

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

FRIDAY

June 3, 2022

4:30 p.m.



NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

Meeting of the Directors

Friday

June 3, 2022 – 4:30 p.m.

AGENDA

FOR CONSIDERATION

1. New York Transportation Development Corporation - Authorization to Perform Certain Acts in Connection with the Senior Debt Financing of the Construction of the New Terminal One Project at John F. Kennedy International Airport; and Authorization to Take All Related Action

Item 1

FOR CONSIDERATION

June 3, 2022

TO: The Directors

FROM: Matthew Bray

SUBJECT: New York Transportation Development Corporation (the “Corporation”) – John F. Kennedy International Airport New Terminal One Project

REQUEST FOR: Authorization to Perform Certain Acts in Connection with the Senior Debt Financing of the Construction of the New Terminal One Project at John F. Kennedy International Airport and Authorization to Take All Related Actions

I. INTRODUCTION.

In December 2019, the Corporation authorized inducement of the financing of certain aspects of the redevelopment, construction, financing, operation, and maintenance of the new Terminal One passenger terminal facility at John F. Kennedy International Airport at terminal facilities known as Terminal One, Terminal Two and Terminal Three (the “Project”), including the commencement of review and preparation of documents necessary in connection therewith. The COVID-19 pandemic as well as disruptions in the financial markets resulted in the delay in finalizing the relevant senior debt documents. The relevant senior bank debt financing documents have now been drafted, reviewed, and are substantially finalized. The Board is being asked to approve the operative provisions, terms and transactions contemplated by such senior debt financing documents consisting of the credit agreement, common terms agreement, related documents, and related actions in connection with Project.

II. BACKGROUND.

Based upon the most recent loan documentation circulated to us to date, the Project is being developed by the project company, JFK NTO LLC, a Delaware limited liability company (“NTO” or the “Lessee”). The Lessee is a newly formed special purpose Delaware limited liability company, all the interests of which on the closing date will be owned by Mars NTO LLC, a Delaware limited liability company, JLC JFK Aggregator L.P., a Delaware limited partnership, and Ullico Infrastructure JFK REIT, LLC, a Delaware limited liability company, (collectively referred to as the “Financial Sponsors”, and each a “Financial Sponsor”). There was a public announcement on February 18, 2022, that Ferrovial, S.A., is acquiring 96% of The Carlyle Group’s 51% interest in

NTO. Lessee will be the tenant under the lease agreement between the Lessee and the Port Authority of New York and New Jersey.

The Project is expected to be completed in three phases: Phase A to commence in June 2022 and open in June 2026, Phase B1 to commence in June 2026 and open in April 2028 and Phase B2 to commence in April 2028 and open in October 2029.

The Project will be funded with equity to be provided by the Financial Sponsors and through third-party debt to be borrowed by or issued by the Corporation. The third-party debt is expected to include (i) bank loan facilities, (ii) letter of credit facilities ((i) and (ii) collectively "Bank Loan Facilities") and (iii) tax-exempt and taxable bonds issued by the Corporation (the "Bonds"). A commercial banking syndicate, which does not include any of the Financial Sponsors, has committed to make available the Bank Loan Facilities, which will be disbursed in the form of loans and letters of credit to the Corporation as needed from time to time to fund construction costs, thereby reducing the carrying costs of the financing. As capital market conditions warrant, the Bonds may be issued to pay for project costs and/or to refinance the Bank Loan Facilities. The Corporation's liability to pay debt service on the Bonds and borrowings under the Bank Loan Facilities will be limited to payments received from the Lessee. The Lessee will enter interest rate hedging contracts, such as interest rate swaps, with the lenders of the Bank Loan Facilities to mitigate the risk of interest rates changes on the borrowings under the Bank Loan Facilities and the Bonds. The Corporation will not be a party to the interest rate hedging contracts.

III. LOAN AGREEMENT.

The Bank Loan Facilities will be evidenced by an Amended and Restated Credit Agreement (the "Credit Agreement") by and among Lessee, MUFG Bank, Ltd., as administrative agent (the "Administrative Agent"), the lenders and letter of credit issuing banks party thereto from time to time (collectively, the "Lenders"), and the Corporation, pursuant to which the Lenders, or certain Lenders, will make available to the Corporation a term loan facility, a liquidity facility, a working capital facility and a security deposit facility. The Corporation will be the conduit issuer under the Credit Agreement and pass through the borrowings under the Credit Agreement to Lessee through a Building Loan Agreement and a Project Loan Agreement among the Corporation, the Lessee and MUFG Bank, Ltd., as intercreditor agent (the "Intercreditor Agent"). The Credit Agreement provides for a Term Commitment consisting of the Closing Date Term Commitment in an aggregate principal amount of approximately \$1,430,000,000 and the Delayed Draw Term Commitment in an aggregate principal amount of approximately \$4,900,000,000, Working Capital Facility Commitment in an aggregate principal amount of approximately \$50,000,000, Liquidity Facility Commitment in an aggregate principal amount of approximately \$200,000,000 and Security Deposit Facility Commitment in an aggregate principal amount of approximately \$50,000,000.

The Credit Agreement is a bank credit facility. It does not require that the Corporation issue tax-exempt or taxable Bonds in respect of NTO and does not govern the terms of such Bonds. There is a Common Terms Agreement that allows for future bond issuances if certain

terms and conditions are met and makes provision for the sharing of collateral and payments (between the banks/financial institutions and bond trustee/bondholders). The Building Loan Agreement and Project Loan Agreement are meant to facilitate the pass-through to the Lessee of both (i) advances made by banks/financial institutions under the Credit Agreement and (ii) proceeds from future issuances by the Corporation of tax-exempt and taxable Bonds. The attached Resolution does not authorize or require the Corporation to issue the Bonds. An additional Board meeting will occur so that the Board of Directors can approve the form of final documents and authorize transaction terms with respect to the issuance of the Bonds.

All of the Corporation's liabilities and obligations related to its participation in the Project will be limited solely to payments received from Lessee under loans and other agreements between the Corporation and Lessee.

IV. SECURITY.

The obligations of the Lessee under the Loan Agreements will be secured under and pursuant to an all assets collateral package provided by the Lessee. The Lessee will enter into the Amended and Restated Common Terms Agreement with, among others, JFK NTO TRS LLC, a Delaware limited liability company (the "Taxable REIT Subsidiary"), MUFG Union Bank, N.A., as collateral agent (the "Collateral Agent"), on behalf of itself and the other secured parties, including the Corporation (the "Secured Parties"), MUFG Union Bank, N.A., as the Account Bank, the Intercreditor Agent, the Administrative Agent, the Corporation and each other secured party that becomes a party thereto from time to time to establish, among other things, the collateral account structure and intercreditor terms.

As security for its obligations under the Project Loan Agreement and the Building Loan Agreement, respectively, the Lessee will grant mortgage liens on and security interests in the interests of the Lessee under the Lease to the Corporation. In addition to the security interest in Lessee's leasehold interest, the obligations will be secured by a lien on and security interest in personal property of the Lessee, including but not limited to Lessee's contractual rights and rights to receivables under the Lease and its Equity Interests in the Taxable REIT Subsidiary in favor of the Collateral Agent, for the benefit of the Secured Parties. The Taxable REIT Subsidiary will grant a security interest in and to all of its personal property to the Collateral Agent, for the benefit of the Secured Parties.

The Corporation shall assign all of its rights, title, and interest as mortgagee under the Mortgages to Collateral Agent for the benefit of the Secured Parties pursuant to a project loan collateral assignment, an assignment of the project loan mortgage, a building loan collateral assignment, and an assignment of the building loan mortgage.

In addition, the equity interests of the Lessee will be pledged, pursuant to an equity pledge agreement, to the Collateral Agent, for the benefit of the Secured Parties.

V. FEDERAL TAX LAW REQUIREMENTS REGARDING INTEREST HEDGES FOR TAX-EXEMPT BONDS.

The Lessee intends to enter into interest rate hedging contracts with certain banks and financial institutions that will also be lenders (or any affiliates thereof) to the Corporation under the Credit Agreement in advance of the issuance dates of the tax-exempt Bonds to manage the risk that market interest rates will change before the Bonds are sold. The Corporation will not be a party to these contracts. The Lessee may terminate these hedging contracts in connection with the issuance of the Bonds and would finance any hedge termination costs it may incur with the proceeds of the Bonds. Applicable federal tax regulations do not permit such termination costs to be financed with the proceeds of tax-exempt Bonds unless the Corporation identifies the interest rate hedges to the Bonds on the books and records maintained for the Bonds. The identification must be made no later than 15 days after the date or dates on which the Lessee enters into the hedging contracts. The Corporation's identification of the interest rate hedging contracts for the tax-exempt Bonds is solely for purposes of federal tax compliance and does not cause the Corporation to be a party to or create any obligation of the Corporation with respect to, the interest rate hedging contracts for the tax-exempt Bonds.

VI. ENVIRONMENTAL REVIEW.

The Corporation, as lead agency, has completed an environmental review of the New Terminal One Project, pursuant to the requirements of the State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. Based on this review, the Corporation previously made a Determination of No Significant Effect on the Environment. Therefore, no further environmental review is required in connection with the requested action.

VII. REQUESTED ACTION.

In accordance with the attached resolution, you are hereby requested to: (1) approve the terms of the Credit Agreement and related financing documents being entered into in connection with the disbursement of the Bank Loan Facilities and authorize the incurrence of the senior secured indebtedness under the Credit Agreement on a negotiated basis; (2) authorize the execution of certificates identifying solely for federal income tax compliance purposes interest hedging contracts for the future issuance of tax-exempt Bonds by the Corporation; and (3) authorize certain officers and employees of the Corporation to take all actions deemed necessary to consummate the transactions contemplated by the Credit Agreement and related financing documents being entered into in connection with the disbursement of the Bank Loan Facilities.

VIII. ATTACHMENTS.

Resolution with the following Exhibits: (Exhibits to Directors only)

- A. Common Terms Agreement
- B. Credit Agreement
- C. Project Loan Agreement
- D. Building Loan Agreement
- E. Project Loan Mortgage
- F. Building Loan Mortgage
- G-1. Project Loan Collateral Assignment
- G-2. Project Loan Mortgage Assignment
- H-1. Building Loan Collateral Assignment
- H-2. Building Loan Mortgage Assignment
- I. Hedge Identification Certificate.

June 3, 2022

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Authorization to Perform Certain Acts in Connection with the Senior Debt Financing of the Construction of the New Terminal One Project at John F. Kennedy International Airport and to Take All Related Actions

WHEREAS, the New York Transportation Development Corporation (the “Corporation”), a local development corporation caused to be incorporated by the New York Job Development Authority pursuant to Section 1411 of the New York Not-For-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, and Section 1802, Subtitle I, Title 8, Article 8 of the New York Public Authorities Law (collectively, the “Act”), is authorized by the Act and its By-Laws to assist in the financing of the costs of eligible facilities; and

WHEREAS, JFK Terminal One Co., LLC (the “Original Applicant”) originally requested that the Corporation act as a conduit for the lending of funds to the Original Applicant pursuant to certain senior debt facilities (which may require interest hedging arrangements) and letter of credit facilities provided by commercial banks and to issue tax-exempt and or taxable bonds to partially finance certain aspects of the redevelopment, construction, financing, operation and maintenance of the Leased Premises (as defined below) at the John F. Kennedy International Airport New Terminal One Project (the “Project”); and

WHEREAS, Carlyle Global Infrastructure Opportunity Fund, L.P., a Cayman Islands exempted limited partnership, JLC Infrastructure Fund I, L.P., a Delaware limited partnership, and Ullico Infrastructure JFK Holdco, LLC, a Delaware limited liability company (collectively, the “Original Financial Sponsors”) originally agreed to provide certain equity financing to fund the Project; and

WHEREAS, in December of 2019, the Corporation declared its official intent to assist in the financing of the Project including the redevelopment, construction, financing, operation and maintenance of the New Terminal One passenger terminal facility at John F. Kennedy International Airport in Queens, New York (the “Airport”) at terminal facilities known as (a) Terminal Three (the “Initial Premises”), (b) Terminal Two (the “First Additional Premises”) and (c) subject to certain traffic triggers and credit rating conditions, the existing Terminal One (the “Second Additional Premises” and together with the Initial Premises and the First Additional Premises, the “Leased Premises”) and to incur loans and to issue bonds and use the proceeds thereof to pay or reimburse certain costs of the Project. This declaration of official intent was subject to subsequent approval of the Project by the Corporation and the Port Authority (hereinafter defined); and

WHEREAS, the Airport is owned by The City of New York (the “City”) and is leased to The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and

thereafter consented to by the Congress of the United States (the “Port Authority”) pursuant to the terms and conditions of the Amended and Restated Agreement of Lease of the Municipal Air Terminals dated November 24, 2004, as amended, amended and restated, supplemented or otherwise modified from time to time (the “Basic Lease”); and

WHEREAS, the Original Applicant has assigned to JFK NTO LLC, a Delaware limited liability company (the “Lessee”), and the Lessee has assumed, the Original Applicant’s rights, interests and obligations with respect to the Project, pursuant to that certain Assignment Agreement, dated as of May 13, 2022 by and between the Original Applicant and the Lessee (the “Lessee Assignment”); and

WHEREAS, on or about May 13, 2022, the Original Financial Sponsors assigned their obligations in relation to the Project, including to provide equity financing to fund the Project, to Mars NTO LLC, a Delaware limited liability company, JLC JFK Aggregator L.P., a Delaware limited partnership, and Ullico Infrastructure JFK REIT, LLC, a Delaware limited liability company; and

WHEREAS, the Port Authority will enter into the Agreement of Lease (the “Lease”), with the Lessee, on or before the First Closing Date (as such term is defined in the “Common Terms Agreement”, a draft of which is annexed to this Resolution as Exhibit A), pursuant to which, among other things, the Lessee will be obliged to consummate the Project; and

WHEREAS, the Lessee has requested that the Corporation (i) enter into to an Amended and Restated Credit Agreement among the Lessee, MUFG Bank, Ltd., as administrative agent (the “Administrative Agent”) and the lenders and letter of credit issuing banks party thereto (the “Lenders”) and the Corporation, referred to herein as the “Credit Agreement,” a draft of which is annexed to this Resolution as Exhibit B), pursuant to which the Lenders, or certain Lenders, will make available to the Corporation a term loan facility, a liquidity facility, a working capital facility and a security deposit facility, (ii) at a later time, issue one or more series of senior secured bonds (the “Bonds”) if requested by the Lessee, (iii) at a later time, issue one or more series of senior secured notes (the “Notes”) if requested by the Lessee, and (iv) at a later time, incur other senior indebtedness, in each case for the purposes of funding, refinancing, or reimbursing the Project and associated costs, not including hedge obligations (collectively, the “Senior Debt”) if requested by the Lessee and (v) enter into an Amended and Restated Common Terms Agreement by and among the Lessee, JFK NTO TRS LLC, a Delaware limited liability company (the “Taxable REIT Subsidiary”), MUFG Union Bank, N.A., as collateral agent (the “Collateral Agent”), on behalf of itself and the other secured parties (the “Secured Parties”), MUFG Union Bank, N.A., as the Account Bank, the Intercreditor Agent, the Administrative Agent, the Corporation and each other secured party that becomes a party thereto from time to time, pursuant to which, among other things, intercreditor terms between such creditors are included; and

WHEREAS, if and as issued, drawn or extended, the proceeds of the Senior Debt will be loaned to the Lessee (i) for purposes of funding Project Loan Costs (as defined in the Common Terms Agreement), pursuant to the project loan agreement (the “Project Loan Agreement,” a draft of which is annexed to this Resolution as Exhibit C) with the Lessee and MUFG Bank, Ltd., as intercreditor agent (the “Intercreditor Agent”) and (ii) for purposes of funding Building Loan

Costs (as defined in the Common Terms Agreement), pursuant to the building loan agreement (the "Building Loan Agreement," a draft of which is annexed to this Resolution as Exhibit D, and together with the Project Loan Agreement, the "Loan Agreements") with the Lessee and the Intercreditor Agent; and

WHEREAS, on or before the First Closing Date, the Corporation will enter into the Common Terms Agreement and the Credit Agreement; and

WHEREAS, as security for its obligations under the Project Loan Agreement and the Building Loan Agreement, respectively, the Lessee will grant mortgage liens on and security interests in the interests of the Lessee under the Lease to the Corporation pursuant to a project loan mortgage (the "Project Loan Mortgage," a draft of which is annexed to this Resolution as Exhibit E) and the building loan mortgage (the "Building Loan Mortgage," a draft of which is annexed to this Resolution as Exhibit F, and, together with the Project Loan Mortgage, the "Mortgages"), respectively, and the Lessee has requested that the Corporation assign all of its rights, title and interest as mortgagee (subject to certain reserved rights) under the Mortgages to the Collateral Agent for the benefit of the Secured Parties; and

WHEREAS, the Corporation shall assign all of its rights, title and interest as mortgagee under the Mortgages to Collateral Agent for the benefit of the Secured Parties pursuant to a project loan collateral assignment (the "Project Loan Collateral Assignment," a draft of which is annexed to this Resolution as Exhibit G-1), an assignment of the Project Loan Mortgage (the "Project Loan Mortgage Assignment," a draft of which is annexed to this Resolution as Exhibit G-2), a building loan collateral assignment (the "Building Loan Collateral Assignment," a draft of which is annexed to this Resolution as Exhibit H-1) and an assignment of the Building Loan Mortgage (the "Building Loan Mortgage Assignment," a draft of which is annexed to this Resolution as Exhibit H-2, and, together with the Project Loan Collateral Assignment, the Project Loan Mortgage Assignment and the Building Loan Collateral Assignment, the "Collateral Assignments"); and

WHEREAS, as security for the payment and performance of the Secured Obligations (as defined in the Common Terms Agreement), (i) the Lessee will, pursuant to a security agreement, grant a security interest in and to the Collateral (as defined in the Common Terms Agreement), including but not limited to its contractual rights and its rights to receivables under the Lease and its Equity Interests (as defined in the Common Terms Agreement) in the Taxable REIT Subsidiary, to the Collateral Agent for the benefit of the Secured Parties, and (ii) the Taxable REIT Subsidiary will, pursuant to a security agreement, grant a security interest in and to the Collateral to the Collateral Agent, for the benefit of the Secured Parties; and

WHEREAS, as security for the payment and performance of the Secured Obligations, the equity interests of the Lessee will be pledged, pursuant to an equity pledge agreement, to the Collateral Agent, for the benefit of the Secured Parties; and

WHEREAS, (i) in order to manage the risk of interest rate changes with respect to the Bonds, the Lessee will enter into one or more contracts, including interest rate swap contracts

and forward contracts with certain banks and financial institutions that will also be lenders (or affiliates of lenders) to the Corporation under the Credit Agreement, in advance of the issuance of the dates of issue of the Bonds (the "Anticipatory Hedge Contracts") which contracts the Lessee may terminate or about the dates of issue of the Bonds, (ii) the Lessee intends to finance its cost, if any, of terminating the Anticipatory Hedge Contracts with a portion of the proceeds of the Bonds, (iii) in order for the Lessee's termination cost of the Anticipatory Hedge Contracts to be financed by a portion of the proceeds of the Bonds, applicable Federal tax regulations require that the Corporation identify the Anticipatory Hedge Contracts on the books and records maintained for the Bonds (each such identification, a "Hedge Identification Certificate", a draft of which is annexed to this Resolution as Exhibit I) no later than 15 days after the date or dates on which the Lessee and the Hedge Providers enter into the Anticipatory Hedge Contracts, (iv) applicable Federal tax regulations require that the Hedge Identification Certificate provide sufficient detail to establish that the Anticipatory Hedge Contract is a "qualified hedge" for purposes of the applicable Federal tax regulations and (v) the Corporation's identification of the Anticipatory Hedges is solely for purposes of Federal tax compliance and does not make the Corporation a party to, or create any obligation of the Corporation with respect to, the Anticipatory Hedge Contracts.

NOW, therefore, the Board, in accordance with the materials presented at this meeting, including the Board Memorandum and the Exhibits annexed to this Resolution (collectively, the "Materials"), upon motion duly made and seconded, duly adopts the following Resolution; and

RESOLVED, that copies of the Materials are hereby ordered to be filed with the records of the Corporation and are deemed to be incorporated herein by reference; and further

RESOLVED, that the Credit Agreement, Common Terms Agreement, Loan Agreements, Mortgages, Collateral Assignments, and the Hedge Identification Certificate (including in each case any exhibits and schedules thereto), in substantially the forms presented to this meeting, are hereby approved, and any Authorized Officer (as hereinafter defined) is hereby authorized and directed to execute and deliver the same on behalf of the Corporation, in such forms as are approved with such changes, supplements and amendments thereto as any Authorized Officer executing the same may approve, such approval to be conclusively evidenced by such Authorized Officer's execution thereof; and further

RESOLVED, that the amount, maturity or maturities, prices and yields, if any, and other terms of or relating to the Senior Debt (the "Terms") insofar as set forth or to be set forth in the Senior Debt Documents (as defined in the Common Terms Agreement), are hereby approved, with the understanding that such Terms will be finalized in connection with the issuance of such Senior Debt, subject to the final approval of any Authorized Officer, such approval to be evidenced by such Authorized Officer's execution of each of the Senior Debt Documents and that all other documents relating to such Senior Debt shall similarly, as appropriate, be conformed thereto; provided that: (A)(i) the aggregate principal amount of the term loan facility under the Credit Agreement shall be approximately \$6,630,000,000.00 consisting of the Closing Date Term Commitment in an aggregate principal amount of approximately \$1,430,000,000 and the Delayed

Draw Term Commitment in an aggregate principal amount of approximately \$4,900,000,000, (ii) the aggregate principal amount of the liquidity facility under the Credit Agreement shall be approximately \$200,000,000, (iii) the aggregate principal amount of the working capital facility under the Credit Agreement shall be approximately \$50,000,000, and (iv) the aggregate principal amount of the security deposit facility under the Credit Agreement shall be approximately \$50,000,000; and (B) the final maturity of any Senior Debt shall not extend past the current expiration date of the Lease of December 30, 2060; and further

RESOLVED, that, if and as issued, drawn or extended, the Corporation shall apply the proceeds of the Senior Debt in accordance with Loan Agreements and the applicable Senior Debt Documents; and further

RESOLVED, that each of the Controller, Treasurer and Deputy General Counsel of the Corporation, and any other person duly authorized to act in such capacity from time to time, is hereby designated an Authorized Officer (each an "Authorized Officer"); and further

RESOLVED, that each of the Authorized Officers is hereby authorized and directed to approve and execute such documents, instruments and certificates, make any changes to the forms of the Credit Agreement, Common Terms Agreement, Loan Agreements, Mortgages, Collateral Assignments, and the Hedge Identification Certificate (including in each case any exhibits and schedules thereto) and all other related documents, as he or she may reasonably deem necessary, desirable or appropriate to consummate the transactions authorized hereby and thereby, make such payments and take such other actions in the name of the Corporation and on its behalf, as he or she may reasonably deem necessary, desirable or appropriate to carry out the foregoing resolutions, including without the execution and delivery of any and all papers, instruments, opinions, certificates, affidavits, agreements and other documents necessary, desirable or appropriate to carry out the foregoing resolutions and that all actions heretofore taken in connection with the offering, sale and issuance of the Senior Debt by any Authorized Officer or his or her designee are hereby ratified and approved; and further

RESOLVED, that each of the Authorized Officers and his or her designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Corporation consistent with this authorization are hereby ratified and affirmed.

* * *