waives such compliance in writing:

(a) Copies of Documents. Without limiting the consent rights of the RRIF Lender set forth in Section 5.2(c), the State shall provide written notice to the RRIF Lender of the State's intent to enter into any Additional Funding Agreement and shall provide drafts of any such Additional Funding Agreement at least ninety (90) days prior to the proposed effective date thereof, together with any related contracts, side letters or other understandings. If the RRIF Lender provides its consent to an Additional Funding Agreement, the State shall provide a complete and fully executed version of each Additional Funding Agreement, together with any related contracts, side letters or other understandings, within ten (10) days following execution or completion thereof.

(b) Compliance with NYS Funding Agreements. The State agrees to take all action necessary to comply with its obligations, covenants and responsibilities set forth in the NYS

Funding Agreements then in effect (subject, in the case of any NYS Funding Agreement, to the appropriation of Contract Payment amounts by the State legislature).

(c) Compliance with Law. The State shall comply in all material respects with all applicable laws relevant to the execution, delivery and/or performance of obligations under this Agreement and the NYS Funding Agreements.

(d) Notices.

(i) The appropriate department of the State shall, within ten (10) Business Days after the State learns of the occurrence (unless another time period is required pursuant to this Section 5.1(d)(i)), give the RRIF Lender and the Borrower written notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event and including any relevant and significant documentation:

(A) Litigation: (1) the filing of any inquiry, investigation, litigation, suit or action, or the commencement of any proceeding, against the State before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the State in writing of any threat of inquiry, investigation, litigation, suit, action, or proceeding, or of any claim against the State with respect to the Project, the Project Development Agreement or any NYS Funding Agreement that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such inquiry, investigation litigation, suit, action or claim, and (2) any judgments against the State with respect to the Project;

(B) Amendments: copies of (1) any proposed amendments to any NYS Funding Agreement at least ninety (90) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof, unless, in each case, the Borrower shall have already provided any such documentation to the RRIF Lender;

(C) Defaults: any actual or, to the knowledge of the State, prospective event of default hereunder or under any NYS Funding Agreement, which notice shall specify the actual or prospective event of default;

(D) Statutory Changes: any amendment or proposed amendment to the Enabling Legislation or the GDC Act; and

(E) Legislative Actions: any Event of Non-Appropriation in respect of the Funding Agreement or any Additional Funding Agreement, or any failure by the State to include in the Governor's Executive Budget the full amount of Contract Payments expected to be payable during the next fiscal year of the State.

(ii) The State shall provide the RRIF Lender with any further information reasonably requested by the RRIF Lender from time to time concerning the matters described in this Section 5.1(d).

(iii) Remedial Action. Within thirty (30) calendar days after the State learns of the occurrence of an event specified in Section 5.1(d)(i) (Notices) (other than in Section 5.1(d)(i)(B) (Amendments)), the State's Authorized Representative shall provide a statement to the RRIF Lender setting forth the actions the State proposes to take with respect thereto.

(e) Budgeting and Appropriations.

(i) For each fiscal year of the State during which the RRIF Loan Agreement remains in effect, the State shall include a debt service appropriation request in the Executive Budget for the aggregate amount of Contract Payments that are scheduled or otherwise expected to be paid during such State fiscal year.

(ii) The Budget Director shall certify quarterly to the comptroller of the State the estimated amount of monies to be transferred from the General Fund to the State's General Debt Service Fund for payment pursuant to the Funding Agreement during each month of such State fiscal year. The Budget Director shall update such certificate periodically, as necessary, to assure that such certification accurately sets forth any and all such amounts required or projected to be required to make Contract Payments under the Funding Agreement. The Budget Director shall promptly revise or amend such certification if additional amounts are required to pay in full all of the Contract Payments payable under the Funding Agreement. Pursuant to each certificate from the Budget Director, the comptroller of the State shall set aside monies in the General Debt Service Fund and make such funds available to pay in full the Contract Payments coming due on the next payment date under the Funding Agreement.

(iii) In the event there is a projected or actual revenue deficiency during the course of any Borrower Fiscal Year, such that the State is not, or projects that it will not be, able to make the Contract Payments from moneys in the General Debt Service Fund in accordance with the Funding Agreement or any Additional Funding Agreement (other than by reason of an Event of Non-Appropriation), the Budget Director shall immediately use best efforts to undertake mitigating efforts to avoid any such deficiency or prospective deficiency, and the Budget Director shall provide written notice to the RRIF Lender and the Borrower of (i) the steps that the Budget Director is taking to avoid a shortfall in any Contract Payments and (ii) the outcomes or results of such steps.

(iv) Following the occurrence of any Event of Non-Appropriation, the Budget Director shall (A) provide written notice to the RRIF Lender in accordance with Section 5.1(d)(i)(E), (B) immediately use best available efforts to seek to mitigate the prospect of an inability of the State to make a Contract Payment as an when due under the Funding Agreement, (C) provide written notice to the RRIF Lender and the Borrower of the steps that the Budget Director is taking to avoid an inability of the State to make such Contract Payment within thirty (30) days after the date as of which the State was required to deliver the notice pursuant to Section 5.1(d)(i)(E), and (D) provide written updates to the RRIF Lender and the Borrower of the outcomes or results of such steps on a monthly basis until the Contract Payments in question shall have been appropriated.

**Section 5.2** State Negative Covenants. The State covenants and agrees as follows until the date the RRIF Loan and the obligations of the Borrower under the RRIF Loan



Documents (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower under the RRIF Loan Agreement, unless the RRIF Lender waives compliance in writing:

(a) No Adverse Amendments. The State hereby confirms and agrees that (i) consistent with Section 5.02 of the Funding Agreement, for so long as the RRIF Loan Agreement is in effect or the RRIF Loan is outstanding, neither the Borrower nor the State shall terminate the Funding Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances which may constitute failure of consideration, or frustration of purpose, or the failure of either party to perform and observe any duty, liability or obligation arising out of or connected with the Funding Agreement, and (ii) for so long as the RRIF Loan Agreement is in effect or the RRIF Loan is outstanding, neither the Borrower nor the State shall amend, change, modify or alter the Funding Agreement, without the prior written consent of the RRIF Lender, except to modify Schedule I thereto to cause such schedule to reflect changes to Exhibit B (*RRIF Debt Service*) to the RRIF Loan Agreement implemented by the RRIF Lender.

(b) No Prohibited Liens. The State shall not create, incur, assume or, except as contemplated in Section 3.1 (*Acknowledgment of Pledge and Assignment*), permit to exist any Lien on the Project, the Contract Payments or the State's respective rights in any of the foregoing. The State shall not collaterally assign any of its rights under or pursuant to any NYS Funding Agreement and shall not permit a Lien to encumber the State's rights or privileges under any NYS Funding Agreement.

(c) Additional Funding Agreements. The State shall not, without the prior written consent of the RRIF Lender, enter into any Additional Funding Agreement. If the RRIF Lender determines in its reasonable discretion that any proposed Additional Funding Agreement contains terms and conditions that are more favorable to the Borrower than the terms contained in the Funding Agreement, the RRIF Lender may require, as a condition to the RRIF Lender's consent to any such Additional Funding Agreement under this Section 5.2(c), that the State and the Borrower amend or modify the Funding Agreement to incorporate such more favorable terms, such amendment or modification to be in form and substance satisfactory to the RRIF Lender.

(d) No Adverse Action. The State shall not in any way impair the rights and remedies of the RRIF Lender under the RRIF Loan Documents in connection with any action or proceedings brought by or on behalf of the RRIF Lender in connection therewith.

**Section 5.3** Records and Reporting.

(a) Records. The State shall maintain and retain all files relating to this Agreement and the NYS Funding Agreements until three (3) years after the later of the date on which (i) all rights and duties hereunder have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, this Agreement or the NYS Funding Agreements in which the RRIF Lender is involved is finally resolved or, if the RRIF Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the RRIF Lender and the State. The State shall provide to the RRIF Lender in a timely manner all records and documentation relating to the Project or the NYS Funding Agreements that the RRIF Lender may reasonably request from time to time.

(b) Reporting by the State. Until the RRIF Loan has been irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower under the RRIF Loan Agreement, the State shall provide the information described below.

(i) The State shall provide to the Borrower, within ten (10) Business Days after becoming available to the public, a copy of the State’s “Annual Information Statement”, any quarterly updates thereto, and any supplements thereto issued to disclose significant events and developments that occur between quarterly updates.

(ii) The State shall provide to the RRIF Lender within ten (10) Business Days after becoming available to the public: (A) the Annual Comprehensive Financial Reports (the “ACFR”) for the State; (B) all final ratings reports that result in a downgrade by any rating agency then rating any indebtedness secured by a service contract of the State; (C) a copy of (1) the Executive Budget Financial Plan and the related debt service appropriation bill and (2) following passage and confirmation thereof, the final State debt service appropriation bill.

(iii) If the State discloses any of the information described in clauses (i) and (ii) above on the Electronic Municipal Marketplace Access (the “EMMA”) operated by the Municipal Securities Rulemaking Board (the “MSRB”), the State’s investor’s guide website, or any similar website, the State may deliver such information to the RRIF Lender by means of a written notice to the RRIF Lender within five (5) Business Days of the date on which the information is posted, specifying the information that has been posted and a link to where such information may be accessed. If, for any reason, the State ceases to make such information publicly available on any such website, the State shall deliver such information directly to the RRIF Lender.

(iv) Without limiting the State’s express obligations herein, the RRIF Lender acknowledges and agrees that the Borrower (and not the State) has the obligation to report to the RRIF Lender regarding the status of the Project, including but not limited to design, construction costs, requisitions, construction schedules, timetables and delays, labor matters, and insurance claims.

**Section 5.4** Contract Payments. The State shall, unless directed otherwise by the Borrower, deposit all amounts payable by it under the Funding Agreement into the Account, held

by the Collateral Agent, using the payment instructions below (or such other payment instructions notified to the State from time to time by the RRIF Lender or the Collateral Agent); provided, however, that if Contract Payments shall be required to be made to any account other than the Account, the Borrower shall (i) be the legal and beneficial owner of all moneys deposited to such account in accordance with, and as described in, Section 8(b) of the RRIF Loan Agreement, and (ii) have provided written direction to the Collateral Agent with respect to withdrawals from such account of amounts equal to the RRIF Debt Service then being due and payable.

Payment Instructions:

Bank Name	The Bank of New York Mellon
A.B.A. Number	[REDACTED]
Swift Code	N/A
For Credit to Account	[REDACTED]

**Section 5.5** Project Monitoring. The State acknowledges that the RRIF Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Modal Grant Offices have oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. The State agrees to cooperate in good faith with the RRIF Lender and the Modal Grant Offices in the conduct of such monitoring by providing the RRIF Lender and the Modal Grant Offices with such reports, documentation or other information as shall be requested by the RRIF Lender and the Modal Grant Offices, or their agents.

**ARTICLE VI**

**NYS FUNDING AGREEMENT CLARIFICATIONS**

**Section 6.1** Conflicts between Project Development Agreement and any Funding Agreement. The State shall not raise, as a defense to any of its obligations hereunder, under the Funding Agreement, or under any Additional Funding Agreement, that any term or provision hereunder or thereunder conflicts with the terms or conditions of the Project Development Agreement. The State acknowledges that disputes with respect to this Agreement are not subject to the Project Development Agreement and agrees that it shall not commence any dispute resolution proceedings under the Project Development Agreement as a defense to, or to frustrate, any of its obligations hereunder, under the Funding Agreement, or under any Additional Funding Agreement.

**Section 6.2** Third Party Beneficiary Rights. The Parties acknowledge and agree that (a) the RRIF Lender is and shall be a third party beneficiary under the Funding Agreement and each Additional Funding Agreement, in each case with the right to enforce the terms and conditions thereunder either directly or through the Collateral Agent, as though it were a signatory and party thereto and (b) the Collateral Agent is an intended beneficiary of the rights and remedies of the RRIF Lender under this Agreement, with the right to enforce the terms and conditions hereunder, as though it were a signatory and party hereto.

**Section 6.3** No Effect on RRIF Loan Documents. The Parties acknowledge and agree that the NYS Funding Agreements do not and shall not alter the terms or conditions of the RRIF Loan Agreement, the CASA, any other agreement, certificate or document entered into or issued in connection with the foregoing, or any rights, remedies, or interests of the RRIF Lender or the Collateral Agent under any of the foregoing.

## ARTICLE VII

### RRIF LENDER RIGHTS AND PROTECTIONS

**Section 7.1** Specific Performance. The RRIF Lender may seek specific performance of this Agreement, whether or not the Borrower shall have complied with any of the provisions hereof or of any NYS Funding Agreement applicable to it, at any time when the State shall have failed to comply with any of the provisions of this Agreement applicable to it. Notice of such demand for specific performance shall be made concurrently to each Party.

**Section 7.2** Remedies Not Exclusive. No remedy conferred herein or reserved to the RRIF Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 7.3** Delay or Omission Not Waiver. No waiver by the RRIF Lender of any breach by the State of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or omission of the RRIF Lender to exercise any right or remedy provided hereunder upon a default of the State (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the RRIF Lender may be exercised from time to time, and as often as may be deemed expedient by the RRIF Lender.

**Section 7.4** No Third Party Rights. The Parties hereby agree that this Agreement creates no third party rights against the United States Federal Government or the RRIF Lender solely by virtue of this Agreement.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.1** Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to RRIF Lender: Build America Bureau  
United States Department of Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of  
Credit Programs  
Email: BureauOversight@dot.gov

If to the State: Director of the Budget  
State of New York  
Executive Department  
Division of the Budget  
State Capitol, Room 113  
Albany, New York 12224

If to Borrower: Gateway Development Commission  
120 Broadway – 10<sup>th</sup> Floor  
New York, NY 10271  
Attention: General Counsel  
Email: Notices@Gatewayprogram.org

Unless otherwise instructed by the RRIF Lender’s Authorized Representative, all notices to the RRIF Lender should be made by email to the email address noted above for the RRIF Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower’s Authorized Representative, with respect to notices to the Borrower, by the State’s Authorized Representative, with respect to notices to the State, or by the RRIF Lender’s Authorized Representative, with respect to notices to the RRIF Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

**Section 8.2** No Personal Recourse. No official, employee or agent of the RRIF Lender, the Borrower or the State or any person executing this Agreement shall be personally liable under this Agreement by reason of the issuance, delivery, execution or performance hereof.

**Section 8.3** Authorized Representatives.

(a) State’s Authorized Representative. The State hereby appoints its Director of Budget, whoever shall hold such position, as its authorized representative to act on the State’s behalf pursuant to the RRIF Loan Documents to which it is a party (each such person, “**State’s Authorized Representative**”).

(b) RRIF Lender's Authorized Representative. The RRIF Lender shall at all times have appointed the RRIF Lender's Authorized Representative by designating such Person or Persons from time to time to act on the RRIF Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the RRIF Lender.

**Section 8.4** Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Agreement shall in any event be effective without the written consent of the Parties.

**Section 8.5** Governing Law. This Agreement shall be governed by the federal laws of the United States if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

**Section 8.6** Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**Section 8.7** Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall inure to the benefit of the Parties hereto and the successors and assigns of the RRIF Lender. None of the State or the Borrower may sell, assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the RRIF Lender.

**Section 8.8** Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the Parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Each Party agrees that the transaction consisting of this Agreement may be conducted by electronic means. Each Party agrees, and acknowledges that it is such Party's intent, that if such Party signs this Agreement using an electronic signature, it is signing, adopting, and accepting this Agreement and that signing this Agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Agreement on paper. Each Party acknowledges that it is being provided with an electronic or paper copy of this Agreement in a usable format.

**Section 8.9** Effectiveness. This Agreement shall be effective as of the Effective Date and shall remain in effect until all amounts borrowed under the RRIF Loan has been irrevocably paid in full, together with any interest accrued thereon, and all other amounts and other obligations under the RRIF Loan Agreement have been satisfied in full.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**GATEWAY DEVELOPMENT COMMISSION**

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

Name:

Title:

**THE PEOPLE OF THE STATE OF NEW YORK**

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

Name: Blake G. Washington

Title: Director of the Budget



**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and through the  
Executive Director of the Build America Bureau

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

Name: Dr. Morteza Farajian

Title: Executive Director

**ACKNOWLEDGED AND AGREED TO:**

**THE BANK OF NEW YORK MELLON**  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**OPINIONS REQUIRED OF THE  
OFFICE OF THE ATTORNEY GENERAL OF THE STATE**

An opinion of counsel from the Office of the Attorney General of the State, dated as of the Effective Date, shall be delivered to the RRIF Lender, substantially to the effect that: (a) the State has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Continuing Covenants and Representations Agreement and the Funding Agreement; (b) the execution and delivery by the State of, and the performance of its respective obligations under, the Continuing Covenants and Representations Agreement and the Funding Agreement have been duly authorized by all necessary organizational or regulatory action; (c) the State has duly executed and delivered the Continuing Covenants and Representations Agreement and the Funding Agreement and each such document constitutes the legal, valid and binding obligation of the State, enforceable against the State in accordance with their respective terms (in the case of the State's financial obligations under the Funding Agreement, subject to annual appropriation); (d) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the State for the execution and delivery by the State of, and the performance of the State under, the Continuing Covenants and Representations Agreement and the Funding Agreement other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the State; (e) the execution and delivery by the State of, and compliance with the provisions of, the Continuing Covenants and Representations Agreement and the Funding Agreement in each case do not (i) violate the law of the State, (ii) violate the laws of the United States of America that are customarily applicable to transactions of the type contemplated, except that no opinion shall be required with respect to Federal securities, banking, insurance, or tax laws, or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the State is a party, or any court order, consent decree, statute, rule, regulation or any other law to which the State is subject; and (f) to counsel's knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the State or any other party by or before any court, arbitrator or any other governmental authority in connection with the Continuing Covenants and Representations Agreement, the Funding Agreement, or the Project that are pending.

Adopted - 7/2/24

**EXHIBIT F**

## **DIRECT AGREEMENT (PANYNJ)**

This **DIRECT AGREEMENT** (this “**Agreement**”) dated as of July 8, 2024 (the “**Effective Date**”), is made by and among (i) THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic, created by compact between the State of New York and the State of New Jersey with the consent of Congress (the “**Port Authority**”); (ii) GATEWAY DEVELOPMENT COMMISSION, a body politic and corporate, a public authority and a government sponsored authority established by the State of New York and the State of New Jersey (the “**Borrower**”); and (iii) the UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”); and acknowledged and agreed to by The Bank of New York Mellon, a bank organized under the laws of the state of New York (the “**Collateral Agent**”).

### **RECITALS**

**WHEREAS**, the Port Authority and the Borrower have entered into that certain Hudson Tunnel Project RRIF Loan Funding Agreement, dated as of April 8, 2024 (as amended to the date hereof and as the same may be further modified or amended from time to time in accordance with its terms, the “**Funding Agreement**”), relating to the Project;

**WHEREAS**, in reliance on the support for the New Tunnel (as defined in the hereinafter defined RRIF Loan Agreement) provided by the Port Authority pursuant to the Funding Agreement, the Borrower and the RRIF Lender have entered into that certain RRIF Loan Agreement (Port Authority Funding Agreement), dated as of the date hereof (the “**RRIF Loan Agreement**”), pursuant to which the RRIF Lender will (subject to the terms and conditions thereof) make a loan in a principal amount not to exceed \$1,870,000,000 (excluding interest that is capitalized), which loan shall be repaid from Contract Payments paid under (and as defined in) the Funding Agreement (subject to the terms and conditions thereof);

**WHEREAS**, the RRIF Lender, the Borrower and the Collateral Agent have entered into that certain Collateral Accounts and Security Agreement (the “**CASA**”), dated as of the date hereof, as may be modified or amended from time to time in accordance with its terms;

**WHEREAS**, it is a condition to the consummation of the transactions contemplated under the RRIF Loan Agreement that the Port Authority and the Borrower each enter into this Agreement and that each provide certain assurances and agreements, as further described below, in connection with the Funding Agreement and the transactions contemplated thereby.

**NOW, THEREFORE**, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Port Authority, the Borrower, and the RRIF Lender (each, a “**Party**” and, collectively, the “**Parties**”) hereby agree as follows:

**ARTICLE I**

**DEFINED TERMS; INTERPRETATION**

**Section 1.1** Capitalized Terms. All capitalized terms not defined herein shall have the meanings given to them in the RRIF Loan Agreement.

**Section 1.2** Defined Terms. The following terms shall have the meanings specified below.

“**Agreement**” has the meaning given to such term in the preamble.

“**Board of Commissioners**” means the board of commissioners of the Port Authority, as set forth in N.Y. Unconsol. Law § 6405 and N.J.S.A. 32:1-5.

“**Borrower**” has the meaning given to such term in the preamble.

“**CASA**” has the meaning given to such term in the recitals.

“**Collateral**” means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (a) the Funding Agreement, including all right, title, and interest of the Borrower in the Contract Payments payable thereunder, (b) the PANYNJ RRIF Account (as defined in the CASA), and (c) all Proceeds (as defined in the CASA) and products in whatever form of all or any part of the foregoing items (a) and (b), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments (as defined in the RRIF Loan Agreement) and other funds or amounts on deposit in the PANYNJ RRIF Account.

“**Collateral Agent**” has the meaning given to such term in the recitals.

“**Commercial Paper Obligations**” means the issue of Special Obligations of the Port Authority known as “Port Authority Commercial Paper Obligations”.

“**Committee on Finance**” means the Committee on Finance of the Board of Commissioners, chartered by that certain Charter of the Committee on Finance of the Board of Commissioners of the Port Authority, approved on September 20, 2012.

“**Consolidated Bond Reserve Fund**” means the special fund by that name established by Section 7 of the Consolidated Bond Resolution.

“**Consolidated Bond Resolution**” means that certain Consolidated Bond Resolution, adopted October 9, 1952, by the Port Authority.

“**Consolidated Bonds**” means direct and general obligations of the Port Authority (which also includes short-term bonds known as “Consolidated Notes”) issued in conformity with the Consolidated Bond Resolution for the purposes therein set forth.

“**CPI**” has the meaning given to such term in Section 5.2(d).

“**Effective Date**” has the meaning given to such term in the preamble.

“**FAA Settlement**” means that certain Agreement and Final Corrective Action Plan, dated as of June 14, 2023, by and between the Port Authority and the Federal Aviation Administration.

“**Funding Agreement**” has the meaning given to such term in the recitals.

“**Institutional Loans**” means Special Obligations issued or incurred pursuant to the Special Obligation Institutional Loan Program.

“**OP Test**” has the meaning given to such term in the FAA Settlement.

“**Party**” has the meaning given to such term in the recitals.

“**Port Authority’s Authorized Representative**” has the meaning given to such term in Section 8.3(a).

“**Port Authority Sources of Payment**” has the meaning provided in the Funding Agreement.

“**RRIF Lender**” has the meaning given to such term in the preamble.

“**RRIF Loan**” means the loan made by the RRIF Lender to the Borrower pursuant to the RRIF Loan Agreement.

“**RRIF Loan Agreement**” has the meaning given to such term in the recitals.

“**SEP Agreement**” means that certain Supporting or Executing Partner Agreement for Construction Services for the Tunneling and Heavy Civil Work for the New Hudson River Tunnel, dated as of October 16, 2023, by and between the Borrower and the Port Authority.

“**Special Obligation Institutional Loan Program**” means the program for the issuance or incurrence of certain Special Obligations established by the resolution adopted by the Port Authority on November 17, 2022.

“**Special Obligations**” means obligations of the Port Authority designated as such that are payable from the proceeds of obligations of the Port Authority issued for such purposes, including Consolidated Bonds and Consolidated Notes issued in whole or in part for such purposes, or from net revenues (as defined in the Funding Agreement) deposited into the Consolidated Bond Reserve Fund, and in the event such net revenues are insufficient therefor, from other moneys of the Port Authority legally available for such payments when due, and that are subject in all respects to the payment of debt service on the Consolidated Bonds and the payment into the General Reserve Fund (as defined in the Consolidated Bond Resolution) of the amount of money necessary to maintain the General Reserve Fund at the amount specified in the General Reserve Fund Statutes (as defined in the Consolidated Bond Resolution).

**Section 1.3 Interpretation.** Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Port Authority’s knowledge is implicated in this Agreement or the phrase “to the Port Authority’s knowledge” or a similar phrase is used in this Agreement, the Port Authority’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Port Authority’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any Party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 8.1 and signed by a duly authorized representative of such Party.

## **ARTICLE II**

### **CONDITIONS PRECEDENT**

**Section 2.1 Conditions Precedent.** Notwithstanding anything herein to the contrary, this Agreement and the RRIF Loan Agreement shall not become effective until each of the following conditions precedent shall have been satisfied:

(a) **Legal Opinion.** Legal counsel to the Port Authority shall have delivered to the RRIF Lender legal opinions satisfactory to the RRIF Lender in its sole discretion (including those opinions set forth on Exhibit A).

(b) **Approval of RRIF Loan Agreement.** The Port Authority shall have delivered to the RRIF Lender the written approval of the Port Authority relating to this Agreement and the RRIF Loan Agreement pursuant to Section 7.04(a)(i) of the Funding Agreement, which approval shall be in form and substance satisfactory to the RRIF Lender.

(c) **Incumbency.** The Port Authority shall have delivered a completed and executed incumbency certificate in the form of Exhibit B.

(d) **Satisfaction of Additional Obligations Test.** The Port Authority shall have delivered to the RRIF Lender a certificate demonstrating satisfaction, with respect to the Special



Obligations established by the Funding Agreement (i.e., the Contract Payments), of each of the requirements set forth in Section 5.2(d).

(e) Other Requested Documentation. The Port Authority shall have delivered such other agreements, documents, instruments, opinions and other items reasonably required by the RRIF Lender, all in form and substance satisfactory to the RRIF Lender.

### **ARTICLE III**

#### **PORT AUTHORITY ACKNOWLEDGMENTS AND UNDERTAKINGS; NO LIABILITY FOR RRIF LOANS**

**Section 3.1** Acknowledgment of Pledge and Assignment. The Port Authority hereby acknowledges the Borrower's pledge and assignment of the Contract Payments to the Collateral Agent on behalf of the RRIF Lender and the Borrower's grant to the Collateral Agent on behalf of the RRIF Lender of a lien on and security interest in the Collateral, pursuant to the terms and conditions of the CASA, as security for the obligations of the Borrower pursuant to the RRIF Loan Documents.

**Section 3.2** Sovereign Immunity. The Port Authority acknowledges and agrees that sovereign immunity shall not bar an action to enforce a claim by the Borrower, the RRIF Lender or the Collateral Agent on behalf of the RRIF Lender based on a breach of this Agreement or of the Funding Agreement.

**Section 3.3** Capital Plan Amount. The Parties acknowledge and agree that the Capital Plan Amount (as defined in the Funding Agreement) (i) limits the amount of the Contract Payments and is inclusive of the principal amount of the RRIF Loan, any capitalized interest thereon, the Credit Risk Premium Payments (as defined in the Funding Agreement and including any portion of the interest that accrues on the RRIF Loan that is allocable to any interest rate adjustment added pursuant to 49 CFR § 260.17(d)), and the Related Expenses and Fees (as defined in the Funding Agreement), but (ii) is not inclusive of, and does not limit, (A) interest that accrues on the RRIF Loan at the portion of the RRIF Interest Rate that is determined pursuant to 49 CFR § 260.9 (and that is not capitalized) and (B) interest that accrues at the Default Rate (other than as specified above with respect to any interest rate adjustment added pursuant to 49 CFR § 260.17(d)) and that is allocable to the Port Authority pursuant to the following sentence. The Parties acknowledge and agree that the Contract Payments shall include interest on the RRIF Loan at the Default Rate (instead of at the RRIF Interest Rate, as provided below) pursuant to the RRIF Loan Agreement only if an Event of Default results from: (a) a breach by the Port Authority of its obligation to make any Contract Payment in accordance with the Funding Agreement; (b) the failure of the Port Authority to observe or perform any material covenant, agreement or obligation of the Port Authority under this Agreement, which failure is not cured within the cure period specified in Section 19(a)(ii) of the RRIF Loan Agreement; (c) a misrepresentation default by the Port Authority of its representations and warranties under this Agreement, as described in Section 19(a)(iv) of the RRIF Loan Agreement, which misrepresentation default is not cured within the cure period specified in Section 19(a)(iv) of the RRIF Loan Agreement (if applicable); (d) a Bankruptcy Related Event with respect to the Port Authority, as described in Section 19(a)(viii) of the RRIF Loan Agreement; (e) the Port Authority contesting in any manner the validity or

enforceability of this Agreement or denying it has any further liability under this Agreement, or purporting to revoke, terminate or rescind this Agreement, as contemplated in Section 19(a)(ix) of the RRIF Loan Agreement; or (f) the Port Authority terminating the Funding Agreement, purporting to revoke, terminate or rescind the Funding Agreement, or contesting the validity or enforceability of the Funding Agreement in accordance with its express terms, as contemplated in Section 19(a)(xi) of the RRIF Loan Agreement. The Parties acknowledge and agree that the Port Authority shall not be responsible or liable for, and the Contract Payments shall not include, payment of interest on the RRIF Loan at a rate higher than the RRIF Interest Rate under any other circumstance. If interest accrues on the RRIF Loan at the Default Rate under the terms of the RRIF Loan Agreement and the Port Authority is not responsible for such Default Rate interest pursuant to this Section 3.3, the Port Authority shall remain responsible for interest at the RRIF Interest Rate, but shall not be responsible for any incremental increase to principal or any interest accruing on any incremental increase to principal as a result of the capitalization of any Borrower Default Rate Incremental Amount.

**Section 3.4** Cooperation.

(a) The Port Authority shall fully cooperate with the RRIF Lender and perform all additional acts reasonably requested by the RRIF Lender to effect the purposes of this Agreement. The Port Authority and the Borrower agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the RRIF Lender may reasonably request to effectuate the terms of this Agreement.

(b) The Port Authority shall cooperate with the Borrower and provide such information and documentation as is reasonably requested by the Borrower in connection with the Borrower's obligation under Section 15(j) (*Annual Rating*) of the RRIF Loan Agreement to obtain an annual public rating on the RRIF Note and a related rating report or letter from the applicable Rating Agency.

**Section 3.5** No Liability for RRIF Loan. Nothing in this Agreement shall be construed to mean that the Port Authority is liable under the RRIF Loan Agreement or the RRIF Note for any debt of the Borrower thereunder.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES**

**Section 4.1** Representations and Warranties of the Port Authority. The Port Authority hereby represents and warrants as of the Effective Date:

(a) Power and Authority. The Port Authority has full legal right, power and authority to enter into this Agreement and the Funding Agreement and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery, and performance of this Agreement and the Funding Agreement.

(b) Port Authority's Officers' Authorization. As of the Effective Date, the officers of the Port Authority executing (or that previously executed) this Agreement and the Funding Agreement, and any certifications or instruments related thereto, are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. This Agreement and the Funding Agreement has been duly authorized, executed and delivered by the Port Authority and each constitutes the legal, valid, and binding agreement of the Port Authority enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law); provided that all payments from the Port Authority under the Funding Agreement are payable solely from, and subject to availability of, funds from the Port Authority Sources of Payment.

(d) Non-Contravention. The execution and delivery by the Port Authority of this Agreement and the Funding Agreement, the consummation of the transactions contemplated herein and therein by the Port Authority and the fulfillment of or compliance with the terms and conditions hereof and thereof by the Port Authority do not (i) conflict with any constitution, statute, regulation or other law or administrative rule, or with any judgment, ruling, decree, or order of any court or judicial or administrative body, in each case applicable to the Port Authority or (ii) conflict with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) under any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Port Authority is a party and/or signatory or by which it or its properties or assets are otherwise subject or bound.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Port Authority, the Board of Commissioners, or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Port Authority of this Agreement and the Funding Agreement, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Agreement or the Funding Agreement or (B) the fulfillment of or compliance by the Port Authority with the terms and conditions of this Agreement and the Funding Agreement, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the Port Authority, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Port Authority, threatened against or adversely affecting the Port Authority's contributions to, or other Port Authority activities related to, the Borrower or the Project, or the ability of the Port Authority to execute, deliver, and perform its obligations under this Agreement and the Funding Agreement.

(g) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Port Authority set forth in this Agreement and in the Funding

Agreement are true, correct, and complete as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(h) No Defaults. The Port Authority is not in default under the terms of this Agreement or the Funding Agreement, and no event has occurred or condition exists that, with the giving of notice or the passage of time or both, would constitute an event of default by the Port Authority under this Agreement or the Funding Agreement. The Port Authority is not in default under the terms of any other Special Obligations.

(i) Governmental Approvals.

(i) All Governmental Approvals required as of the Effective Date for the Port Authority's performance of its obligations hereunder and under the Funding Agreement have been obtained or effected by the Port Authority and are in full force and effect, and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(ii) The Port Authority is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, would constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(j) Funding Agreement. The Funding Agreement is in full force and effect as of the Effective Date and all the conditions precedent to the obligations of the parties under the Funding Agreement have been satisfied, including, without limiting the generality of the foregoing, the conditions set forth in Section 7.4 thereof. No event has occurred that gives the Port Authority or, to the knowledge of the Port Authority, any counterparty thereto the right to terminate the Funding Agreement.

(k) Information. The information furnished by the Port Authority to the RRIF Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the Effective Date; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Port Authority.

(l) Compliance with Law. The Port Authority is in compliance in all material respects with all applicable laws relevant to the execution, delivery and/or performance of its obligations under this Agreement and the Funding Agreement. No notices of violation of any applicable law have been issued, entered or received by the Port Authority or, to the knowledge of the Port Authority, any other party to the Funding Agreement, in respect of the Port Authority's performance under this Agreement or the Funding Agreement other than, in each case, notices of violation that are immaterial.

**Section 4.2** Representations and Warranties of the RRIF Lender. The RRIF Lender hereby makes the following representations and warranties as of the Effective Date:

(a) The RRIF Lender has all requisite power and authority to perform all transactions contemplated by this Agreement and the RRIF Loan Agreement.

(b) This Agreement and the RRIF Loan Agreement have been duly authorized, executed and delivered by the RRIF Lender, and each is a legally valid and binding agreement of the RRIF Lender, enforceable in accordance with its terms.

(c) The officer of the RRIF Lender executing this Agreement and the RRIF Loan Agreement is duly and properly in office and fully authorized to execute the same on behalf of the RRIF Lender.

## ARTICLE V

### PORT AUTHORITY COVENANTS

**Section 5.1** Port Authority Affirmative Covenants. The Port Authority covenants and agrees as follows until the date the RRIF Loan and the obligations of the Borrower under the RRIF Loan Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower under the RRIF Loan Agreement, unless the RRIF Lender waives such compliance in writing:

(a) Copies of Documents; Certifications.

(i) The Port Authority shall provide complete and (as applicable) fully executed versions of the primary agreements and documents related to the issuance or incurrence of any Special Obligations (excluding issuances under the existing documentation for Commercial Paper Obligations and Institutional Loans within the \$1,250,000,000 maximum amount established by the Special Obligation Institutional Loan Program), together with any related contracts, side letters or other understandings, within thirty (30) days following execution or completion thereof.

(ii) Within thirty (30) days after the issuance or incurrence of any new Special Obligations (other than Commercial Paper Obligations or Institutional Loans), the Port Authority shall deliver to the RRIF Lender a certificate, executed by the Port Authority's Authorized Representative, which certificate confirms that each of the conditions set forth in Section 5.2(d) was satisfied as of the date of such issuance or incurrence.

(iii) The Port Authority shall provide the RRIF Lender with any further information reasonably requested by the RRIF Lender from time to time concerning the matters described in this Section 5.1(a).

(b) Compliance with Funding Agreement. The Port Authority agrees to take all action necessary to comply with its obligations, covenants and responsibilities set forth in the Funding Agreement.

(c) Compliance with Law. The Port Authority shall comply in all material respects with all applicable laws relevant to the execution, delivery and/or performance of its obligations under this Agreement and the Funding Agreement.

(d) Notices.

(i) The Port Authority shall, within five (5) Business Days after the Port Authority learns of the occurrence (unless another time period is required pursuant to this Section 5.1(d)(i)), give the RRIF Lender and the Borrower written notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event and including any relevant and significant documentation:

(A) Litigation: (1) the filing of any inquiry, investigation, litigation, suit or action, or the commencement of any proceeding, against the Port Authority before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Port Authority in writing of any threat of inquiry, investigation, litigation, suit, action, or proceeding, or of any claim against the Port Authority with respect to its contributions to, or its other activities related to, the Project or the Funding Agreement that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such inquiry, investigation litigation, suit, action or claim, and (2) any judgments against the Port Authority with respect to the Port Authority's contributions to, or its other activities related to, the Project or the Funding Agreement;

(B) Amendments: copies of (1) any proposed amendments to the Funding Agreement at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

(C) Defaults: any actual or, to the knowledge of the Port Authority, prospective event of default hereunder or under the Funding Agreement, which notice shall specify the actual or prospective event of default;

(D) EMMA: (1) the filing, utilizing EMMA (as defined in Section 5.3(b)) or any successor website maintained by the MSRB (as defined in Section 5.3(b)), of any of the public disclosures described in Section 5.3(b)(i), which notice shall specify the information that has been posted and include a link to such posted information or (2) the discontinuance by the Port Authority of its use of EMMA for the disclosure of its material financial information;

(E) FAA Settlement: any breach of any of the OP Tests and details regarding any mutually agreed or default remedy to resolve such failure that becomes applicable to the Port Authority under the FAA Settlement; and

(F) Port Authority Sources of Payment: the occurrence of any actual or projected deficiency with respect to the funds available from the Port Authority Sources of Payment during the current calendar year or during the

calendar year succeeding the current calendar year, as further described in Section 5.1(e).

(ii) The Port Authority shall provide the RRIF Lender with any further information reasonably requested by the RRIF Lender from time to time concerning the matters described in this Section 5.1(d).

(iii) Remedial Action. Within thirty (30) days after the Port Authority learns of the occurrence of any event specified in sub-clauses (A), (C) or (F) of Section 5.1(d)(i) (*Notices*), any material event notice pursuant to Rule 15c2-12 of the U.S. Securities and Exchange Commission (or any similar rule) that is adverse to the Port Authority, or any failure of any OP Test, the Port Authority's Authorized Representative shall provide a statement to the RRIF Lender setting forth the actions the Port Authority proposes to take with respect thereto.

(e) Management. The Port Authority shall manage, conserve and apply the moneys in the Consolidated Bond Reserve Fund in accordance with the Consolidated Bond Resolution and in a manner designed to ensure that the Port Authority Sources of Payment will be sufficient to make all Contract Payments in the amounts and at the times required by the Funding Agreement. Without limiting the generality of the foregoing, the Port Authority shall include the Contract Payments in each annual budget for each year in which the Contract Payments are due pursuant to the Funding Agreement. In the event there is an actual or projected deficiency in the funds available from the Port Authority Sources of Payment during the current calendar year or during the calendar year succeeding the current calendar year, such that the Port Authority is not, or projects (based either on its published annual budget book projections or any voluntary or mandatory public disclosure that addresses adverse changes to its projections) that it will not be, able to make the Contract Payments from moneys available from the Port Authority Sources of Payment in accordance with the Funding Agreement during such period, the Port Authority shall (i) provide written notice thereof to the RRIF Lender in accordance with Section 5.1(d)(i)(F), (ii) immediately undertake such mitigating efforts as are reasonably necessary to avoid any such deficiency or projected deficiency, (iii) provide written notice to the RRIF Lender and the Borrower of the mitigating efforts undertaken within thirty (30) days after the date as of which the Port Authority was required to deliver the notice pursuant to Section 5.1(d)(i)(F), and (iv) provide written updates to the RRIF Lender and the Borrower of the outcomes or results of such mitigating efforts on a monthly basis until such actual or projected deficiency has been eliminated. Nothing in this Section 5.1(e) shall be construed to obligate the Port Authority to take any action in violation of the Consolidated Bond Resolution or to make any Contract Payment other than from funds available from the Port Authority Sources of Payment.

(f) FAA Settlement. The Port Authority shall comply with the requirements of the FAA Settlement.

**Section 5.2** Port Authority Negative Covenants. The Port Authority covenants and agrees as follows until the date the RRIF Loan and the obligations of the Borrower under the RRIF Loan Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower under the RRIF Loan Agreement, unless the RRIF Lender waives compliance in writing:

(a) No Amendments. The Port Authority shall not terminate, assign, amend, modify, replace, or supplement the Funding Agreement without the prior written consent of the RRIF Lender, except to modify the Schedule A thereto in accordance with Section 2.01(g) of the Funding Agreement to cause such schedule to reflect changes to Exhibit B (*RRIF Debt Service*) to the RRIF Loan Agreement implemented by the RRIF Lender.

(b) Additional Funding Agreements. The Port Authority shall not enter into any additional agreement with the Borrower under which the Port Authority contributes, or commits to contribute, financial resources to (or on behalf of) the Borrower in connection with the Project.

(c) No Adverse Action. The Port Authority shall not in any way impair the rights and remedies of the RRIF Lender under the RRIF Loan Documents in connection with any action or proceedings brought by or on behalf of the RRIF Lender in connection therewith.

(d) Additional Special Obligations. Except for the issuance or incurrence of Commercial Paper Obligations or Institutional Loans within the \$1,250,000,000 maximum amount established by the Special Obligation Institutional Loan Program, the Port Authority shall not enter into or incur any Special Obligations without the prior written consent of the RRIF Lender if, at the time of such issuance or incurrence, the net revenues, as defined in the Consolidated Bond Resolution, for any period of twelve (12) consecutive months during the thirty-six (36) month period preceding such time of issuance shall not have amounted to at least one and fifteen one-hundredths (1.15) times the prospective debt service (computed as hereinafter set forth) for the calendar year after such time of issuance, for which the combined debt service (so computed) upon all obligations outstanding as of such time of issuance which are secured by or are payable from net revenues, including the new Special Obligations and obligations assumed to be outstanding pursuant to this Section 5.2(d), but excluding Commercial Paper Obligations and Institutional Loans, would be at a maximum. For the purpose of calculations under this Section 5.2(d), the following provisions shall apply:

(i) (A) Commercial Paper Obligations and Institutional Loans are assumed to be refunded with Consolidated Bonds with a tenor of thirty (30) years and therefore shall be included as part of the Consolidated Bond obligations for purposes of the calculations under this Section 5.2(d) and (B) it is assumed that the \$1,250,000,000 maximum amount of the Special Obligation Institutional Loan Program, including both Commercial Paper Obligations and Institutional Loans, would be outstanding.

(ii) In calculating such prospective debt service there may, at the Port Authority's option, be substituted for the actual prospective interest payable on any of such obligations secured by or payable from net revenues, including the new Special Obligations, prospective interest on any of such obligations, as follows:

(A) in the event that any of such obligations:

(1) bears interest at a fixed interest rate and has a remaining term to maturity of less than three (3) years from such time of issuance, then the interest rate on such obligation shall be deemed to be the higher of the interest rate on such obligation as of such time of issuance and the interest rate on



the most recent series of the Port Authority's obligations with a term to maturity of at least thirty (30) years; or

(2) bears interest on the basis of an interest payment schedule providing for payments less frequently than annually, then the interest rate on such obligation shall be deemed to be the interest rate equal to the yield to maturity of such obligation as of such time of issuance; or

(3) bears interest at a variable interest rate, then the interest rate on such obligation shall be deemed to be the higher of the rate as published in the Revenue Bond Index of *The Bond Buyer* in effect as of such time of issuance (and in the event such Revenue Bond Index is not published as of such time of issuance, then such rate determined on the basis of a comparable index to be selected in the sole discretion of the Committee on Finance) and the average interest rate on such obligation for the twelve (12) calendar months preceding such time of issuance (and in the event such obligation has not been outstanding for a full twelve (12) calendar months preceding such time of issuance, then such average interest rate determined on the basis of the period of time during which such obligation has been outstanding); or

(4) is associated with an interest rate exchange contract, then the interest rate on such obligation shall be deemed to be the effective interest rate for such obligation determined by reference to such interest rate exchange contract; or

(5) is convertible from one interest rate mode to another, then the interest rate on such obligation shall be deemed to be the interest rate in effect as of such time of issuance.

(B) In addition, in calculating such prospective debt service, in the event that any of such obligations secured by or payable from net revenues, including the new Special Obligations, has (1) a term to maturity from such time of issuance of less than three (3) years or (2) no stated periodic repayment schedule, there may at the Port Authority's option be substituted for the actual prospective debt service upon any of such obligations, the debt service which would be payable if such obligation was forthwith refunded by a series of Special Obligations having the following characteristics: maturity – thirty (30) years from the time of issuance of the new Special Obligations; interest – at the rate of interest determined in accordance with the provisions of the immediately preceding sentence and payable semiannually beginning six (6) months from such time of issuance; amortization – in such annual amounts as would be required to retire the principal amount of such obligation by the thirtieth anniversary of such time of issuance if such annual retirement were effected at par at each anniversary of such time of issuance and if the annual debt service thereon would be equal for all years thereafter until the thirtieth anniversary of such time of issuance.

(C) In the event that the Port Authority has entered into a contract, prior to the delivery of any obligation to be taken into account in the calculations to be performed pursuant to this Section, for the sale to and purchase by the other party to such contract upon original issue, and such obligation (or portion thereof) is to be issued solely for the purpose of refunding bonds, notes or other obligations of the Port Authority, then in such event the time of issuance of such obligation (or portion thereof) shall be deemed to be the date of original issue of such obligation and such obligation (or portion thereof) shall not be deemed to be outstanding prior to such date of original issue. In the event that an obligation (or portion thereof) issued solely for the purpose of refunding bonds, notes or other obligations of the Port Authority is outstanding, including the new Special Obligations, at the same time as the bonds, notes or other obligations of the Port Authority to be refunded, for purposes of the calculation to be performed under this Section only such obligation (or portion thereof) issued solely for the purpose of refunding such bonds, notes or other obligations of the Port Authority shall be included and such bonds, notes or other obligations of the Port Authority to be refunded shall not be deemed to be outstanding for purposes of such calculation.

(D) In the event that any obligation to be taken into account in the calculation to be performed under this Section 5.2(d) is subject to tender at the option of the holder or holders of such obligation, then in such event, in all such calculations such obligation shall be deemed to have been issued without such tender rights and without any credit facilities entered into by the Port Authority with respect to such tender rights; *provided, however*, in the event that upon any payment under such credit facilities to the holder of such obligation, such payment is deemed to be a loan to the Port Authority and such obligation nevertheless remains outstanding, then in such event, such obligation shall be deemed to have been refunded under such credit facilities through such payment.

(iii) Net revenues for purposes of the calculation to be performed pursuant to this Section 5.2(d) may include, in the case of fare and toll increases that have been adopted by the Port Authority but have not yet been put into effect or were not in effect for the entirety of the calculation period (i.e., the twelve (12) consecutive months selected for the purposes of such calculation), the additional net revenues estimated by the Port Authority to be derived during the calculation period from such increases by multiplying the transactions during the calculation period by the respective fare or toll increases; provided, that any such adopted fare and toll increases shall be in effect as of the date of issuance of such Special Obligations or shall be scheduled to take effect within the earlier of (A) thirty-six (36) months following the date of issuance of such Special Obligations and (B) the period before and including the calendar year in which the combined debt service, as calculated pursuant to this Section 5.2(d), is projected to be at a maximum; provided, further, that if the respective fare or toll increases are based on changes to the consumer price index (as determined by the Board of Commissioners, the “CPI”) on a prospective basis, the fare or toll increase for any adjustment during the first twelve (12) months following the date of issuance of such Special Obligations shall be based on the greater of (x) the cumulative change in the CPI, measured as of the date of issuance of such Special Obligations against the most recent adjustment to such fares or tolls based on the CPI (but in no event earlier

than twelve (12) months prior to the date of issuance of such Special Obligations) and (y) two (2%), and the fare or toll increase for each subsequent year shall be two percent (2%), in each case, applied to the fares or tolls in effect immediately prior to the adjustment.

(iv) Net revenues for purposes of the calculation to be performed pursuant to this Section may also include, in the case of facilities (including additions or improvements to facilities) which have not been in operation, in each case during the entire period of the twelve (12) consecutive months selected for the purposes of such calculation (including facilities under construction as of such time of issuance of the new Special Obligations or which are to be acquired, established or constructed by the Port Authority), the average annual net revenues which the Port Authority estimates will be derived from each of such facilities during the first thirty-six (36) months of operation thereof after such time of issuance; *provided, however*, that debt service on all additional obligations estimated to be issued to complete such facilities prior to the date any such facilities (including the addition or improvement thereto) become fully operational, is included in the calculation of prospective debt service; and *provided further, however*, that the amount of any net revenues estimated under this paragraph shall in no event exceed twenty-five percent (25%) of the net revenues (including any net revenues estimated under the immediately preceding paragraph) determined under this Section 5.2(d).

(v) In the event that (A) the new Special Obligations are issued solely for the purpose of refunding outstanding Special Obligations, (B) the maximum annual debt service for such new Special Obligations will be less than or equal to the maximum annual debt service for the outstanding Special Obligations being refunded and either (1) the maximum annual debt service for such new Special Obligations occurs in the same calendar year as the maximum annual debt service for the outstanding Special Obligations or (2) the combined maximum annual debt service in respect of all Consolidated Bonds and Special Obligations outstanding after the issuance or incurrence of such new Special Obligations will be less than or equal to the combined maximum annual debt service in respect of all Consolidated Bonds and Special Obligations outstanding immediately prior to the issuance or incurrence of such new Special Obligations, and (C) the final maturity of the new Special Obligations is no later than the final maturity date of the Special Obligations being refinanced, then no calculations under this Section 5.2(d) shall be required at such time of issuance, and no consent of the RRIF Lender is needed to issue such obligations.

### **Section 5.3 Records and Reporting.**

(a) Records. The Port Authority shall maintain and retain all files relating to this Agreement and the Funding Agreement until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the Funding Agreement (including payments) have been fulfilled and (ii) any litigation relating to this Agreement or the Funding Agreement in which the RRIF Lender is involved is finally resolved or, if the RRIF Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the RRIF Lender and the Port Authority. The Port Authority shall provide to the RRIF Lender in a timely manner all records and documentation relating to the Funding Agreement that the RRIF Lender may reasonably request from time to time.

(b) Reporting. Until the RRIF Loan has been irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower under the RRIF Loan Agreement, the Port Authority shall provide the information described below.

(i) Financial Information. The Port Authority shall provide to the RRIF Lender all of the Port Authority's (1) quarterly unaudited financial statements, (2) annual audited financial statements, (3) annual or longer-term budgets, (4) capital plans, and (5) notices of events described in clause (b)(5)(i)(C) of Rule 15c2-12 of the U.S. Securities and Exchange Commission (or any similar rule), in each case as reported to the MSRB (as defined in Section 5.3(b)).

(ii) FAA Settlement. The Port Authority shall provide to the RRIF Lender copies of all reports that it delivers to the FAA regarding its compliance with 49 U.S.C. § 47115 within five (5) Business Days' of submitting such reports to the FAA.

(iii) EMMA. If the Port Authority discloses any of the information described in clause (i) above on the Electronic Municipal Marketplace Access (the "EMMA") operated by the Municipal Securities Rulemaking Board (the "MSRB"), the Port Authority's investor's guide website, or any similar website, the Port Authority may satisfy its reporting obligations under this Section 5.3(b) by posting such information to EMMA and providing written notice thereof to the RRIF Lender in accordance with Section 5.1(d). If, for any reason, the Port Authority ceases to make such information publicly available on any such website, the Port Authority shall deliver such information directly to the RRIF Lender.

**Section 5.4** Contract Payments. Each Contract Payment shall be made in accordance with the Funding Agreement and, with respect to each RRIF Debt Service Payment Amount (as defined in the Funding Agreement), no later than fifteen (15) days prior to each Semi-Annual Payment Date, commencing with the Debt Service Payment Commencement Date. Notwithstanding anything to the contrary in the Funding Agreement, the Port Authority shall, unless directed otherwise by the RRIF Lender, transfer all amounts payable by it under the Funding Agreement to the Account held by the Collateral Agent, which transfer will reference the payment application information below (or such other payment information of which the Port Authority is notified from time to time by the RRIF Lender). The RRIF Lender and the Borrower acknowledge that the Collateral Agent has agreed pursuant to the CASA to duly perform its obligations as set forth in the CASA, and the RRIF Lender and the Borrower acknowledge that such obligations include the proper deposit into accounts as described in the CASA and the crediting of those accounts. The Borrower hereby covenants to enforce its rights under the CASA to require that the Collateral Agent deposit and credit the Contract Payments in accordance with the CASA and to cooperate with the Port Authority by so enforcing those rights to the extent any Contract Payment which the Port Authority claims was transferred in accordance with the preceding sentence was not received in the accounts as described in the CASA or such accounts were not credited in accordance with the CASA. The Borrower and the RRIF Lender agree that any payment made in accordance with this Section 5.4 shall constitute a complete discharge of the Port Authority's relevant payment obligations under the Funding Agreement and that neither the Borrower nor the RRIF Lender shall have any right or cause of action against the Port Authority thereafter arising from the application of, or failure to apply, the Contract Payments solely due to a failure of the Collateral Agent to comply with the requirements of the CASA.

Payment Instructions:

Bank Name	The Bank of New York Mellon
A.B.A. Number	[REDACTED]
Swift Code	N/A
For Credit to Account	[REDACTED]

**Section 5.5 Project Monitoring.** The Port Authority acknowledges that the RRIF Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Modal Grant Offices have oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. The Port Authority agrees to cooperate in good faith with the RRIF Lender and the Modal Grant Offices in the conduct of such monitoring, to the extent related to the Port Authority’s role under the SEP Agreement, by providing the RRIF Lender and the Modal Grant Offices with such reports, documentation or other information as shall be reasonably requested by the RRIF Lender and the Modal Grant Offices, or their agents, with respect to such activities.

**ARTICLE VI**

**FUNDING AGREEMENT CLARIFICATIONS**

**Section 6.1 Amendments to Funding Agreement.** The Funding Agreement is hereby amended to delete the stricken text from (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the underlined text to (indicated textually in the same manner as the following example: underlined text) the provisions of the Funding Agreement indicated below. The RRIF Lender acknowledges that the parties to the Funding Agreement may amend it to reflect these changes for convenience and the RRIF Lender will not be required to consent to, and will not object to, such an amendment (so long as the amendment reflects only these changes as included herein).

(a) Paragraph J of the Funding Agreement is hereby amended as reflected below:

Pursuant to the authorization of its Board, the Port Authority’s Capital Plan 2017-2026 includes Port Authority support (in the form of debt service payments for an aggregate principal amount of up to (but not in excess of) \$2.7 billion of borrowing in support of the HTP Project (subject to the terms hereof, the “Capital Plan Amount”)), inclusive of the RRIF Loan, Credit Risk Premium Payments and ~~Related Fees and Expenses~~ Related Expenses and Fees (as such terms are hereinafter defined). The PANYNJ’s support, as outlined in the 2017 – 2026 Capital Plan, is subject to the conditions that the PANYNJ is not the ~~primary~~ obligor for the loans and is not liable for any construction completion, cost overrun or project funding risk in connection with the HTP Project.

(b) The definition of “Credit Risk Premium Payments” in the Funding Agreement is hereby amended as reflected below:

“**Credit Risk Premium Payments**” shall mean (a) any payment made to the Collateral Agent prior to the disbursements of the RRIF Loan to pay the ratable credit cost of the RRIF Loan, as determined by the RRIF Lender and based on a percentage set forth in the RRIF Loan Agreement. The, with such Credit Risk Premium Payment attributable to each RRIF Loan drawdown request will be paid prior to such RRIF Loan disbursement or (b) any incremental increase to the RRIF Loan interest rate made by the RRIF Lender on the closing date of the RRIF Loan to account for the credit cost of the RRIF Loan and reduce the amount otherwise payable pursuant to clause (a) of this definition to \$0.

(c) The definition of “Related Expenses and Fees” in the Funding Agreement is hereby amended as reflected below:

“**Related Expenses and Fees**” shall mean commitment fees, servicing and monitoring costs, Administrative Fees, and other amounts that become due and payable by GDC in connection with the RRIF Loan, or by the Port Authority to GDC in connection with this Agreement. For the avoidance of doubt, all legal counsel and financial advisory fees, costs or expenses of GDC incurred in connection with the RRIF Loan that are not expressly described in the definition of “Administrative Fees” are excluded from Related Expenses and Fees, and all Related Expenses and Fees are subject to and limited by the Capital Plan Amount.

(d) Section 2.01(a) of the Funding Agreement is hereby amended as reflected below:

GDC will obtain the consent of the Port Authority, to the identity of the Collateral Agent (which consent shall not be unreasonably withheld so long as the proposed entity is a money center financial institution which regularly serves in such capacity) and the terms of the collateral agency agreement (which consent shall not be unreasonably withheld so long as such terms and reasonable and customary for bond issuances for the funding public improvements). The Port Authority agrees to make each Contract Payment (as directed by GDC) to the Collateral Agent in accordance with the provisions of this Article II for the purpose of enabling the GDC to make its payment obligations under the RRIF Loan Agreement and the other agreements entered into pursuant to, or in connection with, the RRIF Loan Agreement as and when due. Contract Payments shall be made in a manner acceptable to the RRIF Lender to permit the GDC to make its coincident RRIF Loan payments.

(e) Section 2.01(c) of the Funding Agreement is hereby amended as reflected below:

Subject to the provisions of Section 2.03 hereof, the Port Authority also shall pay to the Collateral Agent the Credit Risk Premium Payments incurred in connection

with the RRIF Loan, such payments to be made with Port Authority funds in accordance with this Agreement (and not with RRIF Loan proceeds), but nonetheless reducing the remaining amount of the Capital Plan Amount, dollar-for-dollar. Such Credit Risk Premium Payments, if not included in the RRIF Loan interest rate pursuant to clause (b) of the definition of Credit Risk Premium Payments, shall be invoiced by GDC or the Collateral Agent to the Port Authority reasonably in advance of incurrence thereof and shall be payable by the Port Authority within thirty (30) days of the receipt of any such invoice. If such Credit Risk Premium Payments are included in the RRIF Loan interest rate pursuant to clause (b) of the definition of Credit Risk Premium Payments, such Credit Risk Premium Payments (i) shall be calculated in nominal dollars over the term of the RRIF Loan (and not on a net present value basis) (ii) shall be paid as part of the RRIF Debt Service Payment Amount pursuant to subsection (b) of this Section and (iii) shall nonetheless reduce the Capital Plan Amount, dollar-for-dollar.

below: (f) Section 2.01(d) of the Funding Agreement is hereby amended as reflected

Subject to the provisions of Section 2.03 hereof, for so long as the RRIF Loan Agreement shall remain in effect, the Port Authority shall pay to the Collateral Agent, as additional Contract Payments, all Related Expenses and Fees. **Such Related Expenses and Fees shall be invoiced by GDC or the Collateral Agent to the Port Authority and shall be payable by the Port Authority within thirty (30) days of the receipt of any such invoice.**

below: (g) Section 2.01(e) of the Funding Agreement is hereby amended as reflected

If at any time any payment pursuant to clause (b), (c) or (d) of this Section 2.01 is rescinded, avoided, or must otherwise be returned to the Port Authority pursuant to a court order, decree or directive, whether appealable or not, rendered in connection with any insolvency, bankruptcy, or reorganization with respect to GDC, and the GDC, the Collateral Agent or the RRIF Lender gives the Port Authority notice thereof, the Port Authority will, within ten (10) business days of the date of receipt of such notice, pay to the Collateral Agent, as additional Contract Payments hereunder, such additional amount(s) as shall equal the amount of the rescinded, avoided, or returned payment for which such notice was given; provided, however, that no additional amounts will be payable hereunder unless the original payment was returned to the Port Authority or was rescinded or avoided such that the amount of the original payment remained with the Port Authority if the Port Authority had properly made any payment pursuant to clause (b), (c) or (d) to GDC and the amount of such payment was subsequently rescinded, avoided or returned such that, absent this proviso, the Port Authority would be required to make any payment twice.

below: (h) Section 2.01(f) of the Funding Agreement is hereby amended as reflected

For the avoidance of doubt, in no event shall the combination of amounts, paid plus amounts in each case payable under clauses (b) (except as expressly provided below), (c), (d), and (e) of this Section 2.01 (but without duplication of amounts paid or payable under clause (e) with amounts paid under clauses (b), (c) or (d)), be greater than the Capital Plan Amount. GDC acknowledges that Administrative Fees will have been estimated at the time the RRIF Loan is funded and will be included in Contract Payments at that estimated amount. The Port Authority is not responsible for fees or expenses which would otherwise be Administrative Fees (or Related Expenses and Fees) to the extent that they would cause the aggregate amount of the Port Authority's remaining financial obligations under this Section 2.01 to exceed the Capital Plan Amount then available. The Parties acknowledge and agree that interest that accrues on the RRIF Loan at the portion of the RRIF Interest Rate that is determined pursuant to 49 CFR § 260.9 (and that is not capitalized) and interest that accrues at the Default Rate (as defined in the RRIF Loan Agreement) and is allocable to, and payable by, the Port Authority pursuant to the following sentence shall not be limited by the Capital Plan Amount (except with respect to interest attributable to the Credit Risk Premium Payments, as specified herein). The Parties acknowledge and agree that the Contract Payments shall include interest on the RRIF Loan at the Default Rate (instead of at the RRIF Interest Rate, as provided below) pursuant to the RRIF Loan Agreement only if an Event of Default results from: (a) a breach by the Port Authority of its obligation to make any Contract Payment in accordance with this Agreement; (b) the failure of the Port Authority to observe or perform any material covenant, agreement or obligation of the Port Authority under the Direct Agreement (as defined in the RRIF Loan Agreement), which failure is not cured within the cure period specified in Section 19(a)(ii) of the RRIF Loan Agreement; (c) a misrepresentation default by the Port Authority of its representations and warranties under the Direct Agreement (as defined in the RRIF Loan Agreement), as described in Section 19(a)(iv) of the RRIF Loan Agreement, which misrepresentation default is not cured within the cure period specified in Section 19(a)(iv) of the RRIF Loan Agreement (if applicable); (d) a Bankruptcy Related Event with respect to the Port Authority, as described in Section 19(a)(viii) of the RRIF Loan Agreement; (e) the Port Authority contesting in any manner the validity or enforceability of the Direct Agreement (as defined in the RRIF Loan Agreement) or denying it has any further liability under such Direct Agreement, or purporting to revoke, terminate or rescind such Direct Agreement, as contemplated in Section 19(a)(ix) of the RRIF Loan Agreement; or (f) the Port Authority terminating this Agreement, purporting to revoke, terminate or rescind this Agreement, or contesting the validity or enforceability of this Agreement in accordance with its express terms, as contemplated in Section 19(a)(xi) of the RRIF Loan Agreement. The Port Authority shall not be responsible or liable for, and the Contract Payments shall not include, payment of interest on the RRIF Loan at a rate higher than the RRIF Interest Rate under any other circumstance. If interest accrues on the RRIF Loan at the Default Rate under the terms of the RRIF Loan Agreement and the Port Authority is not responsible for such Default Rate interest pursuant to this Section 2.01(f), the Port Authority shall remain responsible for interest at the RRIF Interest Rate, but shall not be



responsible for any incremental increase to principal or any interest accruing on any incremental increase to principal as a result of the capitalization of any Borrower Default Rate Incremental Amount (as defined in the RRIF Loan Agreement).

below: (i) Section 2.01(g) of the Funding Agreement is hereby amended as reflected

Subject to clause (f) of this Section 2.01, the Port Authority and the GDC acknowledge and agree that the RRIF Debt Service Payment Amount in Schedule A hereto is intended at all times to be equal to the amount of “RRIF Debt Service” (as defined in the RRIF Loan Agreement) on the related “Semi-Annual Payment Date” (as set forth in an exhibit to the RRIF Loan Agreement). The Port Authority and the GDC further agree to modify or replace Schedule A hereto to reflect any changes made to such exhibit to the RRIF Loan Agreement from time to time, provided, however, that no modification or replacement of Schedule A (other than to account for (A) increased principal and interest payments due to the Port Authority’s failure to pay any RRIF Debt Service Payment Amount and (B) interest on the RRIF Loan at the Default Rate that is allocable to and payable by the Port Authority pursuant to Section 2.01(f)) shall have the effect of causing the Port Authority’s financial obligations set forth in this Section 2.01 to exceed the lesser of the (i) any annual amount set forth on Schedule A for any year to exceed the amount for such year that was set forth in Schedule A prior to the such modification or replacement (provided that the first Schedule A will be that in effect on the “Effective Date” of the RRIF Loan Agreement (as such term is defined in the RRIF Loan Agreement)) or (ii) the aggregate amount of the Port Authority’s remaining financial obligations under this Section 2.01 to exceed the Capital Plan Amount then available. Any modification or replacement of Schedule A pursuant hereto shall be deemed a ministerial act and not an amendment or supplement to this Agreement.

below: (j) Section 2.02 of the Funding Agreement is hereby amended as reflected

There is expressly reserved to the Port Authority the right, and the Port Authority is authorized and permitted, at any time or from time to time, as it may choose, subject to and in accordance with the provisions contained in the RRIF Loan Agreement relating to payments of any Funding Partner Default Rate Incremental Amount (as defined in the RRIF Loan Agreement) during the capitalized interest period thereunder or to the voluntary prepayment of the RRIF Loan Payments, as applicable, to make payments in addition to the Contract Payments otherwise payable hereunder. The Port Authority has the right to stipulate that all sums paid by it pursuant to this Section 2.02 be applied to payment of interest that would otherwise be capitalized or to prepayment of the RRIF Loan, as applicable, in accordance with the terms thereof. In such event, the Port Authority shall direct GDC to provide written notice to the RRIF Lender of the anticipated optional payment or prepayment and GDC shall provide such notice (and shall not rescind

any such notice absent subsequent direction by the Port Authority) in accordance with the terms of the RRIF Loan Agreement, which notice shall state that it is conditioned upon the receipt by the Collateral Agent, on behalf of GDC, of funds from the Port Authority sufficient to make such payment or prepayment and shall otherwise comply with all applicable terms of the RRIF Loan Agreement. Any payment by the Port Authority to the Collateral Agent of a Funding Partner Default Rate Incremental Amount pursuant to this Section 2.02 shall discharge the Port Authority's obligation with respect to the Funding Partner Default Rate Incremental Amount to the extent of the amount paid. Any voluntary prepayment by the Port Authority to the Collateral Agent of the principal amount of the RRIF Loan pursuant to this Section 2.02 shall serve to reduce the Capital Plan Amount.

(k) Section 2.03(d) of the Funding Agreement is hereby amended as reflected below:

Except as expressly provided in Section 2.01(f), ~~The~~ aggregate amount of the Contract Payments as scheduled hereunder shall not exceed the Capital Plan Amount.(k) Section 3.01(a) of the Funding Agreement is hereby amended as reflected below:

The GDC agrees to (i) carry out the provisions of the RRIF Loan Agreement and any other agreement duly entered into between GDC and the Port Authority in connection with the Project, the GDC Act and the FFGA, and (ii) exercise its rights and otherwise comply with the provisions set forth under Sections 7.02(e), 14.01(c)(ii) and 14.02(e) of the Project Development Agreement. Such agreement shall constitute consideration for the promises and agreements of the Port Authority contained herein.

**Section 6.2** Third Party Beneficiary Rights. The Parties acknowledge and agree that (a) each of the RRIF Lender and the Collateral Agent is and shall be a third party beneficiary under the Funding Agreement, in each case with the right to enforce the terms and conditions thereunder as though it were a signatory and party thereto and (b) the Collateral Agent is an intended beneficiary of the rights and remedies of the RRIF Lender under this Agreement, with the right to enforce the terms and conditions hereunder, as though it were signatory and party hereto.

**Section 6.3** No Effect on RRIF Loan Documents. The Parties acknowledge and agree that the Funding Agreement does not and shall not alter the terms or conditions of the RRIF Loan Agreement, the CASA, any other agreement, certificate or document entered into or issued in connection with the foregoing, or any rights, remedies, or interests of the RRIF Lender or the Collateral Agent under any of the foregoing.

## ARTICLE VII

### RRIF LENDER RIGHTS AND PROTECTIONS

**Section 7.1** Specific Performance. The RRIF Lender may seek specific performance of this Agreement, whether or not the Borrower shall have complied with any of the

provisions hereof or of the Funding Agreement applicable to it, at any time when the Port Authority shall have failed to comply with any of the provisions of this Agreement applicable to it. Notice of such demand for specific performance shall be made concurrently to each Party.

**Section 7.2** Remedies Not Exclusive. No remedy conferred herein or reserved to the RRIF Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 7.3** Delay or Omission Not Waiver. No waiver by the RRIF Lender of any breach by the Port Authority of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or omission of the RRIF Lender to exercise any right or remedy provided hereunder upon a default of the Port Authority (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the RRIF Lender may be exercised from time to time, and as often as may be deemed expedient by the RRIF Lender.

**Section 7.4** No Third Party Rights. The Parties hereby agree that this Agreement creates no third party rights against the Port Authority (except as provided in Section 6.2), the United States Federal Government or the RRIF Lender solely by virtue of this Agreement.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**Section 8.1** Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to RRIF Lender:      Build America Bureau  
United States Department of Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of  
Credit Programs  
Email: BureauOversight@dot.gov

If to the Port Authority: Port Authority of New York and New Jersey  
4 World Trade Center,  
150 Greenwich Street,  
New York, New York 10007  
Attention: Executive Director

With a copy to the Chief Financial Officer and the  
General Counsel, at the same address.

If to Borrower: Gateway Development Commission  
120 Broadway – 10<sup>th</sup> Floor  
New York, New York 10271  
Attention: General Counsel  
Notices@Gatewayprogram.org

Unless otherwise instructed by the RRIF Lender's Authorized Representative, all notices to the RRIF Lender should be made by email to the email address noted above for the RRIF Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, by the Port Authority's Authorized Representative, with respect to notices to the Port Authority, or by the RRIF Lender's Authorized Representative, with respect to notices to the RRIF Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

**Section 8.2** No Personal Recourse. No official, employee or agent of the RRIF Lender, the Borrower or the Port Authority or any person executing this Agreement shall be personally liable under this Agreement by reason of the issuance, delivery, execution or performance hereof.

**Section 8.3** Authorized Representatives.(a) Port Authority's Authorized Representative. The Port Authority shall at all times have appointed an authorized representative by designating such person or persons from time to time to act on the Port Authority's behalf pursuant to a written certificate furnished to the RRIF Lender and the Servicer, if any, containing the specimen signature or signatures of such person or persons and signed by the Port Authority (each such person, "**Port Authority's Authorized Representative**").

(b) RRIF Lender's Authorized Representative. The RRIF Lender shall at all times have appointed the RRIF Lender's Authorized Representative by designating such Person or Persons from time to time to act on the RRIF Lender's behalf pursuant to a written certificate

furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the RRIF Lender.

**Section 8.4** Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Agreement shall in any event be effective without the written consent of the Parties.

**Section 8.5** Governing Law. This Agreement shall be governed by the federal laws of the United States if and to the extent such federal laws are applicable and the internal laws of the State of New York, if and to the extent such federal laws are not applicable.

**Section 8.6** Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**Section 8.7** Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall inure to the benefit of the Parties hereto and the successors and assigns of the RRIF Lender. None of the Port Authority or the Borrower may sell, assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the RRIF Lender.

**Section 8.8** Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the Parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Each Party agrees that the transaction consisting of this Agreement may be conducted by electronic means. Each Party agrees, and acknowledges that it is such Party's intent, that if such Party signs this Agreement using an electronic signature, it is signing, adopting, and accepting this Agreement and that signing this Agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Agreement on paper. Each Party acknowledges that it is being provided with an electronic or paper copy of this Agreement in a usable format.

**Section 8.9** Effectiveness. This Agreement shall be effective as of the Effective Date and shall remain in effect until all amounts borrowed under the RRIF Loan has been irrevocably paid in full, together with any interest accrued thereon, and all other amounts and other obligations under the RRIF Loan Agreement have been satisfied in full.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**GATEWAY DEVELOPMENT COMMISSION**

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

Name:

Title:

**PORT AUTHORITY OF NEW YORK AND NEW  
JERSEY**

By: \_\_\_\_\_  
Name:  
Title: Executive Director

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION,**  
acting by and through the Executive Director of the  
Build America Bureau

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

Name: Morteza Farajian

Title: Executive Director



**ACKNOWLEDGED AND AGREED TO:**

**THE BANK OF NEW YORK MELLON,**  
as Collateral Agent

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

Name:

Title:

**EXHIBIT A**

**OPINIONS REQUIRED OF COUNSEL TO THE PORT AUTHORITY**

An opinion of the counsel of the Port Authority, dated as of the Effective Date, to the effect that: (a) the Port Authority has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Agreement and the Funding Agreement; (b) the execution and delivery by the Port Authority of, and the performance of its respective obligations under, the Agreement and the Funding Agreement, have been duly authorized by all necessary organizational or regulatory action; (c) the Port Authority has duly executed and delivered the Agreement and the Funding Agreement, and each such document constitutes the legal, valid and binding obligation of the Port Authority, enforceable against the Port Authority in accordance with their respective terms; (d) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State of New York or State of New Jersey is required on the part of the Port Authority for the execution and delivery by the Port Authority of, and the performance of the Port Authority under, the Agreement and the Funding Agreement other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Port Authority; (e) the execution and delivery by the Port Authority of, and compliance with the provisions of, the Agreement and the Funding Agreement in each case do not (i) violate the law of the State of New York or State of New Jersey, (ii) violate the laws of the United States of America, or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Port Authority is a party, or any court order, consent decree, statute, rule, regulation or any other law to which the Port Authority is subject; and (f) to counsel's knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Port Authority or any other party by or before any court, arbitrator or any other governmental authority in connection with the Agreement, the Funding Agreement, or the Port Authority's contributions to, or other Port Authority activities related to, the Project that are pending.

**EXHIBIT B**

**INCUMBENCY CERTIFICATE**

The undersigned certifies that he/she is the [\_\_\_\_\_] of the Port Authority and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Port Authority in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the RRIF Loan Documents (as defined in that certain RRIF Loan Agreement (Port Authority Funding Agreement) dated as of the date hereof) as the Port Authority's Authorized Representative:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of July [8], 2024.

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**#0724-03: AUTHORIZATION TO ENTER INTO, EXECUTE, AND AMEND CREDIT FACILITY AGREEMENTS WITH BANK OF AMERICA, N.A. AND DELEGATE AUTHORITY TO CHIEF EXECUTIVE OFFICER IN CONNECTION WITH THE ESTABLISHMENT OF A CREDIT FACILITY ON BEHALF OF THE GATEWAY DEVELOPMENT COMMISSION**

To help ensure the functionality of intercity and commuter rail infrastructure between New Jersey and New York and throughout the Northeast Corridor, the State of New Jersey (“**New Jersey**”) and the State of New York (“**New York**”) created the Gateway Development Commission (“**GDC**”) through the enactment of parallel legislation by each state codified as the Gateway Development Commission Act (2019 N.Y. Laws, Ch. 108 and N.J.S.A. 32:36-1, et seq.) (collectively, the “**GDC Act**”).

The GDC Act empowers GDC to "enter into, execute and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power of the Commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, with any local government thereof, with any agency, instrumentality, department, commission or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them." 2019 N.Y. Laws, Ch. 108, Section 2(7)(e); N.J.S.A. 32:36-8(e).

The GDC Act also empowers GDC to “enter into loan agreements and otherwise borrow funds or incur indebtedness or other future payment obligations for any corporate purpose, including to effectuate full funding” of the Hudson Tunnel Project (“**HTP**”). 2019 N.Y. Laws, Ch. 108, Section 2(7)(j) and N.J.S.A. 32:36-8.j.

In November of 2023, RFQ No. GDC-23-014-OP (“**RFQ**”) was issued by GDC for Commercial Banking and Underwriting Services and made available to potential respondents requesting a Statement of Qualifications (“**SOQ**”) in order to establish two separate pools for: 1) underwriting services and 2) banking/lending services. On January 19, 2024, twenty-one respondents provided SOQs in response to the RFQ. In March 2024, GDC issued a federally compliant Request for Proposal GDC-23-014A-OP for Liquidity Facility (“**RFP**”) to the short-listed firms approved by the Selection Committee for pool number 2; specifically, for the establishment of a short-term credit facility for working capital for the HTP in an amount of \$300 to \$500 million (“**Credit Facility**”). The Selection Committee completed its review of the proposals and on April 23, 2024, Bank of America, N.A. (“**BOA**”) was notified by GDC that it was the preferred proposer. Thereafter, GDC engaged in extensive negotiations with BOA in April and May 2024 regarding the terms of the agreements related to the Credit Facility, including but not limited to, a Revolving Credit Agreement and a Pledge and Security Agreement (collectively “**Credit Facility Agreements**”).

Adopted - 7/2/24

As a condition precedent to the effectiveness of each of the RRIF Loan Agreements, USDOT requires GDC to enter into a Waiver and Disclaimer (the “**Waiver**”), by and among GDC, USDOT, The Bank of New York Mellon, and BOA.

Section 3.06 of the GDC Bylaws provides that “[t]he Board may delegate in whole or in part any power, authority, discretion or obligation to any Officer, in each case to the extent to which the Board deems appropriate.”

To enable the efficient and timely effectuation of the HTP, it is necessary to delegate to the Chief Executive Officer the authority to take categories of actions in addition to those delegated in the Bylaws.

Pursuant to the foregoing report, the following resolution was adopted, with Co-Chair Glen, Co-Chair Grewal-Virk, Vice Chair Coscia, Commissioner Barbas, Commissioner Bauer, Commissioner Rosen and Commissioner Dominguez voting in favor:

**RESOLVED**, that the GDC Chief Executive Officer is authorized to enter into the Credit Facility Agreements in a form substantially consistent with those attached hereto as Exhibits A and B.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to enter into the Waiver in a form substantially consistent with that attached hereto as Exhibit C.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions consistent with this Resolution, and is directed to finalize the terms of the Credit Facility Agreements and the Waiver and make, execute, and deliver in the name of and on behalf of GDC the Credit Facility Agreements and the Waiver once finalized, and to take all other steps necessary to comply with the terms and conditions of the Credit Facility Agreements and the Waiver once executed.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions to make, execute, and deliver in the name of and on behalf of GDC amendments to the Credit Facility Agreements and the Waiver as may be necessary or required for the delivery of the HTP, subject to the concurrence of BOA and USDOT, and in consultation with, NJ TRANSIT Corporation, the Treasurer of the State of New Jersey, the New Jersey Turnpike Authority, and the State of New York, as applicable, on the content of such amendments, and to take all other steps necessary to comply with the terms and conditions of amendments to the Credit Facility Agreements or the Waiver.

**RESOLVED**, that the GDC Chief Executive Officer, General Counsel, Chief Financial Officer, and Chief Administrative Officer are each authorized to take any and all actions consistent with the Credit Facility Agreements and the Waiver, and make, execute, and deliver in the name of and on behalf of GDC any other documents and certifications as may be necessary or required in order to achieve a financial closing of the Credit Facility.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to approve, create, amend, manage, administer, and terminate the Credit Facility Agreements on behalf of GDC upon such terms as the Chief Executive Officer may deem proper, and to enter into or execute any such

Adopted - 7/2/24

agreements and other documents on behalf of GDC as may be necessary or required in connection with the establishment, maintenance, and termination of the Credit Facility.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to delegate, in writing, the authority to authorize, approve, create, amend, manage, and/or terminate any aspect of the Credit Facility and execute such documents as may be required to other officers or employees of GDC provided that the Chief Executive Officer provides notice in writing to the Co-Chairs and Vice Chair of the Board of such delegation.

**RESOLVED**, that the GDC Chief Executive Officer or designee may enter into and execute any agreements and other documents on behalf of GDC in connection with the Credit Facility in their discretion.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to settle all claims by or against GDC arising out of the Credit Facility where the total payment or amount of the claim is not in excess of \$500,000. Claims against GDC shall include claims against individuals for which GDC would be responsible under Article VII of GDC's Bylaws ("Defense and Indemnification of Individuals"); provided, however, that in the case of claims against individuals for which GDC would be responsible under said Article VII which are covered by insurance purchased by or on behalf of such individuals, GDC shall pay such claims only to the extent that they are in excess of the amount for which insurance carriers are responsible.

**RESOLVED**, that the GDC Chief Executive Officer will report back to the GDC Board of Commissioners upon the closing of the Credit Facility and execution of all documents related to the Credit Facility Agreements or any amendments thereto.

Adopted - 7/2/24

**EXHIBIT A**

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REVOLVING CREDIT AGREEMENT

dated as of July 8, 2024

between

GATEWAY DEVELOPMENT COMMISSION

and

BANK OF AMERICA, N.A.

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## REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT dated as of July 8, 2024 (as amended, modified or restated from time to time in accordance with its terms, this “*Agreement*”), between GATEWAY DEVELOPMENT COMMISSION, a body corporate and politic established by the State of New Jersey and the State of New York (the “*Borrower*”) and BANK OF AMERICA, N.A. (together with its successors and assigns, the “*Bank*”), a national banking association.

### RECITALS

WHEREAS, the Borrower wishes to obtain revolving line of credit (the “*Line of Credit*”) from the Bank hereunder and the Bank is willing, upon the terms and subject to the conditions set forth below, to provide the Line of Credit to the Borrower to finance eligible Hudson Tunnel Project costs and other authorized costs relating to the Hudson Tunnel Project permitted under any of the Resolution, the FFGA and the CIG Program (each as defined herein); and

WHEREAS, all obligations of the Borrower to repay the Bank for extensions of credit made by the Bank under the Line of Credit and to pay all other amounts payable to the Bank arising under or pursuant to this Agreement or the promissory notes to be issued to the Bank hereunder are created under and will be evidenced by this Agreement and such promissory notes and will be secured by a pledge of and first lien on the Pledged Grant Receipts (as defined herein), all in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing Recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Bank to extend to the Borrower the Line of Credit, the Borrower and the Bank hereby agree as follows:

### ARTICLE I

#### DEFINITIONS AND ACCOUNTING TERMS

*Section 1.01. Defined Terms.* In addition to the terms defined in the recitals and elsewhere in this Agreement, the following terms shall have the meanings set forth below:

“*Accountant*” means an independent certified public accountant or a firm of independent certified public accountants, selected by the Borrower and of recognized national or regional standing.

“*Advance*” means a Revolving Loan requested by the Borrower under the Commitment and the terms hereof to provide funds with respect to any permitted purpose.

“*Advance Date*” means the date on which the Bank honors a Request for Advance and makes the funds requested available to the Borrower.

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise. For the avoidance of doubt, none of the Funding Partners are Affiliates of the Borrower.

“*Aggregate Expected Receipts Coverage Ratio*” means the quotient of: (A) the Remaining Expected Pledged Grant Receipts, divided by (B) Aggregate Parity Debt.

“*Aggregate Available Receipts Coverage Ratio*” means the quotient of: (A) the sum of (i) Pledged Grant Receipts that have been received as reimbursements by the Borrower from the FTA pursuant to the FFGA which amounts are currently held in Controlled Accounts, plus (ii) the amount of Pledged Grant Receipts appropriated pursuant to the CIG Program and apportioned by the FTA to the Borrower pursuant to the FFGA in the current Federal Fiscal Year or prior Federal Fiscal Years, but for which the Borrower has not yet submitted Eligible Project Costs to the FTA for reimbursement and has not yet received reimbursement from the FTA, divided by (B) outstanding Aggregate Secured Debt plus requested draws on any Secured Debt that have not yet been fulfilled.

“*Aggregate Parity Debt*” means the sum of (i) the Commitment (including, without limitation, all drawn amounts outstanding and all amounts committed but undrawn hereunder, and all outstanding Advances, Revolving Loans and Term Loans), plus (ii) all other outstanding Parity Debt (including, without limitation, all drawn amounts outstanding and all amounts committed but undrawn thereunder, and all outstanding advances, draws, loans, term loans and other borrowings that are outstanding with respect thereto).

“*Aggregate Secured Debt*” means the sum of all outstanding Secured Debt (including, without limitation, all drawn amounts outstanding and all amounts committed but undrawn thereunder, including without limitation, all outstanding advances, draws, loans, term loans and other borrowings that are outstanding with respect thereto).

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Amortization End Date*” means the earliest to occur of (a) the third (3<sup>rd</sup>) anniversary from the first day of the Term Loan, (b) the third (3<sup>rd</sup>) anniversary of the Stated Termination Date, (c) the date on which the Commitment is terminated or otherwise reduced to zero pursuant to Section 2.04 or Section 7.02 hereof, (d) the date this Agreement is terminated or replaced, and (e) the date on which any Loans are declared immediately due and payable pursuant to Section 7.02 hereof.

“*Amortization Period*” has the meaning set forth in Section 2.21 hereof.

“*Amtrak*” means the National Railroad Passenger Corporation, a corporation established by the United States and organized under the laws of the District of Columbia.

“*Applicable Authority*” means with respect to SOFR, the SOFR Administrator or any Governmental Authority having jurisdiction over the Bank or the SOFR Administrator with respect to its publication of SOFR, in each case acting in such capacity.

“*Applicable Factor*” means, (i) for Taxable Revolving Loans, 100% and (ii) for Tax-Exempt Revolving Loans, 80%.

“*Applicable Spread*” means a rate per annum associated with the Level corresponding to the lowest long-term unenhanced debt rating(s) assigned by any of Moody’s, Fitch or S&P to direct obligations of the United States of America (each, a “*Rating*”), as specified below:

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	TAXABLE APPLICABLE SPREAD	TAX-EXEMPT APPLICABLE SPREAD
Level 1	Aa2 or above	AA or above	AA or above	1.15%	0.80%
Level 2	Aa3	AA-	AA-	1.25%	0.90%
Level 3	A1	A+	A+	1.35%	1.00%
Level 4	A2	A	A	1.45%	1.10%
Level 5	A3	A-	A-	1.55%	1.20%

In the event of split Ratings (*i.e.*, one of the Rating Agencies’ Rating is at a different Level than the Rating of another Rating Agency), the Applicable Spread shall be based upon the Level in which the lowest Rating(s) appears (for the avoidance of doubt, Level 5 is the lowest Level and Level 1 is the highest Level for purposes of the above pricing grid). Any change in the Applicable Spread resulting from a change in a Rating shall be and become effective as of and on the date that the change in such Rating is published by such Rating Agency. References to Ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system, the ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system that most closely approximates the applicable rating category as currently in effect. Upon the occurrence and during the continuation of a Default or Event of Default, the applicable interest rate on the Loans shall increase automatically to the Default Rate. The Borrower acknowledges that as of the Effective Date the Taxable Applicable Spread and Tax-Exempt Applicable Spread is that specified above for Level 1.

“*Approved Fund*” means any Fund that is administered or managed by (a) the Bank, (b) an Affiliate of the Bank or (c) an entity or an Affiliate of an entity that administers or manages the Bank.

“*Audited Financial Statements*” means the audited consolidated balance sheet of the Borrower for the fiscal year ended December 31, 2023, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower, including the notes thereto.

“*Authorization*” means federal legislation or a continuing resolution authorizing the United States Congress to appropriate funds for programs authorized under 49 U.S.C. s. 5309.

“*Authorized Officer*” means Patrick McCoy, Chief Financial Officer of the Borrower, or his designee (provided that any such designee has been delegated authority in accordance with the Resolution and written evidence of such delegation has been provided to, and is in form and content acceptable to, the Bank).

“*Available Commitment*” means, on any date, an initial amount equal to \$500,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Advance or any Revolving Loan in respect of such Advance made to the Borrower under the Commitment; (b) upward in an amount equal to the principal amount of any Revolving Loan under the Commitment, as applicable, that is repaid or prepaid in the manner provided herein; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.04 or Section 7.02(i) hereof; and (d) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided, that*, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed \$500,000,000 at any one time.

“*Bank Agreement*” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement (such as a continuing covenant agreement or supplemental bondholder’s agreement), bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) (i) to make or provide funds to make, payment of, (ii) to purchase or (iii) to provide credit enhancement for bonds, notes or other obligations of the Borrower, in each case, secured by or payable from Pledged Grant Receipts.

“*Bank Controlled Account*” means each deposit account of the Borrower with Bank of America, N.A. containing any Pledged Grant Receipts or into which the proceeds of the Loans shall be deposited in accordance with Section 2.02(d).

“*Base Rate*” means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one percent (1.00%), (ii) the Federal Funds Rate in effect at such time *plus* two percent (2.00%) and (iii) seven percent (7.00%).

“*Base Rate Loan*” means a Loan that bears interest based on the Base Rate.

“*Borrower*” has the meaning set forth in the recitals hereof.

“*Borrowing*” means a borrowing of Revolving Loans from the Bank pursuant to Section 2.01 hereof.

“*Business Day*” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in New York, New York or (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed.



“*Change in Law*” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law, rule, regulation or treaty, (b) any change in any Law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “*Change in Law*,” regardless of the date enacted, adopted or issued.

“*CIG Program*” means the Capital Investment Grants Program, 49 U.S.C. 5309.

“*Code*” means the Internal Revenue Code of 1986, as amended, and, where appropriate any statutory predecessor or any successor thereto.

“*Collateral*” has the meaning set forth in the Security Agreement.

“*Commitment*” means, initially, Five Hundred Million Dollars (\$500,000,000), as the same may be reduced from time to time as provided in Section 2.04 or Section 7.02 hereof.

“*Commitment Fee*” has the meaning set forth in Section 2.07 hereof.

“*Commitment Fee Rate*” means a rate per annum associated with the Level corresponding to the respective Rating as specified below:

LEVEL	MOODY'S RATING	S&P RATING	FITCH RATING	COMMITMENT FEE RATE
Level 1	Aa2 or above	AA or above	AA or above	0.30%
Level 2	Aa3	AA-	AA-	0.40%
Level 3	A1	A+	A+	0.50%
Level 4	A2	A	A	0.60%
Level 5	A3	A-	A-	0.70%

In the event of split Ratings (*i.e.*, one of the Rating Agencies' Rating is at a different Level than the Rating of another Rating Agency), the Commitment Fee Rate shall be based upon the Level in which the lowest Rating(s) appears (for the avoidance of doubt, Level 5 is the lowest Level and Level 1 is the highest Level for purposes of the above pricing grid). Any change in the Commitment Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date that the change in such Rating is published by such Rating Agency. References to Ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system, the ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new

rating system that most closely approximates the applicable rating category as currently in effect. In the event that any Rating is reduced below Baa1/BBB+/BBB+ or is suspended or withdrawn for any credit related reason, or there shall occur any other Event of Default under this Agreement, the Commitment Fee Rate shall automatically increase by 1.50% over the Commitment Fee Rate set forth in Level 5 above. The Borrower acknowledges that as of the Effective Date the Commitment Fee Rate is that specified above for Level 1.

*“Compliance Certificate”* means a certificate substantially in form of Exhibit A hereto.

*“Conforming Changes”* means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate, any conforming changes to the definition of “SOFR,” timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of “Business Day,” the definitions of “Business Day” and “U.S. Government Securities Business Day,” timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Bank, to reflect the adoption and implementation of such applicable rate(s), and to permit the administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Bank determines is reasonably necessary in connection with the administration of this Agreement and any other Related Document).

*“Controlled Account”* means (a) each Bank Controlled Account and (b) each deposit account of the Borrower containing any Pledged Grant Receipts or proceeds of the Loans.

*“Daily SOFR”* means the rate per annum equal to SOFR determined for any day pursuant to the definition thereof. Any change in Daily SOFR shall be effective from and including the date of such change without further notice. If the rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

*“Daily SOFR Loan”* means a Loan that bears interest by reference to Daily SOFR.

*“Debt”* of any Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements, bank agreements or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and not past due for more than 60 days after the date on which such trade account was created), (d) all obligations of such Person as lessee under capital leases, (e) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (f) all Guarantees by such Person of Debt of other Persons, (g) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments and (h) all obligations of such Person under any Swap Contract.

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“*Default*” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“*Default Rate*” means, for any day, a rate of interest per annum equal to the sum of the Base Rate and four percent (4.00%).

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*Determination of Taxability*” means, with respect to any Tax-Exempt Loan, and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that any interest paid or payable on Tax-Exempt Loan is includable, in whole or in part, in the gross income for federal income tax purposes;

(ii) on the date when the Borrower shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the Borrower, or upon any review or audit of the Borrower or upon any other ground whatsoever, interest paid or payable on Tax-Exempt Loan is includable, in whole or in part, in the gross income for federal income tax purposes; or

(iii) on the date when the Borrower shall receive notice from a Noteholder or any former Noteholder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Noteholder or such former Noteholder any interest paid or payable on the Tax-Exempt Loan;

*provided, however*, no Determination of Taxability shall occur under subparagraph (ii) or (iii) hereunder unless the Borrower has been afforded the reasonable opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined.

“*Dollar*” and “*\$*” mean lawful money of the United States.

“*Effective Date*” means July 8, 2024, subject to the satisfaction or waiver by the Bank of the conditions precedent set forth in Article IV hereof.

“*Electronic Record*” and “*Electronic Signature*” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

“*Eligible Project Costs*” means costs associated with the Hudson Tunnel Project for which the Borrower will be reimbursed with Pledged Grant Receipts and other costs associated with the Hudson Tunnel Project that are authorized under any of (i) the Resolution, (ii) the FFGA, (iii) the CIG Program, (iv) the Rebuilding American Infrastructure with Sustainability and Equity grant received by the Borrower, (v) the Federal State Partnership grant received by the Borrower, and (vi) the RRIF Loan Documents.

“*EMMA*” means Electronic Municipal Market Access as provided by the Municipal Securities Rulemaking Board.

“*Environmental Laws*” means any and all federal, state, local, and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“*ERISA Affiliate*” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“*Event of Default*” with respect to this Agreement has the meaning set forth in Section 7.01 of this Agreement and, with respect to any Related Document, has the meaning assigned therein.

“*Event of Non-Appropriation*” means (i) the failure of the United States Congress to appropriate funds for programs authorized under 49 U.S.C. s. 5309 in any Federal Fiscal Year, (ii) the failure of the FTA to apportion to the Borrower, by the last day of any Federal Fiscal Year, Section 5309 Funds that have been appropriated by the United States Congress for such Federal Fiscal Year in an aggregate amount at least sufficient, after giving effect to the payment when due of principal of and interest on all Aggregate Secured Debt coming due in such Federal Fiscal Year, to pay, when due, the principal of and interest on the Loans and all other Obligations hereunder payable in such Federal Fiscal Year, or (iii) the non-receipt of Section 5309 Funds from the federal government in any Federal Fiscal Year in an aggregate amount at least sufficient, after giving effect to the payment when due of principal of and interest on all Aggregate Secured Debt, if any, coming due in such Federal Fiscal Year, to pay, when due, the principal of and interest on the Loans and all other Obligations hereunder payable in such Federal Fiscal Year; *provided, however*, that in no event shall an “Event of Non-Appropriation” be deemed to have occurred

notwithstanding the occurrence of (i), (ii), or (iii) above so long as the Aggregate Available Receipts Coverage Ratio is at least 1.25 to 1.00. Upon request of the Bank, the Borrower shall promptly provide the Bank with calculations demonstrating the then-applicable Aggregate Available Receipts Coverage Ratio certified by the Borrower to the Bank in writing.

“*Event of Non-Authorization*” means any event or occurrence as the result of which there shall not be in effect an Authorization; *provided, however*, that in no event shall an “Event of Non-Authorization” be deemed to have occurred so long as the Aggregate Available Receipts Coverage Ratio is at least 1.25 to 1.00. Upon request of the Bank, the Borrower shall promptly provide the Bank with calculations demonstrating the then-applicable Aggregate Available Receipts Coverage Ratio certified by the Borrower to the Bank in writing.

“*Excess Interest*” has the meaning set forth in Section 2.06(e) hereof.

“*Federal Fiscal Year*” means the annual period commencing on October 1 of a calendar year and ending on September 30 of the next calendar year.

“*Federal Funds Rate*” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective date; *provided, that*, if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*FFGA*” means that certain Full Funding Grant Agreement (Hudson Tunnel Project, Project No. NY-2024-[ ]-[ ]), dated July 8, 2024 between the Borrower and the United States of America, acting through the FTA, as the same may hereafter be amended and supplemented from time to time in accordance with the terms hereof and thereof, which provides for federal financial assistance in the form of Pledged Grant Receipts for the Hudson Tunnel Project in the anticipated amount of \$6,880,000,000.

“*Fiscal Year*” means the twelve-month period from January 1 through the following December 31.

“*Fitch*” means Fitch, Inc., and any successor rating agency.

“*FRB*” means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

“*FTA*” means the U.S. Department of Transportation, Federal Transit Administration.

“*Fund*” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“*Funding Agreements*” means the GDC Operations Funding Agreements (as defined in the Project Development Agreement) and the Funding Agreements (as defined in the Project Development Agreement).

“*Funding Partners*” means The State of New Jersey, The State of New York, and Amtrak.

“*Generally Accepted Accounting Principles*” or “*GAAP*” means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the Borrower, including, without limitation, those principles set forth in the statements and pronouncement of the Government Accounting Standards Board.

“*GDC Operations Funding Agreement*” means any agreement entered into between or among the Borrower, the State, the State of New Jersey, and/or Amtrak pursuant to Section 11.01 of the Project Development Agreement to provide funding for the Borrower’s annual operating budget.

“*Governmental Approval*” means an authorization, consent, approval, permit, license, certificate of occupancy or an exemption of, a registration or filing with, or a report to any Governmental Authority.

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank).

“*Guarantee*” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the “*primary obligor*”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by

the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“*Hudson Tunnel Project*” means (a) the construction of a new Hudson River Tunnel between New York and New Jersey; (b) the rehabilitation of the existing North River Tunnels under the Hudson River; and (c) the construction of the final segment of the concrete casing under western Hudson Yards in Manhattan, New York relating to Hudson Yards Concrete Casing - Section 3 (HYCC-3) Long Island Rail Road (LIRR) Emergency Services Building (ESB) Utility Relocation Early Work associated with the separately funded Hudson Yards Concrete Casing Section 3 project.

“*Interest Payment Date*” means (a) as to any Revolving Loan, (i) the first Business Day of each calendar month, (ii) each date principal of any Revolving Loan is due and payable and (iii) the Termination Date and (b) as to any Term Loan, (i) the first Business Day of each calendar month, (ii) the Amortization End Date and (iii) each date principal of any Term Loan is due and payable.

“*Laws*” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“*Loan*” and “*Loans*” means individually, each Revolving Loan and each Term Loan under this Agreement, and collectively the Revolving Loans and the Term Loans under this Agreement.

“*Margin Stock*” has the meaning ascribed to such term in Regulation U promulgated by the FRB, as now and hereafter from time to time in effect.

“*Material Adverse Effect*” or “*Material Adverse Change*” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower; (b) a material impairment of the ability of the Borrower to perform its obligations under any Related Document to which it is a party; (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of any Related Document to which it is a party or the rights, security, interests or remedies of the Bank hereunder or under any other Related Document; (d) an Event of Non-Appropriation or an Event of Non-Authorization; or (e) a material adverse change in, or a material adverse effect on (i) the Borrower’s eligibility to receive any Pledged Grant

Receipts or Section 5309 Funds under the FFGA or the CIG Program, (ii) the receipt by the Borrower of payments by the FTA under the FFGA, or (iii) any obligation of the FTA to pay Pledged Grant Receipts to the Borrower under the FFGA.

“*Maximum Interest Rate*” means the maximum rate of interest on the relevant obligation permitted by applicable Law.

“*Moody’s*” means Moody’s Investors Service, Inc. and any successor rating agency.

“*NJTA Funding Agreement*” means that certain Amended and Restated State Public Transportation Projects Funding Agreement, dated as of March 31, 2024, by and between the New Jersey Turnpike Authority and the Treasurer of the State of New Jersey.

“*Note*” means, individually and collectively, the Tax-Exempt Note and the Taxable Note.

“*Note Counsel*” means Mayer Brown LLP, or any other firm of attorneys nationally recognized on the subject of tax-exempt municipal finance selected by the Borrower and acceptable to the Bank.

“*Noteholder*” means, initially, the Bank, and each assignee pursuant to Section 8.06 hereof.

“*Obligations*” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising hereunder or under any Related Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“*OFAC*” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“*Original Commitment*” means Five Hundred Million Dollars (\$500,000,000).

“*Parity Commitment*” has the meaning set forth in Section 2.02(a) hereof.

“*Parity Debt*” means any Debt issued or incurred by or on behalf of the Borrower and secured on a parity with the pledge of and Lien on Pledged Grant Receipts securing the principal and interest on the Loans and all other Obligations under this Agreement.

“*Participant(s)*” means any bank(s) or other financial institution(s) that may purchase a participation, interest or assignment from the Bank in the Notes, this Agreement, and the other Related Documents pursuant to a participation agreement between the Bank and such Participant(s).

“*Person*” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.



“*Plan*” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“*Pledged Grant Receipts*” means Section 5309 Funds and the federal grant receipts relating to the CIG Program received by or to be received by the Borrower from the FTA under the FFGA.

“*Prepayment Notice*” means a written notice of prepayment with respect to a Loan hereunder in form and substance satisfactory to the Bank (including any form on an electronic platform or electronic transmission system as shall be approved by the Bank).

“*Prime Rate*” means for any day, the rate of interest in effect for such day as publicly announced from time to time by Bank of America, N.A. as its “prime rate.” The “*prime rate*” is a rate set by Bank of America, N.A. based upon various factors including Bank of America, N.A.’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the prime rate announced by Bank of America, N.A. shall take effect at the opening of business on the day specified in the public announcement of such change *provided, that*, if the Prime Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*Project Development Agreement*” means that certain Project Development Agreement for Hudson Tunnel Project among the Borrower, The State of New Jersey, The State of New York, and Amtrak dated February 3, 2023, as amended by that certain Amendment No. 1 to Project Development Agreement for Hudson Tunnel Project dated as of May 24, 2023, as amended by that certain Amendment No. 2 to Project Development Agreement for Hudson Tunnel Project dated as of March 5, 2024, and as the same may hereafter be amended, supplemented or restated from time to time in accordance with the terms hereof and thereof.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*Quarterly Payment Date*” means the first Business Day of each January, April, July and October.

“*Rating Agency*” means any of Fitch, Moody’s or S&P, as applicable.

“*Related Documents*” means this Agreement, the FFGA, the Resolution, the Project Development Agreement, the Funding Agreements, the Security Agreement, the Notes, and any other documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder (but in any event excluding the RRIF Loan-Related Funding Agreements, NJTA Funding Agreement and the RRIF Loan Documents).

“*Related Parties*” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“*Remaining Expected Pledged Grant Receipts*” means the aggregate Pledged Grant Receipts scheduled to be received under the FFGA for the remaining term of the FFGA but not yet paid to Borrower, whether appropriated or not.

“*Request for Advance*” means a written request for a Revolving Loan hereunder substantially in the form of Exhibit B hereto, or such other form as may be approved by the Bank (including any form on an electronic platform or electronic transmission system as shall be approved by the Bank).

“*Resolution*” means Resolution No. 0724-03 of the governing body of the Borrower authorizing the execution and delivery of this Agreement, the Security Agreement, the Notes, and incurring the obligations hereunder and thereunder, adopted by the governing body of the Borrower on July 2, 2024.

“*Revolving Loan*” has the meaning set forth in Section 2.01 and shall be either individually or collectively a Tax-Exempt Revolving Loan or a Taxable Revolving Loan.

“*RRIF Loan Funding Partner*” means the funding partner counterparty under a RRIF Loan-Related Funding Agreement.

“*RRIF Lender*” means the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau.

“*RRIF Loan Documents*” means (a) that certain RRIF Loan Agreement (NJT Funding Agreement) (RRIF- 2024-0052), dated as of July 8, 2024, by and between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, (b) that certain RRIF Loan Agreement (New York Funding Agreement) (RRIF- 2024-0050), dated as of July 8, 2024, by and between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, (c) that certain RRIF Loan Agreement (Port Authority Funding Agreement) (RRIF- 2024-0051), dated as of July 8, 2024, by and between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, and (d) that certain Collateral Accounts and Security Agreement, dated July 8, 2024, by and among the Borrower, the RRIF Lender, and The Bank of New York Mellon, as collateral agent and securities intermediary, each as may hereafter be amended, supplemented or restated from time to time in accordance with the terms thereof.

“*RRIF Loan-Related Funding Agreements*” means (a) that certain Service Contract, dated as of March 31, 2024, by and between the State, acting by and through the Director of the Budget of the State, and the Borrower (the “*RRIF Loan-Related Funding Agreement (NY)*”), (b) that certain Hudson Tunnel Project Funding Agreement (RRIF Loan), dated as of March 31, 2024,

between the Borrower and New Jersey Transit Corporation (the “*RRIF Loan-Related Funding Agreement (NJT)*”), (c) that certain Hudson Tunnel Project RRIF Loan Funding Agreement, dated as of April 8, 2024, between the Borrower and the Port Authority of New York and New Jersey (the “*RRIF Loan-Related Funding Agreement (PA)*”), each as may hereafter be amended, supplemented or restated from time to time in accordance with the terms hereof and thereof and (d) any other funding agreement entered into by the Borrower from time to time in connection with any loan made available to the Borrower by the RRIF Lender.

“*S&P*” means S&P Global Ratings, and any successor rating agency.

“*Sanction(s)*” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty’s Treasury (“*HMT*”) or other relevant sanctions authority.

“*Section 5309 Funds*” means the Borrower’s share of FTA Section 5309 (49 U.S.C. s. 5309) funds under the CIG Program.

“*Secured Debt*” means Debt that has a Lien on Pledged Grant Receipts or any Section 5309 Funds.

“*Security Agreement*” means that certain Pledge and Security Agreement dated as of July 8, 2024, between the Borrower and the Bank as supplemented, amended or restated from time to time in accordance with the terms hereof and thereof.

“*Semi-Annual Payment Date*” means the first Business Day of each January and July.

“*Significant Delay*” means any date that Pledged Grant Receipts receivable by the Borrower from Section 5309 Funds and actually appropriated and apportioned to the Borrower from the FTA during any two consecutive Federal Fiscal Years, are less than fifty percent (50%) of the estimated Pledged Grant Receipts that were expected to be appropriated and apportioned by the FTA set forth in Attachment 6 of the FFGA; *provided, however*, that in no event shall a “Significant Delay” be deemed to have occurred so long as the Aggregate Available Receipts Coverage Ratio is at least 1.25 to 1.00. Upon request of the Bank, the Borrower shall promptly provide the Bank with calculations demonstrating the then-applicable Aggregate Available Receipts Coverage Ratio certified by the Borrower to the Bank in writing.

“*SOFR*” means, with respect to any applicable determination date, the Secured Overnight Financing Rate published on the fifth U.S. Government Securities Business Day preceding such date by the SOFR Administrator on the Federal Reserve Bank of New York’s website (or any successor source); provided however that if such determination date is not a U.S. Government Securities Business Day, then SOFR means such rate that applied on the first U.S. Government Securities Business Day immediately prior thereto.

“*SOFR Administrator*” means the Federal Reserve Bank of New York, as the administrator of SOFR, or any successor administrator of SOFR designated by the Federal Reserve Bank of New

York or other Person acting as the SOFR Administrator at such time that is satisfactory to the Bank.

“*SOFR Loan*” means a Loan that bears interest by reference to SOFR. All SOFR Loans may be either Taxable Revolving Loans or Tax-Exempt Revolving Loans.

“*State*” means the State of New York.

“*Stated Termination Date*” means July 6, 2029 or such earlier date on which the Commitment is terminated in whole pursuant to Section 2.04 or 7.02 hereof, unless extended pursuant to Section 2.08 hereof.

“*Successor Rate*” has the meaning set forth in Section 2.14(b) hereof.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Tax-Exempt Applicable Spread*” corresponds to the number of basis points set forth in the applicable row under the column titled “Tax-Exempt Applicable Spread” in the definition of Applicable Spread.

“*Tax-Exempt Loan*” and “*Tax-Exempt Loans*” means individually, each Tax-Exempt Revolving Loan and each Tax-Exempt Term Loan under this Agreement, and collectively the Tax-Exempt Revolving Loans and the Tax-Exempt Term Loans under this Agreement.

“*Tax-Exempt Note*” means the promissory note of the Borrower substantially in the form of Exhibit C attached hereto.

“*Tax-Exempt Rate*” means, for each day:

(a) for Tax-Exempt Revolving Loans that bear interest with reference to Daily SOFR, a rate per annum equal to the sum of (A) the product of (I) the Applicable Factor multiplied by (II) the Daily SOFR for each day, plus (B) the Tax-Exempt Applicable Spread;

(b) for Tax-Exempt Loans that bear interest with reference to Base Rate, a rate per annum equal to the Base Rate for such day; and

(c) for Tax-Exempt Term Loans, a rate per annum equal to the Term Loan Rate for such day.

“*Tax-Exempt Revolving Loans*” means each Revolving Loan that bears interest at the Tax-Exempt Rate.

“*Tax-Exempt Term Loan*” means a Tax-Exempt Revolving Loan that is converted to a Term Loan pursuant to the terms of Article II-B hereof.

“*Taxable Applicable Spread*” corresponds to the number of basis points set forth in the applicable row under the column titled “Taxable Applicable Spread” in the definition of Applicable Spread.

“*Taxable Date*” means the date on which any interest paid or payable on any Tax-Exempt Loan is first includable in gross income of the Noteholder (including, without limitation, any previous Noteholder).

“*Taxable Loan*” and “*Taxable Loans*” means individually, each Taxable Revolving Loan and each Taxable Term Loan under this Agreement, and collectively the Taxable Revolving Loans and the Taxable Term Loans under this Agreement.

“*Taxable Note*” means the promissory note of the Borrower substantially in the form of Exhibit D attached hereto.

“*Taxable Period*” has the meaning set forth in Section 2.13 hereof.

“*Taxable Rate*” means, for each day:

(a) for Taxable Revolving Loans that bear interest with reference to Daily SOFR, a rate per annum equal to the sum of (A) the product of (I) the Applicable Factor multiplied by (II) the Daily SOFR, plus (B) the Taxable Applicable Spread;

(b) for Taxable Revolving Loans that bear interest with reference to Base Rate, a rate per annum equal to the Base Rate for such day; and

(c) for Taxable Term Loans, a rate per annum equal to the Term Loan Rate for such day.

“*Taxable Revolving Loans*” means SOFR Loans that bear interest at the Taxable Rate.

“*Taxable Term Loan*” means a Taxable Revolving Loan that is converted to a Term Loan pursuant to the terms of Article II-B hereof.

“*Term Loan*” and “*Term Loan*” means individually, each Taxable Term Loan and each Taxable-Exempt Term Loan under this Agreement, and collectively the Taxable Term Loans and the Tax-Exempt Term Loans under this Agreement.

“*Term Loan Conversion Date*” means the date on which a Revolving Loan is converted to a Term Loan, which, subject to the satisfaction of the conditions precedent in Section 2.17 hereof, shall be the Stated Termination Date.

“*Term Loan Rate*” means, on any particular date, a per annum rate of interest calculated with respect to a particular Term Loan equal to the sum of the Base Rate from time to time in effect *plus* one percent (1.00%).

“*Termination Date*” means the earliest of (a) the Stated Termination Date, (b) the date on which the Available Commitment is reduced to zero and the Commitment terminated pursuant to Section 2.04 or Section 7.02 hereof and (c) the date on which the Bank’s obligation to make Revolving Loans hereunder is terminated in accordance with the terms hereof.

“*Total Revolving Loans Outstanding*” means the aggregate amount of the Revolving Loans.

“*UCC*” means the Uniform Commercial Code as in effect in the State of New York; *provided, that*, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “*UCC*” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“*United States*” and “*U.S.*” means the United States of America.

“*USA Patriot Act*” has the meaning set forth in Section 8.16 hereof.

“*U.S. Government Securities Business Day*” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“*Waiver*” means that certain Waiver and Disclaimer, dated as of July 8, 2024, by and among the Borrower, the RRIF Lender, the RRIF Collateral Agent (as defined therein), the Bank, and the other Persons from time to time party thereto.

“*1933 Act*” means the Securities Act of 1933, as amended.

*Section 1.02. Other Interpretive Provisions.* With reference to this Agreement and each other Related Document, unless otherwise specified herein or in such other Related Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Related Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Related Document, shall be construed to refer to such Related Document in its entirety and not to any particular provision thereof, (iv) all references in a Related Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Related Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”

(c) Section headings herein and in the other Related Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Related Document.

*Section 1.03. Accounting Terms.* All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, *except* as otherwise specifically prescribed herein.

*Section 1.04. Rounding.* Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

*Section 1.05. Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

*Section 1.06. Rates.* The Bank does not warrant, nor accept responsibility for, nor shall the Bank have any liability with respect to, the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rates (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Bank and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Bank may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

## ARTICLE II-A

### FACILITIES; APPLICATION AND ISSUANCE OF THE REVOLVING LOANS; PAYMENTS

*Section 2.01. Revolving Credit Commitments.* Subject to the terms and conditions hereof, the Bank, by its acceptance hereof, agrees to make a loan or loans in U.S. Dollars to the Borrower from time to time on a revolving basis (each, a “*Revolving Loan*”) up to the amount of the Available Commitment, subject to any reductions thereof pursuant to the terms hereof, before the Termination Date. The sum of the aggregate principal amount of Revolving Loans at any time outstanding shall not exceed the Available Commitment in effect at such time. As provided in Section 2.02(c) hereof, the Borrower may elect that any such Revolving Loan be a Tax-Exempt Revolving Loan or a Taxable Revolving Loan. Revolving Loans may be repaid and the principal amount thereof reborrowed before the Termination Date, subject to the terms and conditions hereof.

*Section 2.02. Making of Advances; Use of Proceeds.* (a) *Advances.* Subject to the terms and conditions of this Agreement, the Bank agrees to make Advances from time to time on any Business Day, commencing on the Effective Date and ending on the Termination Date, in amounts not to exceed at any time outstanding the Available Commitment; *provided*, that the Bank shall not be required to make more than four (4) Advances during any calendar month. Each Advance shall be made solely for the purpose of providing funds for Eligible Project Costs of the Borrower; *provided* that in no event shall any of the proceeds of a Tax-Exempt Loan be used to pay or prepay



a Taxable Revolving Loan, unless the Borrower receives an opinion of Note Counsel that such application of such proceeds will not cause interest paid or payable on such Tax-Exempt Loan to be includable in the gross income of the Noteholders thereof for Federal income tax purposes, which shall also be addressed to the Bank or upon which the Bank is entitled to rely. The aggregate amount of all Advances made on any Advance Date shall not exceed the Available Commitment (calculated without giving effect to any Advances made on such date) at 10:00 am (Eastern time) on such date. To the extent the Borrower has entered any Bank Agreement or has a commitment outstanding from any Person to fund, purchase or made advances with respect to any Parity Debt (each a "*Parity Commitment*"), any Borrowing hereunder shall only be made by the Bank in a proportionate amount to a simultaneous funding, purchase, drawing or advance under each outstanding Parity Commitment, so that any Advance hereunder is made on a pro-rata basis with fundings under each outstanding Parity Commitment.

(b) *Reborrowing.* Within the limits of this Section 2.02, the Borrower may borrow, repay pursuant to Section 2.05 hereof, prepay pursuant to Section 2.03 hereof and reborrow under this Section 2.02. Upon any prepayment of any Revolving Loan, the Available Commitment shall be reinstated as set forth in the definition thereof.

(c) *Method of Borrowing.* Each Borrowing shall be made upon the Borrower's irrevocable notice to the Bank, which may be given by telephone. The Bank must receive each such notice not later than 11:00 a.m. three (3) Business Days prior to the requested date of any Borrowing of Daily SOFR Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(c) must be confirmed promptly by delivery to the Bank of a written Request for Advance in the form of Exhibit B attached hereto, appropriately completed and signed by an Authorized Officer; *provided, however,* that for any Request for Advance submitted by an electronic platform or electronic transmission system approved by the Bank, such Request for Advance must be provided to the Bank not later than 4:00 p.m. (Eastern time) on the Business Day of the requested date of any Borrowing in the case of Daily SOFR Loans. Each Borrowing of SOFR Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Each Request for Advance (whether telephonic or written) shall specify (i) the requested date of the Borrowing (which shall be a Business Day), (ii) the principal amount of Revolving Loans to be borrowed, and (iii) whether such Revolving Loan is to be a Taxable Revolving Loan or a Tax-Exempt Loan. If the Borrower fails to specify if the Revolving Loan is requested to be a Taxable Revolving Loan or a Tax-Exempt Loan, the Revolving Loan shall be made as a Taxable Revolving Loan.

(d) Upon satisfaction of the applicable conditions set forth in Section 4.01(b) hereof (and, if such Borrowing is the initial Borrowing, Section 4.01(a) hereof), the Bank shall make all funds available to the Borrower by 3:00 p.m. (Eastern time) on the Business Day specified in the applicable Request for Advance by depositing such funds into the Bank Controlled Account established by the Bank in the Borrower's name or such other Bank Controlled Account(s) as the Borrower and the Bank shall agree.

(e) With respect to SOFR, the Bank will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any Borrower Document, any amendments implementing such Conforming Changes will become effective

without any further action or consent of the Borrower; *provided* that, with respect to any such amendment effected, the Bank shall provide each such amendment implementing such Conforming Changes to the Borrower reasonably promptly after such amendment becomes effective.

*Section 2.03. Prepayments.* (a) The Borrower may, upon delivery of a Prepayment Notice to the Bank, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part without premium or penalty; *provided* that, unless otherwise agreed by the Bank, (i) such Prepayment Notice must be received by the Bank not later than 11:00 a.m. (Eastern time) three (3) Business Days prior to any date of prepayment of Daily SOFR Loans; and (ii) any prepayment of SOFR Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof; or, if less, the entire principal amount thereof then outstanding. Each Prepayment Notice shall specify the date (which shall be a Business Day) and amount of such prepayment. If the Borrower gives such Prepayment Notice, the Borrower shall make such prepayment and the payment amount specified in such Prepayment Notice shall be due and payable on the date specified therein. All prepayments of principal shall include accrued interest to the date of prepayment and all other amounts due pursuant to this Agreement.

(b) If for any reason the Total Revolving Loans Outstanding at any time exceed the Available Commitment then in effect, the Borrower shall immediately prepay Revolving Loans (together with all accrued interest thereon) in an aggregate amount equal to such excess.

(c) If at any time, a Significant Delay occurs or the Aggregate Expected Receipts Coverage Ratio is less than 2.00 to 1.00 (regardless of whether a Loan has converted to a Term Loan), the Borrower shall immediately prepay outstanding Loans (together with all accrued interest thereon) with all amounts in each Controlled Account, and all other legally available funds (excluding any funds of the Borrower pledged for the benefit of the RRIF Lender under the RRIF Loan Documents) and shall continue to immediately prepay the Loans (together with all accrued interest thereon) upon receipt of any additional Pledged Grant Receipts until such time as Significant Delay ceases to exist and the Aggregate Expected Receipts Coverage Ratio equals or exceeds 2.00 to 1.00.

(d) If at any time the Borrower prepays any other Parity Debt, the Borrower shall simultaneously prepay the Loans on a pro-rata basis (together with all accrued interest thereon) with all principal amount of Parity Debt being repaid.

*Section 2.04. Termination or Reduction of Commitment.* (a) The Commitment shall be automatically and permanently reduced to zero on the Stated Termination Date.

(b) If at any time the outstanding amount of all Aggregate Secured Debt exceeds the Remaining Expected Pledged Grant Receipts, the Commitment shall be automatically and permanently reduced by the amount of such excess.

(c) The Commitment shall be reduced from time to time as requested by the Borrower within ten (10) Business Days of the Borrower's written notice to the Bank requesting such reduction; *provided*, that (i) each such reduction amount shall be in an amount equal to \$1,000,000

or a whole multiple of \$100,000 in excess thereof, and (ii) any reduction in the Commitment shall not be effective until the Bank delivers written confirmation to the Borrower reflecting such requested reduction of the Commitment.

(d) The Borrower may at any time and at its sole option terminate the Commitment upon ten (10) Business Days' prior written notice to the Bank. As a condition to any such termination, the Borrower shall pay or cause to be paid all Obligations owed to the Bank.

*Section 2.05. Repayment of Revolving Loans.* Subject to Article II-B hereof, the Borrower shall repay to the Bank on the Termination Date the aggregate principal amount of all Revolving Loans outstanding on such date and accrued and unpaid interest, if any.

*Section 2.06. Interest.* (a) Subject to the provisions of subsection (b) below, (i) each Tax-Exempt Loan, shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at the applicable Tax-Exempt Rate; and (ii) each Taxable Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at the applicable Taxable Rate.

(b) While any Default or Event of Default exists, the Borrower shall pay interest on all outstanding Obligations hereunder (including, without limitation, all Loans) at a rate of interest per annum at all times equal to the Default Rate. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable to the Bank in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) Calculations of interest due under this Agreement shall be calculated on the basis of a 360-day year and actual days elapsed.

(e) If the rate of interest payable hereunder shall exceed the Maximum Interest Rate for any period for which interest is payable, then (a) interest at the Maximum Interest Rate shall be due and payable with respect to such interest period, and (b) interest at the rate equal to the difference between (i) the rate of interest calculated in accordance with the terms hereof and (ii) the Maximum Interest Rate (the "*Excess Interest*"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Interest Rate, at which time the Borrower shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Interest Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (i) the date of payment in full of all Obligations (other than Excess Interest which has not been recaptured) and on which this Agreement is no longer in effect, and (ii) the date on which all deferred Excess Interest is fully paid to the Bank.

*Section 2.07. Fees.*

(a) *Commitment Fees.* The Borrower agrees to pay to the Bank a nonrefundable annual fee (the “*Commitment Fee*”) accruing at the Commitment Fee Rate multiplied by the daily Available Commitment in effect on each day during the preceding quarterly period, payable quarterly in arrears on each Quarterly Payment Date and on the Termination Date. The Commitment Fee shall be calculated on the basis of a 360-day year and actual days elapsed. The Commitment Fee shall accrue at all times during the period from and including the Effective Date to the Termination Date; *provided, however*, if on any day the Borrower utilizes sixty-five percent (65%) or more of the Original Commitment, no Commitment Fee shall accrue for such day.

(b) *Costs, Expenses and Taxes.* The Borrower will promptly pay on demand (i) the reasonable fees, costs and expenses of the Bank incurred in connection with the preparation, negotiation, execution and delivery of this Agreement, the Notes and the other Related Documents, (ii) the reasonable fees and disbursements of Chapman and Cutler LLP counsel to the Bank, incurred in connection with the preparation, execution, filing and administration and delivery of this Agreement and the other Related Documents not in excess of \$150,000, (iii) the reasonable fees and disbursements of counsel or other reasonably required consultants to the Bank with respect to advising the Bank as to the rights and responsibilities under this Agreement and the other Related Documents after the occurrence of any Default or an Event of Default, (iv) a fee for each amendment to this Agreement or any other Related Document or any consent or waiver by the Bank with respect to any Related Document, in each case, in a minimum amount of \$2,500 plus the reasonable fees and expenses of counsel to the Bank; (v) all reasonable costs and expenses, if any, in connection with any waiver or amendment of, or the giving of any approval or consent under, or any response thereto or the enforcement of this Agreement, the Related Documents and any other documents which may be delivered in connection herewith or therewith, including in each case the reasonable fees and disbursements of counsel to the Bank or other reasonably required consultants, and (vi) any amounts advanced by or on behalf of the Bank to the extent required to cure any Default, Event of Default or event of nonperformance hereunder or any Related Document, together with interest at the Default Rate. In addition, the Borrower shall pay any and all stamp taxes, transfer taxes, documentary taxes, and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of this Agreement and the security contemplated by the Related Documents (other than taxes based on the net income or share capital of the Bank) and agrees to indemnify and hold the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying, or omission to pay, such taxes and fees, including interest and penalties thereon; *provided, however*, that the Borrower may reasonably contest any such taxes or fees with the prior written consent of the Bank, which consent, if an Event of Default does not then exist, shall not be unreasonably withheld. In addition, the Borrower agrees to pay, after the occurrence of an Event of Default, all reasonable costs and expenses (including reasonable attorneys’ fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from the Borrower hereunder by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a “workout” or of any collection, insolvency, bankruptcy proceedings or other enforcement proceedings resulting therefrom.

(c) If the Borrower shall fail to pay any amount payable under this Section 2.07 as and when due, each such unpaid amount shall bear interest for each day from and including the date it was due until paid in full at the applicable Default Rate. The obligations of the Borrower under this Section 2.07 shall survive the termination of this Agreement.

*Section 2.08. Extension of Commitment Expiration Date.* At least ninety (90) days and no more than one hundred twenty (120) days prior to the Stated Termination Date, the Borrower may make a request to the Bank, upon written notice, to extend the Stated Termination Date. Not more than thirty (30) days from the date on which the Bank shall have received any such notice from the Borrower pursuant to the preceding sentence, the Bank shall notify the Borrower of the initial consent or nonconsent of the Bank to such extension request, which consent shall be given at the sole and absolute discretion of the Bank. The consent of the Bank, if granted, shall be conditioned upon the preparation, execution and delivery of documentation in form and substance satisfactory to the Bank (which may include, but shall not be limited to the delivery of a “no adverse effect opinion” of Note Counsel to the Bank with respect to the tax-exempt status of the Tax-Exempt Loans, if any). Failure of the Bank to respond to a request for extension of the Stated Termination Date shall constitute denial of such extension.

*Section 2.09. Loans Evidenced by Notes.* (a) The Tax-Exempt Loans shall be evidenced by Tax-Exempt Note to be issued on the Effective Date, payable to the Bank in a principal amount up to the Commitment on the Effective Date and otherwise duly completed. All Tax-Exempt Loans made by the Bank and all payments and prepayments made on account of principal thereof shall be recorded by the Bank on the schedule (or a continuation thereof) attached to the Tax-Exempt Note, it being understood, however, that failure by the Bank to make any such endorsement shall not affect the obligations of the Borrower hereunder or under the Tax-Exempt Note in respect of unpaid principal and interest on any Tax-Exempt Loan. Each entry on the Tax-Exempt Note with respect to a Tax-Exempt Loan schedule shall reflect the applicable principal amount and the applicable interest rate.

(b) The Taxable Loans shall be evidenced by the Taxable Note to be issued on the Effective Date, payable to the Bank in a principal amount up to the Commitment on the Effective Date and otherwise duly completed. All Taxable Loans made by the Bank and all payments and prepayments made on account of principal thereof shall be recorded by the Bank on the schedule (or a continuation thereof) attached to the Taxable Note, it being understood, however, that failure by the Bank to make any such endorsement shall not affect the obligations of the Borrower hereunder or under the Taxable Note in respect of unpaid principal and interest on any Taxable Loan. Each entry on the Taxable Note with respect to a Taxable Loan schedule shall reflect the applicable principal amount and the applicable interest rate.

*Section 2.10. Withholding.* If any payments due under this Agreement are made from outside the United States, the Borrower will not deduct any foreign taxes from any payments it makes hereunder. If any such taxes are imposed on any payments made by the Borrower (including payments under this paragraph), the Borrower will pay the taxes and will also pay to the Bank, at the time interest is paid, any additional amount which the Bank specifies as necessary to preserve the after-tax yield the Bank would have received if such taxes had not been imposed. As soon as practicable after any payment of taxes by the Borrower to a Governmental Authority, as provided

in this Section 2.10, the Borrower will deliver to each the Bank the original or a certificate copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank. The Borrower will confirm that it has paid the taxes by giving the Bank official tax receipts (or notarized copies) within thirty (30) days after the due date. All of the Borrower's obligations under this Section shall survive the termination of this Agreement and the repayment, satisfaction or discharge of all other Obligations.

*Section 2.11. Increased Costs.*

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, a Noteholder;

(ii) subject a Noteholder to any taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on a Noteholder any other condition, cost or expense affecting this Agreement or the Loans;

and the result of any of the foregoing shall be to increase the cost to any such Noteholder with respect to this Agreement, the Loans, or the making, maintenance or funding of any Advance or Loan, or to reduce the amount of any sum received or receivable by such Noteholder hereunder (whether of principal, interest or any other amount) then, upon request of such Noteholder, the Borrower will pay to such Noteholder, such additional amount or amounts as will compensate such Noteholder, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If a Noteholder determines that any Change in Law affecting such Noteholder or any such Noteholder's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Noteholder's capital or liquidity or on the capital or liquidity of such Noteholder's holding company, if any, as a consequence of this Agreement or the Loans to a level below that which such Noteholder or such Noteholder's holding company could have achieved but for such Change in Law (taking into consideration such Noteholder's policies and the policies of such Noteholder's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Noteholder, such additional amount or amounts as will compensate such Noteholder or such Noteholder's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of a Noteholder setting forth the amount or amounts necessary to compensate such Noteholder or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Noteholder the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of a Noteholder to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Noteholder's right to demand such compensation; *provided* that the Borrower shall not be required to compensate such Noteholder pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Noteholder notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Noteholder's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Survival.* All of the Borrower's obligations under this Section shall survive the termination of this Agreement and the repayment, satisfaction or discharge of all other Obligations.

*Section 2.12. Event of Non-Appropriation; Event of Non-Authorization.* If an Event of Non-Appropriation or an Event of Non-Authorization occurs, the Borrower, upon demand of the Bank, shall pay over or cause to be paid over to the Bank forthwith (x) all moneys, securities and funds then held in each Controlled Account, and (y) all Pledged Grant Receipts and Section 5309 Funds as promptly as practicable after receipt thereof, and the Bank may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(i) by written notice to the Borrower, terminate the Commitment and/or (A) declare the outstanding amount of the Loans and Obligations under this Agreement to be immediately due and payable solely from all amounts in each Controlled Account and all other legally available funds (excluding any funds of the Borrower pledged for the benefit of the RRIF Lender under the RRIF Loan Documents) without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue, and (B) declare the remaining outstanding amount of the Loans and Obligations under this Agreement after application of the funds under subsection (i)(A) above to be due and payable within thirty (30) days of such notice, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue after thirty (30) days;

(ii) require the Borrower to apply all Pledged Grant Receipts and Section 5309 Funds to repay the Loans and Obligations under this Agreement; or take such other remedial action as is provided for herein or in the Security Agreement or any other Related Document;

(iii) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the Borrower under the Related Documents, whether for specific performance of any agreement or covenant of the Borrower or in aid of the execution of any power granted to the Bank in the Related Documents;

(iv) exercise its control rights over the Controlled Accounts, including without limitation, directing the disposition of the funds therein without the Borrower's consent and terminating the Borrower's access to withdraw funds in the Controlled Accounts;

(v) exercise, or cause to be exercised, any and all rights and remedies as it may have under the Related Documents and as otherwise available at law and at equity; or

(vi) by written notice to the Borrower, cause all Loans and Obligations which have become due and payable under Section 2.12(i)(B) above to bear interest at the Default Rate.

*Section 2.13. Determination of Taxability.* (a) In the event a Determination of Taxability occurs, the Borrower hereby agrees to pay to each Noteholder of a Tax-Exempt Loan on demand therefor (i) an amount equal to the difference between (A) the amount of interest that would have been paid to such Noteholder on the Tax-Exempt Loans during the period for which interest on the Tax-Exempt Loans is includable in the gross income of such Noteholder if the Tax-Exempt Loans had borne interest at the Taxable Rate, beginning on the Taxable Date (the "*Taxable Period*"), and (B) the amount of interest actually paid to the Noteholder during the Taxable Period for such Tax-Exempt Loans, and (ii) an amount equal to any taxes, interest, penalties or charges owed by such Noteholder as a result of interest on the Tax-Exempt Loans becoming includable in the gross income of such Noteholder, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by such Noteholder in connection therewith;

(b) Subject to the provisions of paragraph (c) below, such Noteholder shall afford the Borrower the reasonable opportunity, at the Borrower's sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on the Tax-Exempt Loans to be included in the gross income of such Noteholder or (ii) any challenge to the validity of the tax exemption with respect to the interest on the Tax-Exempt Loans, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals); *provided* that, in no event shall a Noteholder be required to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person; and

(c) As a condition precedent to the exercise by the Borrower of its right to contest set forth in paragraph (b) above, the Borrower shall, on demand, immediately reimburse the Bank or any other Noteholder for any and all reasonable and necessary expenses (including reasonable attorneys' fees) that may be incurred by the Bank or any other Noteholder in connection with any such contest, and shall, on demand, immediately reimburse the Bank or any other Noteholder for any and all payments, including any taxes or interest or penalties or other charges payable by the Bank or any other Noteholder for failure to include such interest in its gross income.

*Section 2.14. Inability to Determine Rates.* (a) If in connection with any request for a Daily SOFR Loan the Bank determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 2.14(b) below, and the circumstances under clause (i) of such Section 2.14(b) or the Scheduled Unavailability Date has occurred, or (B) adequate and reasonable means do not otherwise exist for determining Daily



SOFR or SOFR for any day with respect to a proposed Daily SOFR Loan, the Bank will promptly so notify the Borrower. Thereafter, the obligation of the Bank to make or maintain Daily SOFR Loans shall be suspended (to the extent of the affected Daily SOFR Loans) until the Bank revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of Daily SOFR Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Daily SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately on the next succeeding Business Day.

(b) *Successor Rate.* If at any time an interest rate index provided for in this Agreement (a “*Reference Rate*”) is not available at such time for any reason or the Bank makes the determination to incorporate or adopt a new interest rate index to replace such Reference Rate in credit agreements, then the Bank may replace such Reference Rate with an alternate interest rate index and adjustment, if applicable, as reasonably selected by the Bank, giving due consideration to any evolving or then existing conventions for such interest rate index and adjustment (any such successor interest rate index, as adjusted, the “*Successor Rate*”). In connection with the implementation of any Successor Rate, the Bank will have the right, from time to time, in good faith to make any conforming, technical, administrative or operational changes to this Agreement as may be appropriate to reflect the adoption and administration thereof and, notwithstanding anything to the contrary herein or in any other loan document, any amendments to this Agreement implementing such conforming changes will become effective upon notice to the Borrower without any further action or consent of the other parties hereto. If at any time any Successor Rate is less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

*Section 2.15. Illegality.* If the Bank determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Bank or its applicable Lending Office to make, maintain or fund Revolving Loans whose interest is determined by reference to SOFR, or to determine or charge interest rates based upon SOFR, then, upon notice thereof by the Bank to the Borrower, any obligation of the Bank to make Daily SOFR Loans shall be suspended, in each case until the Bank notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from the Bank, prepay all Daily SOFR Loans immediately. Upon any such prepayment, the Borrower shall also pay accrued interest on the amount so prepaid.

## ARTICLE II-B

### THE TERM LOANS

*Section 2.16. Term Loans at Stated Termination Date.* Upon the Borrower’s written request for a conversion of Revolving Loans to Term Loans delivered to the Bank not less than thirty (30) days prior to the Stated Termination Date in form and substance satisfactory to the Bank, if the conditions precedent set forth in Section 2.17 hereof are satisfied on the Stated Termination Date, then, (a) the unpaid principal amount of any Taxable Revolving Loan shall convert to a Taxable Term Loan and (b) the unpaid principal amount of any Tax-Exempt Revolving Loan shall convert to a Tax-Exempt Term Loan.

*Section 2.17. Conditions Precedent to Term Loans at Stated Termination Date.* The obligation of the Bank to convert the principal amount of a Revolving Loan to a Taxable Term Loan or a Tax-Exempt Term Loan, as applicable, on the Stated Termination Date shall be subject to the fulfillment of each of the following conditions precedent on the Stated Termination Date in a manner satisfactory to the Bank:

(a) The following statements shall be true and correct on the Stated Termination Date, and the Bank shall have received a certificate incorporating by reference the definitions of the capitalized terms defined in this Agreement, signed by an Authorized Officer and dated the Stated Termination Date, stating that:

(i) the representations and warranties of the Borrower contained herein are true and correct in all material respects on and as of the Stated Termination Date as though made on and as of such date;

(ii) no Default or Event of Default has occurred and is continuing;

(iii) no Event of Non-Appropriation, no Event of Non-Authorization and no Significant Delay, and no event or condition that, in the reasonable good faith opinion of the Bank, with the giving of any notice, the passage of time, or both, could reasonably be expected to give rise to an Event of Non-Appropriation, Event of Non-Authorization, or Significant Delay that could now or in the future materially impair the ability of Borrower to make the required payments to the Bank hereunder or under the Note, shall have occurred and is continuing; and

(iv) no Material Adverse Change shall have occurred.

(b) In the case of the conversion to a Tax-Exempt Term Loan, the delivery to the Bank of an opinion of Note Counsel in form and substance satisfactory to the Bank that such conversion will not adversely affect the tax exempt status of the interest on the Tax-Exempt Loans.

(c) Neither the Borrower or the Bank shall have received actual notice (either verbal or written) from Note Counsel that the opinion delivered pursuant to Section 4.01(a)(i)(8)(B) hereof or the opinion, if any delivered pursuant to Section 4.01(b)(vi) hereof may no longer be relied upon.

(d) The Aggregate Expected Receipts Coverage Ratio as of the date of the Stated Termination Date is at least 2.00 to 1.00. On the Stated Termination Date, the Borrower shall provide the Bank with calculations certified by the Borrower to the Bank in writing demonstrating the then-applicable Aggregate Expected Receipts Coverage Ratio.

*Section 2.18. Term Loans Evidenced by Notes.* (a) The principal amount of each Tax-Exempt Term Loan shall be evidenced by the Tax-Exempt Note. Each Tax-Exempt Term Loan made by the Bank and all payments and prepayments on the account of the principal and interest

of each Tax-Exempt Term Loan shall be recorded by the Bank on the schedule attached to the applicable Tax-Exempt Note; *provided, however*, that the failure of the Bank to make any such endorsement or any error therein shall not affect the obligations of the Borrower hereunder or under the Tax-Exempt Note in respect of unpaid principal and interest on any Tax-Exempt Term Loan.

(b) The principal amount of each Taxable Term Loan shall also be evidenced by the Taxable Note. Each Taxable Term Loan made by the Bank and all payments and prepayments on the account of the principal and interest of each Taxable Term Loan shall be recorded by the Bank on the schedule attached to the Taxable Note; *provided, however*, that the failure of the Bank to make any such endorsement or any error therein shall not affect the obligations of the Borrower hereunder or under the Taxable Note in respect of unpaid principal and interest on any Taxable Term Loan.

*Section 2.19. Interest on Term Loan.* (a) Subject to the provisions of subsection (b) below, (i) the Taxable Term Loan shall bear interest from the Term Loan Conversion Date to the date such Taxable Term Loan is paid in full therefor at a rate per annum described in clause (c) of the definition of Taxable Rate and (ii) the Tax-Exempt Term Loan shall bear interest from the Term Loan Conversion Date to the date such Tax-Exempt Term Loan is paid in full at a rate per annum described in clause (c) of the definition of Tax-Exempt Rate.

(b) While any Default or Event of Default exists, the Borrower shall pay interest on each Term Loan at a rate of interest per annum at all times equal to the Default Rate. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Term Loan shall be due and payable to the Bank in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) Calculations of interest due under this Agreement shall be calculated on the basis of a 360-day year and actual days elapsed.

(e) If the rate of interest payable hereunder shall exceed the Maximum Interest Rate for any period for which interest is payable, then (a) interest at the Maximum Interest Rate shall be due and payable with respect to such interest period, and (b) the Excess Interest shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Interest Rate, at which time the Borrower shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Interest Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (i) the date of payment in full of all Obligations (other than Excess Interest which has not been recaptured) and on which this Agreement is no longer in effect, and (ii) the date on which all deferred Excess Interest is fully paid to the Bank.

*Section 2.20. Prepayment of Term Loans.* The Borrower may, upon delivery of a Prepayment Notice to the Bank, at any time or from time to time voluntarily prepay each Term Loan in whole or in part without premium or penalty; *provided* that, unless otherwise agreed by the Bank, (i) such Prepayment Notice must be received by the Bank not later than 11:00 a.m. (Eastern time) three (3) Business Days prior to any date of prepayment of Term Loans; and (ii) any prepayment of Term Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; or, if less, the entire principal amount of the Term Loan then outstanding. Each Prepayment Notice shall specify the date (which shall be a Business Day) and amount of such prepayment. If the Borrower gives such Prepayment Notice, the Borrower shall make such prepayment and the payment amount specified in such Prepayment Notice shall be due and payable on the date specified therein. All prepayments of principal shall include accrued interest to the date of prepayment and all other amounts due pursuant to this Agreement.

*Section 2.21. Repayment of Term Loans.* The Borrower shall repay to the Bank the principal amount of each Term Loan in installments as to principal, commencing on the first Semi-Annual Payment Date commencing after the Term Loan Conversion Date and on each Semi-Annual Payment Date thereafter, with the final installment in an amount equal to the entire then outstanding principal amount of such Term Loan due and payable on the Amortization End Date (the foregoing period with respect to each Term Loan herein referred to as an “*Amortization Period*”). The principal amount of each Term Loan shall be amortized over the related Amortization Period in equal semi-annual installments of principal.

### ARTICLE III

#### BORROWER’S OBLIGATIONS

*Section 3.01. Pledges Securing Notes; Limited Obligations.* (a) The Notes shall be special limited obligations of the Borrower secured solely by a pledge of, lien on and security interest in all Pledged Grant Receipts and other Collateral, including amounts on deposit from time to time in each Controlled Account, subject to the terms and provisions in this Agreement and the Security Agreement. The Notes and Obligations hereunder shall also be payable from any other legally available funds of the Borrower (excluding any funds of the Borrower pledged for the benefit of the RRIF Lender under the RRIF Loan Documents).

(b) The Pledged Grant Receipts, including amounts on deposit from time to time in each Controlled Account, are hereby pledged to the payment of the Notes and other Obligations, without priority or distinction of one over the other. The pledge of Pledged Grant Receipts made herein and in the Security Agreement shall be irrevocable until the Notes and Obligations have been paid in full and the Bank has no further Commitment. Subject to Sections 6.12 and 6.25 hereof, the granting of this pledge by the Borrower does not limit in any manner the right of the Borrower (i) to issue from time to time other Parity Debt; (ii) to issue or incur any other obligations subordinated in right of payment to the Notes or Parity Debt; or (iii) to grant a security interest in the Pledged Grant Receipts to any other Person in connection with such additional obligations; *provided that* any such security interest in the Pledged Grant Receipts shall (a) not be senior to the security interest granted in favor of the Bank for the Obligations, (b) be on parity with the Lien in favor of

Bank for the Obligations to the extent that such security interest is granted with respect to Parity Debt, and (c) shall be unsecured or subordinate in all respects (including but not limited to lien, payment, remedies and enforcement) to the security interest in favor of the Bank with respect to the Obligations to the extent that such security interest is granted to any obligations other than Parity Debt.

(c) No obligation of the Borrower under this Agreement or under the Related Documents shall constitute indebtedness or a loan of credit of the Borrower within the meaning of any constitutional or statutory limitations. Neither the full faith and credit nor the taxing power of the Borrower, the State of New Jersey, the State of New York, or, in each case, any political subdivision thereof is pledged to the payment of any obligations under the Agreement or the Notes.

*Section 3.02. Obligations Absolute.* The payment obligations of the Borrower under this Agreement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

- (a) any lack of validity or enforceability of this Agreement;
- (b) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Bank, or any other person or entity, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction; or
- (c) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding this Section, the Bank acknowledges the Borrower may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The Borrower's payment obligations shall remain in full force and effect pending the final disposition of any such action. All fees payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid.

## ARTICLE IV

### CONDITIONS PRECEDENT

*Section 4.01. Conditions Precedent.*

(a) *Conditions Precedent to Effective Date.* The obligations of the Bank to make the Commitment available hereunder shall be subject to the fulfillment of each of the following conditions precedent on or before the Effective Date in a manner satisfactory to the Bank:

- (i) The Bank shall have received the following items on or before the Effective Date, each in form and substance satisfactory to the Bank and its counsel:

(1) copies of the resolutions of the governing body of the Borrower approving the execution and delivery of the Related Documents to which the Borrower is a party, and the other matters contemplated hereby, certified by an Authorized Officer as being true and complete and in full force and effect on the Effective Date;

(2) a certificate of an Authorized Officer certifying that the enabling legislation of the Borrower is in full force and effect as of the Effective Date;

(3) the audited annual financial statements of the Borrower for the Fiscal Year ended December 31, 2023, together with internally prepared financial statements of the Borrower for each fiscal quarter(s) ended since the end of such Fiscal Year;

(4) a certificate dated the Effective Date and executed by an Authorized Officer certifying the names, titles, offices and signatures of the persons authorized to sign, on behalf of the Borrower, the Related Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder;

(5) all necessary documents required under KYC/AML documentation;

(6) an executed original or certified copy, as applicable, of each of the Related Documents, the RRIF Loan Documents, the RRIF Loan-Related Funding Agreements, and, to the extent requested by the Bank, such other grant, funding, and/or financing agreements related to paying the total Hudson Tunnel Project costs;

(7) the following opinions, dated the Effective Date and addressed to the Bank or on which the Bank is otherwise expressly authorized to rely: (A) from Note Counsel, opinions as to (i) the due authorization, execution, delivery and enforceability of the Related Documents to which the Borrower is a party, (ii) the pledge of Pledged Grant Receipts securing the Obligations constituting a valid and perfected pledge and security interest, and (iii) and such other customary matters as the Bank may reasonably request; and (B) an opinion addressed to the Bank and dated the Effective Date of Note Counsel as to the pledge of the Pledged Grant Receipts securing the Notes constitutes a valid pledge and is permitted by the Security Agreement and the FFGA and such other matters as the Bank may reasonably request, in form and substance satisfactory to the Bank and its counsel;

(8) a certificate dated the Effective Date and executed by an Authorized Officer certifying (A) that there has been no event or circumstance since December 31, 2023, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (B) that the representations and warranties contained in Article V hereof and the other Related Documents are true and correct in all material respects on the Effective Date and (C) no event has

occurred and is continuing, or would result from entry into this Agreement, which would constitute a Default or Event of Default;

(9) true and correct copies of all Governmental Approvals, if any, necessary for the Borrower to execute, deliver and perform the Related Documents to which it is a party;

(10) lien searches and completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Bank's sole discretion, to perfect the Bank's security interest in the Collateral; and

(11) such other documents, instruments, approvals and, if requested by the Bank, certified duplicates of executed copies thereof, and opinions as the Bank may reasonably request.

(ii) *Litigation.* The Bank shall have received a written description of all actions, suits or proceedings pending or threatened against the Borrower in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body which could reasonably be expected to result in a Material Adverse Effect, if any, and such other statements, certificates, agreements, documents and information with respect thereto as the Bank may reasonably request.

(iii) *Other Matters.* All other legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to the Bank and its counsel, and the Bank shall have received such other statements, certificates, agreements, documents and information with respect to the Borrower and the other parties to the Related Documents and matters contemplated by this Agreement as the Bank may reasonably request.

(iv) *Payment of Fees and Expenses.* On or prior to the Effective Date, the Bank shall have received (A) reimbursement of the Bank's fees and expenses and (B) any other fees incurred in connection with the transaction contemplated by the Related Documents.

In addition, (A) the Bank shall have determined, as of the Effective Date, that no law, regulation, ruling or other action of the United States or the State of New York or the State of New Jersey or any political subdivision or other Governmental Authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Borrower or the Bank from fulfilling their respective obligations under this Agreement or the Note and (B) no material adverse change in the laws, rules, guidelines, or regulations (or their interpretation or administration) currently in effect and applicable to the Borrower, and the transactions contemplated hereby, as determined in sole discretion of the Bank, shall have occurred. Execution and delivery by the Bank of this agreement on the Effective Date shall be conclusive evidence that the Bank has made the determinations required by this paragraph.

(b) *Conditions Precedent to Each Advance.* The obligation of the Bank to make an Advance on any date is subject to the conditions precedent that on the date of such Advance:

(i) the Bank shall have received a Request for Advance as provided in Section 2.02(c) hereof specifying whether such Advance will be a Tax-Exempt Loan or a Taxable Loan;

(ii) all representations and warranties of the Borrower as set forth in Article V hereof and in each other Related Document shall be true and correct in all material respects as though made on the date of such Request for Advance and on the date of the proposed Advance;

(iii) no Default, Event of Default, Event of Non-Appropriation, Event of Non-Authorization or Significant Delay, and no event or condition that, in the reasonable good faith opinion of the Bank, with the giving of any notice, the passage of time, or both, could reasonably be expected to give rise to an Event of Non-Appropriation, Event of Non-Authorization, or Significant Delay that could now or in the future materially impair the ability of Borrower to make the required payments to the Bank hereunder or under the Note, shall have occurred and be continuing on the date of such Request for Advance and on the date of the proposed Advance;

(iv) the principal amount of such Advance shall not exceed the Available Commitment;

(v) no Material Adverse Change shall have occurred;

(vi) that the opinion of Note Counsel delivered pursuant to Section 4.01(a)(i)(8)(B) hereof remains in full force and effect and, with respect to the initial Tax-Exempt Loan, the Bank shall have received an opinion from Note Counsel dated the date of such Advance as to the exclusion of interest on all Tax-Exempt Loans from gross income for federal income tax purposes, in form and substance satisfactory to the Bank;

(vii) neither the Borrower nor the Bank shall have received actual notice (either verbal or written) from Note Counsel that the opinion delivered pursuant to Section 4.01(a)(i)(8)(B) hereof or the opinion delivered pursuant to Section 4.01(b)(vi) (if any) may no longer be relied upon;

(viii) with respect to an Advance for a Tax-Exempt Loan, the Bank shall have received (A) a tax certificate from Borrower's counsel, and (B) evidence that an IRS Form 8038 or Form 8038-G has been duly completed by the Borrower and signed by the Borrower;

(ix) the Commitment and the obligation of the Bank to make an Advance hereunder shall not have terminated pursuant to Section 7.02 hereof or pursuant to Section 2.04 hereof;



(x) the Aggregate Expected Receipts Coverage Ratio as of the date of the Advance is at least 2.00 to 1.00. On the date of such Advance, the Borrower shall provide the Bank with calculations certified by the Borrower to the Bank in writing demonstrating the then-applicable Aggregate Expected Receipts Coverage Ratio.

(xi) To the extent the Borrower has any Parity Commitment outstanding, the Bank has received satisfactory evidence that the amount of the Advance is proportionate to simultaneous funding, purchase, drawing or advance under each outstanding Parity Commitment, so that the Advance is made on a pro-rata basis with fundings under each outstanding Parity Commitment.

Unless the Borrower shall have otherwise previously advised the Bank in writing, delivery to the Bank of a Request for Advance shall be deemed to constitute a representation and warranty by the Borrower that on the date of such Request for Advance and on the date of the proposed Advance each of the foregoing conditions has been satisfied on the date of such Request for Advance and on the date of the proposed Advance and the Borrower has not received actual notice (either verbal or written) from Note Counsel that the opinion delivered pursuant to Section 4.01(a)(i)(8)(B) hereof or the opinion delivered pursuant to Section 4.01(b)(vi) (if any) may no longer be relied upon.

*Section 4.02. No Book-Entry; No Placement or Offering.* None of the Notes shall be (1) assigned a separate rating by any Rating Agency, (2) registered with The Depository Trust Company or any other securities depository, or (3) assigned a CUSIP number by Standard & Poor's CUSIP Service. No offering document or official statement shall be prepared with respect to the Notes.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

The Borrower makes the following representations and warranties to the Bank:

*Section 5.01. Existence and Power.* The Borrower is a body corporate and politic duly organized, validly existing and in good standing under the Laws of the State of New York and the State of New Jersey and has the power and authority to own its properties and to carry on its businesses as now being conducted and as currently contemplated to be conducted hereafter and is duly qualified to do business in each jurisdiction in which the character of the properties owned or leased by it or in which the transactions of any material portion of its business (as now conducted and as currently contemplated to be conducted) makes such qualification necessary.

*Section 5.02. Due Authorization.* (a) The Borrower has all legal power, and has taken all necessary action to authorize the Related Documents to which it is a party, and to execute, deliver and perform its obligations under this Agreement and each of the other Related Documents to which it is a party in accordance with their respective terms. The Borrower has approved the form of the Related Documents to which it is not a party. The Borrower has all legal power and authority

to (i) borrow money for the Hudson Tunnel Project and the purposes specified in this Agreement and to issue the Notes and (ii) grant a first Lien on the Pledged Grant Receipts and each Controlled Account in favor of the Bank to secure the Obligations. The Borrower and the Hudson Tunnel Project are eligible in all respects to receive the Pledged Grant Receipts and Section 5309 Funds pursuant to and in accordance with the FFGA and the CIG Program.

(b) The Borrower is duly authorized and licensed to own its Property and to operate its business under the Laws, rulings, regulations and ordinances of all Governmental Authorities having the jurisdiction to license or regulate such Property or business activity and the departments, agencies and political subdivisions thereof, and the Borrower has obtained all requisite approvals of all such governing bodies required to be obtained for such purposes. All Governmental Approvals necessary for the Borrower to enter into this Agreement and the other Related Documents and to perform the transactions contemplated hereby and thereby and to conduct its business activities and own its property have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other Governmental Approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by, or enforcement against, the Borrower of this Agreement or the due execution, delivery or performance by, or enforcement against, the Borrower of the Related Documents. No other Governmental Approval or other action by, and no notice to or filing with, any Governmental Authority is required for (i) the grant by Borrower of the Liens granted by it pursuant to the Security Agreement, (ii) the perfection or maintenance of the Liens created under the Security Agreement, or (iii) the exercise by the Bank of its rights under the Related Documents or the remedies in respect of the Pledged Grant Receipts pursuant to the Related Documents.

*Section 5.03. Valid and Binding Obligations.* This Agreement has been duly executed and delivered by one or more duly authorized officers of the Borrower, and each of the Related Documents to which the Borrower is a party, when executed and delivered by the Borrower will be, a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

*Section 5.04. Noncontravention; Compliance with Laws.* (a) The execution, delivery and performance of this Agreement and each of the other Related Documents by, and the enforcement against, the Borrower in accordance with their respective terms do not and will not (i) contravene the Borrower's authorizing legislation or organizational documents, (ii) require any consent or approval of any creditor of the Borrower, (iii) violate any Laws (including, without limitation, Regulations T, U or X of the FRB, 49 U.S.C. 5309 or any successor laws or regulations), (iv) conflict with, result in a breach of or constitute a default under the FFGA, the CIG Program or any contract to which the Borrower is a party or by which it or any of its Property may be bound or (v) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by the Borrower or any Affiliate thereof except such Liens, if any, expressly created by a Related Document.

(b) The Borrower is in compliance with all Laws, except for such noncompliance that, singly or in the aggregate, has not caused or is not reasonably expected to cause a Material Adverse Effect.

(c) Nothing in the FFGA or the CIG Program limits or prohibits the Borrower from granting a first Lien on the Pledged Grant Receipts and each Controlled Account in favor of the Bank to secure the Obligations hereunder.

*Section 5.05. Pending Litigation and Other Proceedings.* There is no action, suit or proceeding pending in any court, any other Governmental Authority with jurisdiction over the Borrower or any arbitration in which service of process has been completed against the Borrower or, to the knowledge of the Borrower, any other action, suit or proceeding pending or threatened in any court, any other Governmental Authority with jurisdiction over the Borrower or any arbitrator, in either case against the Borrower or any of its properties or revenues, or any of the Related Documents to which it is a party, which is reasonably likely to result in a Material Adverse Effect, except any action, suit or proceeding which has been brought prior to the Effective Date as to which the Bank has received an opinion of counsel satisfactory to the Bank, in form and substance satisfactory to the Bank and the Bank's legal counsel, to the effect that such action, suit or proceeding is without substantial merit.

*Section 5.06. Financial Statements.* The Audited Financial Statements, which financial statements, accompanied by the audit report of Deloitte & Touche LLP, heretofore furnished to the Bank, which are consistent in all material respects with the audited financial statements of the Borrower for the Fiscal Year ended December 31, 2023, fairly present the financial condition of the Borrower in all material respects as of such dates and the results of its operations for the periods then ended in conformity with GAAP. Since the date of the Audited Financial Statements, there has been no material adverse change in the financial condition or operations of the Borrower that could reasonably be expected to result in a Material Adverse Effect.

*Section 5.07. ERISA.* The Borrower is not subject to ERISA and maintains no Plans.

*Section 5.08. No Defaults.* The Borrower is not in any breach of any term of the FFGA or the CIG Program. No default by the Borrower has occurred and is continuing in the payment of the principal of or premium if any, or interest on any Loans, Obligations or Parity Debt including, without limitation, regularly scheduled payments on Swap Contracts which constitute Obligations or Parity Debt. No bankruptcy, insolvency or other similar proceedings pertaining to the Borrower or any agency or instrumentality of the Borrower are pending or presently contemplated. No Default, Event of Default, Event of Non-Appropriation, or Event of Non-Authorization has occurred and is continuing hereunder. No "default" or "event of default" under, and as defined in, any of the other Related Documents has occurred and is continuing. The Borrower is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect. The Borrower is not in violation of any material term of the organizational documents or authorizing legislation applicable to the Borrower or any material term of any bond indenture or agreement to which it is a party or by which any of its Property is bound which could reasonably be expected to result in a Material Adverse Effect.

*Section 5.09. Insurance.* The Borrower currently maintains a system of self-insurance or insurance coverage with insurance companies believed by the Borrower to be capable of performing their obligations under the respective insurance policies issued by such insurance companies to the Borrower (as determined in its reasonable discretion) and in full compliance with Section 6.04 hereof.

*Section 5.10. Title to Assets.* The Borrower has good and marketable title to all Collateral, including without limitation, all Pledged Grant Receipts. No Collateral of the Borrower is subject to any Lien other than Permitted Liens. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, the Borrower of this Agreement or any other Related Document, (b) the grant by the Borrower of the Liens granted by it in favor of the Bank pursuant to this Agreement, the Security Agreement, and the other Related Documents, (c) the perfection or maintenance of the Liens created under the Related Documents (including the first priority nature thereof) or (d) the exercise by the Bank of its rights under the Related Documents or the remedies in respect of the Collateral pursuant to the Related Documents, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained and (ii) filings to perfect the Liens created by the Related Documents.

*Section 5.11. Incorporation by Reference.* The representations and warranties of the Borrower contained in the other Related Documents to which the Borrower is a party, together with the related definitions of terms contained therein, are hereby incorporated by reference in this Agreement as if each and every such representation and warranty and definition were set forth herein in its entirety, and the representations and warranties made by the Borrower in such Sections are hereby made for the benefit of the Bank. No amendment to or waiver of such representations and warranties or definitions made pursuant to the relevant Related Document or incorporated by reference shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Bank.

*Section 5.12. Correct Information.* All information, reports and other papers and data with respect to the Borrower furnished by the Borrower to the Bank were, at the time the same were so furnished, correct in all material respects. Any financial, budget and other projections furnished by the Borrower to the Bank were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent (subject to the updating or supplementation of any such financial, budget or other projections by any additional information provided to the Bank in writing, the representations contained in this Agreement being limited to financial, budget or other projections as so updated or supplemented), in the judgment of the Borrower, a reasonable, good faith estimate of the information purported to be set forth, it being understood that uncertainty is inherent in any projections and that no assurance can be given that the results set forth in the projections will actually be obtained. No fact is known to the Borrower that materially and adversely affects or in the future may (as far as it can reasonably foresee) materially and adversely affect the security for any of the Notes, or the ability of the Borrower to repay when due the Obligations, that has not been set forth in the financial statements and other documents referred to in this Section 5.12 or in

such information, reports, papers and data or otherwise disclosed in writing to the Bank. The documents furnished and statements made by the Borrower in connection with the negotiation, preparation or execution of this Agreement and the Related Documents do not contain untrue statements of material facts or omit to state material facts necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

*Section 5.13. Use of Proceeds; Margin Stock.* The Borrower will not use the proceeds from the Loans in contravention of any Law or of any Related Document. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds from the Loans will be used to purchase or carry any such Margin Stock or extend credit to others for the purpose of purchasing or carrying any such Margin Stock.

*Section 5.14. Tax-Exempt Status.* The Borrower has not taken any action or omitted to take any action, and has no actual knowledge of any action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Tax-Exempt Loans, if any, from gross income for federal income tax purposes.

*Section 5.15. Usury.* None of the Related Documents provide for any payments that would violate any applicable law regarding permissible maximum rates of interest.

*Section 5.16. Security.* The Security Agreement creates for the benefit of the Noteholders, the legally valid, binding and irrevocable first priority Lien on and pledge of the Pledged Grant Receipts, including amounts on deposit from time to time in each Controlled Account. There is no lien on the Pledged Grant Receipts other than the lien created by the Security Agreement. The Borrower shall not issue or incur or permit the issuance or incurrence of any Debt secured by the Pledged Grant Receipts to rank senior to Lien on Pledge Grant Receipts securing the Obligations. The payment of the Notes and the other Obligations ranks or will rank on a parity with the payment of the principal of and interest on all Parity Debt and is not and shall not be subordinate to any payment secured by a lien on the Pledged Grant Receipts or any other claim, and is prior as against all other Persons having claims of any kind in tort, contract, or otherwise, whether or not such Persons have notice of such lien. The pledge of and lien created by the Security Agreement in the Pledged Grant Receipts is perfected by the filing of UCC financing statements in the appropriate jurisdiction.

*Section 5.17. Pending Legislation and Decisions.* There is no amendment, or to the knowledge of the Borrower, proposed amendment to the Constitution of the State of New York or the State of New Jersey or any Law of the State of New York or the State of New Jersey or any administrative interpretation of the Constitution of the State of New York or the State of New Jersey, or any legislation that has passed either house of the legislature of the State of New York or the State of New Jersey, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to result in a Material Adverse Effect.

*Section 5.18. Notices, Suspension, Termination or Breach under FFGA.* The Borrower has not received any notice of any event described in Section 19 of the FFGA (including, but not limited to FTA exercising any rights of termination or suspension as provided by Section 11 of the Master Agreement, "Right of the Federal Government to Terminate" or demanding any Federal funds

provided to the Borrower for the Project be returned to the United States of America and/or FTA) and is not aware of any pending delivery of any such event or notice.

*Section 5.19. Solvency.* The Borrower is solvent and able to pay its debts as they become due.

*Section 5.20. Environmental Matters.* The operations of the Borrower are in material compliance with all of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations and are not the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, where a failure to comply with any such requirement or the need for any such remedial action could reasonably be expected to result in a Material Adverse Effect.

*Section 5.21. Sovereign Immunity.* The Borrower agrees that: (i) pursuant to (A) Section 6 of the State of New York's version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced, subject to the limitations set forth in such Section 6, and (B) Section 6 of the State of New York's version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement or any other Related Document in effect from time to time presented in accordance with such Section 6 and other applicable laws of the State of New York, including without limitation Section 8 of the New York Court of Claims Act, and (ii) pursuant to (A) Section 23 of the State of New Jersey's version of the Gateway Development Commission Act (N.J.S.A. 32:36-23), the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced, subject to the limitations set forth in such Section 23, and (B) Section 29 of the State of New Jersey's version of the Gateway Development Commission Act (N.J.S.A. 32:37-2), sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement or any other Related Document in effect from time to time presented in accordance with such Section 29.

*Section 5.22. No Public Vote or Referendum.* To the knowledge of the Borrower, there is no public vote or referendum pending, proposed or concluded, the results of which could reasonably be expected to result in a Material Adverse Effect.

*Section 5.23. Swap Contracts.* The Borrower has not entered into any Swap Contract relating to Debt (a) wherein any termination payment thereunder is senior to or on a parity with the payment of the Notes or the other Obligations or (b) which requires the Borrower to post cash collateral to secure its obligations thereunder.

*Section 5.24. Sanctions Concerns and Anti-Corruption Laws.* (a) *Sanctions Concerns.* Neither the Borrower, nor, to the knowledge of the Borrower, any director, officer, employee, agent, affiliate, or representative thereof, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that are (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of

Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction. The Borrower has conducted its business in compliance with all applicable Sanctions and has instituted of maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

(b) *Anti-Corruption Laws.* The Borrower has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

*Section 5.25. Taxes.* The Borrower has filed or caused to be filed, if any, all material tax returns required by law to be filed and has paid or caused to be paid all material taxes, assessments and other governmental charges levied upon or in respect of any of its properties, assets or franchises, other than taxes the validity or amount of which are being contested in good faith by the Borrower by appropriate proceedings and for which the Borrower shall have set aside on its books adequate reserves in accordance with GAAP.

*Section 5.26. Secured Debt and Liens.* As of the Effective Date, no Debt is outstanding that is Secured Debt, other than the Notes and the Obligations hereunder. The Borrower has not assigned, pledged, or otherwise conveyed or encumbered any Pledged Grant Receipts or any Section 5309 Funds or other Collateral to any other Person. Bank has a valid and perfected first priority security interest in all Collateral now existing or hereafter arising, free and clear of any Liens except for Permitted Liens. No effective financing statement or other instrument similar in effect covering any Collateral is on file in any recording office except such as may be filed in favor of the Bank relating to this Agreement and the Security Agreement or the Collateral. The Borrower is not aware of the filing of any judgment or tax lien filings against the Borrower.

## ARTICLE VI

### COVENANTS

The Borrower covenants and agrees, until the full and final payment and satisfaction of all of the Obligations, unless the Bank shall otherwise consent in writing, that:

*Section 6.01. Existence, Etc.* The Borrower (a) shall maintain its existence pursuant to its authorizing legislation, organizational documents, and the Laws of the State of New York and the State of New Jersey and (b) shall not liquidate or dissolve, or sell or lease or otherwise transfer or dispose of all or any substantial part of its property, assets or business, or combine, merge or consolidate with or into any other entity or change the use of facilities or assets that generate Pledged Grant Receipts.

*Section 6.02. Maintenance of Properties.* The Borrower shall, in all material respects, maintain, preserve and keep its Property in good repair, working order and condition (ordinary wear and tear excepted), except to the extent that the failure to do so could reasonably be expected to result in a Material Adverse Effect.

*Section 6.03. Compliance with Laws; Taxes and Assessments.* The Borrower shall comply with all Laws applicable to it and its Property, except where non-compliance could not reasonably be expected to result in a Material Adverse Effect, such compliance to include, without limitation, paying all taxes, assessments and governmental charges imposed upon it or its Property before the same become delinquent, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and reserves are provided therefor that in the opinion of the Borrower are adequate.

*Section 6.04. Insurance.* The Borrower shall maintain insurance with reputable insurance companies or associations believed by the Borrower at the time of purchase of such insurance to be financially sound and in such amounts and covering such risks as are usually carried by organizations engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibles from coverage. The Borrower shall upon request of the Bank furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section 6.04.

*Section 6.05. Reports.* The Borrower shall furnish to the Bank in form and detail satisfactory to the Bank:

(a) *Annual Report.* As soon as available, and in any event within 120 days after the end of each Fiscal Year, the annual audited financial statements of the Borrower together with the opinion of the Borrower's independent accountants.

(b) *Compliance Certificate.* In connection with the financial statements required to be delivered by the Borrower pursuant to Sections 6.05(a) hereof, and to the extent an Advance has not been made during any fiscal quarter of the Fiscal Year of the Borrower, then within thirty (30) days of such fiscal quarter of the Borrower, a Compliance Certificate signed by an Authorized Officer (x) stating that no Event of Default or Default has occurred, or if such Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default, and (y) demonstrating compliance with the financial covenant(s) set forth in Section 6.26 hereof.

(c) *Budget.* As soon as available, and in any event within 30 days following the approval thereof, the operating budget of the Borrower.

(d) *Financial Plan.* As soon as available, and in any event within 120 days after the end of each Fiscal Year, an annual financial plan, the format of which shall be as required by FTA and RRIF Lender (or upon the Bank's request only such portions of the financial plan as may be requested by the Bank). As soon as available, any relevant amendments to any such financial plan. Each such financial plan shall be consistent with the financial, budget and other projections, assumptions, information, and models furnished by the Borrower to the Bank on or prior to the Effective Date.



(e) *Milestone and Construction Progress Reports.* As soon as available, and (i) in any event within 30 days after such reports are due to the FTA, a copy of any “Milestone Progress Reporting (MPR)” provided to the FTA and (ii) and in any event within 30 days after such reports are due to the FTA under the FFGA, a copy of any construction progress report together with detail on budget utilization for the Hudson Tunnel Project.

(f) *Offering Memorandum and Material Event Notices.* (A) Within ten (10) days after the issuance of any securities by the Borrower with respect to which a final official statement or other offering or disclosure document has been prepared by the Borrower, (1) a copy of such official statement or offering circular or (2) notice that such information has been filed with EMMA and is publicly available; and (B) during any period of time the Borrower is subject to continuing disclosure requirements under Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended (17 C.F.R. Sec. 240-15c2-12), or any successor or similar legal requirement, immediately following any dissemination, distribution or provision thereof to any Person, (1) a copy of any reportable event notice (as described in b(5)(i)(C) of Rule 15c2-12) disseminated, distributed or provided in satisfaction of or as may be required pursuant to such requirements or (2) notice that such event notice has been filed with EMMA and is publicly available.

(g) *Notice of Default, Event of Default, Event of Non-Appropriation, Event of Non-Authorization or Significant Delay.* (i) Promptly upon obtaining knowledge of any Default, Event of Default, Event of Non-Appropriation, Event of Non-Authorization, or Significant Delay or notice thereof, or any event or condition that, with the giving of any notice, the passage of time, or both, could give rise to an Event of Non-Appropriation, Event of Non-Authorization, or Significant Delay, and in any event within five (5) days thereafter, a certificate signed by an Authorized Officer specifying in reasonable detail the nature and period of existence thereof and what action the Borrower has taken or proposes to take with respect thereto; (ii) promptly following a written request of the Bank, a certificate of an Authorized Officer as to the existence or absence, as the case may be, of a Default, Event of Default, Event of Non-Appropriation, Event of Non-Authorization, or Significant Delay or any event or condition that, with the giving of any notice, the passage of time, or both, could give rise to an Event of Non-Appropriation, Event of Non-Authorization, or Significant Delay; and (iii) promptly upon obtaining knowledge of any “default” or “event of default” as defined under the FFGA, the Project Development Agreement, any RRIF Loan Document, any RRIF Loan-Related Funding Agreement, any Funding Agreement, any Bank Agreement and/or with respect to any other Debt, notice specifying in reasonable detail the nature and period of existence thereof and what action the Borrower has taken or proposes to take with respect thereto.

(h) *Litigation.* As promptly as practicable, written notice to the Bank of all actions, suits or proceedings pending or threatened against the Borrower before any arbitrator of any kind or before any court or any other Governmental Authority which could reasonably be expected to result in a Material Adverse Effect.

(i) *Amendments.* Promptly after the adoption thereof and to the extent is not required to receive and make notice of the same, copies of any amendments to the Related

Documents, the Bank Agreements, the RRIF Loan Documents, or the RRIF Loan-Related Funding Agreements, or to any provisions of the same.

(j) *FFGA*. As soon as available, and in any event within 30 days of providing the same to the FTA (or receiving the same from the FTA), copies of all notices, reports, financial plans, schedules, and other material information delivered to the FTA under the FFGA or provided to the Borrower by the FTA under the FFGA, and all other material notices and materials provided by or to the Borrower under the FFGA, including, without limitation, all information under Sections 4(b), 5, 10, 12, 14, 16 and 17 of the FFGA.

(k) *Appropriations*. Promptly after such information becomes available to the Borrower (i) the amount of each appropriation by the United States Congress to the FTA and the CIG Program for each Federal Fiscal Year, (ii) the amount of each FTA apportionment to the Borrower of Pledged Grant Receipts that have been appropriated by the United States Congress for such federal fiscal year and (iii) the amount of Pledged Grant Receipts received by the Borrower from the FTA.

(l) *Other Information*. Such other information regarding the business affairs, financial condition and/or operations of the Borrower as the Bank may from time to time reasonably request.

*Section 6.06. Maintenance of Books and Records.* The Borrower will keep proper books of record and account in which full, true and correct entries in accordance with GAAP. All financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements, except as otherwise specifically prescribed herein. Except as provided in the immediately preceding sentence, in preparing any financial data or statements contemplated or referred to in this Agreement, the Borrower shall not vary or modify the accounting methods or principles from the accounting standards employed in the preparation of its audited financial statements described in Section 5.06 hereof.

*Section 6.07. Access to Books and Records.* The Borrower will permit any Person designated by the Bank (at the expense of the Bank, unless and until a Default or Event of Default has occurred, at which time such expenses shall be borne by the Borrower) to visit any of the offices of the Borrower to examine the books and financial records (except books and financial records the examination of which by the Bank is prohibited by law or by attorney or client privilege), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Borrower with their principal officers, employees and independent public accountants, all at such reasonable times and as often as the Bank may reasonably request.

*Section 6.08. Compliance With Documents.* The Borrower agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in each of the Related Documents to which it is a party, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each

and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Bank and shall be enforceable against the Borrower. To the extent that any such incorporated provision permits the Borrower or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the Borrower or any other party, for purposes of this Agreement, such provision shall be complied with unless it is specifically waived by the Bank in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank which shall only be evidenced by the written approval by the Bank of the same. Except as permitted by Section 6.14 hereof, no termination or amendment to such covenants and agreements or defined terms or release of the Borrower with respect thereto made pursuant to the Related Documents to which the Borrower is a party, shall be effective to terminate or amend such covenants and agreements and defined terms or release the Borrower with respect thereto in each case as incorporated by reference herein without the prior written consent of the Bank. Notwithstanding any termination or expiration of any Related Document to which the Borrower is a party, the Borrower shall continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement and the payment in full of the Notes and all other Obligations. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

*Section 6.09. No Impairment.* The Borrower will not take any action under any Related Document or any Bank Agreement which would materially adversely affect the rights, interests, remedies or security of the Bank under this Agreement or any other Related Document or which could reasonably be expected to result in a Material Adverse Effect.

*Section 6.10. Application of Loan Proceeds.* The Borrower will not take or omit to take any action, which action or omission will in any way result in the proceeds from the Loans being applied in a manner other than to pay Eligible Project Costs. The Borrower shall hold the Loan proceeds in the Bank Controlled Account until used for such Eligible Project Costs or otherwise applied as required hereunder.

*Section 6.11. Related Documents, Bank Agreements, RRIF Loan Documents, and RRIF Loan-Related Funding Agreements.* The Borrower will not amend, modify, waive, terminate, or permit to be amended, modified, waived or terminated in any manner whatsoever any Related Document or any Bank Agreement in a manner which would reasonably be expected to adversely affect the Borrower's ability to repay Debt that is secured by or payable from Pledged Grant Receipts or which reasonably would be expected to adversely affect the Collateral or any security for the Loans, the other Obligations or the Borrower's ability to repay when due the Notes or the other Obligations or the interests, security, rights or remedies of the Bank under any Related Document without the prior written consent of the Bank, which shall not be unreasonably withheld. The Borrower may enter into additional RRIF Loan-Related Funding Agreements with a RRIF Loan Funding Partner and pledge the same for the benefit of the RRIF Lender under the RRIF Loan Documents without the prior written consent of the Bank, however except with respect to RRIF Loan-Related Funding Agreements, the Borrower will not pledge any funds of the Borrower for the benefit of the RRIF Lender under the RRIF Loan Documents without the prior

written consent of the Bank which shall not be unreasonably withheld, subject to Section 6.27 hereof. Further, the Borrower will provide the Bank with written notice of any proposed amendment, waiver or termination in respect of any RRIF Loan Document, any RRIF Loan-Related Funding Agreement and/or that certain Amended and Restated State Public Transportation Projects Funding Agreement, dated as of March 31, 2024, by and between the New Jersey Turnpike Authority and the Treasurer of the State of New Jersey, as amended or supplemented, not less than 30 calendar days prior to the effectiveness of any such amendment, waiver or termination.

*Section 6.12. Liens.* The Borrower shall not, directly or indirectly, incur, create or permit to exist any Lien on Pledged Grant Receipts, Section 5309 Funds, any Controlled Account, any Collateral or all or any part of the security provided by the Security Agreement other than the following (clauses (a)-(d) below, “*Permitted Liens*”): (a) Liens created under and in accordance with the Security Agreement; (b) the Liens created for the benefit of the Notes and other Obligations that have heretofore or may hereafter be issued; (c) the Liens created for the benefit of other Parity Debt that may hereafter be issued in accordance with Section 6.25 hereof so long as the Borrower has complied with the requirements for additional Parity Debt set forth in Section 6.25 hereof; and (d) Liens which could not reasonably be expected to materially adversely affect the interests, rights, remedies or security of the Bank under this Agreement and the other Related Documents. The Borrower will prepare, execute and/or file any and all further documents, financing statements, agreements and instruments, and take all further action (including filing UCC and other financing statements, agreements or instruments) that may be required under applicable Law, or that the Bank may reasonably request, in order to effectuate the transactions contemplated by the Related Documents and in order to grant, preserve, protect and perfect the validity and first priority (subject to Permitted Liens) of the security interests and Liens in Collateral created or intended to be created hereby. The Borrower shall deliver or cause to be delivered to the Bank all such instruments and documents (including legal opinions and lien searches) as it shall reasonably request to evidence compliance with this Section 6.12. The Borrower agrees to provide such evidence as the Bank shall reasonably request as to the perfection and priority status of each such security interest and Lien on Collateral. Without limiting the generality of the foregoing, the Borrower will no earlier than six (6) months or later than three (3) months before the fifth (5<sup>th</sup>) anniversary of the date of filing of each UCC financing statement filed in connection with the Collateral (i) deliver and file or cause to be filed an appropriate continuation statement with respect to such financing statement; *provided* that Bank may elect to file such continuation statement. Borrower shall, from time to time at the request of Bank, deliver to Bank any documentation required by Bank to ensure the enforceability under applicable law of any rights and/or powers granted to Bank in this Agreement. Without limiting the generality of the foregoing, at Bank’s request, Borrower shall execute, deliver, file and record such financing statements and other documents as Bank deems necessary to protect Bank’s interest in the Pledged Grant Receipts, the Section 5309 Funds, each Controlled Account and other Collateral.

*Section 6.13. Disclosure to Participants; Successors and Assigns.* The Borrower shall permit the Bank to disclose the financial information received by it pursuant to this Agreement to each successor, assignee, or participant of the Bank pursuant to Section 8.06 of this Agreement, subject to confidentiality restrictions and use restrictions customary for financial institutions.

*Section 6.14. Other Agreements.* In the event that the Borrower shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement which such Bank Agreement provides such Person with different or more restrictive covenants, different or additional events of default and/or greater rights and remedies than are provided to the Bank in this Agreement, the Borrower shall provide the Bank with a copy of each such Bank Agreement and such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies as if specifically set forth herein. The Borrower shall promptly enter into an amendment to this Agreement to include different or more restrictive covenants, different or additional events of default and/or greater rights and remedies; *provided* that the Bank shall have and maintain the benefit of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies even if the Borrower fails to provide such amendment.

*Section 6.15. Immunity from Jurisdiction.* Consistent with Section 6 of the State of New York's version of the Gateway Development Commission Act (2019 vol. 1 874, 899 (2019), ch. 108, Section 6), the Borrower agrees that it is immune from liability under State law as though it were the State of New York, except to the extent that such immunity is waived by the State of New York under Section 8 of the New York Court of Claims Act, and the Borrower irrevocably agrees that it will not assert immunity from claims made by the Bank against the Borrower to enforce this Agreement or any other Related Document under State of New York law to the extent immunity for such claim is waived pursuant to the Gateway Development Commission Act and Section 8 of the New York Court of Claims Act as though the Borrower were the State of New York and the Bank has complied with the applicable New York State law. Further, consistent with Section 29 of the State of New Jersey's version of the Gateway Development Commission Act (N.J.S.A. 32:37-2), the Borrower agrees that it is immune from liability in the State of New Jersey in the same manner and to the same extent as is the State of New Jersey under the provisions of the "New Jersey Tort Claims Act", N.J.S. 59:1-1 *et seq.* and the "New Jersey Contractual Liability Act," N.J.S.59:13-1 *et seq.*, and the Borrower irrevocably agrees that it will not assert immunity from claims made by the Bank against the Borrower to enforce this Agreement or any other Related Document under New Jersey State law to the extent immunity for such claims is waived in accordance with the State of New Jersey's version of the Gateway Development Commission Act and the New Jersey Tort Claims Act and New Jersey Contractual Liability Act as though the Borrower were the State of New Jersey and the Bank has complied with the applicable New Jersey State law.

*Section 6.16. Swap Contracts.* Without the prior written consent of the Bank, the Borrower will not enter into any Swap Contract relating to Debt (a) wherein any termination payments thereunder are senior to or on parity with the payment of the Notes or the other Obligations or (b) which requires the Borrower to post cash collateral to secure its obligations thereunder.

*Section 6.17. Use of Bank's Name.* The Borrower shall not include any information concerning the Bank in any offering document that is not supplied in writing, or otherwise approved, by the Bank expressly for inclusion therein.

*Section 6.18. Maintenance of Tax-Exempt Status of Tax-Exempt Loans.* The Borrower shall not take any action or omit to take any action which, if taken or omitted, would adversely affect the tax-exempt status of the Tax-Exempt Loans, if any.

*Section 6.19. Controlled Account.* The Borrower shall cause all Pledged Grant Receipts received and receivable to be remitted directly and deposited into a single Bank Controlled Account. The Borrower shall ensure that each Controlled Account is maintained at all times with Bank of America, N.A. and that Bank of America, N.A. has “control” of each Controlled Account for purposes of the UCC. The Borrower shall not close or replace any Controlled Account without the prior written consent of the Bank.

*Section 6.20. Environmental Laws.* The Borrower shall comply with all applicable Environmental Laws and cure any defect thereto (or cause other Persons to effect any such defect) to the extent necessary to bring such real property owned, leased, occupied or operated by the Borrower back into compliance with Environmental Laws and to comply with any cleanup orders issued by a Governmental Authority having jurisdiction thereover. The Borrower shall at all times use commercially reasonable efforts to render or maintain any real property owned, leased, occupied or operated by the Borrower safe and fit for its intended uses. The Borrower shall also immediately notify the Bank of any actual or alleged material failure to so comply with or perform, or any material breach, violation or default under any Environmental Law.

*Section 6.21. Federal Reserve Board Regulations.* The Borrower shall not use any portion of the proceeds of Loans for the purpose of carrying or purchasing any Margin Stock and shall not incur any Debt which is to be reduced, retired or purchased by the Borrower out of such proceeds.

*Section 6.22. Budget and Appropriation.* (a) If as of the last Business Day of any Federal Fiscal Year, the grant approvals required to make payments to the Bank as required hereunder from the current Federal Fiscal Year appropriations have not been obtained, then the Borrower shall promptly take all necessary actions to apply all legally available funds (excluding any funds of the Borrower pledged for the benefit of the RRIF Lender under the RRIF Loan Documents) to pay Loans and other Obligations as and when due hereunder.

(b) To the fullest extent permitted and/or required by New York or New Jersey state law, the Borrower shall cause the appropriate Borrower official(s) to take any and all ministerial actions that may be necessary to facilitate the payment of the principal of and interest on the Loans and the payment of all other Obligations and to include the principal of and interest on the Loans and the payment of all other Obligations in the annual budget of the Borrower (including any necessary appropriations related thereto).

(c) The Borrower shall include a financing cost line item in each proposed annual operating budget that it submits pursuant to Section 11.01 of the Project Development Agreement, which line item shall be in an amount sufficient to make all payments in respect of Debt and indebtedness (including any amounts under this Agreement) that the Borrower reasonably anticipates will or may be paid from amounts made available pursuant to its operating budget.

*Section 6.23. Sanctions.* The Borrower will not directly or indirectly, use any proceeds from Loans, or lend, contribute or otherwise make available such proceeds to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as lender or otherwise) of Sanctions.

*Section 6.24. Anti-Corruption Laws.* The Borrower will conduct its business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions. The Borrower will not directly or indirectly, use any proceeds from the Loans for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

*Section 6.25. Limitation on Additional Debt.* The Borrower will not issue and/or incur any Parity Debt unless (A) the Borrower receives the prior written consent of the Bank, which consent shall not be unreasonably withheld so long as no Default, Event of Default, Event of Non-Appropriation, Event of Non-Authorization, Significant Delay, event or condition that, in the reasonable good faith opinion of the Bank, with the giving of any notice, the passage of time, or both, could reasonably be expected to give rise to an Event of Non-Appropriation, Event of Non-Authorization, or Significant Delay that could now or in the future materially impair the ability of Borrower to make the required payments to the Bank hereunder or under the Note, shall have occurred and is continuing, *provided* that (i) the aggregate amount of outstanding Aggregate Parity Debt taking into account such proposed Parity Debt shall not exceed \$1,000,000,000 and (ii) the Borrower provides the Bank with a certificate of an Accountant certifying that the Aggregate Expected Receipts Coverage Ratio is at least equal to 2.00 to 1.00 on the date of issuance of such Parity Debt taking into account such Parity Debt proposed to be issued; and (B) either (i) the Borrower and the Bank enter into a collateral agent agreement, intercreditor agreement, or similar agreement or combination of agreements with the holders of such other Parity Debt in form and substance acceptable to Bank, or (ii) (x) the Borrower enters into a master indenture pursuant to which obligations will be issued from time to time secured by the Pledged Grant Receipts, Section 5309 Funds and each Controlled Account, which obligations shall be issued to secure the Notes and Obligations hereunder and such proposed Parity Debt, and (y) amendments to this Agreement and the other Related Documents, are entered into to convey the Collateral to the master trustee thereunder, in each case, in form and substance acceptable to Bank.

*Section 6.26. Financial Covenants.* (a) *Minimum Aggregate Expected Receipts Coverage Ratio.* The Borrower covenants and agrees that it shall at all times maintain an Aggregate Expected Receipts Coverage Ratio of at least 2.00 to 1.00. Upon request of the Bank, the Borrower shall promptly provide the Bank with calculations demonstrating the then-applicable Aggregate Expected Receipts Coverage Ratio certified by the Borrower to the Bank in writing.

(b) *Pledged Grant Receipts.* The Borrower covenants and agrees that it shall take any and all action necessary such that the Pledged Grant Receipts received by the Borrower and other

legally available funds of the Borrower (excluding any funds of the Borrower pledged for the benefit of the RRIF Lender under the RRIF Loan Documents) in each Fiscal Year are available and used to pay all Obligations hereunder as and when due. The Borrower shall not permit the amount of Aggregate Secured Debt outstanding at any time to exceed the Remaining Expected Pledged Grant Receipts.

*Section 6.27. GDC Operations Funding Agreement; FFGA, CIG Program and Project Development Agreement.* (a) The Borrower shall not, without the prior written consent of the Bank, collaterally assign, pledge, or grant a Lien on any right, title or interest of the Borrower, whether now owned or hereafter acquired or arising, in or to (A) the Project Development Agreement, (B) any GDC Operations Funding Agreement, (C) any amounts paid or payable to the Borrower pursuant to any GDC Operations Funding Agreement, (D) any account in which such payments under any GDC Operations Funding Agreement is or may be deposited, or (E) any proceeds of the foregoing in whatever form (collectively, "GDC Operating Assets"). For the avoidance of doubt, this Section 6.27(a) shall not prevent the Borrower in any way from using, depositing or transferring GDC Operating Assets to pay the Bank amounts owed with respect to any Loans or other amounts under this Agreement or restrict the Borrower from using, depositing or transferring GDC Operating Assets to pay the RRIF Lender amounts owed with respect to any loans or other amounts under the RRIF Loan Documents.

(b) Without limiting the generality of the foregoing, notwithstanding Section 14.01(b)(iii) of the Project Development Agreement or any other provision of the FFGA, Project Development Agreement, or other relevant agreement permitting assignment, the Borrower shall not assign any of its rights or obligations under the Project Development Agreement, the FFGA, or any other agreement in any manner that would affect the Borrower's status as the recipient of all Pledged Grant Receipts and Section 5309 Funds. Except in favor of the Bank, the Borrower shall not collaterally assign any of its rights under or pursuant to the Project Development Agreement or the FFGA and shall not permit a Lien to encumber the Borrower's rights or privileges under the Project Development Agreement or the FFGA, except in favor of the Bank.

*Section 6.28. Further Assurances.* From time to time hereafter, the Borrower shall execute and deliver such additional instruments, certificates or documents, and shall take all such actions as the Bank may reasonably request for the purposes of implementing or effectuating the provisions of the Related Documents or for the purpose of more fully perfecting or renewing the rights of the Bank with respect to the rights, properties or assets subject to such documents (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by the Borrower which may be deemed to be a part thereof). Upon the exercise by the Bank of any power, right, privilege or remedy pursuant to the Related Documents which requires any consent, approval, registration, qualification or authorization of any Governmental Authority, the Borrower will, to the extent permitted by law, execute and deliver all necessary applications, certifications, instruments and other documents and papers that the Bank may be required to obtain for such governmental consent, approval, registration, qualification or authorization. At any time, and from time to time, upon request by the Bank, the Borrower will, at the Borrower's expense, correct any defect, error or omission which may be discovered in the form or content of any of the Related Documents to which the Borrower is a party or protect the Bank's interests, security, rights and remedies with respect to the Pledged



Grant Receipts, Section 5309 Funds, each Controlled Account and all other Collateral. The Borrower will at any and all times, insofar as it may be authorized so to do by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, assignments, recordings, filings, transfers and assurances as may be necessary or as the Bank may reasonably request (i) for the better assuring, conveying, granting, assigning and confirming the rights, grants, and other funds and the collateral pledged or assigned to the payment of the Notes and the other Obligations payable hereunder and (ii) to enable the Bank or any Noteholder to assign or pledge its rights or interests in the Notes to any Federal Reserve Bank.

## ARTICLE VII

### EVENTS OF DEFAULT

*Section 7.01. Events of Default.* The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of Law) shall be an “*Event of Default*” hereunder, unless waived in writing by Bank:

(a) the Borrower shall fail to pay the principal of or interest on any Loans when due (whether by schedule maturity, required prepayment, or otherwise);

(b) the Borrower shall fail to pay any Obligation (other than the obligation to pay the principal of or interest on the Loans) when due and such failure shall continue for three (3) Business Days;

(c) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(d) the Borrower shall default in the due performance or observance of any of the covenants set forth in Section 2.03(b), 2.03(c), 2.03(d), 2.12, 6.01, 6.05, 6.10, 6.11, 6.12, 6.15, 6.17, 6.19, 6.22, 6.23, 6.24, 6.25, 6.26 or 6.27 hereof; or

(e) the Borrower shall default in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Related Document and such default shall remain unremedied for a period of thirty (30) days after the occurrence thereof;

(f) the Borrower shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) become insolvent or shall not pay, or be unable to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States

Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 7.01(g) of this Agreement;

(g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 7.01(f)(v) shall be instituted against the Borrower and such proceeding continues undischarged or any such proceeding continues undismissed or unstayed for a period of thirty (30) or more days;

(h) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of the Borrower by the Borrower or any Governmental Authority with appropriate jurisdiction;

(i) (i) any provision of this Agreement or any Related Document related to (A) payment of principal of or interest on the Loans or any Parity Debt or (B) the availability of Pledged Grant Receipt or Section 5309 Funds or the validity or enforceability of the pledge of the Pledged Grant Receipts shall at any time for any reason cease to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction, or shall be declared, in a final non-appealable judgment by any court of competent jurisdiction, to be null and void, invalid or unenforceable; or

(ii) the validity or enforceability of any material provision of this Agreement or any Related Document related to (A) payment of principal of or interest on the Loans or any Parity Debt, or (B) the validity or enforceability of the pledge of the Pledged Grant Receipts shall be publicly contested by the Borrower; or

(iii) any other material provision of this Agreement or any other Related Document, other than a provision described in clause (i) above, shall at any time for any reason cease to be valid and binding on the Borrower or shall be declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be publicly contested by the Borrower;

(j) the Borrower or the Hudson Tunnel Project shall become ineligible for Pledged Grant Receipt or Section 5309 Funds or the CIG Program; or the dissolution or termination of the existence of the Borrower;

(k) the Borrower shall (i) default on the payment of the principal of or interest on any Parity Debt beyond the period of grace, if any, provided in the instrument or agreement under which such Parity Debt was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any Parity Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Parity Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Parity Debt;

(l) the Borrower shall (i) default on the payment of the principal of or interest on any Debt (other than Parity Debt) aggregating in excess of \$25,000,000, beyond the period of grace, if any, provided in the instrument or agreement under which such Debt (other than Parity Debt) was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any Debt (other than Parity Debt) aggregating in excess of \$25,000,000, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Debt;

(m) any final, unappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, which are not covered in full by insurance, with written acknowledgement of such coverage having been provided by the provider of such insurance coverage to the Bank, in an aggregate amount in excess of \$25,000,000 shall be entered or filed against the Borrower or against any of its Property and remain unpaid, unvacated, unbonded or unstayed for a period of sixty (60) days;

(n) any “event of default” under any Related Document (as defined respectively therein) shall have occurred;

(o) any of Moody’s, S&P or Fitch, and shall have downgraded any Rating to below “A3” (or its equivalent), “A-” (or its equivalent), or “A-” (or its equivalent) respectively, or suspended or withdrawn its rating of the same;

(p) the Bank ceases to have an effective pledge of and Lien on any Collateral to the extent of the priority created or purported to be created by the Security Agreement, and this Agreement;

(q) an event of default under the FFGA or the termination of the FFGA;

(r) legislation shall be passed by a Governmental Authority that terminates or materially halts or materially adversely affects the construction or completion of the Hudson Tunnel Project in a manner that could result in a Material Adverse Effect;

(s) the failure of the Funding Partners to provide adequate funding for Borrower's operations;

(t) the termination of the Project Development Agreement for any reason other than performance in full of all of Borrower's obligations thereunder and the payment in full by the Borrower of all of its Obligations hereunder; or

(u) during any period that any Parity Commitment is outstanding, the Borrower fails to cause a proportionate funding under each such Parity Commitment outstanding simultaneously with each Advance made by the Bank hereunder shall in violation of Section 2.02 hereof.

*Section 7.02. Consequences of an Event of Default.* If an Event of Default specified in Section 7.01 hereof shall occur and be continuing, then the Bank may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(i) by written notice to the Borrower, terminate the Commitment and/or declare the outstanding amount of the Loans and Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(ii) deliver a written notice to the Borrower that an Event of Default has occurred and is continuing and accelerate all Loans and other Obligations outstanding hereunder or, subject to the Waiver, take such other remedial action as is provided for herein or in the Security Agreement or any other Related Document;

(iii) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, and in each case subject to the Waiver, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the Borrower under the Related Documents, whether for specific performance of any agreement or covenant of the Borrower or in aid of the execution of any power granted to the Bank in the Related Documents;

(iv) at the expense of the Borrower, cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however,* that the Bank shall have no obligation to effect such a cure;

(v) subject to the Waiver, exercise its control rights over the Controlled Accounts, including, without limitation, directing the disposition of the funds therein without Borrower's consent and terminating Borrower's access to withdraw funds in the Controlled Accounts; or

(vi) subject to the Waiver, exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents (other than as provided for in clause (ii) of this Section 7.02) and as otherwise available at law and at equity;

*provided, however,* that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of the Bank to make Advances shall automatically terminate, the unpaid principal amount of all outstanding Advances and all interest and other amounts as aforesaid shall automatically become due and payable, without further act of the Bank.

*Section 7.03. Solely for the Benefit of Bank.* The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank is entitled, but shall have no duty or obligation to the Borrower or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Bank hereunder or under any of the other Related Documents.

*Section 7.04. Discontinuance of Proceedings.* In case the Bank shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Related Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Bank shall have the unqualified right so to do and, in such event, the Borrower and the Bank shall be restored to their former positions with respect to the Obligations, the Related Documents and otherwise, and the rights, remedies, recourse and powers of the Bank hereunder shall continue as if the same had never been invoked.

## ARTICLE VIII

### MISCELLANEOUS

*Section 8.01. Amendments, Etc.* No amendment or waiver of any provision of this Agreement or any other Related Document, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing signed by the Bank and the Borrower, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

*Section 8.02. Notices; Effectiveness; Electronic Communications.* (a) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, to the address, fax number, e-mail address or telephone number specified the Borrower or the Bank on Schedule 8.02 hereof. Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of

business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (c).

(b) *Electronic Communications.* Notices and other communications to the Bank hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging and Internet or intranet websites) pursuant to procedures approved by the Bank. The Bank or the Borrower, in its discretion, agrees to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that the approval of such procedures may be limited to particular notices or communications.

(c) Unless the Bank otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgment by the intended recipient (such as by the "return receipt requested" function, as available, return email address or other written acknowledgment) including that such notice or communication is available and identifying the website address therefor; *provided* that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(d) *Change of Address, Etc.* Each of the Borrower and the Bank may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(e) *Reliance by the Bank.* The Bank shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Bank and the Related Parties from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such recording.

*Section 8.03. No Waiver; Cumulative Remedies.* No failure by the Bank to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Related Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Related Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Related Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

*Section 8.04. Expenses; Indemnity.* (a) In addition to any and all rights of reimbursement, subrogation or any other rights pursuant hereto or under law or in equity, the Borrower agrees, to the extent permitted by law, to reimburse the Bank and the officers, directors, employees and agents thereof (each such Person being called a “*Indemnitee*”) from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever that the Bank may incur (or which may be claimed against the Bank by any person or entity whatsoever) that arises out of the transactions contemplated by this Agreement or the other Related Documents including, without limitation, (i) the execution and delivery of, or payment or failure to pay under, this Agreement, any other Related Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Related Documents and (ii) the use of the proceeds of the Loans; *provided, however*, that the Borrower shall not be required to reimburse the Bank for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of the Bank.

(b) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable Law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Related Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the advancing of the Loans or the use of the proceeds thereof. No Indemnitee referred to in subsection (a) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby.

(c) *Payments.* All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(d) *Survival.* The agreements in this Section and the indemnity provisions of Section 8.02(e) shall survive the payment in full of the Loans, the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

*Section 8.05. Payments Set Aside.* To the extent that any payment by or on behalf of the Borrower is made to a Noteholder, or such Noteholder exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the such Noteholder in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law, FFGA, the CIG Program, or any other federal, state or local law, program, or requirement or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

*Section 8.06. Successors and Assigns.*

(a) *Successors and Assigns Generally.* (a) This Agreement is binding on the Borrower's and the Bank's successors and assignees. The Borrower agrees that it may not assign this Agreement, the Notes, or the other Related Documents. Any assignment by the Bank of this Agreement, the Notes, or the other Related Documents shall require the consent of the Borrower (such consent not to be unreasonably withheld or delayed) unless (a) an Event of Default has occurred and is continuing at the time of such assignment, or (b) such assignment is to an Affiliate of the Bank or an Approved Fund. The Bank may sell participations in the Related Documents and Obligations without the Borrower's prior written consent, and may exchange information about the Borrower (including, without limitation, any information regarding any hazardous substances) with actual or potential Participants; *provided, however*, that (i) no such participation by any such Participant shall in any way affect the obligations of the Bank hereunder; and (ii) the Borrower shall be required to deal only with the Bank, with respect to any matters under this Agreement and the other Related Documents and no such Participant shall be entitled to enforce any provision hereunder against the Borrower. The Borrower agrees that each Participant or assignee, as applicable, shall be entitled to the benefits of Sections 2.10, 2.11 and 8.04 hereof to the same extent as if it were the Bank hereunder.

(b) *Certain Pledges.* In addition to the rights of the Bank set forth above, the Bank may at any time pledge, assign, or grant a security interest in all or any portion of its rights or interests under this Agreement, the Notes, and/or the other Related Documents to secure obligations of the Bank or an Affiliate of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided* that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

*Section 8.07. Treatment of Certain Information; Confidentiality.* Each of the Borrower and the Bank agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Related Document or any action or proceeding relating to this Agreement or any other Related Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the



credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Bank or any of its Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, “Information” means all information received from the Borrower relating to the Borrower or any of their respective businesses, other than any such information that is available to the Bank on a nonconfidential basis prior to disclosure by the Borrower, provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Bank may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers the Bank in connection with the administration of this Agreement and the other Related Documents. Except as otherwise provided below in this paragraph, the Borrower agrees that it will not issue any press release or similar public disclosure using the name of the Bank or its Affiliates nor will the Borrower make any public disclosure of this Agreement or any part hereof or any statement or description of the content of this Agreement or any part hereof, without the prior written consent of the Bank. The Borrower may, after consultation with the Bank, file (or cause to be filed) with the Municipal Securities Rulemaking Board under its Electronic Municipal Market Access (EMMA) system or otherwise a copy of this Agreement and agreements between the Bank and the Borrower related to this Agreement, in each case redacted in a manner satisfactory to the Bank to prevent disclosure of any signatures, account information, information regarding pricing, or other proprietary or other confidential information regarding the transactions contemplated hereby, or a summary of this Agreement and such related agreements (in each case as so redacted). The Borrower shall be permitted to include in such redacted copies of this Agreement (or summaries thereof) such information as shall be necessary to comply with requirements of applicable law (including federal or state securities laws and the regulations promulgated thereunder) and the requirements of its continuing disclosure agreements to the extent that such disclosure is required to cause the underwriting, issuance, sale or remarketing of bonds or other obligations issued by the Borrower to be in compliance with applicable law. The Borrower may include any such redacted copies of this Agreement and related agreements (or summaries thereof) in any official statement, offering circular or other disclosure document prepared in connection with any issuance of Debt by the Borrower.

*Section 8.08. Counterparts; Integration; Effectiveness.* This Agreement and each of the other Related Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Related Documents, and any separate letter agreements with respect to fees payable to the Bank constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Bank and when the Bank shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a

signature page of this Agreement or any other Related Document, or any certificate delivered thereunder by fax transmission or e-mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement or such other Related Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Related Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

*Section 8.09. Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Related Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Bank, regardless of any investigation made by the Bank or on its behalf and notwithstanding that the Bank may have had notice or knowledge of any Default at the time of the initial Advance, and shall continue in full force and effect as long as any Obligation hereunder shall remain unpaid or unsatisfied.

*Section 8.10. Severability.* If any provision of this Agreement or the other Related Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Related Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

*Section 8.11. Governing Law; Jurisdiction; Etc.* (a) *GOVERNING LAW.* THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS (EXCEPT, AS TO ANY OTHER RELATED DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT (EXCEPT, AS TO ANY OTHER RELATED DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) *Submission to Jurisdiction.* THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE BANK OR ANY RELATED PARTY OF THE BANK IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT

PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER RELATED DOCUMENT SHALL AFFECT ANY RIGHT THAT THE BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *Waiver of Venue.* THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *Service of Process.* EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

*Section 8.12. Waiver of Jury Trial.* EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

*Section 8.13. No Advisory or Fiduciary Relationship.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the services regarding this Agreement provided by the Bank and any Affiliate thereof are arm's-length commercial transactions between the Borrower, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary pursuant to Section 15B of the Securities Exchange Act of 1934, for the Borrower, or any other Person and (ii) neither the Bank nor any of

its Affiliates has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Bank and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by law, the Borrower, hereby waives and releases any claims that it may have against the Bank or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

*Section 8.14. Electronic Execution of Certain Documents.* This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “Communication”), including Communications required to be in writing, may, if agreed by the Bank, be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The Borrower agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any Communication shall be valid and binding on the Borrower to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered to the Bank. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Bank of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Bank may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of the Bank’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Bank is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Bank pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Bank has agreed to accept such Electronic Signature, the Bank shall be entitled to rely on any such Electronic Signature without further verification and (b) upon the request of the Bank any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

*Section 8.15. USA Patriot Act.* The Bank hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Bank to identify the Borrower in accordance with the Act. The Borrower agrees to, promptly following a request by the Bank, provide all such other documentation and

information that the Bank requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

*Section 8.16. Time of the Essence.* Time is of the essence of the Related Documents.

*Section 8.17. Entire Agreement.* THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

*Section 8.18. No Third-Party Rights.* Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto and the Noteholders any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

*Section 8.19. US QFC Stay Rules.*

(a) *Recognition of U.S. Resolution Regimes.* In the event that any party that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this paragraph (a) apply notwithstanding the provisions of paragraph (b).

(b) *Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings.* Notwithstanding anything to the contrary in this Agreement or any related agreement, but subject to the requirements of paragraph (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following:

(a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“*Insolvency Proceeding*” means a receivership, insolvency, liquidation, resolution, or similar proceeding.

“*U.S. Special Resolution Regime*” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

*Section 8.20. Right of Setoff.* If an Event of Default shall have occurred and be continuing, each Noteholder and their respective Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Noteholder or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Related Document to such Noteholder or its Affiliates, irrespective of whether or not such Noteholder or its Affiliates shall have made any demand under this Agreement or any other Related Document and although such obligations of the Borrower may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Noteholder different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The rights of each Noteholder and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Noteholder or its Affiliates may have. Each Noteholder agrees to notify the Borrower promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

*Section 8.21. Procurement Documentation.* The Parties acknowledge that the Bank has delivered the Borrower’s standard form Financial Institution Responsibility Guidelines and such documentation is on file with the Borrower. Attached hereto as Exhibit E are certain procurement documentation delivered by the Bank to the Borrower, including the Vendor Code of Ethics, Federal Contract Provisions and Insurance Requirements.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the Effective Date.

BANK OF AMERICA, N.A.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GATEWAY DEVELOPMENT COMMISSION

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A.

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement dated as of \_\_\_\_\_, 2024 (the “*Agreement*”), between the Gateway Development Commission (the “*Borrower*”) and Bank of America, N.A. (the “*Bank*”). Unless otherwise defined herein, the terms used in this Certificate shall have the meanings assigned thereto in the Agreement.

The undersigned Authorized Officer hereby certifies as of the date hereof that he/she is the \_\_\_\_\_ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to the Bank on the behalf of the Borrower, and that:

1. **[Attached hereto as Schedule 1 are the year-end audited financial statements required by Section 6.05(a) of the Agreement for the fiscal year of the Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section.**

2.] The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a review of the transactions and condition (financial or otherwise) of the Borrower during the accounting period covered by the attached financial statements.

3. A review of the activities of the Borrower during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Borrower performed and observed all its Obligations under the Related Documents, and

**[select one:]**

**[to the best knowledge of the undersigned during such fiscal period, the Borrower performed and observed each covenant and condition of the Related Documents applicable to it, and no Default, Event of Default, Event of Non-Appropriation, Event of Non-Authorization or Significant Delay has occurred and is continuing.]**

**--or--**

**[the following covenants or conditions have not been performed or observed and the following is a list of each such Default or Event of Default and its nature and status:]**



4. The representations and warranties of the Borrower contained in Article V of the Agreement are true and correct on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Certificate, the representations and warranties contained in Section 5.06 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to Section 6.05 of the Agreement, including the statements in connection with which this Certificate is delivered.

5. The Aggregate Expected Receipts Coverage Ratio as of the date hereof is [ ], which **[is][is not]** in compliance with the financial covenant set forth in Section 6.26(a) of the Agreement. The financial covenant calculations and information set forth on Schedule I attached hereto are true, complete, and correct.

Delivery of an executed counterpart of a signature page of this Certificate by fax transmission or other electronic mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of \_\_\_\_\_,  
\_\_\_\_\_.

GATEWAY DEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE I  
TO COMPLIANCE CERTIFICATE**

[Aggregate Expected Receipts Coverage Ratio calculation]

**EXHIBIT B**

**FORM OF REQUEST FOR ADVANCE**

[Date]

Bank of America, N.A.  
One Bryant Park  
12<sup>th</sup> Floor  
New York, NY 10036  
Attention: Eunice Onie Lee  
Telephone: (646) 743-1358  
Email: eunice.lee@bofa.com

Ladies and Gentlemen:

The undersigned, an Authorized Officer, refers to the Revolving Credit Agreement, dated as of July 8, 2024 (together with any amendments or supplements thereto, the “*Agreement*”), by and between the Gateway Development Commission (the “*Borrower*”) and Bank of America, N.A. (the “*Bank*”) (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to the Agreement, that the Bank make an Advance under the Agreement, and in that connection sets forth below the following information relating to such Advance (the “*Proposed Advance*”):

1. The Business Day of the Proposed Advance is \_\_\_\_\_, 20\_\_ (the “*Advance Date*”), which complies with the timeline set forth for such Advance in Section 2.02 of the Agreement.

2. The principal amount of the Proposed Advance is \$ \_\_\_\_\_, which is not greater than the Available Commitment as of the Advance Date.

3. The aggregate amount of the Proposed Advance shall be used solely for Eligible Project Costs.

4. The Proposed Advance is hereby identified as **[Tax-Exempt Revolving Loan] [Taxable Revolving Loan]**<sup>1</sup>.

5. After giving effect to the Proposed Advance, the aggregate principal amount of all Revolving Loans outstanding under the Agreement will not exceed the Available Commitment.

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<sup>1</sup> With respect to an Advance for Tax-Exempt Revolving Loan, Bank of America, N.A., as Bank, should confirm that it has received evidence that an IRS Form 8038-G has been duly completed by the Borrower and signed by the Borrower.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Advance Date, before and after giving effect thereto:

- (a) the undersigned is an Authorized Officer;
- (b) the representations and warranties of the Borrower set forth in Article V of the Agreement and in each other Related Document are true and correct in all material respects as though made on the date hereof and on the Advance Date;
- (c) no Default, Event of Default, Event of Non-Appropriation, Event of Non-Authorization or Significant Delay and no event or condition that, in the reasonable good faith opinion of the Bank, with the giving of any notice, the passage of time, or both, could reasonably be expected to give rise to an Event of Non-Appropriation, Event of Non-Authorization, or Significant Delay that could now or in the future materially impair the ability of Borrower to make the required payments to the Bank hereunder or under the Note, shall have occurred and be continuing on the date hereof and on the Advance Date;
- (d) the principal amount of such Advance shall not exceed the Available Commitment;
- (e) no Material Adverse Change has occurred;
- (f) the opinion of Note Counsel delivered pursuant to Section 4.01(a)(i)(8)(B) of the Agreement remains in full force and effect **[ and, with respect to the initial Tax-Exempt Loan, the Bank shall have received an opinion from Note Counsel dated the date of such Advance as to the exclusion of interest on all Tax-Exempt Loans from gross income for federal income tax purposes, in form and substance satisfactory to the Bank];**
- (g) the Borrower has not received actual notice (either verbal or written) from Note Counsel that the opinion[s] delivered pursuant to Section 4.01(a)(i)(8)(B) **[and the Section 4.01(b)(vi)]** of the Agreement may no longer be relied upon. **[The Bank shall have received satisfactory evidence that all representations and certifications of the Borrower that the Bank deems necessary to maintain the tax-exempt status of the interest on any Tax-Exempt Loan have been delivered and are true and correct and evidence that an IRS Form 8038 or Form 8038-G has been duly completed by the Borrower and signed by the Borrower];**
- (h) The Aggregate Expected Receipts Coverage Ratio as of the date hereof is, and as of the Advance Date, will be , which is in compliance with the financial covenant set forth in Section 6.26 of the Agreement and demonstrated in the calculations and information set forth on Schedule I attached hereto which are true, complete, and correct.
- (i) The Bank has the following Parity Commitment(s) outstanding in the following amounts as of the date hereof and as of the Advance Date. Attached hereto is

written evidence that the amount of the Proposed Advance to be funded on the Advance Date is proportionate to simultaneous funding, purchase, drawing or advance under each outstanding Parity Commitment, so that the proposed Advance will be made on a pro-rata basis with fundings under each outstanding Parity Commitment on the Advance Date.

<b>Parity Commitment Agreement</b>	<b>Available Commitment under Parity Commitment as of Advance Date</b>	<b>Total Principal Amount Outstanding</b>	<b>Proposed Funding Amount under Parity Commitment on Advance Date</b>

The Proposed Advance shall be made by the Bank by depositing such funds into the Bank Controlled Account specified in Section 2.02(d) of Agreement or such other Bank Controlled Account(s) as the Borrower and the Bank shall agree.

Very truly yours,

GATEWAY DEVELOPMENT COMMISSION

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**

**FORM OF TAX-EXEMPT NOTE**

**TRANSFER OF THIS NOTE IS RESTRICTED AS SET FORTH IN THE AGREEMENT**

**GATEWAY DEVELOPMENT COMMISSION**

**TAX-EXEMPT NOTE**

**PRINCIPAL AMOUNT**  
\$500,000,000

**DATED DATE**  
July 8, 2024

For value received, GATEWAY DEVELOPMENT COMMISSION (the “*Borrower*”), a body corporate and politic established by the State of New Jersey and the State of New York, promises to pay to BANK OF AMERICA, N.A. (together with its successors and assigns, the “*Bank*”), at the address provided in the Agreement (as hereinafter defined), (i) the principal sum of FIVE HUNDRED MILLION DOLLARS (\$500,000,000) or, if less, the aggregate unpaid principal amount of all Loans which are Tax-Exempt Loans bearing interest with respect to the Tax-Exempt Rate (or, if applicable, the Default Rate, the Maximum Interest Rate or rate determined in accordance with Section 2.06(e) or Section 2.19(e) of the Agreement) made by the Bank to the Borrower, payable at such times as are specified in the Agreement, and (ii) interest on the unpaid principal amount of each Loan which is a Tax-Exempt Loan bearing interest with respect to the Tax-Exempt Rate (or, if applicable, the Default Rate, the Maximum Interest Rate or rate determined in accordance with Section 2.06(e) or Section 2.19(e) of the Agreement) made by the Bank, from the date of each such Tax-Exempt Loan until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Agreement, in lawful money of the United States of America, in federal or other immediately available funds, from the date hereof until this Tax-Exempt Note (this “*Note*”) is paid in full, in like money and funds at such office. Notwithstanding anything set forth herein to the contrary, the maximum aggregate principal amount of Tax-Exempt Loans and Taxable Loans under the Agreement may not exceed Five Hundred Million Dollars (\$500,000,000).

This Note is the Tax-Exempt Note referred to in, is issued pursuant to, is subject to the terms and conditions of, and the indebtedness evidenced by this Note is further evidenced by, the Revolving Credit Agreement dated as of July 8, 2024 (as amended, restated, supplemented and otherwise modified, the “*Agreement*”), between the Borrower and the Bank. The terms and conditions of the Agreement are incorporated herein by reference. To the extent of any direct conflict between the terms and conditions of this Note and the terms and conditions of the Agreement, the terms and conditions of the Agreement will prevail and govern. The Borrower promises to make all other payments owed by it under the Agreement. All capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Agreement.

This Note is subject to prepayment and amounts prepaid prior to the Termination Date may be reborrowed, all pursuant to the terms and under the conditions of the Agreement. Reference is made to the Agreement for provisions as to the prepayment hereof, for reborrowing, for conversion of Tax-Exempt Revolving Loans to Term Loans, and for repayment of Tax-Exempt Revolving Loans and Term Loans. Reference is also made to the Agreement for provisions providing for additional interest and other amounts to be payable under certain circumstances. If the Noteholder enforces this Note upon default, the Borrower shall reimburse the Noteholder for reasonable costs and expenses incurred by the Noteholder in collection, including reasonable attorney's fees and expenses as set out in Section 2.07 and 8.04 of the Agreement. This Note shall be construed in accordance with and governed by the internal laws of the State of New York.

The parties hereto, including the undersigned maker and all guarantors, endorsers and pledgors that may exist at any time with respect hereto, hereby waive presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note and assent to the extensions of the time of payment or forbearance or other indulgence without notice.

Time is of the essence of this Note.

Further reference is made to the Agreement for the provisions relating to the security of this Note and the duties and obligations of the Borrower.

It is hereby certified, recited and declared that all conditions, acts and things essential to the validity of this Note exist, have happened and have been done and that every requirement of law affecting the issuance hereof has been duly complied with.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned Borrower has caused this Tax-Exempt Note to be executed by its duly authorized officer as of the date first above written.

GATEWAY DEVELOPMENT COMMISSION

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT D**

**FORM OF TAXABLE NOTE**

**TRANSFER OF THIS NOTE IS RESTRICTED AS SET FORTH IN THE AGREEMENT**

**GATEWAY DEVELOPMENT COMMISSION**

**TAXABLE NOTE**

**PRINCIPAL AMOUNT**  
\$500,000,000

**DATED DATE**  
July 8, 2024

For value received, GATEWAY DEVELOPMENT COMMISSION (the "*Borrower*"), a body corporate and politic established by the State of New Jersey and the State of New York, promises to pay to BANK OF AMERICA, N.A. (together with its successors and assigns, the "*Bank*"), at the address provided in the Agreement (as hereinafter defined), (i) the principal sum of FIVE HUNDRED MILLION DOLLARS (\$500,000,000) or, if less, the aggregate unpaid principal amount of all Loans which are Taxable Loans bearing interest with respect to the Taxable Rate (or, if applicable, the Default Rate, the Maximum Interest Rate or rate determined in accordance with Section 2.06(e) or Section 2.19(e) of the Agreement) made by the Bank to the Borrower, payable at such times as are specified in the Agreement, and (ii) interest on the unpaid principal amount of each Loan which is a Taxable Loan bearing interest with respect to the Taxable Rate (or, if applicable, the Default Rate, the Maximum Interest Rate or rate determined in accordance with Section 2.06(e) or Section 2.19(e) of the Agreement) made by the Bank, from the date of each such Taxable Loan until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Agreement, in lawful money of the United States of America, in federal or other immediately available funds, from the date hereof until this Taxable Note (this "*Note*") is paid in full, in like money and funds at such office. Notwithstanding anything set forth herein to the contrary, the maximum aggregate principal amount of Tax-Exempt Loans and Taxable Loans under the Agreement may not exceed Five Hundred Million Dollars (\$500,000,000).

This Note is the Taxable Note referred to in, is issued pursuant to, is subject to the terms and conditions of, and the indebtedness evidenced by this Note is further evidenced by, the Revolving Credit Agreement dated as of July 8, 2024 (as amended, restated, supplemented and otherwise modified, the "*Agreement*"), between the Borrower and the Bank. The terms and conditions of the Agreement are incorporated herein by reference. To the extent of any direct conflict between the terms and conditions of this Note and the terms and conditions of the Agreement, the terms and conditions of the Agreement will prevail and govern. The Borrower promises to make all other payments owed by it under the Agreement. All capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Agreement.

This Note is subject to prepayment and amounts prepaid prior to the Termination Date may be reborrowed, all pursuant to the terms and under the conditions of the Agreement. Reference is

made to the Agreement for provisions as to the prepayment hereof, for reborrowing, for conversion of Taxable Revolving Loans to Term Loans, and for repayment of Taxable Revolving Loans and Term Loans. Reference is also made to the Agreement for provisions providing for additional interest and other amounts to be payable under certain circumstances. If the Noteholder enforces this Note upon default, the Borrower shall reimburse the Noteholder for reasonable costs and expenses incurred by the Noteholder in collection, including reasonable attorney's fees and expenses as set out in Section 2.07 and 8.04 of the Agreement. This Note shall be construed in accordance with and governed by the internal laws of the State of New York.

The parties hereto, including the undersigned maker and all guarantors, endorsers and pledgors that may exist at any time with respect hereto, hereby waive presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note and assent to the extensions of the time of payment or forbearance or other indulgence without notice.

Time is of the essence of this Note.

Further reference is made to the Agreement for the provisions relating to the security of this Note and the duties and obligations of the Borrower.

It is hereby certified, recited and declared that all conditions, acts and things essential to the validity of this Note exist, have happened and have been done and that every requirement of law affecting the issuance hereof has been duly complied with.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned Borrower has caused this Taxable Note to be executed by its duly authorized officer as of the date first above written.

GATEWAY DEVELOPMENT COMMISSION

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT E**

**PROCUREMENT DOCUMENTATION**

See attached.

**SCHEDULE 8.02**

**ADDRESSES**

The Borrower: Gateway Development Commission  
120 Broadway  
10<sup>th</sup> Floor  
New York, New York 10271  
Attn: Chief Executive Officer  
Telephone: (917) 841-6415

The Bank: Bank of America, N.A.  
100 Federal Street  
Boston, MA 02110  
Attention: Collin De La Bruere  
Telephone: (617) 434-1362  
Email: [collin.delabruere@bofa.com](mailto:collin.delabruere@bofa.com)

Adopted - 7/2/24

**EXHIBIT B**

## PLEDGE AND SECURITY AGREEMENT

This Pledge and Security Agreement (the “*Security Agreement*”) is dated as of July 8, 2024, between GATEWAY DEVELOPMENT COMMISSION, a body corporate and politic established by the State of New Jersey and the State of New York (the “*Debtor*”), and BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns, the “*Secured Party*”).

### PRELIMINARY STATEMENT

A. The Secured Party has agreed to make loans, extend credit, or otherwise make financial accommodations available to or for the account Debtor pursuant to a Revolving Credit Agreement dated as of the date hereof (as amended, modified, supplemented or restated from time to time, the “*Credit Agreement*”) between the Debtor and the Secured Party. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Credit Agreement.

B. As a condition to making loans or otherwise extending credit to the Debtor, the Secured Party requires, among other things, that the Debtor execute this Security Agreement in favor of the Secured Party to create a Lien on and security interest in the property of the Debtor described herein, subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the benefits accruing to the Debtor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

*Section 1. Grant of Security Interest.* As collateral security for the Obligations defined below, the Debtor hereby pledges and grants to the Secured Party a first priority lien on and security interest in, and acknowledges and agrees that the Secured Party has and shall continue to have a continuing lien on and security interest in, and right of set-off against, all right, title, and interest of the Debtor, whether now owned or existing or hereafter created, acquired, or arising or as to which such Grantor now or hereafter has the power to transfer interest therein, in and to all of the following:

- (a) all of the Debtor’s Pledged Grant Receipts;
- (b) accounts and Receivables, to the extent any account or Receivable constitutes, relates to or arises from the assets described in subclause (a);
- (c) chattel paper (including all electronic chattel paper and all tangible chattel paper), to the extent any chattel paper constitutes, relates to or arises from the assets described in subclause (a);

- (d) instruments (including promissory notes), to the extent any instrument (including any promissory note) constitutes, relates to or arises from the assets described in subclause (a);
- (e) general intangibles (including payment intangibles), to the extent any general intangible constitutes, relates to or arises from the assets described in subclause (a);
- (f) deposit accounts, to the extent any such deposit account constitutes, relates to or contains the assets described in subclause (a), including without limitation, the deposit accounts identified in Schedule C hereto and all other such accounts into which the Debtor's Pledged Grant Receipts and/or the proceeds of the Loans are deposited from time to time, collectively the "*Pledged Accounts*";
- (g) investment property (including certificated and uncertificated securities, securities accounts, security entitlements, commodity accounts, and commodity contracts) to the extent any investment property constitutes, contains, relates to or arises from the assets described in subclause (a);
- (h) cash, monies, personal property, and interests in personal property of the Debtor of any kind or description now held by the Secured Party or at any time hereafter transferred or delivered to, or coming into the possession, custody, or control of, the Secured Party, or any agent or affiliate of the Secured Party, whether expressly as collateral security or for any other purpose (whether for safekeeping, custody, collection or otherwise, but excluding safety deposit boxes or property delivered to the Secured Party as a trustee in trust for third parties) and all dividends and distributions on or other rights in connection with any such property, in each case to the extent constituting or arising from the assets described in subclause (a);
- (i) contract rights, all books and records, supporting evidence and documents relating to any of the above-described property or any Collateral, including, without limitation, computer programs, disks, tapes and related electronic data processing media, and all rights of the Debtor to retrieve the same from third parties, written applications, credit information, account cards, payment records, correspondence, delivery and installation certificates, invoice copies, delivery receipts, notes, and other evidences of indebtedness, insurance certificates and the like, together with all books of account, ledgers, and cabinets in which the same are reflected or maintained;
- (j) additions to, and substitutions and replacements of, any and all of the foregoing;



- (k) all proceeds and products of the foregoing, and all insurance of the foregoing and proceeds thereof; and
- (l) all other rights which are represented by, arise from, or relate to any of the foregoing;

all of the foregoing being herein sometimes referred to as the “*Collateral*,” *provided, that*, for the avoidance of doubt, the Collateral shall exclude the Excluded Collateral. All terms which are used in this Security Agreement which are defined in the Uniform Commercial Code of the State of New York as in effect from time to time (“*UCC*”) shall have the same meanings herein as such terms are defined in the UCC, unless this Security Agreement shall otherwise specifically provide; *provided, that*, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “*UCC*” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority. For purposes of this Security Agreement, the following terms have the meanings set forth below:

“*CASA*” means that certain Collateral Accounts and Security Agreement, dated as of July 8, 2024, by and among the Debtor, the RRIF Lender and The Bank of New York Mellon, as collateral agent and securities intermediary, as supplemented, amended or restated from time to time in accordance with the terms thereof.

“*CIG Program*” means the Capital Investment Grants Program, 49 U.S.C. 5309.

“*DACA*” means each agreement among the Debtor, the Secured Party, and a depository institution, which agreement is in form and substance reasonably acceptable to the Secured Party and which provides the Secured Party “control” (as such term is used in Article 9 of the UCC) over each Pledged Account held at a depository institution other than the Secured Party, as supplemented, amended, or restated pursuant to the terms thereof.

“*Excluded Collateral*” means the Collateral (as defined in the *CASA*).

“*Loan*” and “*Loans*” has the meaning set forth in the Credit Agreement.

“*Material Event*” means the occurrence of one or more any of the following: (a) an Event of Non-Appropriation, (b) Event of Non-Authorization, (c) a Significant Delay, or (d) at any time the Aggregate Expected Receipts Coverage Ratio is less than 2.00 to 1.00.

“*PGR Receivable*” means any Receivable that constitutes, relates to or arises from Pledged Grant Receipts.

“*Pledged Grant Receipts*” mean the Section 5309 Funds and the federal grant receipts relating to the CIG Program received by or to be received by the Borrower from the FTA under the FFGA.

“*Receivables*” means all rights to the payment of a monetary obligation, whether or not earned by performance, and whether evidenced by an account, chattel paper, instrument, general intangible or otherwise.

“*RRIF Lender*” means the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau.

“Section 5309 Funds” means the Borrower’s share of FTA Section 5309 (49 U.S.C. s. 5309) funds under the CIG Program.

“*Threshold Event*” has the meaning set forth in Section 8 of this Security Agreement.

“*Waiver*” means that certain Waiver and Disclaimer, dated as of July 8, 2024, by and among the Debtor, the RRIF Lender, the RRIF Collateral Agent (as defined therein), the Secured Party, and the other persons from time to time party thereto.

*Section 2. Obligations Hereby Secured.* The lien and security interest herein granted and provided for is made and given to secure, and shall secure, the payment and performance of (a) any and all indebtedness, obligations and liabilities of whatsoever kind and nature of the Debtor to the Secured Party or any of its affiliates (whether arising before or after the filing of a petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Debtor, whether or not a claim for post-petition interest fees or expenses is allowed in such proceeding), whether direct or indirect, absolute or contingent, due or to become due, and whether now existing or hereafter arising and howsoever held, evidenced or acquired, and whether several, joint or joint and several, including, without limitation, all indebtedness, obligations, and liabilities of the Debtor to the Secured Party arising under the Credit Agreement, the Note, and/or the Related Documents, (b) any and all liabilities, obligations and amounts of the Debtor owed to the Secured Party or any of its affiliates pursuant to any agreements from time to time entered into, including, without limitation, the Related Documents, any agreement pursuant to which the Secured Party issues letters of credit on behalf of the Debtor and including, without limitation, agreements with respect to the following types of bank products and services provided to the Debtor by the Secured Party or any of its affiliates: (i) credit or charge cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (ii) stored value cards, and (iii) depository, cash management, and treasury management services, including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services (such agreements as the same may be amended or modified from time to time being hereinafter referred to as “*Bank Products*” and the liability of the Debtor in respect of such Bank Products being hereinafter referred to as “*Bank Product Obligations*”); and (c) any and all reasonable and documented out-of-pocket expenses and charges, legal or otherwise, suffered or incurred by the Secured Party in collecting or enforcing any of such indebtedness, obligations or liabilities or in realizing on or protecting or preserving any security therefor, including, without limitation, the lien and security interest granted hereby (all of the foregoing being hereinafter referred to collectively as the “*Obligations*”).

*Section 3. Covenants, Agreements, Representations and Warranties.* The Debtor hereby covenants and agrees with, and represents and warrants to, the Secured Party that:

(a) The Debtor shall not change its jurisdiction of organization without the Secured Party's prior written consent. The Debtor is the sole and lawful owner of the Collateral. This Security Agreement has been duly executed and delivered by the Debtor and constitutes the legal, valid and binding obligation of the Debtor enforceable against the Debtor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally.

(b) The Debtor's chief executive office and principal place of business is at, and the Debtor keeps and shall keep all of its books and records relating to the Pledged Grant Receipts, PGR Receivables and other Collateral only at 120 Broadway – 10<sup>th</sup> Floor, New York, New York 10271; and the Debtor has no other executive offices or places of business other than those listed under Schedule A. The Debtor shall not move its chief executive office or maintain a place of business other than those specified in the immediately preceding sentence without first providing the Secured Party thirty (30) days' prior written notice of the Debtor's intent to do so, provided that the Debtor shall at all times maintain its chief executive office in the United States of America and, with respect to any such new location, the Debtor shall have taken all action requested by the Secured Party to maintain the lien and security interest of the Secured Party in the Collateral at all times fully perfected and in full force and effect.

(c) The Debtor's legal name and jurisdiction of organization are correctly set forth in the first paragraph of this Security Agreement. The Debtor has not transacted business at any time during the immediately preceding five-year period, and does not currently transact business, under any other legal names or trade names other than the prior legal names and trade names (if any) set forth on Schedule B attached hereto. The Debtor shall not change its legal name or transact business under any other trade name without first giving thirty (30) days' prior written notice of its intent to do so to the Secured Party.

(d) The Collateral and every part thereof is and shall be free and clear of all security interests, liens (including, without limitation, mechanics', laborers' and statutory liens), attachments, levies, and encumbrances of every kind, nature and description, whether voluntary or involuntary, except for the lien and security interest of the Secured Party therein and Permitted Liens (as defined in the Credit Agreement). The Debtor shall warrant and defend the Collateral against any claims and demands of all persons at any time claiming the same or any interest in the Collateral adverse to the Secured Party.

(e) The Debtor shall promptly pay when due all taxes, assessments and governmental charges and levies upon or against the Debtor or any of the Collateral, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith by appropriate proceedings which prevent foreclosure or other realization upon any of the Collateral and preclude interference with the operation of the Debtor's business in the ordinary course, and the Debtor shall have established adequate reserves therefor.

(f) The Debtor shall perform in all material respects its obligations under any contract or other agreement constituting part of the Collateral, it being understood and agreed that the Secured Party has no responsibility to perform such obligations.

(g) Subject to Section 6(b) hereof and the terms of the Credit Agreement, the Debtor shall not, without the Secured Party's prior written consent, sell, assign or otherwise dispose of the Collateral or any interest therein; provided, however, that prior to the occurrence of a Threshold Event, the Debtor shall not be prohibited from using the proceeds of the Pledged Grant Receipts or proceeds of the Pledged Accounts in the ordinary course of business.

(h) The Debtor shall at all times allow the Secured Party and its representatives to verify all or any part of the Collateral in any manner and through any medium, which the Secured Party deems appropriate.

(i) The Debtor agrees from time to time to deliver to the Secured Party such evidence of the existence, identity and location of the Collateral and of its availability as collateral security pursuant hereto (including, without limitation, schedules describing all Pledged Grant Receipts and PGR Receivables created or acquired by the Debtor) as the Secured Party may reasonably request. The Debtor agrees to furnish all assistance and information, and perform any acts, which the Secured Party may require in connection with verifying all or any part of the Collateral.

(j) The Debtor agrees to execute and deliver to the Secured Party such further agreements, assignments, instruments, and documents and to do all such other things as the Secured Party may deem reasonably necessary or appropriate to assure the attachment, perfection, and first priority of, and the ability of the Secured Party to enforce, the Secured Party's lien and security interest hereunder, including, without limitation, (i) such financing statements, and amendments thereof or supplements thereto, and such other instruments and documents as the Secured Party may from time to time reasonably require in order to comply with the UCC and any other applicable law, (ii) such control agreements with respect to Pledged Accounts, and to cause the relevant depository institutions and issuers to execute and deliver such control agreements, as the Secured Party may from time to time reasonably require in accordance with the terms hereof, (iii) complying with any provision of any statute, regulation or treaty of the United States and/or any foreign jurisdiction as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Secured Party to enforce, the Secured Party's security interest in such Collateral (including, without limitation, executing such instruments or notices as may be necessary or reasonably desirable in order to perfect and preserve the first priority security interests granted or purported to be granted hereby), (iv) securing governmental and other third party waivers, consents and approvals in form and substance reasonably satisfactory to the Secured Party, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral and any party or parties whose consent is required for the security interest of the Secured Party to attach, and (v) appearing in and defending any action or proceeding that may adversely affect the Debtor's title to or the Secured Party's security interest in the Collateral. The Debtor hereby agrees that a carbon, photographic or other reproduction of this Security Agreement or any such financing statement is sufficient for filing as a financing statement by the Secured Party without notice thereof to the Debtor wherever the Secured Party in its sole reasonable discretion desires to file the same. The Debtor hereby authorizes the Secured

Party to file any and all financing statements covering the Collateral or any part thereof as the Secured Party may require. In the event for any reason the law of any jurisdiction other than New York becomes or is applicable to the Collateral or any part thereof, or to any of the Obligations, the Debtor agrees to execute and deliver all such agreements, assignments, instruments and documents and to do all such other things as the Secured Party in its sole reasonable discretion deems necessary or appropriate to preserve, protect, and enforce the lien and security interest of the Secured Party under the law of such other jurisdiction. The Debtor agrees to mark its books and records to reflect the lien and security interest of the Secured Party in the Collateral.

(k) On failure of the Debtor to perform any of the covenants and agreements herein contained, the Secured Party may, at its option, perform the same and in so doing may expend such sums as the Secured Party may deem advisable in the performance thereof, including, without limitation, the payment of any taxes, liens and encumbrances, expenditures made in defending against any adverse claims, and all other expenditures which the Secured Party may be compelled to make by operation of law or which the Secured Party may make by agreement or otherwise for the protection of the security hereof. All such documented sums and amounts so expended shall be repayable by the Debtor upon demand. No such performance of any covenant or agreement by the Secured Party on behalf of the Debtor, and no such advancement or expenditure therefor, shall relieve the Debtor of any default under the terms of this Security Agreement or in any way obligate the Secured Party to take any further or future action with respect thereto. The Secured Party, in making any payment hereby authorized, may do so according to any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim. The Secured Party, in performing any act hereunder, shall be the sole judge, in its reasonable discretion, of whether the Debtor is required to perform same under the terms of this Security Agreement. The Secured Party is hereby authorized to charge any account of the Debtor maintained with the Secured Party for the amount of such sums and amounts so expended.

*Section 4. Special Provisions Re: Receivables.* The Debtor shall be deemed to have warranted as to all Pledged Grant Receipts that are Receivables that such Receivables and all papers and documents relating thereto are genuine and in all respects what they purport to be and that such Receivables are valid and subsisting. The Debtor shall be deemed to have warranted that no such Receivable is evidenced by any Instrument or Chattel Paper unless such Instrument or Chattel Paper has theretofore been endorsed by the Debtor and delivered to the Secured Party (except that, prior to the existence of a Threshold Event, the Debtor will not be required to endorse and deliver to the Secured Party any such Instrument or Chattel Paper); and that the amount of such Receivable represented as owing, to the knowledge of the Debtor, is not disputed and is not subject to any set-offs, credits, deductions or countercharges other than those arising in the ordinary course of the Debtor's business which are disclosed to the Secured Party in writing promptly upon the Debtor becoming aware thereof. Without limiting the foregoing, if any Receivable constituting Collateral arises out of a contract with the United States of America, or any state or political subdivision thereof, or any department, agency or instrumentality of any of the foregoing, the Debtor agrees to notify the Secured Party and, during the existence of a Threshold Event, at the Secured Party's request, execute whatever instruments and documents are required by the Secured Party in order that such Receivable shall be assigned to the Secured Party

and that proper notice of such assignment shall be given under the federal Assignment of Claims Act (or any successor statute) or any similar state or local statute, as the case may be.

*Section 5. Special Provisions Re: Pledged Accounts.* (a) All Pledged Accounts of the Debtor on the date hereof are listed and identified (by account number and depository institution) on Schedule C attached hereto and made a part hereof. The Debtor shall promptly notify the Secured Party of any other deposit account opened or maintained by the Debtor after the date hereof into which the Debtor intends to deposit Pledged Grant Receipts, and shall submit to the Secured Party a supplement to Schedule C to reflect such additional accounts (provided the Debtor's failure to do so shall not impair the Secured Party's security interest therein). With respect to any future Pledged Account maintained by a depository institution other than the Secured Party (to the extent permitted by the Credit Agreement), the Debtor shall cause the depository institution to enter into and deliver a DACA with the Debtor and the Secured Party, in form and substance satisfactory to the Secured Party which provides, among other things, for the depository institution's agreement that it will comply with instructions originated by the Secured Party directing the disposition of the funds in the Pledged Account without further consent by such Debtor. Debtor shall not terminate any Pledged Account without the Secured Party's prior written consent.

(b) For purposes of this Agreement, the "bank's jurisdiction" of Bank of America, N.A. in its capacity as the depository bank with respect to the Pledged Accounts for purposes of part 3 of Article 9 of the applicable UCC Article 9 is the State of New York.

*Section 6. Collection of Collateral.* (a) The Debtor's Pledged Accounts are identified on Schedule C attached hereto. No Pledged Accounts, other than accounts held by the Secured Party or with respect to which the Secured Party has a DACA, shall be utilized for the deposit of Pledged Grant Receipts without the prior written consent of the Secured Party.

(b) Upon the occurrence of a Threshold Event, in the event the Secured Party requests the Debtor to do so:

(i) all Instruments and Chattel Paper at any time constituting part of the Pledged Grant Receipts, PGR Receivables or any other Collateral shall, upon receipt by the Debtor, be immediately endorsed to and deposited with the Secured Party; and/or

(ii) the Debtor shall instruct all account debtors to remit all payments in respect of Pledged Grant Receipts, PGR Receivables or any other Collateral to a lockbox or lockboxes under the sole custody and control of the Secured Party and which are maintained at post office(s) selected by the Secured Party or to a Pledged Account subject to a first priority perfected lien in favor of the Secured Party.

(c) Upon the occurrence and during the continuation of any Threshold Event, whether or not the Secured Party has exercised any or all of its rights under other provisions of this Section 6, the Secured Party or its designee may notify the Debtor's account debtors at any time that the Collateral has been assigned to the Secured Party or of the Secured Party's security interest therein, and either in its own name, or the Debtor's name, or both, demand, collect (including, without

limitation, through a lockbox analogous to that described in Section 6(b)(ii) hereof), receive, receipt for, sue for, compound and give acquittance for any or all amounts due or to become due on the Collateral, and in the Secured Party's reasonable discretion, file any claim or take any other action or proceeding which the Secured Party may deem necessary or appropriate to protect or realize upon the security interest of the Secured Party in the Collateral.

(d) Upon the occurrence and during the continuation of any Threshold Event, the Secured Party may at any time direct the depository institution at which any Pledged Account subject to a DACA is held to withdraw the Collateral or any part thereof from such Pledged Account and deliver such Collateral to the Secured Party and/or to transfer such Collateral or any part thereof into the Secured Party's name or into the name of its nominee or nominees. The Debtor shall cause each depository institution at which any Pledged Account subject to a DACA is held to, and hereby irrevocably authorizes and directs any such depository institution to, furnish to the Secured Party a copy of each monthly statement pertaining to the Pledged Account and the Collateral and such other information regarding the Collateral as is requested from time to time by the Secured Party which would ordinarily be available if requested by the Debtor.

*Section 7. Power of Attorney.* In addition to any other powers of attorney contained herein, the Debtor hereby appoints the Secured Party, its nominee, and any other person whom the Secured Party may designate, as the Debtor's attorney-in-fact, with full power and authority upon the occurrence and during the continuation of any Threshold Event to sign the Debtor's name on verifications of Pledged Grant Receipts, PGR Receivables and other Collateral; to send requests for verification of Collateral to the Debtor's customers, account debtors and other obligors; to endorse the Debtor's name on any checks, notes, acceptances, money orders, drafts and any other forms of payment or security that may come into the Secured Party's possession or on any assignments, stock powers, or other instruments of transfer relating to the Collateral or any part thereof; to sign the Debtor's name on any invoice or bill of lading relating to any Collateral, on claims to enforce collection of any Collateral, on notices to and drafts against customers and account debtors and other obligors, on schedules and assignments of Collateral, on notices of assignment and on public records; and to do all things necessary to carry out this Security Agreement. The Debtor hereby ratifies and approves all acts of any such attorney and agrees that neither the Secured Party nor any such attorney will be liable for any acts or omissions nor for any error of judgment or mistake of fact or law other than such person's gross negligence or willful misconduct. The Debtor also hereby grants the Secured Party a power of attorney to execute and/or file in the name of the Debtor any such financing statements, or amendments and supplements to financing statements, on behalf of the Debtor without notice thereof to the Debtor. The foregoing powers of attorney, being coupled with an interest, are irrevocable until the Obligations have been fully paid and satisfied and all agreements of the Secured Party to extend credit to or for the account of the Debtor have expired or otherwise have been terminated.

*Section 8. Defaults and Remedies.* (a) The occurrence of any one or more of the following events shall constitute an "*Threshold Event*" hereunder:

- (i) a Material Event shall occur and be continuing;

- (ii) an Event of Default (as defined in the Credit Agreement) shall occur and be continuing under the Credit Agreement;
- (iii) any representation or warranty made by or on behalf of the Debtor in this Security Agreement or in any certificate or statement delivered hereunder shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered;
- (iv) the Debtor shall default in the due performance or observance of any other term, covenant or agreement contained in this Security Agreement and such default shall remain unremedied for a period of thirty (30) days after the occurrence thereof;
- (v) default in the observance or performance of any provision hereof dealing with the use of proceeds of Collateral; or
- (vi) default in the observance or performance of any terms or provisions of any mortgage, security agreement or any other instrument or document securing any Obligations or setting forth terms and conditions applicable thereto or otherwise relating thereto, or this Security Agreement or any such other mortgage, security agreement, instrument or document shall for any reason not be or shall cease to be in full force and effect or any of the foregoing is declared to be null and void.

NOTHING HEREIN CONTAINED SHALL IMPAIR THE DEMAND CHARACTER OF ANY OF THE OBLIGATIONS WHICH ARE EXPRESSED TO BE PAYABLE ON DEMAND.

(b) Upon the occurrence and during the continuation of any Threshold Event, subject to the Waiver, the Secured Party shall have, in addition to all other rights provided herein, the rights and remedies of a secured party under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the UCC applies to the affected Collateral), under the Related Documents, or under other applicable law and in equity, including, without limitation, the right to (i) exercise control of any Pledged Account, deposit account, or investment property subject to the Secured Party's control, (ii) collect payments due pursuant to any contractual arrangements relating to the Collateral directly from third parties, (iii) take possession of other Collateral (if any), and for that purpose the Secured Party may, so far as the Debtor can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom, (iv) in its absolute discretion, realize upon the Collateral in any order and in any manner it so elects and (v) set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Secured Party to or for the credit or the account of Debtor, against any and all of the Obligations now or hereafter existing under this Security Agreement and the other Related Documents, irrespective of whether or not the Secured Party has made any demand under this Security Agreement and even though such Obligations may be unmatured (the foregoing set off rights are in addition to other rights of set off that the Secured Party may have). The Secured Party may require the Debtor to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of the Debtor's principal office(s) or at such other locations as the Secured Party reasonably designates. Further the Secured Party may, without demand and, to the extent permitted by applicable law, without advertisement, notice, hearing or



process of law, all of which the Debtor hereby waives to the extent permitted by applicable law, at any time or times, sell and deliver all or any part of the Collateral held by or for it at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as the Secured Party deems advisable, in its reasonable discretion. The Secured Party shall give the Debtor at least 10 days' prior written notice of the date, time and place of any public sale of Collateral or of the date after which any private sale or any other intended disposition of Collateral is to be made. The Debtor hereby acknowledges that 10 days' prior written notice of such sale or sales is reasonable notice. No notification need be given to the Debtor if it has signed, after the occurrence of a Threshold Event, a statement renouncing or modifying any right to notification of sale or other intended disposition. The Secured Party shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. To the maximum extent permitted by applicable law, the Secured Party may be the purchaser of any or all of the Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any Collateral payable at such sale. For the purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Secured Party shall be free to carry out such sale pursuant to such agreement and the Debtor shall not be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Secured Party shall have entered into such an agreement all Events of Default are remedied and the Obligations are paid in full. The Debtor hereby waives all of its rights of redemption from any such sale. The Secured Party may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale was postponed or the Secured Party may further postpone such sale by announcement made at such time and place. The Secured Party may sell or otherwise dispose of the Collateral without giving any warranties as to the Collateral or any part thereof, including, without limitation, disclaimers of any warranties of title or the like, and the Debtor acknowledges and agrees that the absence of such warranties shall not render the disposition commercially unreasonable.

(c) Without in any way limiting the foregoing, upon the occurrence and during the continuation of any Threshold Event, the Secured Party shall have the right to exercise any and all rights with respect to all Pledged Accounts of the Debtor, including, without limitation, the right to direct the disposition of the funds in each Pledged Account and to collect, withdraw and receive all amounts due or to become due or payable under each such Pledged Account.

(d) The powers conferred upon the Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose on it any duty to exercise such powers. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession or control if such Collateral is accorded treatment substantially equivalent to that which the Secured Party accords its own property, consisting of similar type assets. This Security Agreement constitutes an assignment of rights only and not an assignment of any duties or obligations of the Debtor in any way related to the Collateral, and Secured Party shall have no duty or obligation to discharge any such duty or obligation. The Secured Party shall have no responsibility for taking any necessary steps to preserve rights against any parties with respect to any Collateral. Neither the Secured Party nor any party acting as attorney for the Secured

Party shall be liable for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct.

(e) Failure by the Secured Party to exercise any right, remedy or option under this Security Agreement or any other agreement between the Debtor and the Secured Party or provided by law, or delay by the Secured Party in exercising the same, shall not operate as a waiver; and no waiver by the Secured Party shall be effective unless it is in writing and then only to the extent specifically stated. Subject to the Waiver, the rights and remedies of the Secured Party under this Security Agreement shall be cumulative and not exclusive of any other right or remedy which the Secured Party may have.

*Section 9. Application of Proceeds; Expenses; Overdue Amounts.* The Debtor shall pay to the Secured Party on demand amounts equal to any and all reasonable and documented expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred or paid by the Secured Party in protecting, preserving or enforcing the Secured Party's rights under or in respect of any of the Obligations or any of the Collateral, or in the prosecution or defense of any action or proceeding by or against the Secured Party or the Debtor concerning any matter arising out of or connected with this Security Agreement or the Collateral or the Obligations, including, without limitation, any of the foregoing arising in, arising under or related to a case under the United States Bankruptcy Code (or any successor statute). After deducting all of said expenses, the residue of any proceeds of collection or sale of the Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Secured Party may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all the Obligations (other than inchoate contingent obligations) and after making any payments required by UCC Section 9-608(a)(1)(c) or 9-615(a)(3), any excess shall be returned to the Debtor. In the absence of final payment and satisfaction in full of the Obligations, the Debtor shall remain liable for any deficiency in the payment of the Obligations. Upon the occurrence and during the continuance of a Threshold Event, all amounts due and payable by the Debtor hereunder will be secured by the Collateral and shall bear, whether before or after judgment, interest at the Default Rate (without duplication of any default interest accruing under the Related Documents).

*Section 10. Continuing Agreement; Termination.* This Security Agreement shall be a continuing agreement in every respect and shall remain in full force and effect until all of the Obligations, both for principal, interest, periodic scheduled payments and termination payments, have been fully paid and satisfied and all agreements of the Secured Party, including, without limitation, with respect to the Credit Agreement or any agreement to purchase bonded indebtedness, extend credit or make accommodations to or for the account of the Debtor have expired or otherwise have been terminated. Upon the payment and performance in full of the Obligations (other than inchoate contingent indemnification obligations, obligations under hedging agreements and cash management obligations, including, without limitation, the cash collateralization or backstopping of all the Obligations, if any, consisting of letters of credit), and the full and final termination of any commitment to extend any financial accommodations under the Credit Agreement (the "*Termination Date*"), the security interests granted herein shall automatically terminate and all rights to the Collateral shall revert to the Debtor. Upon such termination of this Security Agreement, the Secured Party shall, upon the request and at the

expense of the Debtor, execute and deliver to the Debtor all documents that the Debtor reasonably requests to evidence such termination and release of its security interest hereunder (including, without limitation, UCC-3 financing statement amendments to terminate the initial UCC-1 financing statement or amend such financing statement, as applicable), and will duly assign and transfer to the Debtor such of the Collateral that may be in the possession of the Secured Party and has not theretofore been sold or otherwise applied or released pursuant to this Security Agreement. Such documents shall be prepared by the Debtor and must be in form and substance reasonably satisfactory to the Secured Party. Any execution and delivery of documents pursuant to this Section 10 will be without recourse to or warranty by the Secured Party.

*Section 11. Marshaling.* The Secured Party shall not be required to marshal any present or future collateral security (including, but not limited to, this Security Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Debtor hereby agrees that it will not invoke any law relating to the marshaling of collateral under this Security Agreement or under any other instrument, and, to the extent that it lawfully may, the Debtor hereby irrevocably waives the benefits of all such laws the Debtor and the Secured Party waive any right to require the marshaling of any of the Collateral.

*Section 12. Indemnity.* The Debtor agrees to indemnify and hold harmless the Secured Party and each of its directors, officers, employees, agents and affiliates (collectively, the “*Indemnified Parties*”) from and against any and all claims, damages, demands, losses, obligations, judgments and liabilities (including, without limitation, reasonable and documented out-of-pocket attorneys’ fees and expenses) in any way arising out of or in connection with this Security Agreement, the other Related Documents or the Collateral, except to the extent the same shall arise as a result of the gross negligence or willful misconduct of any of the Indemnified Parties.

*Section 13. Security Interest Absolute.* To the maximum extent permitted by applicable law, all rights of the Secured Party, all security interests hereunder, and all Obligations of the Debtor hereunder, shall be absolute and unconditional.

*Section 14. Miscellaneous.* (a) No amendment or waiver of any provision of this Security Agreement, and no consent to any departure by the Debtor therefrom, shall be effective unless in writing signed by the Secured Party and the Debtor, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. All of the rights, privileges, remedies and options given to the Secured Party hereunder shall inure to the benefit of its successors and assigns, and all the terms, conditions, covenants, agreements, representations and warranties of and in this Security Agreement shall bind the Debtor and its legal representatives, successors and assigns, provided that the Debtor may not assign its rights or delegate its duties hereunder without the Secured Party’s prior written consent.

(b) Except as otherwise specified herein, all notices and other communications provided for hereunder shall be in writing and shall be mailed, sent, or delivered in accordance with the notice provisions of the Credit Agreement.

(c) If any provision of this Security Agreement is held to be invalid, illegal or unenforceable, (a) the validity, legality and enforceability of the remaining provisions of this Security Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(d) The headings in this Security Agreement are included for convenience of reference only and shall not affect the interpretation of this Security Agreement.

(e) This Security Agreement may be executed in may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Security Agreement by fax transmission or e-mail transmission (e.g., “.pdf” or “.tif”) shall be effective as delivery of a manually executed counterpart of this Security Agreement. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of this Security Agreement, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

(f) *Governing Law.* THIS SECURITY AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(g) *Submission to Jurisdiction.* THE DEBTOR IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE SECURED PARTY OR ANY RELATED PARTY OF THE SECURED PARTY IN ANY WAY RELATING TO THIS SECURITY AGREEMENT OR THE TRANSACTIONS RELATING HERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER

JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS SECURITY AGREEMENT SHALL AFFECT ANY RIGHT THAT THE SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS SECURITY AGREEMENT AGAINST THE DEBTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(h) *Waiver of Venue.* THE DEBTOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT IN ANY COURT REFERRED TO IN PARAGRAPH (G) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(i) *Service of Process.* EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8.02 OF THE CREDIT AGREEMENT. NOTHING IN THIS SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(j) *Waiver of Jury Trial.* EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Debtor has caused this Pledge and Security Agreement to be duly executed and delivered in New York, New York, as of the date and year first above written.

GATEWAY DEVELOPMENT COMMISSION, as  
Debtor

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and agreed to in New York, New York, as of the date and year first above written.

BANK OF AMERICA, N.A., as Secured Party

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE A**

**LOCATIONS**

Places of Business (including Debtor's chief executive office and principal place of business):

Chief Executive Office and Principal Place of Business:

120 Broadway – 10<sup>th</sup> Floor  
New York, New York 10271

Other Locations:

2 Penn Plaza East, 11th Floor  
Newark, New Jersey 07105

**SCHEDULE B**

**OTHER NAMES**

A. PRIOR LEGAL NAMES

None

B. TRADE NAMES

None



**SCHEDULE C**

**PLEDGED ACCOUNTS**

BANK NAME

ACCOUNT NUMBER

Adopted - 7/2/24

**EXHIBIT C**

## WAIVER AND DISCLAIMER

This Waiver and Disclaimer (this “Agreement”), dated as of July 8, 2024 is entered into by and between (i) GATEWAY DEVELOPMENT COMMISSION, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York (the “Borrower”), (ii) the UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, in its capacity as lender under the RRIF Loan Agreements (defined below) (including its successors and assigns, the “RRIF Lender”), (iii) THE BANK OF NEW YORK MELLON, a bank organized under the laws of the State of New York, in its capacity as collateral agent on behalf of the RRIF Lender (in such capacity (including its successors and assigns), the “RRIF Collateral Agent”), (iv) BANK OF AMERICA, N.A. (including its successors and assigns, the “Working Capital Facility Lender”) and (v) any GANs Trustee(s) (as defined below) that may become party to this Agreement from time to time upon execution of a Joinder (as defined below).

### RECITALS:

A. The Borrower has entered into (i) that certain Revolving Credit Agreement, dated as of the date hereof (the “Working Capital Credit Agreement”), with the Working Capital Facility Lender, (ii) that certain Pledge and Security Agreement, dated as of the date hereof (the “Working Capital Security Agreement” and, together with the Working Capital Credit Agreement and the other ancillary and related contracts, certificates and documents entered into in connection with the foregoing, the “Working Capital Facility Credit Documents” and the indebtedness contemplated thereunder being hereinafter referred to as the “Working Capital Facility Obligations”), with the Working Capital Facility Lender. The Working Capital Facility Credit Documents are secured by the Working Capital Facility Agreement Collateral (as defined below).

B. The Borrower has entered into (i) the RRIF Loan Agreements (as defined below) with the RRIF Lender, (ii) that certain Collateral Accounts and Security Agreement (the “CASA”) with the RRIF Lender and the RRIF Collateral Agent, and (iii) other ancillary agreements related thereto (collectively, the “RRIF Loan Documents” and the indebtedness contemplated thereunder being hereinafter referred to as the “RRIF Loans”) and the Borrower has granted a security interest in, and will repay the RRIF Loans from the proceeds of, the RRIF Collateral (as defined below).

C. The Borrower from time to time may issue grant anticipation obligations (“GANs” and the holders of such indebtedness being “GANs Holders”) that are secured by a pledge to a collateral agent appointed by the GANs Holders (any such agent, including its successors and assigns, a “GANs Trustee”) of all or part of the GANs Collateral pursuant to an indenture, note purchase agreement, credit agreement or other agreement and related contracts and documents (such agreements, the “GANs Documents,” and the indebtedness contemplated thereunder being hereinafter referred to as the “GANs Obligations”).

D. The RRIF Lender has directed the RRIF Collateral Agent to provide its acknowledgement of the existence of (i) the Working Capital Facility Obligations and (ii) any

GANs Obligations, and to waive and disclaim any rights or claims with respect to (x) the Working Capital Facility Agreement Collateral, and (y) the Grant Agreement Collateral, and the RRIF Collateral Agent hereby provides such acknowledgment, disclaimer and waiver.

NOW, THEREFORE, the premises being as stated above, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and among the Borrower, RRIF Lender, the RRIF Collateral Agent and the Working Capital Facility Lender as follows:

SECTION 1. Definitions.

“Bankruptcy Proceeding” means (a) any voluntary or involuntary case or proceeding under any Insolvency Law with respect to the Borrower or its assets, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to the Borrower or its assets, (c) any liquidation, dissolution, or winding up of the Borrower; (d) any assignment for the benefit of creditors or any other marshalling of assets or liabilities of the Borrower; or (e) any other proceeding of any type or nature in which substantially all claims of creditors of the Borrower are determined and any payment or distribution is or may be made on account of such claims.

“GANs Collateral” means, subject to any restrictions set forth in the Working Capital Facility Credit Documents, that portion of the Grant Agreement Collateral described in the GANS Documents.

“Governmental Authority” means any nation, state, sovereign or government, any federal, regional, state or local government or political subdivision thereof or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Person or matters in question.

“Grant Agreement Collateral” means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to:

(a) that certain Full Funding Grant Agreement, dated as the date hereof, by and between the Borrower and the U.S. Department of Transportation, Federal Transit Administration, relating to a Capital Investment Grant awarded to the Borrower in connection with the Project;

(b) that certain agreement to be entered into by and between the Borrower and the U.S. Department of Transportation, Federal Railroad Administration relating to a Federal-State Partnership for Intercity Passenger Rail Grant awarded to the Borrower in connection with the Project;

(c) certain Grant Agreement under the Fiscal Year 2023 RAISE Program, dated as of June 4, 2024, by and between the Borrower and the U.S. Department of Transportation, Federal Transit Administration, relating to a Rebuilding America’s Infrastructure with Sustainability and Equity (RAISE) program grant awarded to the Borrower in connection with the Project; and

(d) all Proceeds and products in whatever form of all or any part of the foregoing, including all rents, profits, income (including, for the avoidance of doubt, any contract payments under the agreements described in parts (a) and (b) of this definition), whether now earned or hereafter acquired, and all other benefits and compensation with respect to all or any part of the foregoing (together with all rights to recover and proceed with respect to the same), and all accessions to, substitutions for and replacements of all or any part of the foregoing.

“Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“Joinder” means an agreement substantially in the form of Attachment A hereto.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Proceeds” means “proceeds” as such term is defined in the UCC or under other relevant law and, in any event, shall include, but shall not be limited to, (a) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with respect to, any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Borrower, in each case with respect to any of the RRIF Collateral or the Grant Agreement Collateral, as applicable, (b) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the RRIF Collateral or the Grant Agreement Collateral, as applicable, by any Governmental Authority (or any person acting under color of Governmental Authority), and (c) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or payable under or in connection with any of the RRIF Collateral or the Grant Agreement Collateral, as applicable, (whether or not in connection with the sale, lease or other disposition of the RRIF Collateral or the Grant Agreement Collateral, as applicable).

“RRIF Collateral” means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to:

(a) (i) that certain Service Contract, dated as of March 31, 2024, by and between the Borrower and the State of New York (the “New York Funding Agreement”), including all right, title, and interest of the Borrower in the Contract Payments (as defined in the New York Funding Agreement) payable thereunder, (ii) the account at the RRIF Collateral Agent with the account number [REDACTED] (the “NY RRIF Account”), and (iii) all Proceeds and products in whatever form of all or any part of the foregoing items (i) and (ii), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments (as defined in the RRIF Loan Agreement (New York Funding Agreement)) and other funds or amounts on deposit in the NY RRIF Account;

(b) (i) that certain Hudson Tunnel Funding Agreement (RRIF Loan), dated as of March 31, 2024, by and between the Borrower and the New Jersey Transit Corporation (the “NJT Funding Agreement”), including all right, title and interest of the Borrower in the Contract Payments (as defined in the NJT Funding Agreement) payable thereunder, (ii) the account at the RRIF Collateral Agent with the account number [REDACTED] (the “NJ RRIF Account”), and (iii) all Proceeds and products in whatever form of all or any part of the foregoing items (i) and (ii), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments (as defined in the RRIF Loan Agreement (NJT Funding Agreement) and other funds or amounts on deposit in the NJ RRIF Account;

(c) (i) that certain Hudson Tunnel Project RRIF Loan Funding Agreement, dated as of April 8, 2024, by and between the Borrower and the Port Authority of New York and New Jersey, as amended by that certain Direct Agreement (PANYNJ), dated as of the date hereof, among the RRIF Lender, the Borrower and the Port Authority of New York and New Jersey) (the “Port Authority Funding Agreement”), including all right, title and interest of the Borrower in the Contract Payments (as defined in the Port Authority Funding Agreement) payable thereunder, (ii) the account at the RRIF Collateral Agent with the account number [REDACTED] (the “PANYNJ RRIF Account”), and (iii) all Proceeds and products in whatever form of all or any part of the foregoing items (i) and (ii), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments (as defined in the RRIF Loan Agreement (Port Authority Funding Agreement) and other funds or amounts on deposit in the PANYNJ RRIF Account; and

(d) (i) any other funding agreement entered into by the Borrower from time to time in connection with any loan made available to the Borrower by the RRIF Lender, including all right, title and interest of the Borrower in any amounts payable thereunder, (ii) any account established with the Collateral Agent in connection with such other funding agreement, and (iii) all Proceeds and products in whatever form of all or any part of any of the foregoing items (i) and (ii), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments (as defined in the applicable RRIF loan agreement) and other amounts on deposit in such account.

“RRIF Loan Agreements” means:

(a) that certain RRIF Loan Agreement (New York Funding Agreement), dated as of the date hereof, by and between the Borrower and the RRIF Lender (the “RRIF Loan Agreement (New York Funding Agreement)”);

(b) that certain RRIF Loan Agreement (NJT Funding Agreement), dated as of the date hereof, by and between the Borrower and the RRIF Lender (the “RRIF Loan Agreement (NJT Funding Agreement)”); and

(c) that certain RRIF Loan Agreement (Port Authority Funding Agreement), dated as of the date hereof, by and between the Borrower and the RRIF Lender (the “RRIF Loan Agreement (Port Authority Funding Agreement)”).

“UCC” means the Uniform Commercial Code, as the same may, from time to time, be in effect in the State of New York; provided that if by reason of mandatory provisions of law, any or all of the perfection, priority of the security interest in, or remedies with respect to, any RRIF Collateral or any Grant Agreement Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof.

“Working Capital Facility Agreement Collateral” means the “Collateral” as defined in the Working Capital Security Agreement (including, without limitation, that portion of the Grant Agreement Collateral described in the Working Capital Facility Credit Documents), a copy of which definition (and related defined terms), as of July 8, 2024, is set forth in Attachment B.

SECTION 2. Working Capital Facility Lender Acknowledgments, Waivers, Representations and Warranties.

- (a) The Working Capital Facility Lender hereby:
- (i) acknowledges that the Borrower is entering into each of the RRIF Loan Agreements and is incurring the obligations associated with the RRIF Loans;
  - (ii) acknowledges that, pursuant to the CASA, the Borrower has granted a security interest in the RRIF Collateral to the RRIF Collateral Agent (for the benefit of the RRIF Lender);
  - (iii) agrees that notwithstanding any security interest granted to or held by the Working Capital Facility Lender in any property of the Borrower pursuant to the Working Capital Facility Credit Documents, the RRIF Collateral Agent (on behalf of the RRIF Lender) has and shall have an exclusive security interest in the RRIF Collateral and the exclusive right to bring claims against the Borrower with respect to, and receive any and all Proceeds of, the RRIF Collateral;
  - (iv) (A) waives any right to claim any right, title, or interest with respect to any part of the RRIF Collateral that the Working Capital Facility Lender might have, whether pursuant to any Working Capital Facility Credit Documents or other contract or at law or in equity, and (B) waives any right at any time to bring any claim against, enforce against, or direct the allocation, disposition or use of any of the RRIF Collateral or any of the Proceeds of any of the RRIF Collateral;
  - (v) agrees that it shall not seek to commence or support any involuntary proceeding or action against the Borrower that may be available under any Insolvency Law and shall not promote or actively support any legislative, administrative or judicial action that would have the effect of permitting or allowing any such involuntary proceeding or action against the Borrower to be commenced; and
  - (vi) agrees, until the discharge of the RRIF Loans, that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Bankruptcy Proceeding), the perfection, priority, validity or enforceability of the lien, pledge

or other security interest held by or on behalf of any of the RRIF Lender in the RRIF Collateral or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the Working Capital Facility Lender to enforce this Agreement.

SECTION 3. GANs Trustee Acknowledgments, Waivers, and Representations and Warranties.

(a) Each GANs Trustee from time to time party to this Agreement, on its own behalf and on behalf of each GANs Holder, hereby:

(i) acknowledges that the Borrower is entering into each of the RRIF Loan Agreements and is incurring the obligations associated with the RRIF Loans;

(ii) acknowledges that pursuant to the CASA the Borrower has granted a security interest in the RRIF Collateral to the RRIF Collateral Agent (for the benefit of the RRIF Lender);

(iii) agrees that notwithstanding any security interest granted to or held by the GANs Trustee (on its own behalf or on behalf of the GANs Holders) in any property of the Borrower pursuant to the GANs Documents, the RRIF Collateral Agent (on behalf of the RRIF Lender) has and shall have an exclusive security interest in the RRIF Collateral and the exclusive right to bring claims against the Borrower with respect to, and receive any and all Proceeds of, the RRIF Collateral;

(iv) (A) waives any right to claim any right, title, or interest with respect to any part of the RRIF Collateral that the GANs Trustee (on its own behalf or on behalf of the GANs Holders) or the GANs Holders might have, whether pursuant to any GANs Documents or other contract or at law or in equity, and (B) waives any right at any time to bring any claim against, enforce against, or direct the allocation, disposition or use of any of the RRIF Collateral or any of the Proceeds of any of the RRIF Collateral;

(v) agrees that it shall not seek to commence or support any involuntary proceeding or action against the Borrower that may be available under any Insolvency Law and shall not promote or actively support any legislative, administrative or judicial action that would have the effect of permitting or allowing any such involuntary proceeding or action against the Borrower to be commenced; and

(vi) agrees, until the discharge of the RRIF Loans, that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Bankruptcy Proceeding), the perfection, priority, validity or enforceability of the lien, pledge or other security interest held by or on behalf of any of the RRIF Lender in the RRIF Collateral or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the GANs Trustee to enforce this Agreement.

(b) The GANs Trustee hereby represents and warrants to the RRIF Lender that the GANs Holders (i) have authorized the GANs Trustee Collateral Agent to enter into this Waiver



and Disclaimer and (ii) have expressly agreed to be bound by the terms of this Waiver and Disclaimer.

SECTION 4. RRIF Collateral Agent and Lender Acknowledgments, Waivers and Authorization.

(a) The RRIF Collateral Agent, on its behalf and at the direction of the RRIF Lender, hereby:

(i) acknowledges that the Borrower (A) is entering into the Working Capital Credit Agreement and is incurring the Working Capital Facility Obligations and (B) may enter into GANs Documents and incur obligations associated with the GANs Obligations;

(ii) acknowledges that (A) pursuant to the Working Capital Security Agreement, the Borrower has granted a security interest in the Working Capital Facility Agreement Collateral to the Working Capital Facility Lender and (B) pursuant to the GANs Documents (if and when entered), the Borrower may grant a security interest in the GANs Collateral to the GANs Trustee (for the benefit of the GANs Holders);

(iii) agrees that notwithstanding any security interest granted to or held by the RRIF Collateral Agent (on its own behalf or on behalf of the RRIF Lender) in any property of the Borrower pursuant to the RRIF Loan Documents, (A) the Working Capital Facility Lender has and shall have, subject to any security interest and rights granted in favor of the GANs Trustee, an exclusive security interest in the Working Capital Facility Agreement Collateral and exclusive right to bring claims against the Borrower with respect to, and receive any and all Proceeds of, the Working Capital Facility Agreement Collateral and (B), in the event the Borrower enters into any GANs Documents, the GANs Trustee (on behalf of the GANs Holders) shall have, subject to any security interest and rights granted in favor of the Working Capital Facility Lender, an exclusive security interest in the GANs Collateral and exclusive right to bring claims against the Borrower with respect to, and receive any and all Proceeds of, the GANs Collateral;

(iv) (A) waives any right to claim any right, title, or interest with respect to any part of the Grant Agreement Collateral and/or the Working Capital Facility Agreement Collateral that the RRIF Collateral Agent (on its own behalf or on behalf of the RRIF Lender) or the RRIF Lender might have, whether pursuant to any RRIF Loan Documents or other contract or at law or in equity, and (B) waives any right at any time to bring any claim against, enforce against, or direct the allocation, disposition or use of any of the Grant Agreement Collateral and/or the Working Capital Facility Agreement Collateral or any of the Proceeds of any of the Grant Agreement Collateral and/or Working Capital Facility Agreement Collateral;

(v) agrees that it shall not seek to commence or support any involuntary proceeding or action against the Borrower that may be available under any Insolvency Law and shall not promote or actively support any legislative, administrative or judicial action that would have the effect of permitting or allowing any such involuntary proceeding or action against the Borrower to be commenced; and

(vi) agrees, until the discharge of the Working Capital Facility Obligations or GANs Obligations, as applicable, that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Bankruptcy Proceeding), the perfection, priority, validity or enforceability of the lien, pledge or other security interest held by or on behalf of any of the Working Capital Facility Lender or GAN Holders, as applicable, in the Grant Agreement Collateral and/or the Working Capital Facility Agreement Collateral or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the RRIF Collateral Agent or the RRIF Lender to enforce this Agreement.

(b) The RRIF Lender hereby directs the RRIF Collateral Agent to enter into this Waiver and Disclaimer and agrees to be bound by the terms of this Waiver and Disclaimer.

SECTION 5 Joinder by GANs Trustee. The Borrower shall not enter into any GANs Documents unless, simultaneously therewith, the Borrower causes the GANs Trustee appointed thereunder (on behalf of the GANs Holders related thereto) to execute a Joinder and deliver such executed Joinder to each other party to this Agreement, thereby becoming a party to this Agreement.

SECTION 6. Miscellaneous.

(a) No amendment, modification, termination or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

(b) This Agreement shall be governed by the laws of the State of New York.

(c) In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(d) This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns.

(e) This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement shall be effective as delivery of an original executed counterpart of this Agreement and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures for this Agreement may be made by electronic means, if

accompanied by an email from the applicable signatory, contemporaneous or otherwise, confirming the use of such means.

(f) All references to any contract, agreement, or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

(g) This Agreement shall be effective as of the date first written above.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**BANK OF AMERICA, N.A.,**  
as Working Capital Facility Lender

By: \_\_\_\_\_  
Name:  
Title:

**GATEWAY DEVELOPMENT COMMISSION,**  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION,** acting by and through the  
Executive Director of the Build America Bureau,  
as RRIF Lender

By: \_\_\_\_\_  
Name: Dr. Morteza Farajian  
Title: Executive Director, Build America Bureau

**THE BANK OF NEW YORK MELLON,**  
as RRIF Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Attachment A

FORM OF JOINDER

THIS JOINDER (this “Joinder”), dated as of [\_\_\_\_], is executed by [\_\_\_\_], a [\_\_\_\_], on its own behalf and in its capacity as [trustee][collateral agent] for the GANs Holders (as defined below), in such capacity (including its successors and assigns), the “GANs Trustee”).

This Joinder is entered into in accordance with that certain Waiver and Disclaimer, dated as of July 8, 2024 (as amended, restated, modified or supplemented from time to time, the “Waiver and Disclaimer”), among (i) Gateway Development Commission, a body politic and corporate, a public authority and a government sponsored authority established by the State of New Jersey and the State of New York (the “Borrower”), (ii) the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, in its capacity as lender under the RRIF Loan Agreements (including its successors and assigns, the “RRIF Lender”), (iii) The Bank of New York Mellon, a bank organized under the laws of the state of New York, in its capacity as collateral agent on behalf of the RRIF Lender (in such capacity (including its successors and assigns), the “RRIF Collateral Agent”), (iv) Bank of America, N.A. (including its successors and assigns, the “Working Capital Facility Lender”) and (v) each GANs Trustee that becomes party thereto from time to time. Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed thereto in the Waiver and Disclaimer.

The GANs Trustee has been appointed pursuant to [*insert description of applicable GANs Document*] to serve as [trustee][collateral agent] on behalf of the holders of certain [*insert description of GANs*] issued or to be issued by the Borrower (such holders, the “GANs Holders”).

The GANs Trustee, hereby agrees as follows:

1. Joinder of GANs Trustee. Pursuant to Section 5 of the Waiver and Disclaimer, the GANs Trustee, by its execution of this Joinder, hereby becomes a party to the Waiver and Disclaimer and hereby becomes bound by all of the terms and conditions of the Waiver and Disclaimer, and from and after the date hereof is a party thereto entitled to all of the rights and benefits and bound by all of the obligations of a GANs Trustee under the Waiver and Disclaimer. The GANs Trustee hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions, obligations and conditions applicable to a GANs Trustee in the Waiver and Disclaimer.

2. Interpretation. Section 6 of the Waiver and Disclaimer shall apply to this Joinder, *mutatis mutandis*.

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IN WITNESS WHEREOF, the GANs Trustee has caused this Joinder to be duly executed and delivered by its duly authorized officer as of the date written above.

[\_\_\_\_\_] ,  
as GANs Trustee

By: \_\_\_\_\_  
Name:  
Title:

Attachment B

DEFINITION OF “WORKING CAPITAL FACILITY AGREEMENT COLLATERAL”

From the Pledge and Security Agreement (as amended, modified, supplemented or restated from time to time, the “*Security Agreement*”) dated as of July 8, 2024, between GATEWAY DEVELOPMENT COMMISSION, a body corporate and politic established by the State of New Jersey and the State of New York (the “*Debtor*”), and BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns, the “*Secured Party*”).

...

A. The Secured Party has agreed to make loans, extend credit, or otherwise make financial accommodations available to or for the account Debtor pursuant to a Revolving Credit Agreement dated as of the date hereof (as amended, modified, supplemented or restated from time to time, the “*Credit Agreement*”) between the Debtor and the Secured Party. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Credit Agreement.

...

- (a) all of the Debtor’s Pledged Grant Receipts;
- (b) accounts and Receivables, to the extent any account or Receivable constitutes, relates to or arises from the assets described in subclause (a);
- (c) chattel paper (including all electronic chattel paper and all tangible chattel paper), to the extent any chattel paper constitutes, relates to or arises from the assets described in subclause (a);
- (d) instruments (including promissory notes), to the extent any instrument (including any promissory note) constitutes, relates to or arises from the assets described in subclause (a);
- (e) general intangibles (including payment intangibles), to the extent any general intangible constitutes, relates to or arises from the assets described in subclause (a);
- (f) deposit accounts, to the extent any such deposit account constitutes, relates to or contains the assets described in subclause (a), including without limitation, the deposit accounts identified in Schedule C to the Security Agreement and all other such accounts into which the Debtor’s Pledged Grant Receipts and/or the proceeds of the Loans are deposited from time to time, collectively the “*Pledged Accounts*”);
- (g) investment property (including certificated and uncertificated securities, securities accounts, security entitlements, commodity accounts, and

commodity contracts) to the extent any investment property constitutes, contains, relates to or arises from the assets described in subclause (a);

- (h) cash, monies, personal property, and interests in personal property of the Debtor of any kind or description now held by the Secured Party or at any time hereafter transferred or delivered to, or coming into the possession, custody, or control of, the Secured Party, or any agent or affiliate of the Secured Party, whether expressly as collateral security or for any other purpose (whether for safekeeping, custody, collection or otherwise, but excluding safety deposit boxes or property delivered to the Secured Party as a trustee in trust for third parties) and all dividends and distributions on or other rights in connection with any such property, in each case to the extent constituting or arising from the assets described in subclause (a);
- (i) contract rights, all books and records, supporting evidence and documents relating to any of the above-described property or any Collateral, including, without limitation, computer programs, disks, tapes and related electronic data processing media, and all rights of the Debtor to retrieve the same from third parties, written applications, credit information, account cards, payment records, correspondence, delivery and installation certificates, invoice copies, delivery receipts, notes, and other evidences of indebtedness, insurance certificates and the like, together with all books of account, ledgers, and cabinets in which the same are reflected or maintained;
- (j) additions to, and substitutions and replacements of, any and all of the foregoing;
- (k) all proceeds and products of the foregoing, and all insurance of the foregoing and proceeds thereof; and
- (l) all other rights which are represented by, arise from, or relate to any of the foregoing;

all of the foregoing being herein sometimes referred to as the “*Collateral*,” *provided, that*, for the avoidance of doubt, the Collateral shall exclude the Excluded Collateral. All terms which are used in the Security Agreement which are defined in the Uniform Commercial Code of the State of New York as in effect from time to time (“*UCC*”) shall have the same meanings herein as such terms are defined in the UCC, unless the Security Agreement shall otherwise specifically provide; *provided, that*, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “*UCC*” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions



hereof relating to such perfection, effect of perfection or non-perfection or priority. For purposes of the Security Agreement, the following terms have the meanings set forth below:

*"CASA"* means that certain Collateral Accounts and Security Agreement, dated as of July 8, 2024, by and among the Debtor, the RRIF Lender and The Bank of New York Mellon, as collateral agent and securities intermediary, as supplemented, amended or restated from time to time in accordance with the terms thereof.

*"CIG Program"* means the Capital Investment Grants Program, 49 U.S.C. 5309.

*"Excluded Collateral"* means the Collateral (as defined in the CASA).

*"FFGA"* means that certain Full Funding Grant Agreement (Hudson Tunnel Project, Project No. NY-2024-015-00), dated July 8, 2024 between the Debtor and the United States of America, acting through the FTA, as the same may hereafter be amended and supplemented from time to time in accordance with the terms thereof and the terms of the Credit Agreement which provides for federal financial assistance in the form of Pledged Grant Receipts for the Hudson Tunnel Project in the anticipated amount of \$6,880,000,000.

*"FTA"* means the U.S. Department of Transportation, Federal Transit Administration.

*"Loan"* and *"Loans"* has the meaning set forth in the Credit Agreement.

*"Pledged Grant Receipts"* mean the Section 5309 Funds and the federal grant receipts relating to the CIG Program received by or to be received by the Debtor from the FTA under the FFGA.

*"Receivables"* means all rights to the payment of a monetary obligation, whether or not earned by performance, and whether evidenced by an account, chattel paper, instrument, general intangible or otherwise.

*"RRIF Lender"* means the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau.

*"Section 5309 Funds"* means the Debtor's share of FTA Section 5309 (49 U.S.C. s. 5309) funds under the Capital Investment Grants Program, 49 U.S.C. 5309.

**#0724-04: AUTHORIZATION TO ENTER INTO, EXECUTE, AND AMEND COLLATERAL ACCOUNTS AND SECURITY AGREEMENT WITH THE BANK OF NEW YORK MELLON AND DELEGATE AUTHORITY TO CHIEF EXECUTIVE OFFICER IN CONNECTION THEREWITH ON BEHALF OF THE GATEWAY DEVELOPMENT COMMISSION**

To help ensure the functionality of intercity and commuter rail infrastructure between New Jersey and New York and throughout the Northeast Corridor, the State of New Jersey ("**New Jersey**") and the State of New York ("**New York**") created the Gateway Development Commission ("**GDC**") through the enactment of parallel legislation by each state codified as the Gateway Development Commission Act (2019 N.Y. Laws, Ch. 108 and N.J.S.A. 32:36-1, et seq.) (collectively, the "**GDC Act**").

The GDC Act empowers GDC to "enter into, execute and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power of the Commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, with any local government thereof, with any agency, instrumentality, department, commission or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them." 2019 N.Y. Laws, Ch. 108, Section 2(7)(e); N.J.S.A. 32:36-8(e).

The GDC Act also empowers GDC to "enter into loan agreements and otherwise borrow funds or incur indebtedness or other future payment obligations for any corporate purpose, including to effectuate full funding" of the Hudson Tunnel Project ("**HTP**"). 2019 N.Y. Laws, Ch. 108, Section 2(7)(j) and N.J.S.A. 32:36-8.j.

By Resolution 0224-08, the Board approved GDC's entry into the following agreements with each respective partner to support the funding of the HTP, and each such agreement was subsequently executed by each respective partner and GDC: (i) the HTP RRIF Loan Funding Agreement, dated April 8, 2024, between GDC and the Port Authority of New York and New Jersey ("**PANYNJ**"), (ii) the HTP Funding Agreement (RRIF Loan), dated March 31, 2024, between GDC and NJ Transit Corporation ("**NJ TRANSIT**"), and (iii) the Service Contract, dated March 31, 2024, between GDC and New York (each, as amended, a "**RRIF Local Funding Agreement**" and, collectively, the "**RRIF Local Funding Agreements**").

To facilitate the funding of the HTP, each RRIF Local Funding Agreement will support, through back-to-back payments made thereunder, a separate loan agreement between GDC and the United States Department of Transportation ("**USDOT**"), an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau ("**BAB**") under the Railroad Rehabilitation and Improvement Financing ("**RRIF**") program administered by the

Adopted - 7/2/24

USDOT (each a “**RRIF Loan Agreement**” and, collectively, the “**RRIF Loan Agreements**”). As a condition precedent to the effectiveness of each RRIF Loan Agreement, USDOT will utilize a Collateral Accounts and Security Agreement (“**CASA**”), by and among USDOT, GDC and the Collateral Agent (as defined herein).

In April of 2024, GDC issued a federally compliant Request for Proposal No. GDC-24-022-OP (“**RFP**”) for Collateral Agent Services in connection with the RRIF Loan Agreements. In May of 2024, GDC completed its review of the proposals, and The Bank of New York Mellon was selected by GDC to provide collateral agent services (“**Collateral Agent**”) under the CASA. The CASA is attached to this Resolution as Exhibit A.

The CASA must be entered into at the time of entry into the RRIF Loan Agreements. The entry into the RRIF Loan Agreements and the CASA are anticipated to occur shortly after this Board meeting.

Section 3.06 of the GDC Bylaws provides that “[t]he Board may delegate in whole or in part any power, authority, discretion or obligation to any Officer, in each case to the extent to which the Board deems appropriate.”

To enable the efficient and timely effectuation of the HTP, it is necessary to delegate to the Chief Executive Officer the authority to take categories of actions in addition to those delegated in the Bylaws.

Pursuant to the foregoing report, the following resolution was adopted, with Co-Chair Glen, Co-Chair Grewal-Virk, Vice Chair Coscia, Commissioner Barbas, Commissioner Bauer, Commissioner Rosen and Commissioner Dominguez voting in favor:

**RESOLVED**, that the GDC Chief Executive Officer is authorized to enter into the CASA in a form substantially consistent with that attached hereto as Exhibit A.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions consistent with this Resolution and is directed to finalize the terms of the CASA and make, execute, and deliver in the name of and on behalf of GDC, the CASA once finalized, and to take all other steps necessary to comply with the terms and conditions of the CASA once executed.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions to make, execute, and deliver in the name of and on behalf of GDC amendments to the CASA as may be necessary or required for the delivery of the HTP, subject to the concurrence of USDOT, and the Collateral Agent, and consultation with PANYNJ, NJ TRANSIT, New Jersey Turnpike Authority, the Treasurer of the State of New Jersey and/or the State of New York, as applicable, on the content of such amendments, and to take all other steps necessary to comply with the terms and conditions of amendments to the CASA.

**RESOLVED**, that the GDC Chief Executive Officer, General Counsel, Chief Financial Officer, and Chief Administrative Officer are each authorized to take any and all actions consistent with the CASA, (including the filing of UCC-1 financing statements in the appropriate offices in New York and New Jersey), and make, execute, and deliver in the name of and on behalf of GDC any other documents and certifications as may be necessary or required in order to execute and deliver the CASA, and any action taken by GDC to file and other actions taken as necessary to create the security interests contemplated in the CASA, including the filing of UCC-1 financing statements in the appropriate offices in New York and New Jersey which shall be and hereby are ratified.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to approve, create, amend, manage, and administer the CASA on behalf of GDC upon such terms as the Chief Executive Officer may deem proper, and to enter into or execute any such agreements or other documents or certifications on behalf of GDC as may be necessary or required in connection with the establishment and maintenance of the CASA.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to delegate, in writing, the authority to authorize, approve, create, amend and manage any aspect of the CASA and execute such documents as may be required to other officers or employees of GDC provided that the GDC Chief Executive Officer provides notice in writing to the Co-Chairs and Vice Chair of the Board of such delegation.

**RESOLVED**, that the GDC Chief Executive Officer or designee may enter into and execute any agreements and other documents on behalf of GDC as may be required by the Collateral Agent or otherwise in connection with the CASA in their discretion.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to settle all claims by or against GDC arising out of the CASA where the total payment or amount of the claim is not in excess of \$500,000. Claims against GDC shall include claims against individuals for which GDC would be responsible under Article VII of GDC's Bylaws ("Defense and Indemnification of Individuals") provided, however, that in the case of claims against individuals for which GDC would be responsible under said Article VII which are covered by insurance purchased by or on behalf of such individuals, GDC shall pay such claims only to the extent that they are in excess of the amount for which insurance carriers are responsible.

**RESOLVED**, that the GDC Chief Executive Officer will report back to the GDC Board of Commissioners upon entry into the CASA, and execution of all documents related to the CASA or any amendments thereto.

Adopted - 7/2/24

**EXHIBIT A**

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**COLLATERAL ACCOUNTS AND SECURITY AGREEMENT**

Dated as of July [8], 2024

by and among

**GATEWAY DEVELOPMENT COMMISSION**

as the Borrower

**UNITED STATES DEPARTMENT OF TRANSPORTATION,  
an agency of the United States of America acting by and through the Executive Director of  
the Build America Bureau**

as the RRIF Lender

and

**THE BANK OF NEW YORK MELLON,  
a bank organized under the laws of the state of New York,**

as the Collateral Agent and the Securities Intermediary

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## COLLATERAL ACCOUNTS AND SECURITY AGREEMENT

This COLLATERAL ACCOUNTS AND SECURITY AGREEMENT (including any supplements and amendments hereafter, this “**Agreement**”), dated as of July [8], 2024 is made by and among the Gateway Development Commission, a bi-state commission and a body corporate and politic established by the State of New Jersey and the State of New York (the “**Borrower**”), the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, in its capacity as lender under the RRIF Loan Agreements (defined below) (including its successors and assigns, the “**RRIF Lender**”), The Bank of New York Mellon, a bank organized under the laws of the state of New York, in its capacity as collateral agent on behalf of itself and the RRIF Lender (in such capacity (including its successors and permitted assigns), the “**Collateral Agent**”), and The Bank of New York Mellon, a bank organized under the laws of the state of New York, in its capacity as Securities Intermediary (as defined herein).

### RECITALS

A. The Borrower deems it necessary and appropriate to provide for (a) the financing, construction and equipping of a new two-tube rail tunnel connecting the State of New York and the State of New Jersey, as part of the Northeast Rail Corridor, and (b) the financing, renovation and rehabilitation of the existing North River Tunnels, along with certain ancillary projects, (a) and (b) together commonly known as the Hudson Tunnel Project (as more fully defined in each RRIF Loan Agreement, the “**Project**”).

B. Pursuant to (i) that certain RRIF Loan Agreement (New York Funding Agreement) between the Borrower and the RRIF Lender, dated as of the date hereof (the “**RRIF Loan Agreement (New York Funding Agreement)**”), (ii) that certain RRIF Loan Agreement (NJT Funding Agreement) between the Borrower and the RRIF Lender, dated as of the date hereof (the “**RRIF Loan Agreement (NJT Funding Agreement)**”), and (iii) that certain RRIF Loan Agreement (Port Authority Funding Agreement) between the Borrower and the RRIF Lender, dated as of the date hereof (the “**RRIF Loan Agreement (Port Authority Funding Agreement)**”), and together with the RRIF Loan Agreement (New York Funding Agreement) and the RRIF Loan Agreement (NJT Funding Agreement), the “**RRIF Loan Agreements**”), the RRIF Lender has agreed to make loans to the Borrower on the terms and subject to the conditions set forth in each of the RRIF Loan Agreements, the proceeds of which will be used to finance a portion of the costs of the Project.

C. The Borrower’s debt service obligations under (i) the RRIF Loan Agreement (New York Funding Agreement) will be supported by all payments (the “**New York Contract Payments**”) made by the State of New York to or for the benefit of the Borrower under that certain Service Contract, dated as of March 31, 2024, by and between the Borrower and the State of New York (the “**New York Funding Agreement**”), (ii) the RRIF Loan Agreement (NJT Funding Agreement) will be supported by all payments (the “**New Jersey Contract Payments**”) made by the New Jersey Transit Corporation to or for the benefit of the Borrower under that certain Hudson Tunnel Funding Agreement (RRIF Loan), dated as of March 31, 2024, by and between the Borrower and the New Jersey Transit Corporation (the “**NJT**”).

**Funding Agreement**”), and (iii) the RRIF Loan Agreement (Port Authority Funding Agreement) will be supported by all payments (the “**Port Authority Contract Payments**”) made by the Port Authority of New York and New Jersey to or for the benefit of the Borrower under that certain Hudson Tunnel Project RRIF Loan Funding Agreement, dated as of April 8, 2024, by and between the Borrower and the Port Authority of New York and New Jersey (the “**Port Authority Funding Agreement**” and, together with the New York Funding Agreement and NJT Funding Agreement, the “**Funding Agreements**”).

D. The RRIF Lender wishes to appoint The Bank of New York Mellon, a bank organized under the laws of the state of New York, as Collateral Agent and Securities Intermediary under this Agreement, and the Collateral Agent wishes to set forth the terms on which it shall accept such appointment and shall undertake to perform certain duties on behalf of the RRIF Lender with respect thereto.

E. In consideration of the extensions of credit under the RRIF Loan Agreements, and other accommodations of the RRIF Lender under the RRIF Loan Agreements, respectively, the Borrower has agreed to secure its obligations under the Finance Documents as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

## **ARTICLE I GRANT OF LIEN ON COLLATERAL**

### **Section 1.01 Grant of Lien.**

(a) In order to secure the prompt, irrevocable and indefeasible payment and performance in full when due of the RRIF Obligations (New York Funding Agreement) (whether now existing or hereafter arising and howsoever evidenced, and whether at stated maturity or otherwise), the Borrower hereby pledges and grants to the Collateral Agent, for the benefit of the RRIF Lender, a first priority and continuing Lien on and security interest in all right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to all New York Collateral.

(b) In order to secure the prompt, irrevocable and indefeasible payment and performance in full when due of the RRIF Obligations (NJT Funding Agreement) (whether now existing or hereafter arising and howsoever evidenced, and whether at stated maturity or otherwise), the Borrower hereby pledges and grants to the Collateral Agent, for the benefit of the RRIF Lender, a first priority and continuing Lien on and security interest in all right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to all New Jersey Collateral.

(c) In order to secure the prompt, irrevocable and indefeasible payment and performance in full when due of the RRIF Obligations (Port Authority Funding Agreement) (whether now existing or hereafter arising and howsoever evidenced, and whether at stated maturity or otherwise), the Borrower hereby pledges and grants to the Collateral Agent, for the benefit of the RRIF Lender, a first

priority and continuing Lien on and security interest in all right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to all Port Authority Collateral.

**Section 1.02 Priority of Liens.** The Liens and security interests granted pursuant to Section 1.01 shall be prior in right to any other pledge, Lien or security interest created by the Borrower in any Collateral and shall have priority over any other claims against the Collateral (subject only to Permitted Liens).

**Section 1.03 Preservation of Liens.** The Borrower shall promptly take any and all steps that may be necessary, or that the Collateral Agent may reasonably request (acting on the written instructions of the RRIF Lender) to maintain the validity, perfection and first priority position of the Liens on the Collateral (subject only to Permitted Liens) to enable the Collateral Agent or any designee to exercise and enforce its rights, remedies, powers and privileges under this Agreement with respect to such Liens.

**Section 1.04 Preservation of Collateral.** The Borrower shall defend the right, title and interest of the Borrower in and to the Collateral against the claims of any other Person.

**Section 1.05 No Other Financing Statements.** So long as this Agreement is in effect, the Borrower will not execute or authorize to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) or statements relating to the Collateral, except financing statements filed or to be filed in respect of and covering the security interests granted herein.

## ARTICLE II REPRESENTATIONS AND WARRANTIES; COVENANTS

**Section 2.01 Borrower Representations and Warranties.** The Borrower hereby represents and warrants to the RRIF Lender as follows:

(a) Schedule 1 (as such schedule may be amended or supplemented from time to time) sets forth under the appropriate headings: (1) the full legal name of the Borrower, (2) all other names under which the Borrower currently conducts business, if any, (3) the type of organization the Borrower, (4) the jurisdictions of organization of the Borrower, (5) its organizational identification number, if any, and (6) the jurisdiction where the chief executive office of the Borrower is located;

(b) except as provided in Schedule 1, the Borrower has not changed its name, jurisdiction of organization or chief executive office and has not done business under any other name, in each case, within the past five (5) years;

(c) the Borrower has been duly established and is validly existing as an entity of the type as set forth in Schedule 1 solely under the laws of the jurisdictions as set forth in Schedule 1 and remains duly existing as such;

(d) the Borrower has full power and authority to grant to the Collateral Agent a security interest in the Collateral pursuant to this Agreement and to execute, deliver and perform its obligations under this Agreement;

(e) the filing of the financing statements attached to this Agreement as Exhibit C (*Financing Statements*) in the filing offices set forth in Schedule I (*Borrower Organizational Information*) of this Agreement and the taking of possession or control by the Collateral Agent of such of the Collateral with respect to which a security interest may be perfected only by possession or control has created a valid, perfected and continuing first priority security interest in the Borrower's rights in the Collateral in favor of the Collateral Agent, subject to no other Liens (other than Liens described in, and subject to the terms of, Section 6.06(k) of this Agreement) and entitled to all the rights, remedies and priorities and benefits afforded by the Uniform Commercial Code and all other applicable law as enacted in any relevant jurisdiction;

(f) as of the date hereof, there is no effective financing statement (or similar statement or instrument of registration under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Collateral, other than financing statements filed in favor of the Collateral Agent; and

(g) the Borrower is the legal and beneficial owner of the Collateral free and clear of any lien, claim, option or right of others, except for Permitted Liens.

**Section 2.02 Borrower Covenant.** The Borrower shall not change its chief executive office without the prior written consent of the RRIF Lender.

**Section 2.03 Collateral Agent Representations and Warranties.** The Collateral Agent hereby represents and warrants to the RRIF Lender that the Collateral Agent has a physical office in the United States that engages in a business or other regular activity of maintaining "securities accounts" (as defined in the Hague Securities Convention).

### ARTICLE III COLLATERAL AGENT

**Section 3.01 Appointment.** The Bank of New York Mellon, a bank organized under the laws of the state of New York, is hereby appointed as collateral agent for the benefit of the RRIF Lender with respect to the Liens on the Collateral and the rights and remedies granted pursuant to the Security Documents. The Collateral Agent hereby accepts such appointment and agrees to act as Collateral Agent in the manner contemplated herein and in the Security Documents. The Collateral Agent is hereby authorized and directed to act in strict accordance with the terms of this Agreement (notwithstanding any contrary provision in any other Security Document) with respect to Enforcement Actions or the application of any Collateral or the Proceeds thereof. The Collateral Agent hereby accepts and agrees to, and the Borrower hereby acknowledges and consents to, the foregoing authorization and direction. Any party that shall become a Secured Party after the date hereof pursuant to the terms hereof shall be deemed

to have so acknowledged and consented to such appointment, authorization and direction of the Collateral Agent by the RRIF Lender set forth in this Section 3.01.

### **Section 3.02 Duties and Responsibilities.**

(a) Subject to the terms hereof, the Collateral Agent agrees, for the benefit of the RRIF Lender, to administer and enforce this Agreement and any other Security Documents to which it is a party as Collateral Agent, and, among other remedies, to foreclose upon, collect and dispose of the Collateral and to apply the Proceeds therefrom, for the benefit of the RRIF Lender, as provided herein, and otherwise to perform its duties and obligations as the Collateral Agent hereunder and thereunder in accordance with the terms hereof and thereof; provided, however, that the Collateral Agent shall have no duties or responsibilities except those expressly set forth herein or in any other Security Documents to which it is a party, and no implied covenants or obligations, fiduciary or otherwise, shall be read into this Agreement or any such other Security Documents against the Collateral Agent.

(b) Notwithstanding anything contained herein to the contrary, the Collateral Agent shall not be required to exercise any discretion or take any discretionary action but shall only be required to act or refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the RRIF Lender, and such instructions shall be binding upon the Collateral Agent and the RRIF Lender; provided, however, that the Collateral Agent shall not be required to take any action which is contrary to any provision hereof or of the other Finance Documents to which the Collateral Agent is a party or applicable Law.

(c) Notwithstanding any other provision of the Security Documents, in no event shall the Collateral Agent be required to foreclose on, or take possession of, any Collateral, if, in the reasonable judgment of the Collateral Agent, such action would be in violation of any applicable Law, rule or regulation pertaining thereto, or if the Collateral Agent reasonably believes that such action would result in the incurrence of liability by the Collateral Agent for which it is not fully indemnified by the Borrower pursuant to Sections 3.10 and 8.02 hereof.

(d) The Collateral Agent shall not be responsible to the RRIF Lender for (i) any recitals, statements, representations or warranties by the Borrower or the RRIF Lender (other than its own) contained in this Agreement or the other Finance Documents, or any certificate or other document delivered by the Borrower or the RRIF Lender thereunder, (ii) the value, validity, effectiveness, genuineness, enforceability (other than as to the Collateral Agent with respect to such documents to which the Collateral Agent is a party) or sufficiency of this Agreement or any other document referred to or provided for herein or therein or of the Collateral held by the Collateral Agent under the Security Documents, (iii) the performance or observance by the Borrower or RRIF Lender (other than as to itself) of any of their respective agreements contained herein or therein, nor shall the Collateral Agent be liable to the RRIF Lender because of the invalidity or unenforceability of any provisions of this Agreement (other than as to itself) or (iv) the validity, perfection, priority or enforceability of the Liens on any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its

part hereunder (except to the extent such action or omission constitutes negligence, bad faith or willful misconduct on the part of the Collateral Agent), the validity of the title of the Borrower to the Collateral owned by the Borrower, insuring the Collateral or the payment of Taxes, charges, assessments on the Collateral or otherwise as to the maintenance of the Collateral.

(e) Except when a mandatory action is required by the Collateral Agent under the Security Documents, the Collateral Agent may at any time request written instructions from the RRIF Lender as to a course of action to be taken by it hereunder and under any of the Security Documents or in connection herewith and therewith or any other matters relating hereto and thereto. The RRIF Lender shall promptly reply to any such request and the Collateral Agent shall be fully justified in failing or refusing to take any such action if it shall not have received such written instruction of the RRIF Lender. This provision is intended solely for the benefit of the Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any other party hereto.

(f) None of the Collateral Agent, the Securities Intermediary or any of their directors, officers, employees or agents shall be liable or responsible to the RRIF Lender for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own negligence, bad faith or willful misconduct.

**Section 3.03 Authorization.** The Collateral Agent is hereby authorized to (a) execute, deliver, and perform in such capacity under this Agreement and each other Finance Document to which the Collateral Agent is or is intended to be a party, (b) exercise and enforce (directly or through a designee) any and all rights, powers and remedies provided to the Collateral Agent under this Agreement, any other Finance Document to which the Collateral Agent is a party or is a third party beneficiary, any applicable Law, or any other document, instrument, or agreement to which the Collateral Agent is a party or a third party beneficiary, in each case in accordance with the terms thereof, and (c) take any other action under and in accordance with this Agreement and any other Finance Document to which the Collateral Agent is a party reasonably incidental to the foregoing or in order to facilitate the issuance of new RRIF Obligations permitted under, and in accordance with, each of the Finance Documents, including executing documents to which it is intended to be a party, and amendments, modifications and supplements to the Finance Documents to which it is a party, in each case, that do not adversely affect the rights of the RRIF Lender or the Liens on the Collateral held for the benefit of the RRIF Lender. Notwithstanding the foregoing, the Collateral Agent shall not commence an Enforcement Action except in accordance with written instructions given by the RRIF Lender. All decisions with respect to the type of Enforcement Action which is to be commenced shall be made by, and all actions with respect to prosecution and settlement of such Enforcement Action shall require the written consent of, the RRIF Lender, and the Collateral Agent shall not be required to take any Enforcement Action in the absence of any such written consent. The Collateral Agent shall pursue, and use all commercially reasonable efforts in connection with, the prosecution of any Enforcement Action that the Collateral Agent is so authorized or directed to initiate pursuant to this Agreement, subject to the terms of this Agreement. The Collateral Agent shall deliver copies of all notices it receives on behalf of the RRIF Lender or in connection with the Finance Documents or the Project to the RRIF Lender promptly upon receipt.



**Section 3.04 Perfection; Administrative Actions.** The Collateral Agent shall take such action as it deems necessary or advisable to continue the perfection of the Liens on the Collateral held for the benefit of the RRIF Lender, subject to the limitations set forth herein, as instructed by the RRIF Lender.

(a) Without limitation to Section 3.03, the Borrower authorizes the filing of such continuation statements and financing statement amendments in such offices as are or shall be necessary or as the Collateral Agent acting at the direction of the RRIF Lender may determine to be appropriate or advisable to preserve the priority of the Liens granted by this Agreement in any and all of the Collateral, to preserve the validity, perfection or priority of the Liens granted by this Agreement in any and all of the Collateral or to enable the Collateral Agent (or its designated agent) to exercise its remedies, rights, powers and privileges under this Agreement. The Collateral Agent shall file such continuation statements and financing statement amendments, as directed by the RRIF Lender. Concurrently with the execution and delivery of this Agreement, the Borrower shall (a) cooperate with the Collateral Agent in obtaining, and take such other actions in order for the Collateral Agent to obtain, Control with respect to all Project Accounts included in the Collateral, including (to the extent requested by the Collateral Agent at the direction of the RRIF Lender) (i) in the case of any such Project Account for which the Collateral Agent is not, from time to time, the bank at which that Project Account is maintained, causing such bank to enter into an agreement reasonably satisfactory to the Collateral Agent and (ii) in the case of any security entitlement, causing the relevant Securities Intermediary to enter into an agreement in such form as reasonably satisfactory to the Collateral Agent and (b) take all such other actions, and authenticate or sign and file or record such other records or instruments, as are necessary or as the Collateral Agent acting at the direction of the RRIF Lender may request to perfect and establish the priority of the Liens granted by this Agreement in any and all of the Collateral or to enable the Collateral Agent (or its designated agent) to exercise its remedies, rights, powers and privileges under this Agreement. For the sake of clarity, Borrower has filed UCC-1 financing statements for the benefit of the Collateral Agent.

(b) The Collateral Agent shall not release any of the Collateral held by the Collateral Agent for the benefit of the RRIF Lender, except upon payment in full in cash of the applicable RRIF Obligations. Upon the written request by the Collateral Agent or the Borrower at any time, the RRIF Lender (acting in accordance with the terms of this Agreement) will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section. At the Borrower's reasonable expense, the Collateral Agent will take all actions necessary, including executing documents to which it is intended to be a party, and amendments, modifications and supplements to such documents to which it is a party, in each case, to preserve, protect and accept additional Collateral for the benefit of the RRIF Lender.

**Section 3.05 Determination of Amounts of RRIF Obligations.** Upon the written request of the Collateral Agent or the Borrower, the RRIF Lender shall promptly deliver to the Collateral Agent a certificate, dated the date of delivery thereof and signed by the RRIF Lender, as to (a) the principal amount of the RRIF Obligations then outstanding held by the RRIF Lender (provided, such amount shall be equal to the aggregate principal amount of the then-outstanding RRIF Obligations), (b) in the case of any such certificate being delivered in contemplation of the application of amounts received by the

Collateral Agent in respect of the Collateral pursuant to Article VII hereof, the amount of interest on the RRIF Obligations owing and any other amounts in respect of the RRIF Obligations owing to the RRIF Lender, as the case may be (in the case of any such other amounts, accompanied by appropriate evidence thereof), and/or (c) in the event that any of the RRIF Obligations shall have become or been declared to be due and payable (whether at stated maturity, by required prepayment, redemption, declaration, acceleration, demand or otherwise), the principal amount of such RRIF Obligations then due and payable to the RRIF Lender, as the case may be (to the extent that such information is different from that provided in clause (b) above). The Collateral Agent shall be entitled to rely on certifications received by it in accordance with the above for the purposes of determining the amount of the RRIF Obligations then outstanding held by the RRIF Lender; provided, that in the absence of the Collateral Agent's receipt of any certification requested by it pursuant to this sentence, the Collateral Agent shall be entitled (but not obligated) to take such action if the Collateral Agent shall have sufficient knowledge (acting reasonably) to make any determination required to be made in connection with such action. For purposes of this Section 3.05, calculations of RRIF Obligations shall be separated into RRIF Obligations (NJT Funding Agreement), RRIF Obligations (New York Funding Agreement) and RRIF Obligations (Port Authority Funding Agreement).

**Section 3.06 Employment of Agents.** The Collateral Agent may, at the Borrower's reasonable cost and expense, employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Collateral Agent's negligence, bad faith or willful misconduct in employing or retaining, or relying on, any such counsel, accountants, appraisers, experts or advisors, the Collateral Agent may act and rely and shall be fully protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the Collateral Agent, in relation to any matter arising in the administration hereof or in the determination or discharging of its rights and duties hereunder, and shall not be responsible to Borrower for any act or omission on the part of any of them or for acting or relying in good faith on the opinion, advice or information obtained from such expert or advisor. In addition, the Collateral Agent shall not be liable to Borrower or the RRIF Lender for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians as it may reasonably require for the purpose of discharging its ministerial duties hereunder, and the Collateral Agent shall not be liable to Borrower or the RRIF Lender hereunder with regards to such third party nominees, correspondents, designees, agents, subagents or subcustodians for any acts or omissions of such persons except to the extent of its negligence, bad faith or willful misconduct in nominating, appointing, directing or instructing such Persons and so long as such Persons are permitted to act hereunder.

**Section 3.07 Reliance of Collateral Agent.** In connection with the performance of its duties hereunder, the Collateral Agent shall be entitled to rely conclusively upon, and shall be fully protected in acting or refraining from acting in accordance with, any written certification, notice, instrument, opinion, request, consent, order, approval, direction or other written communication (including any thereof by electronic communication) of or from the RRIF Lender (including, but not limited to, instructions under Section 3.02) to the extent not in violation of the terms hereof or of the other Finance Documents, which

the Collateral Agent in good faith reasonably believes to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and it shall be entitled to rely conclusively upon the due execution, validity and effectiveness, and the truth, correctness and acceptability of, any provisions contained therein. The Collateral Agent shall not have any responsibility hereunder to make any investigation into the facts or matters stated in any notice, certificate, instrument, demand, request, direction, instruction, or other communication furnished to it. Whenever this Agreement (or any other Finance Document) specifies that any instruction, direction or consent by the RRIF Lender is to be given in accordance with the terms of this Agreement, the Collateral Agent shall be entitled to rely upon any such instruction, direction or consent by the RRIF Lender (which instruction, direction or consent need not state that it is given in accordance with the terms of this Agreement), and the Collateral Agent may presume without investigation that any such instruction, direction or consent by the RRIF Lender has been given in accordance with the terms of this Agreement and the other applicable Finance Documents. The RRIF Lender shall give any instruction, direction or consent required to be given by it to the Collateral Agent in accordance with the terms of this Agreement.

**Section 3.08 Non-Reliance on Collateral Agent.** The RRIF Lender hereby expressly acknowledges that neither the Collateral Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Collateral Agent (other than any explicit written representation or warranty made by the Collateral Agent) hereafter taken shall be deemed to constitute any representation or warranty by the Collateral Agent to the RRIF Lender or the Borrower. Except for any notices, reports and other documents expressly required to be maintained by the Collateral Agent or furnished to the RRIF Lender by the Collateral Agent hereunder, the Collateral Agent shall not have any duty or responsibility to provide the RRIF Lender with any credit or other information concerning the business, operations, property, condition (financial or other), prospects or creditworthiness of the Borrower. Except to the extent it has made or renewed any obligations as permitted under Section 3.09, The Bank of New York Mellon is entering into this Agreement and any other Security Documents solely in its capacity as Collateral Agent and as Securities Intermediary and not in its individual capacity and in no case shall The Bank of New York Mellon (or any Person acting as successor Collateral Agent under this Agreement) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations of the Borrower (as applicable) hereunder or thereunder, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under such party. This Section 3.08 shall survive the payment of all RRIF Obligations. Except as provided in Section 3.12(c) hereof, the Collateral Agent shall have no obligation and shall incur no obligation for its failure to monitor or verify the filing of financing statements (or amendments or continuations thereto) and the information contained therein.

**Section 3.09 Collateral Agent in Individual Capacity.** Subject to the RRIF Loan Agreements, the Collateral Agent and its Affiliates may make loans to, issue letters of credit in favor of, accept deposits from and generally engage in any kind of business with the Borrower and its Affiliates as though the Collateral Agent were not the Collateral Agent hereunder and under any Security Documents.

**Section 3.10 Collateral Agent Under No Obligation.** None of the provisions of this Agreement or any other Security Documents shall be construed to require the Collateral Agent to expend

or risk its own funds or otherwise to incur any personal liability, financial or otherwise, in the performance of any of its duties hereunder or thereunder. The Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in it by the Security Documents unless the Collateral Agent shall have been offered and accepted security or indemnity from the Borrower reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in exercising such rights or powers (including interest thereon from the time incurred until reimbursed); provided, however, that for purposes of this Section 3.10, the indemnification provided to the Collateral Agent by the Borrower pursuant to Section 8.02 is hereby acknowledged as acceptable.

**Section 3.11 Resignation and Removal; Successor Collateral Agent; Individual Collateral Agent.**

(a) Subject to the appointment and acceptance of a successor Collateral Agent as provided below, the Collateral Agent may resign at any time by giving at least ninety (90) days' prior written notice thereof to RRIF Lender and the Borrower, and the Collateral Agent may be removed at any time with or without cause by the RRIF Lender (acting in accordance with the terms of this Agreement and the other applicable Finance Documents) upon ninety (90) days' written notice thereof to the Collateral Agent and the Borrower unless a shorter period of notice is required by the RRIF Lender. Upon any such resignation or removal, the RRIF Lender (acting in accordance with the terms of this Agreement) shall have the right to cause the Borrower to appoint a successor Collateral Agent acceptable to the RRIF Lender, which replacement Collateral Agent, so long as no Event of Default has occurred and is continuing, shall also be reasonably acceptable to the Borrower; provided, that if a successor Collateral Agent has not been appointed within sixty (60) days of any such notice, the Collateral Agent shall have the right to petition a court of competent jurisdiction to designate such successor Collateral Agent.

(b) If no successor Collateral Agent shall have been so appointed by the RRIF Lender within thirty (30) days after the retiring Collateral Agent's giving of notice of resignation or the removal of the retiring Collateral Agent by the RRIF Lender in accordance with clause (a) above, then the retiring Collateral Agent may, on behalf of the RRIF Lender, apply, at the reasonable expense of the Borrower, to a court of competent jurisdiction (with notice to the RRIF Lender and the Borrower) for the appointment of a successor Collateral Agent. In all such cases, the successor Collateral Agent shall (i) be a bank organized under the laws of the United States of America or any state thereof that has an office in the State of New York and which agrees to administer the Collateral in accordance with the terms hereof and of any other Security Documents and the unsecured long-term debt of which shall be rated no lower than 'A', 'A2' or the equivalent rating from each Rating Agency that provides a rating on such bank's unsecured long-term debt, (ii) have a total capital stock and unimpaired surplus of not less than \$500,000,000, and (iii) so long as no Event of Default has occurred and is continuing, be acceptable to the Borrower. If at any time the Collateral Agent shall fail to meet such requirements and qualifications set forth in the sentence above, the Collateral Agent shall promptly provide notice of such failure to the Borrower and the RRIF Lender. The Bank of New York Mellon hereby represents and confirms that it meets the qualifications provided in the second sentence of this clause (b). Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, obligations

and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and responsibilities hereunder arising thereafter. After any retiring Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Agreement (including Sections 3.14, 8.01 and 8.02) shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent. For the avoidance of doubt, no resignation or removal pursuant to this Section 3.11 shall be effective until (i) a successor for the Collateral Agent has been appointed in accordance with (and subject to) the provisions of this Section 3.11, (ii) the resigning or removed Collateral Agent has transferred to its successor all of its rights and obligations in its capacity as the Collateral Agent under this Agreement and the other Finance Documents, (iii) the resigning or removed Collateral Agent has assigned, transferred or delivered, as applicable, all Collateral held by it to the successor Collateral Agent, together with all records, instruments and other documents necessary or appropriate to execute such assignment, transfer or delivery to the successor Collateral Agent, (iv) the resigning or removed Collateral Agent has executed and delivered to the successor Collateral Agent the filed amendments to the applicable financing statements, and has taken other actions as may be necessary or appropriate, in connection with the assignment, transfer or delivery to the successor Collateral Agent of the Liens created under the Security Documents, and (v) the successor Collateral Agent has executed and delivered an agreement to be bound by the terms of this Agreement and to perform all duties required of the Collateral Agent hereunder and thereunder.

**Section 3.12 Books and Records; Reports.**

(a) The Collateral Agent shall at all times keep, or cause to be kept, proper books of record and accounts in which complete and accurate entries shall be made of all transactions relating to the RRIF Obligations and all Project Accounts established pursuant to this Agreement. Such books of record and accounts shall be available for inspection by the RRIF Lender or the Borrower, or their respective agents or representatives duly authorized in writing, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

(b) Within fifteen (15) days after the end of each month, the Collateral Agent shall furnish to the RRIF Lender or relevant representatives thereof and the Borrower, a report (which may be in the form of the customary account statements of the Collateral Agent) that shall set forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts during such month. If available from the Collateral Agent, the Collateral Agent shall provide electronic statements upon request of the Borrower.

(c) Within sixty (60) days after the end of each calendar year, the Collateral Agent shall furnish to the RRIF Lender or relevant representatives thereof and the Borrower or its representative, a report (which may be in the form of the customary account statements of the Collateral Agent) setting forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts during the preceding year. The Collateral Agent shall provide electronic statements upon request of the Borrower.

(d) The Collateral Agent shall maintain records of all receipts, disbursements and investments of funds with respect to the Project Accounts until the fifth (5th) anniversary of the date on which all of the RRIF Obligations shall have been paid in full.

(e) On or prior to the date that is six (6) months prior to the expiration date of any UCC financing statement that has been filed with respect to the Collateral for which Collateral Agent is secured party, the Collateral Agent shall provide RRIF Lender or relevant representatives thereof and the Borrower notice of the impending expiration date. The Borrower shall provide the Collateral Agent and the RRIF Lender or relevant representatives thereof evidence that the required continuation statement has been properly and timely filed promptly following such filing. The Borrower authorizes the Collateral Agent and the RRIF Lender, at any time and from time to time, to file or record financing statements, amendments thereto, and other filing or recording documents or instruments with respect to any Collateral in such form and in such offices as the Collateral Agent or the RRIF Lender reasonably determines appropriate to perfect the security interests of the Agent under this Agreement. The Collateral Agent shall file or record such continuation statements and financing statement amendments as directed by the RRIF Lender. However, the Collateral Agent shall not have a duty to file UCC-1 financing statements. This clause (e) is not intended to modify the responsibility of, the liability of, or provide a defense to, the Borrower under any Finance Document with respect to the filing of continuation statements or the maintenance of the Collateral Agent's perfected security interest in the Collateral with the priority contemplated by the Finance Documents.

**Section 3.13 No Consequential Damages.** In no event shall the Collateral Agent or the Securities Intermediary be liable to Borrower or the RRIF Lender under or in connection with the Finance Documents for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including, but not limited to, lost profits, whether or not foreseeable, even if the Collateral Agent and/or Securities Intermediary has been advised of the possibility thereof and regardless of the form of action in which such damages are sought; provided, that nothing herein shall expand the Borrower's indemnification obligations as provided in Section 8.02.

**Section 3.14 Reserved.**

**Section 3.15 Force Majeure.** In no event shall the Collateral Agent be responsible or liable to the Borrower or the RRIF Lender 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 strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, epidemics, pandemics, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services not within the Collateral Agent's control, the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the Collateral Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**Section 3.16 Additional Protections.** The rights, privileges, protections and benefits given to the Collateral Agent or the Securities Intermediary, as the case may be, including its rights to be

indemnified, are extended to, and shall be enforceable by, each agent, custodian and other Person employed to act hereunder by the Collateral Agent or the Securities Intermediary, as the case may be to the extent permitted to be so employed in accordance with the terms hereof; provided, however, that all such rights, privileges, protections and benefits are subject to the same limits and conditions imposed upon the Collateral Agent or the Securities Intermediary, as the case may be.

**Section 3.17 Merger of the Collateral Agent.** Any corporation or company into which the Collateral Agent shall be merged, or with which it shall be consolidated, or any corporation or company resulting from any merger or consolidation to which the Collateral Agent shall be a party, shall be the Collateral Agent under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, provided, that such resulting corporation or company shall meet the requirements of Section 3.11(b). Upon the occurrence of any such event the Collateral Agent shall promptly provide written notice thereof to the RRIF Lender and the Borrower. The successor Collateral Agent shall execute, deliver and file an amendment to the applicable financing statements if information related to the Collateral Agent noted on such financing statements has changed as a result of such merger or consolidation.

**Section 3.18 Transfer to an Affiliate.** In addition to any rights it may have under Section 3.17 hereof or under any other provision of this Agreement or any other Security Document, each of the Collateral Agent and the Securities Intermediary may assign or transfer its rights under this Agreement and any other Security Documents to any Affiliate that meets the requirements of Section 3.11(b) subject to the prior written consent of the Borrower (so long as no Event of Default has occurred and is continuing) and the RRIF Lender.

#### **ARTICLE IV BORROWER REMAINS LIABLE**

Anything herein to the contrary notwithstanding, (a) the Borrower shall remain liable under its contracts and agreements (including the Finance Documents to which it is a party) to its respective counterparties to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Collateral Agent of any of the rights hereunder shall not release the Borrower from any of its duties or obligations to its respective counterparties under its contracts and agreements, and (c) neither the Collateral Agent nor the RRIF Lender shall have any obligation or liability to the respective counterparties under the contracts and agreements of the Borrower to which the Collateral Agent or the RRIF Lender is not a party solely by reason of this Agreement, nor shall the Collateral Agent or the RRIF Lender be obligated to perform any of the obligations or duties of the Borrower thereunder or to take any action to collect or enforce any claim for payment assigned thereunder. Notwithstanding the foregoing, if the Borrower fails to perform any agreement or obligation of the Borrower contained herein relating to the perfection or preservation of the Collateral, the Collateral Agent or the RRIF Lender may (but shall not be obligated to) itself perform, or cause performance of, such agreement or obligation, and the reasonable and documented expenses of the Collateral Agent and the RRIF Lender incurred in connection therewith shall be payable by the Borrower under Article VIII hereof.

**ARTICLE V  
REASONABLE CARE**

The powers conferred on the Collateral Agent hereunder are being conferred solely to protect its interest in the Collateral for the benefit of the RRIF Lender and shall not impose any duty upon it to exercise any such powers unless otherwise expressly provided. Except for the safe custody and preservation of the Collateral in its possession, the accounting for monies actually received, transferred or disbursed by it hereunder, the Collateral Agent shall have no other duty as to the Collateral, whether or not the Collateral Agent or the RRIF Lender has or is deemed to have knowledge of any matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to the Collateral. The Collateral Agent hereby agrees to exercise reasonable care in respect of the custody and preservation of the Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords property that it customarily holds in the capacity of collateral agent.

**ARTICLE VI  
THE PROJECT ACCOUNTS**

**Section 6.01 Establishment of Project Accounts**

(a) As of the date hereof, the Borrower has established and created the accounts identified below with the Securities Intermediary, each in the name of the Borrower (collectively, each such account, including, in each case, any sub-accounts established and created from time to time, collectively the “**Project Accounts**”):

(i) the account at The Bank of New York Mellon with the account number [REDACTED] (the “**NY RRIF Account**”)

(ii) the account at The Bank of New York Mellon with the account number [REDACTED] (the “**NJ RRIF Account**”)

(iii) the account at The Bank of New York Mellon with the account number [REDACTED] (the “**PANYNJ RRIF Account**”)

(b) All of the Project Accounts shall be under the control of the Collateral Agent and, except as expressly provided herein, the Borrower shall not have any right to withdraw funds from any Project Account. The Borrower hereby irrevocably authorizes the Collateral Agent to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Project Account in accordance with the terms of this Agreement.

(c) The Collateral Agent may, at the expense of the Borrower, open such other accounts as may be reasonably necessary for the administration of the Financing Documents (including for receipt and management of collateral proceeds following an exercise of remedies following an Event



of Default); provided, that such accounts and the amounts on deposit therein are in all cases subject to the first priority perfected security interest of the Collateral Agent for the benefit of the RRIF Lender.

**Section 6.02 Funds as Collateral.** Any deposit made into the Project Accounts hereunder (except through clerical or other manifest error or in a manner that is otherwise inconsistent with this Agreement) shall be irrevocable and all cash, cash equivalents, instruments, and Permitted Investments on deposit in the Project Accounts are subject to a Lien in favor of the Collateral Agent (on behalf of the RRIF Lender) pursuant to Section 1.01 and shall be held by the Collateral Agent as Collateral for the benefit of the RRIF Lender as provided herein.

**Section 6.03 Investment.**

(a) Funds in the Project Accounts may be invested and reinvested only in Permitted Investments (at the risk and expense of the Borrower) in accordance with written instructions given to the Collateral Agent by the Borrower (prior to the occurrence of an Event of Default and, thereafter (so long as such Event of Default shall be continuing), as directed by the RRIF Lender and in accordance with the written instructions of the RRIF Lender) and, unless an Event of Default has occurred and is continuing, the Borrower is entitled to instruct the Collateral Agent to liquidate Permitted Investments for purposes of effecting any such investment or reinvestment, upon permitted withdrawals from the respective accounts or for any other purpose permitted hereunder; provided, that absent such instruction, such amounts held in the Project Accounts shall be held uninvested in cash. The Collateral Agent shall not be required to take any action with respect to investing the funds in the Project Accounts in the absence of written instructions by the Borrower or the RRIF Lender (to the extent provided in accordance with the terms hereof). The Collateral Agent shall not be liable for any loss resulting from any Permitted Investment or the sale or redemption thereof made in accordance with the terms hereof. The Collateral Agent may conclusively rely upon investment instructions provided to it that such investments are Permitted Investments. If and when cash is required for disbursement in accordance with this Article VI or Section 7.05 hereof that is not on deposit in the applicable Project Account, the Collateral Agent is authorized, without instructions from the Borrower, in the event the Borrower fails to direct the Collateral Agent to do so in a timely manner and to the extent necessary to make payments required pursuant to this Article VI or Section 7.05 hereof, to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Collateral Agent shall deem reasonable and prudent under the circumstances. The Borrower acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Borrower specifically waives receipt of such confirmations to the extent permitted by law. The Collateral Agent will provide the Borrower periodic cash transaction statements which shall include detail for all investment transactions made by the Collateral Agent hereunder.

(b) The Collateral Agent shall have no obligation to invest or reinvest the funds if all or a portion of the funds is deposited with (or instructions with respect to the same are given to) the Collateral Agent after 12 p.m. (E.S.T. or E.D.T., as applicable) on the day of deposit. Instructions to invest or reinvest that are received after 12 p.m. (E.S.T. or E.D.T., as applicable) will be treated as if received on the following Business Day.

(c) In the event the Collateral Agent does not receive investment instructions, the amounts held by the Collateral Agent pursuant to the provisions of this Agreement shall not be invested and the Collateral Agent shall not incur any liability for interest or income thereon.

(d) The parties hereto each acknowledge that non-deposit investment products are not obligations of or guaranteed by The Bank of New York Mellon nor any of its affiliates, are not FDIC insured, and are subject to investment risks, including the possible loss of principal amount invested in one or more of the money market funds made available by the Collateral Agent and initially selected by the Borrower.

(e) Any investment direction contained herein may be executed through an affiliated broker or dealer of the Collateral Agent and any such affiliated broker or dealer shall be entitled to such broker's or dealer's usual and customary fees for such execution as agreed to by the Borrower. It is agreed and understood that the Collateral Agent may earn fees associated with the investments outlined above to the extent previously agreed with the Borrower. Neither the Collateral Agent nor its affiliates shall have a duty to monitor the investment ratings of any Permitted Investments.

(f) Investments may be held by the Collateral Agent directly or through any clearing agency or depository (collectively, the "**Clearing Agency**") including the federal reserve/treasury book-entry system for United States and federal agency securities, and The Depository Trust Company. The Collateral Agent shall not have any responsibility or liability for the actions or omissions to act on the part of any Clearing Agency.

**Section 6.04 Withdrawal and Application of Funds; Third Party Payments; Event of Default.** The Borrower hereby gives a standing direction to the Collateral Agent to make each of the transfers described in clauses (a) and (b) below at the times indicated below for each such transfer.

(a) On each Semi-Annual Payment Date beginning on the Debt Service Payment Commencement Date (under the RRIF Loan Agreement (New York Funding Agreement)), amounts on deposit in the NY RRIF Account shall be transferred by the Collateral Agent to the RRIF Lender in an amount required for the payment of interest then due and payable pursuant to the RRIF Loan Agreement (New York Funding Agreement). On each Semi-Annual Payment Date beginning on the Debt Service Payment Commencement Date (under the RRIF Loan Agreement (NJT Agreement)), amounts on deposit in the NJ RRIF Account shall be transferred by the Collateral Agent to the RRIF Lender in an amount required for the payment of interest then due and payable pursuant to the RRIF Loan Agreement (NJT Funding Agreement). On each Semi-Annual Payment Date beginning on the Debt Service Payment Commencement Date (RRIF Loan Agreement (Port Authority Funding Agreement)), amounts on deposit in the PANYNJ RRIF Account shall be transferred by the Collateral Agent to the RRIF Lender in an amount required for the payment of interest then due and payable pursuant to the RRIF Loan Agreement (Port Authority Funding Agreement).

(b) On each Semi-Annual Payment Date beginning on the initial principal payment date in Exhibit B (*RRIF Debt Service*) to the RRIF Loan Agreement (New York Funding Agreement), amounts on deposit in the NY RRIF Account shall be transferred by the Collateral Agent to the RRIF

Lender in an amount required for the payment of principal then due and payable pursuant to the RRIF Loan Agreement (New York Funding Agreement). On each Semi-Annual Payment Date beginning on the initial principal payment date in Exhibit B (*RRIF Debt Service*) to the RRIF Loan Agreement (NJT Funding Agreement), amounts on deposit in the NJ RRIF Account shall be transferred by the Collateral Agent to the RRIF Lender in an amount required for the payment of principal then due and payable pursuant to the RRIF Loan Agreement (NJT Funding Agreement). On each Semi-Annual Payment Date beginning on the initial principal payment date in Exhibit B (*RRIF Debt Service*) to the RRIF Loan Agreement (Port Authority Funding Agreement), amounts on deposit in the PANYNJ RRIF Account shall be transferred by the Collateral Agent to the RRIF Lender in an amount required for the payment of principal then due and payable pursuant to the RRIF Loan Agreement (Port Authority Funding Agreement).

(c) On each date when any other fees, costs, expenses and other amounts are then due and payable pursuant to the RRIF Loan Agreement (New York Funding Agreement), amounts on deposit in the NY RRIF Account shall be transferred by the Collateral Agent to the RRIF Lender in an amount required for the payment of such fees, costs, expenses and other amounts (including indemnification obligations) then due and payable pursuant to the RRIF Loan Agreement (New York Funding Agreement). On each date when any other fees, costs, expenses and other amounts are then due and payable pursuant to the RRIF Loan Agreement (NJT Funding Agreement), amounts on deposit in the NJ RRIF Account shall be transferred by the Collateral Agent to the RRIF Lender in an amount required for the payment of such fees, costs, expenses and other amounts (including indemnification obligations) then due and payable pursuant to the RRIF Loan Agreement (NJT Funding Agreement). On each date when any other fees, costs, expenses and other amounts are then due and payable pursuant to the RRIF Loan Agreement (Port Authority Funding Agreement), amounts on deposit in the PANYNJ RRIF Account shall be transferred by the Collateral Agent to the RRIF Lender in an amount required for the payment of such fees, costs, expenses and other amounts (including indemnification obligations) then due and payable pursuant to the RRIF Loan Agreement (Port Authority Funding Agreement).

(d) At the instruction of the Borrower the Collateral Agent shall withdraw from the Project Accounts on a *pro rata* basis amounts sufficient to fund payments to be made by the Borrower to a Rating Agency pursuant to Section 15(j) of each of the RRIF Loan Agreements. Such instruction shall be accompanied by a certification of the Borrower that such instruction and requested withdrawal and transfer complies with each of the applicable requirements of the CASA and each other relevant Finance Document.

(e) Notwithstanding anything to the contrary contained in this Agreement, upon receipt of a notice of an Event of Default, the RRIF Lender may, in connection with or following the taking of an Enforcement Action, without consent of the Borrower, instruct the Collateral Agent in writing to apply proceeds of the Project Accounts to the payment of the applicable RRIF Obligations that are secured by such Project Account, in accordance with the terms of this Agreement and in the order set forth in Section 7.05, so long as such payments are on account of amounts due under the Finance Documents in respect of such RRIF Obligations.

**Section 6.05 Termination of Project Accounts.** Upon the payment in full in cash of all RRIF Obligations (and the RRIF Lender no longer having any commitment to make disbursements to the Borrower under any RRIF Loan Agreement), this Agreement will terminate. Upon the payment in full in cash of any of the RRIF Obligations (NJT Funding Agreement), RRIF Obligations (New York Funding Agreement) and RRIF Obligations (Port Authority Funding Agreement) (and the termination or expiration of the RRIF Lender’s commitment to make disbursements to the Borrower under the corresponding RRIF Loan Agreement), the Collateral Agent will, within thirty (30) days of receipt of a request from the Borrower, countersigned by the RRIF Lender, and at the expense of the Borrower, close the Project Account used to secure such RRIF Obligations and/or liquidate any investments credited thereto and transfer the funds deposited therein or credited thereto, as directed by the Borrower. Thereafter, with respect to such closed Project Account, the Collateral Agent will be released from any further obligation to (a) comply with Entitlement Orders originated by the Collateral Agent to the extent that any of the Project Accounts is a “securities account” under the applicable provision of the UCC or (b) comply with instructions originated by the RRIF Lender, to the extent that any of the Project Accounts is a “deposit account” under the applicable provision of the UCC or (c) comply with any obligation under any Finance Document except as specifically provided herein or therein, in each case as contemplated herein or therein. Nothing contained in this Section 6.05 will be construed to modify or otherwise affect the Collateral Agent’s Lien in the Project Accounts and the funds therein, prior to such closure liquidation and/or transfer in accordance with the terms hereof.

**Section 6.06 Securities Intermediary.**

(a) The Project Accounts shall be established and maintained as securities accounts (within the meaning of Section 8-501(a) of the UCC) with a securities intermediary. Each of the parties to this Agreement, including The Bank of New York Mellon, hereby agrees that The Bank of New York Mellon (or any successor thereto) shall act as the securities intermediary (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) (in such capacity (including its successors and assigns), the “**Securities Intermediary**”) under and for the purposes of this Agreement and for so long as The Bank of New York Mellon (or any successor thereto) is also acting in the capacity as the Collateral Agent.

(b) The Securities Intermediary hereby accepts and agrees to act as such under this Agreement and represents and warrants that it is as of the date hereof, and shall be for so long as it is the Securities Intermediary hereunder, a banking corporation or a national bank that in the ordinary course of its business maintains securities accounts for others, meets the requirements and qualifications set forth in the first sentence of Section 6.06(e) and is acting in that capacity hereunder. The Securities Intermediary agrees with the parties hereto that each of the Project Accounts shall be an account to which Financial Assets may be credited and undertakes to treat the Collateral Agent as entitled to exercise the rights that comprise such Financial Assets. The Securities Intermediary agrees with the parties hereto that each item of property credited to each Project Account shall be treated as a Financial Asset. Each of the Collateral Agent and the Securities Intermediary represents and warrants that it has not entered into any agreement or taken any other action that gives any Person other than the Collateral Agent control over any of the Project Accounts or that is otherwise inconsistent with this Agreement. Each of the Collateral Agent and

the Securities Intermediary agrees that it shall not become a party to any agreement or take any action that gives any Person other than the Collateral Agent control over any of the Project Accounts or that is otherwise inconsistent with this Agreement. The Securities Intermediary agrees that any Financial Assets credited to such Project Accounts, or any “securities entitlement” (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, shall not be subject to any Lien or right of set-off in favor of the Securities Intermediary or anyone claiming through the Securities Intermediary (other than the Collateral Agent). The Securities Intermediary hereby represents that, except for the claims and interests of the Collateral Agent and the Borrower in the Project Accounts, the Securities Intermediary has no knowledge of, and has received no notice of, any claim to, or interest in, any Project Account. If any Person asserts any lien (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against any Project Account, the Securities Intermediary, upon obtaining written notice thereof, will promptly notify the Collateral Agent, the RRIF Lender or relevant representatives thereof and the Borrower thereof.

(c) It is the intent of the Collateral Agent and the Borrower that the Collateral Agent (for the benefit of the RRIF Lender) be the Entitlement Holder with respect to the Project Accounts. In any event, the Securities Intermediary hereby agrees that it will comply with Entitlement Orders with respect to any and/or all of the Project Accounts originated by the Collateral Agent without further consent by the Borrower or any other Person. The Securities Intermediary covenants that it will not agree with any Person other than the Collateral Agent to comply with Entitlement Orders with respect to the Project Accounts originated by any Person or entity other than the Collateral Agent. The Collateral Agent authorizes the Securities Intermediary to follow Entitlement Orders issued by the Borrower unless and until the Securities Intermediary receives an Entitlement Order from the Collateral Agent. Without limiting the Securities Intermediary’s obligation or ability to comply with Entitlement Orders originated by the Collateral Agent, the Collateral Agent covenants solely with the Borrower that it shall not provide any such Entitlement Order unless an Event of Default shall have occurred and be continuing.

(d) The Securities Intermediary shall not change the name or account number of any Project Account without the prior written consent of the Collateral Agent and, for so long as no Event of Default under the applicable RRIF Loan Agreement has occurred and is continuing, the Borrower and at least five (5) Business Days’ prior notice to the RRIF Lender, and shall not change the Entitlement Holder. The Securities Intermediary shall at all times act as a “securities intermediary” (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) in maintaining the Project Accounts and shall credit to each Project Account each Financial Asset to be held in or credited to each Securities Account pursuant to this Agreement. To the extent, if any, that the Collateral Agent is deemed to hold directly, as opposed to having a security entitlement in, any Financial Asset held by the Securities Intermediary for the Collateral Agent, the Securities Intermediary hereby agrees that it is holding such Financial Asset as the agent of the Collateral Agent and hereby expressly acknowledges and agrees that it has received notification of the Collateral Agent’s security interest in such Financial Asset and that it is holding possession of such Financial Asset for the benefit of the Collateral Agent.

(e) Each Project Account shall remain held at all times by a “securities intermediary” (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) that is a bank organized under the laws of the United States of America or any state thereof that has offices in the State of New York with unsecured long-term debt which shall be rated no lower than ‘A’, ‘A2’ or the equivalent rating from each Rating Agency that provides a rating on such bank’s unsecured long-term debt and that has a total capital stock and unimpaired surplus of not less than \$500,000,000. The Securities Intermediary shall give notice to the Collateral Agent and the Borrower of the location of the Project Accounts and of any change thereof prior to the use or change thereof. If at any time the Securities Intermediary shall fail to meet such requirements and qualifications set forth in the first sentence above, the Borrower shall replace the Securities Intermediary as soon as practicable with a qualifying Securities Intermediary.

(f) Any income received by the Collateral Agent with respect to the balance from time to time on deposit in each Project Account, including any interest or capital gains on investments in overnight securities made with amounts on deposit in each Project Account, shall be credited to the applicable such Project Account. All right, title and interest in and to the cash amounts on deposit from time to time in each Project Account together with any investments in overnight securities from time to time made pursuant to this Section 6.06 shall constitute part of the Collateral for the applicable RRIF Obligations and shall be held for the benefit of the RRIF Lender and the Borrower as their interests shall appear hereunder and shall not constitute payment of such RRIF Obligations (or any other obligations to which such funds are provided hereunder to be applied) until applied thereto as provided in this Agreement.

(g) In the event that, notwithstanding the last sentence of clause (b) above, the Securities Intermediary has or subsequently obtains by agreement, operation of Law or otherwise a Lien in any of the Project Accounts, or any Financial Asset credited thereto, or any “securities entitlement” (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, the Securities Intermediary hereby agrees that such Lien shall be subordinate to the Lien of the Collateral Agent.

(h) The “securities intermediary’s jurisdiction” of the Securities Intermediary for purposes of the UCC (or the Uniform Commercial Code of any other jurisdiction to the extent applicable) is the State of New York.

(i) Terms used in Section 6.05 and this Section 6.06 that are defined in the UCC shall have the meaning set forth in the UCC. Without limiting the foregoing, the term “securities intermediary” shall, with respect to book-entry securities, have the meanings given to it, as applicable to the types of security under: 31 C.F.R. Part 357 (sale and issue of marketable book-entry Treasury bills, notes and Senior Loan); 12 C.F.R. Part 615 (book-entry securities of the Farm Credit Administration and related conditions); 12 C.F.R. 987 (book-entry securities of the Financial Federal Housing Board), 12 C.F.R. Part 1511 (book-entry securities of the Resolution Funding Corporation); 24 C.F.R. Part 81 (book-entry securities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation); 31 C.F.R. Part 354 (book-entry securities of the Student Loan Marketing Association); 18

C.F.R. Part 1314 (book-entry securities of Tennessee Valley Authority); and 24 C.F.R. Part 350 (book-entry securities of Government National Mortgage Association).

(j) To the extent that any Project Account is not considered a “securities account” (within the meaning of Section 8-501(a) of the UCC), such Project Account shall be deemed to be a “deposit account” (as defined in Section 9-102(a)(29) of the UCC), which the Collateral Agent shall maintain with the Securities Intermediary acting not as a securities intermediary but as a “bank” (within the meaning of Section 9-102(a)(8) of the UCC) and, in such circumstances, the “bank’s jurisdiction” of the Securities Intermediary for purposes of the UCC (or the Uniform Commercial Code of any other jurisdiction to the extent applicable) is the State of New York. The Securities Intermediary hereby agrees to comply with any and all instructions originated by the Collateral Agent directing disposition of funds in any and/or all of the Project Accounts without any further consent of the Borrower or any other Person. The Collateral Agent authorizes the Securities Intermediary to comply with any instructions with respect to any such deposit accounts from the Borrower unless and until the Securities Intermediary receives instructions with respect to any such deposit accounts from the Collateral Agent. Without limiting the Securities Intermediary’s obligation or ability to comply with any instructions with respect to any such deposit accounts from the Collateral Agent, the Collateral Agent covenants with the Borrower that it shall not provide any such instructions unless an Event of Default shall have occurred and be continuing.

(k) In the event that the Collateral Agent has, or subsequently obtains, by agreement, by operation of law or otherwise a security interest in any Collateral Account (or any portion thereof), the Collateral Agent hereby agrees that such security interest shall be subordinate to the security interest of the RRIF Lender. The financial assets, money and other items credited to each Collateral Account will not be subject to deduction, set-off, recoupment, banker’s lien, or any other right in favor of any person other than the RRIF Lender; provided, however, the Collateral Agent may set off (i) all amounts due to the Collateral Agent in respect of customary fees and expenses for the routine maintenance and operation of each Collateral Account and (ii) the face amount of any checks which have been credited to a Collateral Account but are subsequently returned unpaid because of uncollected or insufficient funds).

**Section 6.07 Tax Reporting.** All Account Earnings relating to the Project Accounts shall be reported to the Internal Revenue Service and, to the extent applicable, all state and local taxing authorities under the name and taxpayer identification number of the Borrower. The Borrower shall prepare or cause to be prepared any tax returns or other forms or information required to be filed in connection with any such earnings. The Collateral Agent does not have any interest in the Collateral deposited hereunder but is serving as collateral agent only and having only possession thereof. The Borrower shall pay or reimburse the Collateral Agent upon request for any transfer taxes or other Taxes relating to the Collateral incurred in connection herewith and shall indemnify and hold harmless the Collateral Agent from any amounts that it is obligated to pay in the way of such Taxes to the extent paid by the Collateral Agent in respect of the Collateral. The Borrower will provide the Collateral Agent with appropriate W-9 forms for taxpayer identification numbers, number certifications, or W-8 forms for non-resident alien certifications. This paragraph shall survive notwithstanding any termination of this Agreement or the resignation or removal of the Collateral Agent.

**Section 6.08 Inadequately Identified Amounts.** In the event that the Collateral Agent receives any amount which is inadequately or incorrectly identified as to the Project Account into which such amount is to be credited, the Collateral Agent shall notify the Borrower (with a copy of such notice to the RRIF Lender) of such event and shall request instructions as to the Project Account into which such amount should be credited.

## **ARTICLE VII COLLATERAL AND REMEDIES**

**Section 7.01 Administration of Collateral.** The Project Accounts and the amounts on deposit therein shall be held by the Collateral Agent for the benefit of the RRIF Lender pursuant to the terms hereof and any other Security Documents and shall be administered by the Collateral Agent in the manner contemplated hereby and thereby.

### **Section 7.02 Event of Default.**

(a) The Borrower hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of the Borrower or otherwise) to act, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due or to become due to the Borrower under or arising out of the Collateral, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Collateral Agent may deem to be necessary or advisable to protect the interests of the Collateral Agent and/or the RRIF Lender, which appointment as attorney is coupled with an interest.

(b) Notwithstanding anything to the contrary contained in this Agreement or any document executed in connection with any of the RRIF Obligations, the Collateral Agent, unless a responsible officer of the Collateral Agent shall have actual knowledge thereof, shall not be deemed to have any knowledge of any Event of Default unless and until it shall have received written notice from the Borrower or RRIF Lender describing such Event of Default in reasonable detail. If the Collateral Agent receives any such notice, the Collateral Agent shall deliver a copy thereof to the RRIF Lender; provided that if the Collateral Agent receives any such notice from a Person other than the Borrower, the Collateral Agent also shall deliver a copy thereof to the Borrower.

**Section 7.03 Enforcement of Remedies.** Upon the occurrence of an Event of Default under the applicable RRIF Loan Agreement, the Collateral Agent (as directed by the RRIF Lender, such direction a “**Direction Notice**”) shall take the Enforcement Actions with respect to the Collateral as described in such Direction Notice (which Direction Notice may direct the Collateral Agent to delegate authority to take any Enforcement Action to the RRIF Lender); provided that, in the absence of a Direction Notice, the Collateral Agent may (but shall not be obligated to) take such action (with written notice thereof to the RRIF Lender and the Borrower) or refrain from taking such action with respect to such Event of Default as it shall deem in the best interests of the RRIF Lender and solely to the extent permitted hereunder, pursuant to any other Security Documents or pursuant to any applicable law. Upon receipt by the Collateral Agent of a Direction Notice, the Collateral Agent shall seek to enforce the



Security Documents (with prior notice thereof to the Borrower, to the extent not in violation of Law or court order) and to realize upon the Collateral in accordance with such Direction Notice and otherwise in accordance with the terms hereof and of any other Security Documents; provided, however, that the Collateral Agent shall not be obligated to follow any Direction Notice if the Collateral Agent reasonably determines that such Direction Notice is in conflict with any provisions of any applicable law or any Security Document, and the Collateral Agent shall not, under any circumstances except in the event of the Collateral Agent's negligence, fraud, bad faith or willful misconduct, be liable to the RRIF Lender, the Borrower or any other Person for following a Direction Notice. The RRIF Lender shall promptly provide a copy of any Direction Notice to the Borrower following any Direction Notice it delivers to the Collateral Agent hereunder; provided, that, failure to so deliver such Direction Notice shall not limit the RRIF Lender's rights under this Agreement.

**Section 7.04 Secured Party Information.** In the event that the Collateral Agent proceeds to foreclose upon, collect, sell or otherwise dispose of or take any other action with respect to any or all of the Collateral or to enforce any provisions of the Security Documents or takes any other action pursuant to this Agreement or any provision of any other Security Documents or requests directions from the RRIF Lender as provided herein, upon the request of the Collateral Agent, the RRIF Lender (or any agent of or representative thereof) shall promptly deliver a written notice to the Collateral Agent setting forth (a) the aggregate amount of RRIF Obligations (categorized into (i) RRIF Obligations (NJT Funding Agreement), (ii) RRIF Obligations (New York Funding Agreement) and (iii) RRIF Obligations (Port Authority Funding Agreement)) owing to the RRIF Lender under the applicable Finance Documents as of the date specified by the Collateral Agent in such request and (b) such other information as the Collateral Agent may reasonably request.

**Section 7.05 Application of Proceeds.**

(a) Subject to clauses (b) and (c) of this Section 7.05, after the taking of an Enforcement Action, all Proceeds received by the Collateral Agent derived from the funds set forth in clauses (i)-(iii) below pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents shall be applied as follows:

(i) All amounts on deposit in, and all Proceeds attributable to, the NY RRIF Account shall be applied first to the RRIF Lender for the payment of all accrued and unpaid interest on the RRIF Loan Obligations (New York Funding Agreement), second, to the RRIF Lender for the payment of any unpaid principal that is due and payable pursuant to the RRIF Loan Agreement (New York Funding Agreement), third, to the RRIF Lender for the payment of any unpaid fees, costs, expenses, and other amounts that are due and payable pursuant to RRIF Loan Agreement (New York Funding Agreement) and fourth, the balance to whomever may be lawfully entitled to such balance.

(ii) All amounts on deposit in, and all Proceeds attributable to, the NJ RRIF Account shall be applied first to the RRIF Lender for the payment of all accrued and unpaid interest on the applicable obligations pursuant to the RRIF Loan Agreement (NJT Funding

Agreement), second, to the RRIF Lender for the payment of any unpaid principal that is due and payable pursuant to the RRIF Loan Agreement (NJT Funding Agreement), third, to the RRIF Lender for the payment of any unpaid fees, costs, expenses, and other amounts that are due and payable pursuant to RRIF Loan Agreement (New Jersey) and fourth, the balance to whomever may be lawfully entitled to such balance.

(iii) All amounts on deposit in, and all Proceeds attributable to, the PANYNJ RRIF Account shall be applied first to the RRIF Lender to pay for the payment of all accrued and unpaid interest on the applicable obligations pursuant to the RRIF Loan Agreement (Port Authority Funding Agreement), second, to the RRIF Lender to pay for the payment of any unpaid principal that is due and payable pursuant to the RRIF Loan Agreement (Port Authority Funding Agreement), third, to the RRIF Lender for the payment of any unpaid fees, costs, expenses, and other amounts that are due and payable pursuant to RRIF Loan Agreement (Port Authority Funding Agreement) and fourth, the balance to whomever may be lawfully entitled to such balance.

(b) Following the taking of an Enforcement Action, notwithstanding any provision to the contrary in this Agreement or any other Finance Document, but subject to Section 6.04(e) and clause (a) of this Section 7.05, the Collateral Agent, as directed by the RRIF Lender, will have the right to direct the application of all amounts on deposit in or credited to the applicable Project Accounts that are securing the RRIF Obligations that gave rise to such Enforcement Action, and to otherwise deal with the Collateral, without the need for consent of, or any other action by, the Borrower. Subject to the prior application of the funds as described in clause (a) of this Section 7.05, following the taking of an Enforcement Action, all Proceeds received by the Collateral Agent pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents, including proceeds from the sale or disposition of applicable Collateral or other Enforcement Action and amounts available in or otherwise transferred from the applicable Project Accounts shall be applied promptly by the Collateral Agent, after payment of unpaid fees, costs and expenses of the Collateral Agent (including those of its attorneys and advisors) due and payable in accordance with Sections 8.01 and 8.02, as directed in accordance with this Agreement by the RRIF Lender.

(c) If at any time the RRIF Lender shall for any reason obtain any payment or distribution upon or with respect to any RRIF 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, the RRIF Lender agrees that it shall have received such amounts in trust, and shall promptly remit such amount so received in error to the Collateral Agent to be deposited into the Project Account from which such payment was originally made or into which it was intended to be deposited, as applicable.

**Section 7.06 Reliance on Information.** For purposes of applying payments received in accordance with this Article VII, 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 3.05 and Section 7.04 of this Agreement, with respect to the amounts of the outstanding RRIF Obligations owed to

the RRIF Lender and the amount of any proceeds distributed from the Project Accounts. In the event that the Collateral Agent, in its reasonable discretion, 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 (or its designated agent) shall have the right to exercise any and all remedies provided hereunder or in any other Finance Document directly with respect to any Funding Agreement and 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 7.07 Right of the RRIF Lender to Direct Collateral Agent.** Notwithstanding anything in this Agreement to the contrary, the RRIF Lender shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Collateral Agent, to give any instruction, consent or direction to the Collateral Agent as required or permitted to be given pursuant to the terms of this Agreement with respect to application of proceeds of the Project Accounts.

## **ARTICLE VIII COMPENSATION, INDEMNITY AND EXPENSES**

**Section 8.01 Compensation; Fees and Expenses.** The Borrower hereby agrees to pay to the Collateral Agent for its own account compensation in such amount as separately agreed upon in writing between the Borrower and the Collateral Agent. In addition, the Borrower shall pay at least ten (10) Business Days after written demand from the Collateral Agent the amount of any and all other reasonable out-of-pocket expenses incurred by the Collateral Agent and/or the RRIF Lender, including the reasonable and customary fees, charges and disbursements of any counsel for the Collateral Agent and the RRIF Lender, in connection with (a) the preparation of amendments and waivers hereunder and under any other Security Documents requested by the Borrower; (b) the enforcement of the rights or remedies of the Collateral Agent or the RRIF Lender under this Agreement or any other Security Document, including all reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the RRIF Obligations; (c) the sale of, collection from or other realization upon, the Collateral in accordance with the terms hereof and of any other Security Documents; and (d) lien and security interest searches and filings in connection with the Collateral.

**Section 8.02 Borrower Indemnification.** The Borrower shall indemnify each of the Collateral Agent, the Securities Intermediary, and each of their respective officers, directors, employees, agents and attorneys-in-fact (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Security Document or any agreement or instrument contemplated thereby to which such Indemnitee is a party or the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated thereby (including the performance by the parties hereto of their respective obligations under the Security Documents), (ii) the violation or alleged violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters, in each case arising out of or in direct relation to the

Project in its entirety, or (iii) any actual claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related fees, charges, disbursements or expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the negligence or willful misconduct of such Indemnitee. To the extent permitted by applicable law, neither the Collateral Agent nor Securities Intermediary shall assert, and each of the Collateral Agent and Securities Intermediary hereby waives, any claim against the Borrower on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Finance Documents, the other transactions contemplated hereby and thereby, the RRIF Obligations or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. The obligations of the Borrower under this Section 8.02 shall survive the payment in full of the RRIF Obligations, any resignation or removal of the Collateral Agent and the Securities Intermediary pursuant to Section 3.11 hereof, and the termination of this Agreement pursuant to Article IX hereof.

#### **ARTICLE IX TERMINATION**

Upon termination of this Agreement pursuant to Section 6.05 of this Agreement, (i) this Agreement and all rights granted hereby shall terminate and cease to be in force and effect, (ii) all rights to the Collateral as shall not have been sold or otherwise applied, in each case, pursuant to the terms hereof shall revert to the Borrower, its successors or assigns, (iii) all powers of attorney and proxy granted hereunder by the Borrower shall terminate, (iv) the Borrower shall be authorized to prepare and file UCC termination statements terminating all of the financing statements filed in connection with the Collateral and (v) the Collateral Agent shall, promptly, at the Borrower's expense, (A) return all certificates, instruments, and documents evidencing the Collateral, (B) execute and deliver all documentation, UCC termination statements and instruments of assignment as furnished by the Borrower to release the Liens created pursuant to this Agreement on the Collateral and to terminate this Agreement, and (C) agree, at the request and at the expense of the Borrower, to furnish, execute, and deliver such documents, instruments, and certificates that the Borrower shall reasonably request to evidence such termination and release.

#### **ARTICLE X MISCELLANEOUS PROVISIONS**

**Section 10.01 Further Assurances.** The Borrower agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments, powers, assignments, amendments, and documents, and take all further action as the Collateral Agent or the RRIF Lender, shall, in their reasonable discretion, deem necessary or appropriate to ensure creation of Liens and to perfect and maintain perfected the Liens created and/or perfected hereunder and under the other Security Documents, to enable the Collateral Agent and RRIF Lender to enforce their rights and remedies hereunder and

thereunder, and to carry into effect the purposes hereof or better assure and confirm the validity, enforceability and priority of the Liens on the Collateral. Without limiting the generality of the foregoing, the Borrower shall file or refile and/or deliver to the Collateral Agent from time to time, when necessary or requested, financing statements, powers of attorney, certificates, and other assurances or instruments as the Collateral Agent or the RRIF Lender shall reasonably request. Without limiting the foregoing, pursuant to any applicable law, the Borrower and the Collateral Agent authorize the RRIF Lender to file or record financing statements and other filing or recording documents or instruments with respect to the Collateral without the signature of the Borrower in such form and in such offices as the RRIF Lender determines, in its sole discretion, advisable to perfect the security interests of the Collateral Agent under this Agreement and to preserve the other rights and interests granted to the Collateral Agent and RRIF Lender hereunder, as against third parties, with respect to the Collateral. The Borrower and the Collateral Agent authorize the RRIF Lender, on behalf of the Collateral Agent, to use any description of the Collateral with such scope as the RRIF Lender, in its reasonable discretion, finds desirable or advisable. If an Event of Default has occurred and is continuing, the Collateral Agent or the RRIF Lender may institute and maintain, in its own name or in the name of the Borrower, such suits and proceedings as the Collateral Agent or the RRIF Lender may be advised by counsel as being necessary, desirable or expedient to prevent any impairment of the Lien on or the perfection thereof in the Collateral. All of the foregoing shall be at the sole cost and expense of the Borrower.

**Section 10.02 Amendments; Waivers.**

(a) Any term, covenant, agreement or condition of this Agreement or of any other Security Documents may be amended, modified or waived only by an instrument in writing signed by each of the Collateral Agent (acting upon the instruction of the RRIF Lender) and the Borrower; provided, that the consent of the Securities Intermediary shall be required for any amendment to Section 6.06 hereof or any other amendment that would modify the rights or obligations of the Securities Intermediary.

(b) The waiver (whether express or implied) by the Collateral Agent of any breach of the terms or conditions of this Agreement shall not prejudice any remedy of the Collateral Agent or the RRIF Lender in respect of any continuing or other breach of the terms and conditions hereof, and shall not be construed as a bar to any right or remedy which the Collateral Agent or the RRIF Lender would otherwise have on any future occasion under this Agreement.

(c) No failure to exercise nor any delay in exercising, on the part of the Collateral Agent or the RRIF Lender, of any right, power or privilege under this Agreement shall operate as a waiver thereof. No single or partial exercise by the Collateral Agent or the RRIF Lender of any right, power or privilege under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege available to it. All remedies hereunder and under any other Security Documents are cumulative and are not exclusive of any other remedies that may be available to the Collateral Agent and the RRIF Lender, whether at law, in equity or otherwise.

**Section 10.03 Successors and Assigns.**

(a) This Agreement and the other Security Documents, if any, shall be binding upon and inure to the benefit of the Collateral Agent, the Securities Intermediary, the Borrower, the RRIF Lender, and their respective successors and permitted assigns.

(b) Nothing contained in this Agreement or any other Security Document is intended to limit the right of any Secured Party to assign, transfer or grant participations in its rights in its respective RRIF Obligations and Finance Documents.

**Section 10.04 Notices.** Unless otherwise expressly provided herein, all notices, instructions, consents, requests, directions and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or email, as follows:

(i) if to the Borrower:

Gateway Development Commission  
120 Broadway – 10th Floor  
New York, NY 10271  
Attention: General Counsel  
Email: Notices@Gatewayprogram.org

(ii) if to the Collateral Agent and Securities Intermediary:

The Bank of New York Mellon  
1 Pershing Plaza – 4th Floor  
AIM # 07D-0400  
Jersey City, NJ 07399  
Attention: Corporate Trust Services  
Email: Frederic.belen@bnymellon.com

(iii) if to the RRIF Lender:

Build America Bureau  
United States Department of Transportation  
Room W12-402  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of Credit Programs  
Email: BureauOversight@dot.gov

All instructions required under this Agreement shall be delivered to the Collateral Agent in writing, in either original or electronic document format (e.g., pdf), executed by an Authorized Representative. The identity of such Authorized Representatives, as well as their specimen signatures, shall be delivered to the Collateral Agent substantially in the form of a duly completed and executed

incumbency certificate substantially in the form of Exhibit B (provided that for the RRIF Lender, delivery of the RRIF Lender's Authorized Representative Certificate, as provided pursuant to the RRIF Loan Agreements, shall satisfy the requirements of this section) and shall remain in effect until such party notifies the Collateral Agent of any change by delivery of a replacement duly completed and executed incumbency certificate substantially in the form of Exhibit B (or, in the case of the RRIF Lender, by delivery of a replacement RRIF Lender's Authorized Representative Certificate). In its capacity as Collateral Agent, the Collateral Agent will accept all instructions and documents complying with the above under the indemnities provided in this Agreement, and reserves the right to refuse to accept any instructions or documents which fail to comply with the terms hereof; provided, that in the event of any such refusal by the Collateral Agent, the Collateral Agent shall promptly notify the relevant Authorized Representative executing the instructions or delivering the documents of such non-compliance and provide a reasonable time period for the correction thereof. Further to this procedure, the Collateral Agent reserves the right to telephone an Authorized Representative of the RRIF Lender or the Borrower to confirm the details of such instructions or documents if they are not already on file with it as standing instructions, and the Collateral Agent agrees that it will promptly telephone an Authorized Representative of the RRIF Lender or the Borrower, as applicable, if the Collateral Agent has determined that it will refuse to accept any instructions or documents which fail, or appear to fail, to comply. The Collateral Agent and the parties hereto agree that the above constitutes a commercially reasonable security procedure.

Any party hereto may change its address or email address for notices and other communications hereunder by notice to the other parties hereto. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and, if given in accordance with this Section, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or, in the case of notice given by mail, overnight delivery service, or email, when deposited in the mail, one Business Day after delivery to the overnight courier, or when sent by email, as applicable; provided that any notice to be served on the Collateral Agent shall be effective only when actually received by the Collateral Agent, marked for the attention of the department or officer specified by the Collateral Agent for such purpose.

**Section 10.05 Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 10.04 shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable, and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures for this Agreement or for any document or instrument delivered in connection herewith may be made by electronic means, if accompanied by an email from the applicable signatory, contemporaneous or otherwise, confirming the use of such means.

**Section 10.06 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial**

(a) THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) UNLESS OTHERWISE REQUIRED BY SECTION 6 OF THE NEW YORK GDC ACT OR SECTION 23 OF THE NEW JERSEY GDC ACT (TAKING INTO CONSIDERATION THOSE CLAIMS THAT MUST BE FILED WITH THE COURT OF CLAIMS OR NJ SUPERIOR COURT), THE PARTIES HEREBY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN, THE CITY OF NEW YORK, FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER SECURITY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. UNLESS OTHERWISE REQUIRED BY SECTION 6 OF THE NEW YORK GDC ACT OR SECTION 23 OF THE NEW JERSEY GDC ACT (TAKING INTO CONSIDERATION THOSE CLAIMS THAT MUST BE FILED WITH THE COURT OF CLAIMS OR NJ SUPERIOR COURT), THE PARTIES HERETO IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) THE BORROWER, RRIF LENDER, AND COLLATERAL AGENT HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF THE BORROWER, RRIF LENDER, OR COLLATERAL AGENT.

**Section 10.07 Captions**

(a) The headings of the several articles and sections and clauses of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

**Section 10.08 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.



**Section 10.09 Collateral Agent's Rights.**

(a) If at any time the Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Collateral (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of such property), the Collateral Agent is authorized to comply therewith in any manner it or legal counsel of its own choosing reasonably deems appropriate. If the Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Collateral Agent shall not be liable to any of the parties hereto or to any other Person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(b) In the event of any dispute between or conflicting claims by or among the Borrower and the RRIF Lender with respect to any property being held by the Collateral Agent in connection with this Agreement or any other Security Documents, the Collateral Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such property so long as such dispute or conflict shall continue, and the Collateral Agent shall not be or become liable in any way to the Borrower or the RRIF Lender for failure or refusal to comply with such conflicting claims, demands or instructions. The Collateral Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Collateral Agent or (ii) the Collateral Agent shall have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting (provided that any indemnity that may at any time be requested from the RRIF Lender shall instead be provided by the Borrower and the Collateral Agent shall not refuse to take any action on the basis that the Borrower is providing such indemnification in lieu of the RRIF Lender). Any court order, judgment or decree shall be accompanied by a legal opinion by counsel for the presenting party, reasonably satisfactory to the Collateral Agent, to the effect that said order, judgment or decree represents a final adjudication of the rights of the parties by a court of competent jurisdiction, and that the time for appeal from such order, judgment or decree has expired without an appeal having been perfected. The Collateral Agent shall act on such court order and legal opinions without further question.

(c) To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. When any account is opened, the Collateral Agent shall be entitled to such information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

**Section 10.10 Patriot Act Notification.** The Collateral Agent hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L., 107-56 (signed into law October 26, 2001) (the “**Patriot Act**”), the Collateral Agent may be required to obtain, verify and record

information that identifies the Borrower, which information includes the name, address, tax identification number and other information regarding the Borrower that will allow the Collateral Agent to identify the Borrower in accordance with the Patriot Act.

**Section 10.11 Events Occurring on Days That Are Not Business Days.** Other than as expressly set forth in this Agreement, if the date for making any payment or the last day for the performance of any act or the exercising of any right under this Agreement is a day that is not a Business Day, such payment shall be made, such act shall be performed and such right shall be exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date herein.

*[signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

**GATEWAY DEVELOPMENT  
COMMISSION,**  
as Borrower

By: \_\_\_\_\_  
Name: Kris Kolluri  
Title: Chief Executive Officer

**THE BANK OF NEW YORK MELLON,**  
as Collateral Agent and Securities Intermediary

By: \_\_\_\_\_  
Name:  
Title:

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION,**  
acting by and through the Executive Director of  
the Build America Bureau

By: \_\_\_\_\_  
Name: Dr. Morteza Farajian  
Title: Executive Director

**SCHEDULE 1****BORROWER ORGANIZATIONAL INFORMATION**

Full legal name of Borrower	Gateway Development Commission
All other names under which the Borrower currently conducts business (if any)	N/A
Type of organization the Borrower	a body politic and corporate, a public authority and a government sponsored authority established by the state of New Jersey and the state of New York under the GDC Act
Jurisdictions of organization of the Borrower	New York and New Jersey
Borrower's organizational identification number	EIN: 87-2091167
Jurisdiction where the Borrower's chief executive office is located	New York
Changes to name, jurisdiction of organization or chief executive office, in each case, within the past five (5) years	N/A
Any other name under which Borrower has done business within the past five (5) years	N/A
Proper offices for filing of UCC-1 financing statements with respect to Borrower	New York

## **EXHIBIT A**

### **DEFINITIONS AND RULES OF INTERPRETATION**

**Defined Terms.** Except as otherwise provided herein or unless the context otherwise requires, (a) the rules of interpretation set forth in Section 2 of the RRIF Loan Agreements shall apply herein as if fully set forth herein; (b) in case of, and solely to the extent of, any conflict between the terms and conditions of the applicable RRIF Loan Agreement and this Agreement, the terms and conditions of the applicable RRIF Loan Agreement shall prevail; (c) the term “money” or “funds” includes any cash, check, deposit, investment security or other form in which any of the foregoing are held hereunder; (d) all references in this Agreement to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to the applicable UCC; (e) any reference to or defined term for securities account or deposit account, including, without limitation, the Project Accounts, shall include any subaccount thereof, and any substitute, successor (whether by renumbering or otherwise) or replacement account thereof; and (f) in addition to terms defined in the preamble and recitals hereto (which shall, in this Agreement, have the meaning given therein), (i) capitalized terms used but not defined herein (including in the preamble and recitals hereto) shall have the meanings given to them in the applicable RRIF Loan Agreement; (ii) except as expressly provided herein, all capitalized terms used herein that are defined in the UCC (as defined below) are used herein as defined therein; and (iii) the following terms have the respective meanings set forth below:

“**Account Earnings**” means the interest income and other investment earnings earned with respect to amounts deposited to any Project Account.

“**Affiliate**” means, with respect to any Person, any other Person that is Controlling, Controlled by, or under common Control with such Person. For purposes of this definition, “**control**” (including its correlative meanings – “Controlling”, “Controlled by” and “under common Control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

“**Agreement**” has the meaning specified in the recitals to this Agreement.

“**Authorized Representative**” means the authorized representative or other authorized signatory of the Borrower or any other party hereto, as set forth in the most recently delivered incumbency certificate for such party.

“**Borrower**” has the meaning specified in the preamble to this Agreement.

“**Clearing Agency**” has the meaning specified in Section 6.03(f).

“**Code**” means the Internal Revenue Code of 1986 and the regulations promulgated and rulings issued thereunder, each as amended from time to time, and any successor statute.

“**Collateral**” means (a) solely with respect to the RRIF Obligations (New York Funding Agreement), the New York Collateral, (b) solely with respect to the RRIF Obligations (NJT Funding Agreement), the New Jersey Collateral, and (c) solely with respect to the RRIF Obligations (Port Authority Funding Agreement), the Port Authority Collateral.

“**Collateral Agent**” has the meaning specified in the preamble to this Agreement.

“**Control**” has, with respect to Project Accounts, the meaning assigned to the term in Article 9 of the UCC.

“**Default**” means any event or circumstance that, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

“**Direction Notice**” has the meaning specified in Section 7.03.

“**Dollars**”, “**U.S. Dollars**” or “**\$**” means the lawful currency of the United States of America.

“**Effective Date**” means the date of this Agreement.

“**Enforcement Action**” means any action, whether by judicial proceedings or otherwise, to enforce or exercise any of the rights and remedies granted to or available to the Collateral Agent and/or the RRIF Lender pursuant to the Finance Documents or available under any applicable law, including, without limitation, the UCC, against the Collateral or the Borrower, in each case, upon the occurrence of an Event of Default.

“**Event of Default**” means any of the events identified as an “Event of Default” under any Finance Document.

“**FDIC**” means the Federal Deposit Insurance Corporation.

“**Federal Book-Entry Regulations**” means (i) the United States Department of the Treasury’s regulations governing “Securities” (as defined in 31 C.F.R. § 357.2) issued by the United States Treasury and maintained in the form of entries in the federal reserve banks’ system known as the Treasury/Reserve Automated Debt Entry System (TRADES), as such regulations are set forth in 31 C.F.R. Part 357 and (ii) regulations analogous and substantially similar to the regulations described in clause (i) above governing any other automated book-entry system operated by the United States federal reserve banks in which securities issued by government sponsored enterprises are issued, recorded, transferred and maintained in book-entry form.

“**Finance Documents**” means:

- (a) the Notes;



- (b) the RRIF Loan Agreements;
- (c) this Agreement;
- (d) any other Security Documents; and
- (e) any other agreement, document or instrument relating to the foregoing and designated as a Finance Document in writing by the Borrower and the RRIF Lender.

**“Funding Agreements”** has the meaning specified in the recitals to this Agreement.

**“Hague Securities Convention”** means the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, July 5, 2006, 17 U.S.T. 401, 46 I.L.M. 649.

**“Indemnitee”** has the meaning specified in Section 8.02.

**“Law”** means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or bylaws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date hereof including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Governmental Authority.

**“Lien”** means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, or any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

**“New Jersey Collateral”** means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (i) the NJT Funding Agreement, including all right, title and interest of the Borrower in the New Jersey Contract Payments payable thereunder, (ii) the NJ RRIF Account, and (iii) all Proceeds and products in whatever form of all or any part of the foregoing items (i) and (ii), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments and other funds or amounts on deposit in the NJ RRIF Account.

**“New Jersey Contract Payments”** has the meaning specified in the recitals to this Agreement.

**“New York Collateral”** means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (i) the New York Funding Agreement, including all right, title and interest of the Borrower in the New York Contract Payments payable thereunder, (ii) the NY RRIF Account, and (iii) all Proceeds and products in whatever form of all or any part of the foregoing items (i) and (ii), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments and other funds or amounts on deposit in the NY RRIF Account.

“**New York Contract Payments**” has the meaning specified in the recitals to this Agreement.

“**New York Funding Agreement**” has the meaning specified in the recitals to this Agreement.

“**NJ RRIF Account**” has the meaning specified in Section 6.01.

“**NJT Funding Agreement**” has the meaning specified in the recitals to this Agreement.

“**Notes**” means the RRIF Note.

“**NY RRIF Account**” has the meaning specified in Section 6.01.

“**PANYNJ RRIF Account**” has the meaning specified in Section 6.01.

“**Patriot Act**” has the meaning specified in Section 10.10.

“**Permitted Liens**” means:

- (a) Liens granted pursuant to the Finance Documents;
- (b) Liens for Taxes not yet due or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP; and
- (c) Liens (i) of a collecting bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of setoff) that are customary in the banking industry (in the case of the Collateral Agent, subject to Section 6.06(k)).

“**Port Authority Collateral**” means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (i) the Port Authority Funding Agreement, including all right, title and interest of the Borrower in the Port Authority Contract Payments payable thereunder, (ii) the PANYNJ RRIF Account and (iii) all Proceeds and products in whatever form of all or any part of the foregoing items (i) and (ii), including all security entitlements carried therein, and all cash, cash equivalents, instruments, Permitted Investments and other funds or amounts on deposit in the PANYNJ RRIF Account.

“**Port Authority Contract Payments**” has the meaning specified in the recitals to this Agreement.

“**Port Authority Funding Agreement**” has the meaning specified in the recitals to this Agreement.

“**Proceeds**” means “proceeds” as such term is defined in Article 9 of the UCC or under other relevant law and, in any event, shall include, but shall not be limited to, (i) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with

respect to, any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Borrower, in each case with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (iii) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or payable under or in connection with any of the Collateral (whether or not in connection with the sale, lease or other disposition of the Collateral).

“**Project**” has the meaning specified in the recitals to this Agreement.

“**Project Accounts**” has the meaning specified in Section 6.01(a).

“**RRIF Lender**” has the meaning specified in the preamble to this Agreement.

“**RRIF Loan Agreements**” has the meaning specified in the recitals to this Agreement.

“**RRIF Loan Agreement (New York Funding Agreement)**” has the meaning specified in the recitals to this Agreement.

“**RRIF Loan Agreement (NJT Funding Agreement)**” has the meaning specified in the recitals to this Agreement.

“**RRIF Loan Agreement (Port Authority Funding Agreement)**” has the meaning specified in the recitals to this Agreement.

“**RRIF Note**” means each promissory note delivered by the Borrower in substantially the form of Exhibit E to the RRIF Loan Agreements.

“**RRIF Obligations**” means, collectively, the RRIF Obligations (NJT Funding Agreement), the RRIF Obligations (New York Funding Agreement) and the RRIF Obligations (Port Authority Funding Agreement).

“**RRIF Obligations (New York Funding Agreement)**” means all of the obligations of the Borrower, including any payment or performance obligations, pursuant to or in connection with the RRIF Loan Agreement (New York Funding Agreement), including all such amounts that would be owed by the Borrower but for the fact that collection or receipt of such amounts is unenforceable or not allowed due to a pending proceeding by or against the Borrower under any Insolvency Law.

“**RRIF Obligations (NJT Funding Agreement)**” means all of the obligations of the Borrower, including any payment or performance obligations, pursuant to or in connection with the RRIF Loan Agreement (NJT Funding Agreement), including all such amounts that would be owed by the Borrower but for the fact that collection or receipt of such amounts is unenforceable or not allowed due to a pending proceeding by or against the Borrower under any Insolvency Law.

**“RRIF Obligations (Port Authority Funding Agreement)”** means all of the obligations of the Borrower, including any payment or performance obligations, pursuant to or in connection with the RRIF Loan Agreement (Port Authority Funding Agreement), including all such amounts that would be owed by the Borrower but for the fact that collection or receipt of such amounts is unenforceable or not allowed due to a pending proceeding by or against the Borrower under any Insolvency Law.

**“Securities”** has the meaning ascribed thereto in Article 9 of the UCC.

**“Securities Intermediary”** has the meaning specified in Section 6.06(a).

**“Security Documents”** means the collective reference to (a) this Agreement; (b) any other agreement, document or instrument hereafter entered into or delivered by the Borrower or any other Person which purports to create a Lien in favor of the RRIF Lender or the Collateral Agent for the benefit of the RRIF Lender; and (c) all UCC financing statements and other filings, recordings or registrations required by the Finance Documents to be filed or made in respect of any such Security Document.

**“Taxes”** means any and all present or future income, stamp, transfer, turnover and other taxes, levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and any and all interest, penalties, claims or other liabilities arising under or relating thereto, including those on the Collateral Agent or the RRIF Lender or on payments to be made to or received by any of them from the Borrower under this Agreement.

**“Uniform Commercial Code”** or **“UCC”** means the Uniform Commercial Code, as the same may, from time to time, be in effect in the State of New York; provided that if by reason of mandatory provisions of law, any or all of the perfection, priority of the security interest in, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term **“UCC”** shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof or any other Finance Document or any financing statement relating to such perfection, priority, or remedies and for purposes of definitions related to such provisions.

**“U.S. Government”** means the United States of America and its departments and agencies.

**EXHIBIT B**

**INCUMBENCY CERTIFICATE**

**Gateway Development Commission**

[\_\_\_\_], 20[ ]

I, the undersigned [*NAME*], [*TITLE*] of the Gateway Development Commission (the “Borrower”), hereby certify that the following Authorized Representatives of the Borrower have been duly elected or appointed and are now acting and are qualified to sign on the Borrower’s behalf and that the specimen signatures appearing opposite the names and titles are the genuine signatures of such officers and that said elections or appointments are now in full force and effect. You are further authorized to recognize these signatures until you receive our written instructions to the contrary.

Name (Print)	Title	Signature
_____	_____	_____
.....	.....	.....
.....	.....	.....
.....	.....	.....

IN WITNESS WHEREOF, the undersigned has caused this Incumbency Certificate to be duly executed and delivered as of the date set forth above.

By:

.....  
Name:  
Title:

**EXHIBIT C**  
**FINANCING STATEMENTS**

### **#0724-05: AUTHORIZATION TO AMEND FUNDING AGREEMENT WITH THE STATE OF NEW YORK FOR HUDSON YARDS CONCRETE CASING – SECTION 3**

To help ensure the functionality of intercity and commuter rail infrastructure between New Jersey and New York and throughout the Northeast Corridor (the “**NEC**”), New Jersey and New York created the Gateway Development Commission (“**GDC**”) through the enactment of parallel legislation by each state codified as the Gateway Development Commission Act (2019 N.Y. Laws, Ch. 108 and N.J.S.A. 32:36-1, et seq.) (collectively, the “**GDC Act**”).

The GDC Act empowers the Commission to “enter into, execute and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power of the Commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, with any local government thereof, with any agency, instrumentality, department, commission or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them.” 2019 N.Y. Laws, Ch. 108, Section 2(7)(e); N.J.S.A. 32:36-8(e).

Section 3.06 of the GDC Bylaws provides that “[t]he Board may delegate in whole or in part any power, authority, discretion or obligation to any Officer, in each case to the extent to which the Board deems appropriate.”

Accordingly, on February 3, 2023, the State of New Jersey, the State of New York, the National Railroad Passenger Corporation (“**Amtrak**”), and GDC entered into the Project Development Agreement (“**PDA**”) in order to establish their respective roles and responsibilities with respect to the funding, financing, right-of-way acquisition, procurement, delivery, and operation of the Hudson Tunnel Project (“**HTP**”).

As further described in the PDA, the delivery of certain work packages of the HTP may be implemented pursuant to agreements between the GDC and certain Supporting or Executing Partners as defined in Section 3.02(a) of the PDA (“**SEPs**”), which include the State of New York.

In order to preserve the underground right-of-way for the Hudson River Tunnel to connect to New York Pennsylvania Station, Amtrak has, since 2012, led the design and construction of a concrete casing beneath the John D. Caemmerer West Side Storage Yard on the west side of Manhattan known as (“**Hudson Yards Concrete Casing**” or “**HYCC**”).

The Hudson Yards Concrete Casing has been divided into three (3) segments: HYCC-1, HYCC-2, and HYCC-3. Amtrak oversaw the construction of HYCC-1 and HYCC-2, both of which were completed years before GDC was established. Amtrak has completed final design of HYCC-3 and has secured necessary approvals under the National Environmental Policy Act to construct HYCC-3. The design contemplates extending the concrete casing on a diagonal alignment from 11th Avenue to 30th Street, where it will connect with the Hudson River Tunnel once constructed.

Adopted - 7/2/24

In 2023, Amtrak was notified it was selected for a \$292 million grant for HYCC-3 by the U.S. Department of Transportation under the National Infrastructure Project Assistance program, which also is known as the Mega Grant Program.

Resolution 0523-03 authorized GDC to enter into a Funding Agreement with the State of New York for HYCC-3 ("**NY Funding Agreement**"). The NY Funding Agreement was executed by GDC and the State of New York and dated August 22, 2023.

Consistent with Section 2.01(b) of the NY Funding Agreement and the appropriations bill enacted by the State of New York Legislature for the 2024 fiscal year, the parties have negotiated a Letter of Amendment to the NY Funding Agreement.

Pursuant to the foregoing report, the following resolutions were adopted, with Co-Chair Glen, Co-Chair Grewal-Virk, Vice Chair Coscia, Commissioner Barbas, Commissioner Bauer, Commissioner Rosen and Commissioner Dominguez voting in favor:

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions consistent with this resolution, and to make, execute, and deliver in the name and on behalf of GDC the Letter Amendment to the NY Funding Agreement attached as Exhibit A, and to take all other steps necessary to comply with the terms and conditions of the NY Funding Agreement, as amended.



Adopted - 7/2/24

**EXHIBIT A**

**LETTER OF AMENDMENT TO NY FUNDING AGREEMENT**

July \_\_\_\_\_, 2024

Kris Kolluri  
Chief Executive Officer  
Gateway Development Commission  
2 Penn Plaza East  
Newark, New Jersey 07105

Subject: Agreement No. C000292 between the State of New York (“New York”) and Gateway Development Commission (“GDC”)

Dear Mr. Kolluri:

Under this Letter of Amendment to Agreement No. C000292 (the “Agreement”), New York and GDC agree to the following:

1. Section 1.02 *Rules of Interpretation* is deleted and replaced with the following:

*1.02 Rules of Interpretation.*

(a) In this Agreement and in Appendix A attached hereto, except to the extent that the context otherwise requires:

- (i) words and phrases not otherwise defined in this Agreement or in the Appendix hereto (A) that have well-known technical, insurance, or construction industry meanings shall be construed pursuant to such recognized meanings, and (B) of an accounting or financial nature shall be construed pursuant to generally accepted accounting principles in the United States, in each case considering the context in which such words and phrases are used;
- (ii) references to any document or agreement, including this Agreement and the Appendix hereto, shall be deemed to include references to such document or agreement as amended, supplemented or replaced from time to time in accordance with its terms and (where applicable) subject to compliance with the requirements set forth herein and therein;
- (iii) references to an entity shall include its successors and permitted assigns;
- (iv) references to time and dates shall be deemed to refer to Eastern Time;

- (v) reference to any applicable law shall be deemed to include reference to such law as amended or supplemented from time to time;
- (vi) unless the context shall otherwise require, the words “hereto,” “herein,” “hereof,” and other words of similar import refer to this Agreement as a whole;
- (vii) the use herein of the words “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter;
- (viii) the term “promptly” shall mean as soon as reasonably practicable under the facts and circumstances at the time; and
- (ix) headings are for convenience only and shall not affect the interpretation of this Agreement.

(b) The relevant terms of this Agreement shall not be construed against the Party that prepared them, and the Parties waive any law with contrary effect that would otherwise be applicable in connection with the construction and interpretation of this Agreement.

2. The second sentence of paragraph (b) of Section 2.01 *Funding* is deleted and replaced with the following:

New York shall direct that GDC remit such balance to an account specified by New York within forty-five (45) days after Mega Grant closeout pursuant to 2 C.F.R. § 200.344.

3. Section 7.05 *Entire Agreement* is deleted and replaced with the following:

GDC shall comply with each obligation of “Contractor” set forth in Appendix A (*Standard Clauses for New York State Contracts*) hereto. The Parties acknowledge that, in accordance with the terms of Section 16 of Appendix A (*Standard Clauses for New York State Contracts*), statutory authorization of the submission of disputes with respect to HTP contracts between New York and GDC to binding arbitration has been established pursuant to Part RR of Chapter 58 of the Laws of 2024. This Agreement, as well as its appendices, attachments and exhibits, and any valid amendments constitute the entire agreement among the Parties regarding its subject matter, and no other oral or written understandings, representations, inducements, consideration, promises, or interpretations are part of this Agreement.

4. Paragraph (a) of Section 7.08 *Amendments; Waivers* is deleted and replaced with the following:

(a) No modifications, amendments or waivers of, or consents to departures from, this Agreement will be valid unless in a writing signed by each Party to this Agreement and approved in writing by the Offices of the New York Attorney General and New York State Comptroller.

5. Appendix A (*Standard Clauses for New York State Contracts*) attached hereto is attached as Appendix A (*Standard Clauses for New York State Contracts*) to the Agreement.

Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect through the expiration date.

Please indicate your agreement to the above by signing below.

Sincerely,

Kathryn Garcia  
Director of State Operations and  
Infrastructure  
State of New York

Accepted and Agreed:

\_\_\_\_\_  
Kris Kolluri  
Chief Executive Officer  
Gateway Development Commission

\_\_\_\_\_  
(Date)

Agreement C000292



## APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**June 2023**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to

a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**4. WORKERS’ COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the

manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at

independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in

which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide

Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will



affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must,

instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair

Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business and Technology  
Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business  
Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to

provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCIITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent

this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to

respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.