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CREDIT FACILITY AND REIMBURSEMENT AGREEMENT

Dated as of July 1, 2021

BETWEEN

CITY AND COUNTY OF DENVER, COLORADO,  
for and on behalf of its Department of Aviation

and

BANC OF AMERICA PREFERRED FUNDING CORPORATION

Relating to:  
\$15,800,000 outstanding principal amount of  
City and County of Denver, Colorado, for and on behalf of  
its Department of Aviation  
Airport System Revenue Bonds,  
Series 2021A

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## Credit Facility and Reimbursement Agreement

(This Table of Contents is not a part of  
this Credit Facility and  
Reimbursement Agreement  
and is only for  
convenience of reference)

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EXHIBIT A - NOTICE OF TENDER

## CREDIT FACILITY AND REIMBURSEMENT AGREEMENT

This CREDIT FACILITY AND REIMBURSEMENT AGREEMENT dated as of July 1, 2021 (as amended, modified or supplemented from time to time, this “*Agreement*”), is entered into between the City and County of Denver, Colorado, for and on behalf of its Department of Aviation (the “*City*”), and Banc of America Preferred Funding Corporation, and its successors and assigns (the “*Bank*”).

### RECITALS

WHEREAS, the City has heretofore issued the Series 2021A Bonds (as hereinafter defined) pursuant to the terms of the hereinafter defined Ordinance;

WHEREAS, the City has determined to execute this Agreement in connection with the Series 2021A Bonds being issued to refund, by means of an exchange, the City and County of Denver, Colorado, Airport System Revenue Bonds Series 1992F; and

WHEREAS, the City has determined to execute this Agreement in order to provide a source of funding for the purchase by the Bank on the terms and conditions specified herein of the Series 2021A Bonds which are tendered; and

WHEREAS, the Bank is willing, upon the terms and conditions set forth in this Agreement, to hold the Series 2021A Bonds as Series 2021A Credit Facility Bonds (as hereinafter defined) upon the direction of a mandatory tender by the Bank;

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, the City, for and on behalf of its Department of Aviation, and the Bank, on behalf of itself and the Holders, hereby agree as follows:

### ARTICLE ONE DEFINITIONS

*Section 1.1. Definitions.* As used in this Agreement:

“*Affiliate*” means a corporation, partnership, association, joint venture, business trust, governmental entity or similar entity organized under the laws of any state that directly, or indirectly through one (1) or more intermediaries, Controls or is Controlled by, or is under common Control with, the City, the Department of Aviation or Bank, as may be applicable.

“*Agreement*” has the meaning set forth in the introductory paragraph hereto.

“*Airport*” means the Denver International Airport.

“*Airport System*” has the meaning set forth in the General Bond Ordinance.

“*Applicable Law*” means all applicable provisions of all constitutions, statutes, rules, regulations and all orders, judgments and decrees of all governmental bodies, courts and arbitrators.

“*Authorized Denominations*” has the meaning set forth in the Ordinance.

“*Authorized Officer*” means the Manager, the Acting Manager of Aviation, the Manager of Finance, the Chief Financial Officer, ex-officio Treasurer of the City, the Debt Administrator of the City or the City Attorney.

“*Bank*” means Banc of America Preferred Funding Corporation, a Delaware corporation, and its successors and assigns.

“*Bank Agreement*” has the meaning set forth in Section 5.1(x) hereof.

“*Bank Obligations*” means (i) the Senior Bond Obligations and (ii) the obligations of the City, for and on behalf of its Department of Aviation, under this Agreement to repay (a) all expenses and charges payable or reimbursable hereunder to the Bank, the Majority Holder or the other Holders arising under or in relation to this Agreement (including, without limitation, any amounts to reimburse the Bank, the Majority Holder or the other Holders for any advance or expenditures by it under any of such documents) and (b) all other payment obligations of the City, on behalf of its Department of Aviation, to the Bank, the Majority Holder or any other Holders arising under or in relation to this Agreement or the other Related Documents, in each case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

“*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 (iv) seven percent (7.00%).

“*Bond Counsel*” means Hogan Lovells US LLP or any other attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the validity of and the tax-exempt nature of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America and selected by the City, for and on behalf of its Department of Aviation.

“*Bond Documents*” means the General Bond Ordinance, Supplemental Bond Ordinance, the Bond Purchase Contract, the Paying Agent Agreement, the Tax Certificate and the Series 2021A Credit Facility Bonds.

“*Bond Purchase Contract*” means the Bond Purchase and Exchange Agreement dated July [13], 2021, between Banc of America Preferred Funding Corporation and the City.

“*Bond Requirements*” has the meaning set forth in the General Bond Ordinance.

“*Bonds*” means, collectively, any bonds issued pursuant to the General Bond Ordinance that are secured on a parity with the Series 2021A Bonds and the Series 2021A Credit Facility Bonds.

“*Business Day*” has the meaning set forth in the Supplemental Bond Ordinance.

“*Calculation Agent*” means Bank of America, N.A.

“*Capital Fund*” has the meaning set forth in the Ordinance.

“*Capital Lease*” means any lease of Property by any Person which in accordance with GAAP would be required to be capitalized on the balance sheet of such Person.

“*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.

“*City*” means the City and County of Denver, Colorado, for and on behalf of its Department of Aviation.

“*Closing Date*” means July [13], 2021.

“*Code*” means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, and all lawful regulations promulgated thereunder.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, through the right to elect not less than a majority of the members of its board of directors or other governing board, by contract or otherwise, “*Controlling*” and “*Controlled*” have meanings correlative thereto.

“*Credit Facility*” has the meaning set forth in the General Bond Ordinance.

“*Credit Facility Obligations*” has the meaning set forth in the General Bond Ordinance

“*Debt*” means, for any Person (without duplication), (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other

similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property, except trade accounts payable arising in the ordinary course of business, (d) all Capital Leases of such Person, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all Guarantees by such Person of Debt of other Persons and (i) all obligations of such Person under any Swap Agreement; *provided* that in no event shall the term “*Debt*” as used herein include any indebtedness of the City, for and on behalf of its Department of Aviation, which is payable solely from payments to be made by a Person other than the City, for and on behalf of its Department of Aviation.

“*Default*” means any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default.

“*Default Rate*” means the sum of the Base Rate from time to time in effect *plus* 4.00% per annum, payable on demand.

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to Sections of ERISA shall be construed also to refer to any successor Sections.

“*Escrow Account*” has the meaning set forth in the General Bond Ordinance.

“*Event of Default*” has the meaning set forth in Section 7.1 hereof.

“*Excess Interest*” has the meaning specified in Section 2.10 hereof.

“*FAA*” means the Federal Aviation Administration of the United States Department of Transportation and any successor thereto.

“*Federal Funds Rate*” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as determined by the Bank.



“*Fiscal Year*” has the meaning set forth in the General Bond Ordinance.

“*Fitch*” means Fitch, Inc., and its successors and assigns.

“*FRB*” means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

“*Funds*” means (i) all funds established under the General Bond Ordinance (except for moneys and securities held in any Escrow Account and except as otherwise provided in the General Bond Ordinance) and, (ii) to the extent pledged to the payment of the Bank Obligations, all funds and accounts established under the Supplemental Bond Ordinance.

“*GAAP*” means accounting principles generally accepted in the United States of America in effect from time to time, applied by the City, for and on behalf of its Department of Aviation, on a basis consistent with applicable Government Accounting Standards Board pronouncements and the City’s most recent financial statements, furnished to the Holders pursuant to Section 5.1(h) hereof.

“*General Bond Ordinance*” means Ordinance No. 0777, Series of 2018, adopted by the City, for and on behalf of its Department of Aviation, cited as the “*2018 Amended and Restated Airport System General Bond Ordinance*,” as amended and supplemented prior to the Effective Date and as it may be further amended and supplemented from time to time in accordance with the provisions of Section 6.8 hereof and the provisions thereof.

“*General Junior Lien Bond Ordinance*” means Ordinance No. 17-0972, Series of 2017 cited as the “*Airport System General Junior Lien Bond Ordinance*,” as amended and supplemented prior to the Effective Date hereof and as it may be amended and supplemented from time to time in accordance with the provisions thereof

“*General Subordinate Bond Ordinance*” means Ordinance No. 302, Series of 2013, titled as the “*Amended and Restated Airport System General Subordinate Bond Ordinance*,” as amended and supplemented prior to the Effective Date hereof and as it may be amended and supplemented from time to time in accordance with the provisions thereof.

“*Governmental Approval*” means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

“*Governmental Authority*” means any nation or government, any state, department, agency or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

“*Gross Revenues*” has the meaning set forth in the General Bond Ordinance on the date hereof, as such definition may be amended from time to time in accordance with the terms hereof and the General Bond Ordinance.

“*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.

“*Holder*” shall mean each registered owner of the Series 2021A Credit Facility Bonds, including the Bank.

“*Initial Index Rate Period*” has the meaning set forth in the Supplemental Bond Ordinance.

“*Junior Lien Bonds*” has the meaning set forth in the General Junior Lien Bond Ordinance.

“*Junior Lien Obligations*” has the meaning set forth in the General Junior Lien Bond Ordinance.

“*Junior Lien Obligation Cross-Default Provision*” means a provision in a Bank Agreement, pursuant to which the Provider is supporting bonds or other securities under the Ordinance secured senior to or on a parity with Senior Bonds, including the Series 2021A Bonds and the Series 2021A Credit Facility Bonds, the other Bank Obligations, and all other Senior Obligations, which provides for an event of default under such Bank Agreement upon the occurrence of (i) a failure by the City, for and on behalf of its Department of Aviation, to pay when due the principal, interest or redemption price of any Junior Lien Obligations or (ii) any event, default or event of default with respect to any Junior Lien Obligations which, pursuant to the provisions of any Contract related to such Junior Lien Obligations, permits the holders of such Junior Lien Obligations to accelerate such Junior Lien Obligations or require such Junior Lien Obligations to be prepaid prior to the stated maturity date thereof.

“*Laws*” means such federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

“*Lending Office*” means, with respect to the Bank, the office or offices of the Bank described as such in Section 8.09 hereof, or such other office or offices as the Bank may from time to time notify the City.

“*Lien*” means any mortgage, deed of trust, lien, security interest, assignment, pledge, charge, hypothecation or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“*Majority Holder*” means the Holders owning a majority of the aggregate principal amount of Series 2021A Credit Facility Bonds from time to time; *provided* that, the Majority Holder shall at all times be Banc of America Preferred Funding Corporation, any Affiliate of Banc of America Preferred Funding Corporation or any commercial bank. As of the Closing Date, the Bank shall be the Majority Holder.

“*Manager*” has the meaning set forth in the General Bond Ordinance.

“*Material Adverse Effect*” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, performance, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Department of Aviation of the City or the Airport System or the transactions contemplated by this Agreement or the Related Documents; (b) a material impairment of the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations under any Related Document to which it is a party; or (c) a material adverse change in, or a material adverse effect upon, the legality, validity, binding effect or enforceability against the City, for and on behalf of its Department of Aviation, of any Related Document to which it is a party.

“*Maximum Rate*” means the lesser of (i) twelve percent (12%) per annum and (ii) the maximum non-usurious lawful rate of interest permitted by law.

“*Moody’s*” means Moody’s Investors Service, Inc. and its successors and assigns.

“*Net Revenues*” means the Gross Revenues remaining after the deduction of Operation and Maintenance Expenses.

“*Noise Law*” means, collectively, the Noise Statute and the Noise Regulations.

“*Noise Regulations*” means 14 Code of Federal Regulations Part 161, as amended.

“*Noise Statute*” means the Federal Airport Noise and Capacity Act of 1990, as amended.

“*Notice of Tender*” means the form of Notice of Tender delivered by the Bank pursuant to the terms of Section 2.2 hereof and attached hereto as Exhibit A.

“*Obligations*” has the meaning set forth in the General Bond Ordinance.

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

“*Operation and Maintenance Expenses*” has the meaning set forth in the General Bond Ordinance.

“*Ordinance*” means that certain General Bond Ordinance as supplemented by the Supplemental Bond Ordinance and as otherwise amended and supplemented.

“*Outstanding*” has the same meaning herein as in the General Bond Ordinance.

“*Paying Agent*” means U.S. Bank National Association, as Paying Agent under Supplemental Bond Ordinance No. [\_\_\_\_], and any successor paying agent for the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds).

“*Paying Agent Agreement*” means that certain Paying Agent Agreement dated as of July [13], 2021, between the City and the Paying Agent, as amended, supplemented, modified or restated from time to time in accordance with the provisions of Section 6.08 hereof and thereof.

“*Person*” means an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*PFCs*” means the passenger facility charge imposed by the City, for and on behalf of its Department of Aviation, on passengers enplaned at the Airport pursuant to the PFC Regulations.

“*PFC Regulations*” means 14 CFR Part 158 of the Federal Aviation Regulations, as amended and supplemented, and any successor regulations of the FAA relating to PFCs.

“*Pledged Funds*” means the Bond Fund established under the General Bond Ordinance and, to the extent pledged to the payment of Bonds and Obligations, any other funds and accounts established under the General Bond Ordinance and the Supplemental Bond Ordinance.

“*Pricing Certificate*” means the pricing certificate delivered by the Treasurer of the City with respect to the Series 2021A Bonds pursuant to Supplemental Bond Ordinance No. [\_\_\_\_].

“*Prime Rate*” means on 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 such 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.

“*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.

“*Provider*” has the meaning set forth in Section 5.01(x) hereof.

“*Rating Agencies*” means S&P, Moody’s and Fitch.

“*Related Documents*” means this Agreement, the Bond Documents and any other documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder.

“*S&P*” means S&P Global Ratings, and its successors and assigns.

“*Sanction(s)*” means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*Senior Bond Rating*” means each long-term unenhanced rating assigned by Moody’s, S&P and/or Fitch to the Senior Bonds (each, a “*Senior Bond Rating*”).

“*Senior Bonds*” means “Bonds” as defined in the General Bond Ordinance.

“*Senior Bond Obligations*” means the obligations of the City to pay principal of and interest on the Series 2021A Credit Facility Bonds.

“*Senior Obligations*” means “*Obligations*” as defined in the General Bond Ordinance.

“*Series 2021A Bonds*” means the City’s Airport System Revenue Bonds, Series 2021A issued by the City, for and on behalf of its Department of Aviation, in the original aggregate principal amount of \$15,800,000.

“*Series 2021A Credit Facility Bonds*” means the Series 2021A Bonds registered for the account of the Bank or its transferee, nominee or designee pursuant to the terms of Section 2.1 hereof.

“*State*” means the State of Colorado.

“*Supplemental Bond Ordinance*” means the Supplemental Bond Ordinance No. [\_\_\_\_], which supplements the General Bond Ordinance, as amended, supplemented, modified, or restated from time to time in accordance with the terms hereof and thereof.

“*Swap Agreement*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing

(including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, 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.

“*Taxes*” means any and all present or future taxes, duties, levies, imposts, deductions, fees, assessments, charges or withholdings, and any and all liabilities with respect to the foregoing, including interest, additions to tax and penalties applicable thereto.

“*Tax Certificate*” means the tax certificate delivered by the City, for and on behalf of its Department of Aviation, in connection with the delivery of the Series 2021A Bonds substantially in such form as Bond Counsel may require and which shall be approved by the Bank, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof and thereof.

“*Tender Date*” means the Business Day on which the tender occurs following delivery of the Notice of Tender by the Bank.

“*Tender Period*” means the period from the Closing Date hereof to and including the earliest of the close of business on (a) the last day of the Initial Index Rate Period, (b) the date on which no Series 2021A Bonds are Outstanding, and (c) the date that Banc of America Preferred Funding Corporation or any of its Affiliates no longer own any of the Series 2021A Bonds.

“*Tender Price*” means 100% of the principal amount of the Series 2021A Bond deemed tendered in accordance with the terms of the Ordinance.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein shall have the same meanings herein as in the Ordinance. All references in this Agreement to times of day shall be references to New York time unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

## **ARTICLE TWO**

### **TENDER OF BONDS**

*Section 2.1. Commitment to Hold Series 2021A Bonds as Series 2021A Credit Facility Bonds.* The Bank agrees, on the terms and conditions contained in this Agreement, to hold the Series 2021A Bonds deemed tendered in accordance with the terms of the Ordinance, from time to time during the Tender Period at the Tender Price. The aggregate principal amount (or portion thereof) of any Series 2021A Bonds held by the Bank on and after any Tender Date shall be an

Authorized Denomination. Any Series 2021A Bonds so held shall thereupon constitute Series 2021A Credit Facility Bonds for purposes hereof and Series 2021 Credit Facility Bonds under the Supplemental Bond Ordinance No. [\_\_\_\_\_] and shall, from the date of such tender and while they are Series 2021A Credit Facility Bonds, bear interest at the Default Rate and have such other characteristics of Series 2021A Credit Facility Bonds as set forth herein and Series 2021 Credit Facility Bonds as provided in the Ordinance.

*Section 2.2. Method of Causing Tender.* If, on any Business Day during the Tender Period, the Bank delivers a Notice of Tender to the Paying Agent and City, the Series 2021A Bonds shall be deemed Series 2021A Credit Facility Bonds on the Tender Date set forth therein.

*Section 2.3. Payment Obligations.* (a) The City, for and on behalf of its Department of Aviation, hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all Bank Obligations owing to the Bank, the Majority Holder and the Holders, whether now existing or hereafter arising, irrespective of their nature, whether direct or indirect, absolute or contingent, with interest thereon at the rate or rates provided in the Related Documents for such Bank Obligations.

(b) The City, for and on behalf of its Department of Aviation, shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all reasonable costs and expenses of the Holders in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of their rights under this Agreement, the other Related Documents and such other documents as may be delivered in connection herewith or therewith, including, without limitation, the reasonable fees and expenses for counsel and other reasonably required consultants to such Holders in connection with advising such Holders as to their rights and remedies under this Agreement, the other Related Documents and such other documents;

(ii) a fee for each amendment of any Related Document or consent by the Bank, the Majority Holder or the Holders or waiver by the Bank, the Majority Holder or the Holders under any Related Document, in each case in a minimum amount of \$3,500, plus the reasonable fees and expenses of any counsel retained by the Holders in connection therewith; and

(iii) any amounts advanced by or on behalf of Bank, the Majority Holder or the Holders to the extent required to cure any Event of Default (or an event or condition which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default) or event of nonperformance hereunder or under any other Related Document, together with interest at the Default Rate.

In addition, if at any time any Governmental Authority shall require revenue or other documentary stamps or any other tax in connection with the execution or delivery of this Agreement or other Related Documents, then, if the City, for and on behalf of its Department of Aviation, lawfully may pay for such stamps, taxes or fees, the City, for and on behalf of its

Department of Aviation, shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the City, for and on behalf of its Department of Aviation, agrees, to the extent permitted by law, to save the Holders harmless from and against any and all liabilities with respect to or resulting from any delay of the City or the Department of Aviation in paying, or omission of the City or the Department of Aviation to pay, for such stamps, taxes and fees hereunder.

*Section 2.4. Rights of Bank Holders.* Upon holding Series 2021A Credit Facility Bonds after a deemed tender, the Bank shall be entitled to and, where necessary, shall be deemed assigned all rights, privileges and security accorded Holders as provided in the Series 2021A Bonds and in the Ordinance, other than the right (a) to tender such Series 2021A Credit Facility Bonds for purchase pursuant to Section 6.15 of Supplemental Bond Ordinance No. [\_\_\_\_], (b) to have such Series 2021A Bonds purchased upon an expiration or termination of this Agreement or (c) in any event, to have such Series 2021A Bonds purchased with amounts drawn hereunder; *provided, however,* that to the extent rights and privileges in addition to those granted to Holders of the Series 2021A Bonds under the Ordinance and the Series 2021A Bonds are provided to Holders of Series 2021A Credit Facility Bonds pursuant to this Agreement, the terms of this Agreement shall prevail and govern and any such additional rights and privileges shall be deemed to be incorporated in the Ordinance. Upon purchasing Series 2021A Credit Facility Bonds and the registration of such Series 2021A Credit Facility Bonds in the name of, for the benefit of, or at the direction of the Bank, as provided herein, the Bank shall be recognized by the City, for and on behalf of the Department of Aviation, and the Paying Agent as the true and lawful owners of the Series 2021A Credit Facility Bonds (or, in the case of Book Entry Bonds, the beneficial owners thereof), and the City, for and on behalf of the Department of Aviation, and the Paying Agent acknowledge that Series 2021A Credit Facility Bonds shall be considered Series 2021 Credit Facility Bonds for purposes of the Supplemental Bond Ordinance and shall be secured to the same extent as any other Holders of Bonds under the Ordinance, including, without limitation, the right to receive payments of principal and interest, and all rights under the Ordinance upon the occurrence of any “event of default” under the Ordinance, except to the extent the Ordinance and this Agreement provide to the Bank rights, privileges or obligations that are not applicable to Holders in general.

*Section 2.5. Computation of Interest.* All computations of interest payable by the City, for and on behalf of its Department of Aviation, under this Agreement shall be made on the basis of a year of 360 days and actual days elapsed. Interest shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof. All computations of fees and other amounts payable by the City, for and on behalf of its Department of Aviation, under this Agreement shall be made on the basis of a year of 360 days and actual days elapsed.

*Section 2.6. Payment.* All payments to be made by the City, for and on behalf of its Department of Aviation, other than the Senior Bond Obligations, shall be made in Dollars and immediately available funds by wire transfer pursuant to instructions provided by the Bank to the City, for and on behalf of its Department of Aviation, without condition or deduction for any counterclaim, defense, recoupment or setoff. If any payment to be made by the City, for and on behalf of its Department of Aviation, shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected



in computing interest or fees, as the case may be. For payments not made by direct debit, payments will be made to the Bank at the Lending Office not later than 3:00 p.m. on the date specified herein. All payments received by the Bank after 3:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

*Section 2.7. Late Payments.* If any amount with respect to the Series 2021A Credit Facility Bond or any Bank Obligation is not paid when due, such obligation shall bear interest until paid in full at the Default Rate.

*Section 2.8. Obligations Absolute.* The payment obligations of the City, for and on behalf of its Department of Aviation, 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, the Series 2021A Credit Facility Bonds or any of the other Related Documents;

(b) any amendment or waiver of or any consent to departure from all or any of the Related Documents;

(c) the existence of any claim, set-off, defense or other right which the City, for and on behalf of its Department of Aviation, may have at any time against the Bank, the Majority Holder any other Holder or any other Person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or

(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding this Section, the Bank acknowledges the City, for and on behalf of its Department of Aviation, may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The payment obligations of the City, for and on behalf of its Department of Aviation, 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.

*Section 2.9. Maximum Rate.* If the rate of interest payable on the Series 2021A Credit Facility Bonds shall exceed the Maximum Rate for any period for which interest is payable, then, to the extent permitted by law, (a) interest at the Maximum 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 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 Rate, at which time the City, for and on behalf of its Department of Aviation, shall pay to the Holders, with respect to amounts then payable to the Holders 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 Holders to equal the Maximum 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 Series 2021A Credit Facility Bonds and other Bank 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 Holders. Notwithstanding the foregoing, on the date on which no Series 2021A Credit Facility Bonds or other Bank Obligations remain unpaid, to the extent permitted by law, the City, for and on behalf of its Department of Aviation, shall pay the Holders a fee equal to any accrued and unpaid Excess Interest.

*Section 2.10. Optional Redemption.* The Series 2021A Credit Facility Bonds deemed tendered hereunder in accordance with the Ordinance, from time to time during the Tender Period, may be optionally redeemed by the City on any Business Day upon five (5) Business Days' written notice to the Bank.

*Section 2.11. Special Obligations.* Notwithstanding any other provision of this Agreement or any other Related Document to the contrary, the Series 2021A Credit Facility Bonds are special obligations of the City, for and on behalf of its Department of Aviation, payable solely from the Net Revenues and the Funds on parity with all other outstanding Senior Bonds issued pursuant to the Ordinance. The Series 2021A Credit Facility Bonds and all other Bank Obligations shall not (i) constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation or (ii) be considered or held to be general obligations of the City. The City does not pledge its full faith and credit and taxing power for the payment of the Bank Obligations. The obligations owed to the Holders (including the Bank) hereunder (other than amounts due on the Series 2021A Credit Facility Bonds) of the City, for and on behalf of its Department of Aviation, are general, unsecured obligations of the City, for and on behalf of its Department of Aviation, and payable from moneys in the Capital Fund.

### **ARTICLE THREE**

#### **TAXES, YIELD PROTECTION AND ILLEGALITY**

*Section 3.1. 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 the Bank or any other Holder;

(ii) subject the Bank or any other Holder 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 the Bank or any other Holder any other condition, cost or expense affecting this Agreement;

and the result of any of the foregoing shall be to increase the cost to the Bank or any other Holder with respect to this Agreement, the Series 2021A Credit Facility Bonds, or the making, maintenance or funding of the purchase price of the Series 2021A Credit Facility Bonds, or to reduce the amount of any sum received or receivable by the Bank or any other Holder hereunder (whether of principal, interest or any other amount) then, upon request of the Bank or any other Holder, the City, for and on behalf of its Department of Aviation, will pay to the Bank or any other Holder, such additional amount or amounts as will compensate the Bank or any other Holder for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank or any other Holder determines that any Change in Law affecting the Bank or any other Holder or the Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Bank's capital or liquidity or on the capital or liquidity of the Bank's holding company, if any, as a consequence of this Agreement or the Series 2021A Credit Facility Bonds to a level below that which the Bank or the Bank's holding company could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's holding company with respect to capital adequacy), then from time to time the City, for and on behalf of its Department of Aviation, will pay to the Bank, such additional amount or amounts as will compensate the Bank or the Bank's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Bank or any other Holder setting forth the amount or amounts necessary to compensate the Bank or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the City shall be conclusive absent manifest error. The City, for and on behalf of its Department of Aviation, shall pay the Bank 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 the Bank to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Bank's right to demand such compensation; *provided* that the City shall not be required to compensate the Bank pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that the Bank notifies the City of the Change in Law giving rise to such increased costs or reductions and of the Bank'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 six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

*Section 3.2. Reserved.*

*Section 3.3. Reserved.*

*Section 3.4. Taxes.* If any payments to the Bank under this Agreement are made from outside the United States, the City will not deduct any foreign taxes from any payments it makes to the Bank or any other Holder. If any such taxes are imposed on any payments made by the City (including payments under this paragraph), the City, for and on behalf of its Department of Aviation, will pay the taxes and will also pay to the Bank or any other Holder, at the time interest

is paid, any additional amount which the Bank or any other Holder specifies as necessary to preserve the after-tax yield the Bank or any other Holder would have received if such taxes had not been imposed. As soon as practicable after any payment of taxes by the City to a Governmental Authority, as provided in this Section 3.4, the City will deliver to 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 or any other Holder. The City will confirm that it has paid the taxes by giving the Bank or any other Holder official tax receipts (or notarized copies) within thirty (30) days after the due date.

*Section 3.5. Bank Statements; Survival of Obligations.* The Bank shall deliver a written statement of the Bank to the City, for and on behalf of its Department of Aviation, as to the amount due, if any, under Section 3.1 or 3.4 hereof. Such written statement shall set forth in reasonable detail the calculations upon which the Bank determined such amount and shall be final, conclusive and binding on the City, for and on behalf of its Department of Aviation, in the absence of manifest error. Unless otherwise provided herein, the amount specified in the written statement of the Bank shall be payable on demand after receipt by the City, for and on behalf of its Department of Aviation, of such written statement. The obligations of the City under Sections 3.1 and 3.4 hereof shall survive payment of the Bank Obligations and termination of this Agreement.

## **ARTICLE FOUR**

### **CONDITIONS PRECEDENT TO EFFECTIVENESS**

*Section 4.1. Conditions Precedent to Effectiveness.* As conditions precedent to the effectiveness of this Credit Facility and Reimbursement Agreement, the City, for and on behalf of its Department of Aviation, shall provide to the Bank on the Effective Date, each in form and substance satisfactory to the Bank and the Bank's counsel, Chapman and Cutler LLP (hereinafter, the "*Bank's counsel*"):

(a) *Authorizing Documents.* The following authorizing documents of the City, for and on behalf of its Department of Aviation:

(i) certified copies of the General Bond Ordinance, as supplemented by Supplemental Bond Ordinance, authorizing, among other things, the execution, delivery and performance by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents to which it is a party (on the dates each such Related Document was executed and delivered by the City, for and on behalf of its Department of Aviation), certified by the Clerk and Recorder of the City as being in full force and effect;

(ii) certified copies of all governmental and regulatory approvals, if any, necessary for the City, for and on behalf of its Department of Aviation, to execute, deliver and perform its obligations under the Related Documents to which the City, for and on behalf of its Department of Aviation, is a party;

(b) *Financing Documents.* The following Related Documents:

(i) an executed or certified copy of each document, instrument, certificate and opinion delivered pursuant to the General Bond Ordinance, as supplemented by the Supplemental Bond Ordinance, and the other Related Documents in connection with the execution and delivery of this Agreement and the issuance and delivery of the Series 2021A Bonds and the agreement to purchase the Series 2021A Credit Facility Bonds hereunder;

(ii) one fully registered Series 2021A Bond executed by the City, for and on behalf of its Department of Aviation, issued to and registered in the name of Cede & Co.; and

(c) *Opinions.* The following opinions, dated the Effective Date and addressed to the Bank or on which the Bank is otherwise expressly authorized to rely:

(i) a written opinion or opinions of the City Attorney, dated the Effective Date and addressed to the Bank, as to the due execution and delivery of this Agreement and the other Related Documents to which the City, for and on behalf of its Department of Aviation, is a party, the enforceability of this Agreement and the other Related Documents to which the City, for and on behalf of its Department of Aviation, is a party, and such other customary matters as the Bank may reasonably request;

(ii) the written opinion of Bond Counsel dated the Effective Date and addressed to the Bank, to the effect that (A) this Agreement and the other Related Documents have been, duly authorized, executed and delivered by the City, for and on behalf of its Department of Aviation, and are the legal, valid and binding obligations of the City, for and on behalf of its Department of Aviation, enforceable against the City, for and on behalf of its Department of Aviation, in accordance with their respective terms, except as enforceability may be limited by the valid exercise of judicial discretion and the constitutional powers of the United States of America and subject to valid bankruptcy, insolvency, reorganization or moratorium or other similar laws applicable to the City or the Department of Aviation, as applicable, and equitable principles relating to or affecting creditors' rights generally from time to time; (B) the execution and delivery by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents do not violate the constitution or laws of the State; (C) the City, for and on behalf of its Department of Aviation, has taken all actions, and has obtained all approvals, necessary to the authorization, execution, delivery and performance by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents; (D) interest on the Series 2021A Bonds or the Series 2021A Credit Facility Bonds is excluded from the gross income of any owner of the Series 2021A Bonds or the Series 2021A Credit Facility Bonds for federal income tax purposes (excluding treatment of interest on the Series 2021A Bonds or the Series 2021A Credit Facility Bonds as an item of tax preference for purposes

of the federal alternative minimum tax); (E) the Series 2021A Bonds constitute “Bonds” for purposes of the General Bond Ordinance and the Series 2021A Credit Facility Bonds constitute “Credit Facility Obligations” for purposes of the General Bond Ordinance and “Series 2021 Credit Facility Bonds” for purposes of Supplemental Bond Ordinance and are entitled to the benefit of the security pledged therefor; (F) the obligations of the City, for and on behalf of its Department of Aviation, to repay the Senior Bond Obligations and the Series 2021A Credit Facility Bonds pursuant to this Agreement are special obligations of the City, for and on behalf of its Department of Aviation, payable solely from the Net Revenues and the Pledged Funds on parity with all outstanding Bonds and any other Obligations issued pursuant to the General Bond Ordinance; (G) the Series 2021A Credit Facility Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended; and (H) the General Bond Ordinance, as supplemented by Supplemental Bond Ordinance, are each exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended. The Bank Obligations and other obligations (other than the Senior Bond Obligations) of the City, for and on behalf of its Department of Aviation, are general, unsecured obligations of the City, for and on behalf of its Department of Aviation, and payable from moneys in the Capital Fund.

(d) *Closing Certificates.* The following closing certificates of the City, for and on behalf of its Department of Aviation:

(i) a certificate signed by a duly authorized officer of the City, for and on behalf of its Department of Aviation, dated the Effective Date and stating that:

(A) the representations and warranties contained in Article Five of this Agreement are true and correct on and as of the Effective Date as though made on such date;

(B) no Event of Default or event or condition which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing, or would result from the execution, delivery or performance of this Agreement or any Related Document to which the City, for and on behalf of its Department of Aviation, is a party;

(C) except as provided by the City to the Bank in writing (or in a form otherwise acceptable to the Bank) on or before the Effective Date, there has been no event or circumstance since the date of the audited annual financial statements dated December 31, 2019, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(D) (1) the entering into of this Agreement is an arm’s length commercial transaction between the City, for and on behalf of its Department of Aviation and the Bank, (2) the City, for and on behalf of its

Department of Aviation, has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the entering into of this Agreement and (3) the Bank has not acted as a fiduciary in favor of the City or the Department of Aviation with respect to the Series 2021A Bonds or the Series 2021A Credit Facility Bonds or the process leading to the issuance of the Series 2021A Bonds and has no other obligations to the City or the Department of Aviation with respect to these transactions except as expressly set forth in this Agreement;

(ii) a certificate of the Treasurer of the City with respect to authorization and incumbency of the officers of the City, for and on behalf of its Department of Aviation, to execute on behalf of the City, for and on behalf of its Department of Aviation, this Agreement and the other documents to be delivered by the City, for and on behalf of its Department of Aviation, hereunder;

(e) *Additional Financial Information.* The following documents and other information of the City, for and on behalf of its Department of Aviation:

(i) the audited financial statements of the City for the Fiscal Year ended December 31, 2019, including balance sheets, income and cash flow statements;

(ii) the unaudited financial statements of the City for the fiscal quarters ended June 30, 2020 and September 30, 2020, including balance sheets and income and cash flow statements;<sup>1</sup>

(iii) a copy of the most recent Report of the Airport Consultant;

(iv) a list of all of the outstanding Swap Agreements of the City, for and on behalf of its Department of Aviation (including each respective Swap Agreement's mark to market valuation) and each swap counterparty thereto; and

(v) evidence that the unenhanced long-term credit rating from the Rating Agencies assigned to the Senior Bonds are not less than A1/A+/A+ for Moody's, S&P and Fitch, respectively.

*Section 4.2. Additional Conditions to Closing.* As additional conditions precedent to the obligation of the Bank to deliver this Agreement:

(a) *Credit Requirements.* Prior to the Effective Date, the Bank shall have determined, in its sole discretion, based in part upon the information and reports submitted by the City, for and on behalf of its Department of Aviation, that the City and the Department of Aviation meets the Bank's credit requirements;

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<sup>1</sup> To be updated if FY 2020 audit complete pre-closing.

(b) *Litigation.* Prior to the Effective Date, the Bank shall have received a written description of all actions, suits or proceedings pending or, to the knowledge of the City, for and on behalf of its Department of Aviation, threatened against the City, for and on behalf of its Department of Aviation, 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;

(c) *Other Matters.* On the Effective Date, the Related Documents shall be in full force and effect in the form theretofore approved by the Bank and none of the Related Documents shall have been amended, modified or supplemented other than as contemplated herein. There shall not have occurred any change or any development involving a prospective change in the financial or operating condition of the City, for and on behalf of its Department of Aviation, or its ability to pay its obligations with respect to the Bonds or this Agreement, from that set forth in the financial statements provided to the Bank that in the judgment of the Bank is material and adverse to the Bank nor any change in any law, rule, regulation (or the interpretation or administration thereof), that, in each case, may adversely affect the consummation of the transactions contemplated hereunder, as determined by the Bank in its sole discretion. The representations and warranties of the City, for and on behalf of its Department of Aviation, contained herein shall be true, complete and correct on the date hereof and on the Effective Date, as if made on the Effective Date and the City, for and on behalf of its Department of Aviation, shall have performed and complied with all agreements and conditions required by the Related Documents to be performed or complied with by it prior to the Effective Date. The City, for and on behalf of its Department of Aviation, shall not have failed to pay principal of or interest as and when due on any of its indebtedness payable from the Net Revenues and the Funds. 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 City, for and on behalf of its Department of Aviation, and the other parties to the Related Documents and matters contemplated by this Agreement as the Bank may reasonably request; and

(d) *Payment of Fees and Expenses.* On or prior to the Effective Date, the Bank shall have received reimbursement of the Bank's reasonable fees and expenses (including, without limitation, the reasonable fees and expenses of counsel to the Bank in an amount not to exceed \$[\_\_\_\_]) and any other fees incurred in connection with the transaction contemplated by the Related Documents. The fees of counsel to the Bank shall be paid directly to Chapman and Cutler LLP in accordance with the instructions provided by Chapman and Cutler LLP.



## ARTICLE FIVE

### REPRESENTATIONS

*Section 5.1. Representations of the City, for and on behalf of its Department of Aviation.* In order to induce the Bank to enter into this Agreement, the City, for and on behalf of its Department of Aviation, represents and warrants to the Bank and the Holders of the Series 2021A Credit Facility Bonds as follows:

(a) *Organization; Power and Authority.* The City is duly organized and validly existing as a municipal corporation and political subdivision under the laws of the State. The City, for and on behalf of its Department of Aviation, has full right and authority to enter into this Agreement, has or had the full right and authority to enter into the other Related Documents to which it is a party on the date of execution of such Related Documents and to perform each and all of the matters and things herein and therein provided for.

(b) *Due Authorization; No Violation.* The execution, delivery and performance by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents to which it is a party on the date of execution of such Related Documents and the issuance, execution and delivery of the Series 2021A Bonds and the Series 2021A Credit Facility Bonds on the respective dates of issuance, execution and delivery were duly authorized by all necessary action, and did not and will not violate any constitutional provisions or any law or any regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to the City or the Department of Aviation or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than the Lien of the General Bond Ordinance) upon any of the assets of the City or the Department of Aviation pursuant to the terms of, any resolution, ordinance, mortgage, indenture, agreement or instrument to which the City or the Department of Aviation is a party or by which it or any of its properties is bound.

(c) *Enforceability.* This Agreement, and each Related Document to which the City, for and on behalf of its Department of Aviation, is a party constitute the legal, valid and binding obligations of the City, for and on behalf of its Department of Aviation, enforceable against the City, for and on behalf of its Department of Aviation, in accordance with their respective terms, except as such enforceability may be subject to and limited by (w) applicable bankruptcy, reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally, (x) the exercise of judicial discretion, procedural and other defenses based on particular factual circumstances and equitable principles in appropriate cases, (y) the reasonable exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State, and (z) the exercise by the United States of powers delegated to it by the United States Constitution; *provided* that, while certain remedies and other provisions of this Agreement and each Related Document are subject to the aforesaid exceptions and limitations and, therefore, may not be enforceable in accordance with their

respective terms, such unenforceability would not preclude the enforcement of the obligations of the City, for and on behalf of its Department of Aviation, to pay the Senior Bond Obligations from the Net Revenues and Pledged Funds as provided in the Ordinance. The Series 2021A Bonds and the Series 2021A Credit Facility Bonds have been duly issued, executed and delivered in conformity with the General Bond Ordinance and the Supplemental Bond Ordinance and constitute legal, valid and binding obligations of the City, for and on behalf of its Department of Aviation, enforceable in accordance with their terms, except as such enforceability may be subject to and limited by (w) applicable bankruptcy, reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally, (x) the exercise of judicial discretion, procedural and other defenses based on particular factual circumstances and equitable principles in appropriate cases, (y) the reasonable exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State, and (z) the exercise by the United States of powers delegated to it by the United States Constitution; provided that, while certain remedies and other provisions of this Agreement and each other Related Document are subject to the aforesaid exceptions and limitations and, therefore, may not be enforceable in accordance with their respective terms, such unenforceability would not preclude the enforcement of the obligations of the City, for and on behalf of its Department of Aviation, to pay the Senior Bond Obligations from the Net Revenues and Pledged Funds as provided in the Ordinance, and in all events the Senior Bond Obligations shall be entitled to the benefit and security of the Ordinance, the Net Revenues and the Pledged Funds as provided in the Ordinance.

(d) *Status.* Under the terms of the General Bond Ordinance, the General Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance, the Net Revenues cannot secure any Debt of the City (including Debt for and on behalf of its Department of Aviation) other than as provided in or permitted by the General Bond Ordinance the General Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance. As of the Effective Date, the Series 2021A Bonds constitute the only Debt of the City or the City, for and on behalf of its Department of Aviation, that is secured by a Lien on the Net Revenues other than the other Senior Bonds, Obligations, Subordinate Bonds, Subordinate Credit Facility Obligations, and other Subordinate Obligations (all as defined in the General Bond Ordinance or the General Subordinate Bond Ordinance, as applicable) and Junior Lien Obligations and Junior Lien Bonds issued or incurred prior to the Effective Date. Under the terms of the General Bond Ordinance, the General Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance, the Net Revenues cannot secure any Debt of the City (including Debt for and on behalf of its Department of Aviation) other than Senior Bonds (including the Series 2021A Bonds), Obligations, Subordinate Bonds, Subordinate Credit Facility Obligations, other Subordinate Obligations (as defined in the General Bond Ordinance or the General Subordinate Bond Ordinance), and Junior Lien Obligations and Junior Lien Bonds. The Net Revenues cannot be used to pay any obligations of the City (including Debt for and on behalf of its Department of Aviation) other than the foregoing described Debt, Operation and Maintenance Expenses and any other lawful purposes.

(e) *Disclosure.* Except as provided by the City to the Bank in writing (or in a form otherwise acceptable to the Bank) on or before the Effective Date, no representation, warranty or other statement made by the City, for and on behalf of its Department of Aviation in this Agreement or any other Related Document to which it is a party or any other document or financial statement provided by the City, for and on behalf of its Department of Aviation, to the Bank or any Holder in connection with this Agreement, contains any untrue statement of a material fact or omits (as of the date made or furnished) any material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they are made. To the best of the knowledge of the City, for and on behalf of its Department of Aviation, there is no fact, which the City, for and on behalf of its Department of Aviation, has not disclosed to the Bank or any Holder in writing which materially adversely affects or, so far as the City, for and on behalf of its Department of Aviation, can now reasonably foresee, is likely to materially adversely affect the ability (financial or otherwise) of the City, for and on behalf of its Department of Aviation, to perform its obligations hereunder or under the Related Documents to which it is a party.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or, to the best knowledge of the City, for and on behalf of its Department of Aviation, threatened against or affecting the City, for and on behalf of its Department of Aviation or the Airport System, wherein an unfavorable decision, ruling or finding could reasonably be expected to result in a Material Adverse Effect.

(g) *No Defaults.* The City, for and on behalf of its Department of Aviation, is not in default under (i) any order, writ, injunction or decree of any court or governmental body or agency applicable to the Airport System, or (ii) any law or regulation, or (iii) any bonds or other Debt or obligations payable from or secured by the Net Revenues or amounts on deposit in the Funds, or (iv) any contract, agreement or instrument to which the City, for and on behalf of its Department of Aviation, is a party or by which it or its property is bound, in each case, which default could reasonably be expected to result in a Material Adverse Effect; and no event has occurred which with the giving of notice or the passage of time or both would constitute such a default.

(h) *Financial Statements and Condition.* Except as provided by the City to the Bank in writing (or in a form otherwise acceptable to the Bank) on or before the Effective Date, the audited balance sheet of the City as of December 31, 2019 and the related audited statements of earnings, changes in fund equity and cash flows of the City for the Fiscal Years then ended, and the accompanying footnotes thereon, dated December 31, 2019, reported on by BKD, LLP (“*BKD*”) independent certified public accountants, have been delivered to the Bank. Consistent with BKD’s opinion dated [June 19], [2020], the City believes these financial statements, as of the Effective Date, fairly present the financial condition of the City as at such dates and the results of the operations of the Airport System, for the periods covered by such statements, all in conformity with GAAP. Since December 31, 2019, except as provided by the City to the Bank in writing, (or in a form otherwise acceptable to the Bank) on or before the Effective Date, there has been no

material adverse change in the condition (financial or otherwise), business or operations of the Airport System or the City.

(i) *Consents.* No authorization, consent, order or other approval of, or registration or filing with, or taking of any other action in respect of or by, any court or governmental body, agency or other instrumentality is required for the valid execution, delivery or performance by the City, for and on behalf of its Department of Aviation, of this Agreement or was required for the valid execution, delivery or performance by the City, for and on behalf of its Department of Aviation, of the Related Documents to which the City, for and on behalf of its Department of Aviation, is a party or the issuance, execution, delivery and performance of the Series 2021A Bonds and the Series 2021A Credit Facility Bonds, except such as shall have been duly obtained, given or accomplished prior to the execution and delivery hereof or thereof.

(j) *Security.* The provisions of the General Bond Ordinance (including, without limitation, Section 203 thereof) create an irrevocable and first Lien (but not necessarily an exclusive first Lien) on the Net Revenues and Pledged Funds of the Airport System for the benefit of the holders of the Series 2021A Bonds, including the Series 2021A Credit Facility Bonds, on a parity with the Lien thereon in favor of the holders of Senior Bonds and Obligations (including, without limitation, the Bank and the Holders). The provisions of Section 203 of the General Bond Ordinance and Section 8.13 hereof create, with respect to the Senior Bond Obligations, including the Series 2021A Credit Facility Bonds, an irrevocable first Lien (but not necessarily an exclusive first Lien) on the Net Revenues of the Airport System for the benefit of the Bank and the Holders, on a parity with the Lien thereon in favor of the holders of Bonds and holders of other Obligations (the Lien in favor of the Bank and the Holders, the holders of the Bonds and the other Obligations shall be an exclusive first Lien). Such Liens are prior as against all other Persons having claims of any kind in tort, contract or otherwise, whether or not such Persons have notice thereof. No filing or recording of any instrument and no taking of any other action by any Person is necessary to maintain each such pledge as a valid and enforceable pledge or to maintain the priority thereof as stated in the preceding sentences.

(k) *Bond Documents.* The City, for and on behalf of its Department of Aviation, hereby makes to the Bank the same representations and warranties made by the City, for and on behalf of its Department of Aviation, in each Bond Document to which the City, for and on behalf of its Department of Aviation, is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference in this subparagraph (k) for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth in this subparagraph (k) in its entirety. No amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in the Bond Documents shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated in this subparagraph (k) by this reference, without the prior written consent of the Bank.

(l) *No Proposed Legal Changes.* There is no amendment, or to the knowledge of the City, for and on behalf of its Department of Aviation, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the Series 2021A Bonds or the Series 2021A Credit Facility Bonds, or the rights of any Holder thereof in its capacity as such, or the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations under this Agreement or the other Related Documents.

(m) *No Sovereign Immunity.* The City, for and on behalf its Department of Aviation, does not enjoy any defense on the grounds of immunity (sovereign or otherwise) with respect to its contractual obligations under this Agreement, the General Bond Ordinance or Supplemental Bond Ordinance.

(n) *Bankruptcy and Insolvency.* Gross Revenues (other than revenues from fuel taxes not derived from the ownership or operation of the Airport System and other components (if any) of Gross Revenues not derived from the ownership or operation or disposition of the Airport System) are “special revenues” (within the meaning of 11 U.S.C. § 902(2)(A)) and, accordingly, such Gross Revenues acquired by the City after the commencement of any case by the City under 11 U.S.C. §§ 901 *et seq.* shall remain subject to the Liens created by and under the General Bond Ordinance in favor of the holders of the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds) and the Bank. Under 11 U.S.C. § 922(d), the filing of a petition under 11 U.S.C. §§ 301 and 901 which commences such a case does not operate as a stay of application of such Gross Revenues to the payment of the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds) or any amounts payable under this Agreement in accordance with the provisions of 11 U.S.C. § 928, notwithstanding that such Gross Revenues are received and held by the City. Under 11 U.S.C. §§ 922(d), 927 and 928, the filing of a petition under 11 U.S.C. §§ 301 and 901 which commences such a case does not operate as a stay of the transfer of such Gross Revenues to the holders of the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds) or to the Bank to the extent of any amounts owing thereunder or hereunder. Pursuant to 11 U.S.C. § 926(b), no transfer of property (including, without limitation, Gross Revenues after payment of the necessary operating expenses of the Airport System pursuant to 11 U.S.C. § 928(b)) by the City, for and on behalf of its Department of Aviation, in respect of the holders of the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds) or the Bank or as a subrogee thereof is subject to avoidance under 11 U.S.C. § 547.

(o) *Environmental Matters.* Except as disclosed in writing to the Bank, the City, for and on behalf of its Department of Aviation, does not have knowledge that the operations of the Airport System are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are 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, which non-compliance or remedial action could reasonably be expected to result in a Material Adverse Effect.

(p) *ERISA.* Neither the City nor the Department of Aviation has ever established nor contributed to, nor is a party to, any “employee benefit plan” within the meaning of Section 3(3) of ERISA or any other form of bonus, incentive compensation, deferred compensation or other similar plan or arrangement, other than a “governmental plan” within the meaning of Section 414(d) of the Code or Section 3(32) of ERISA.

(q) *Title to Properties; Liens and Encumbrances.* The City, for and on behalf of its Department of Aviation, has good title in fee simple or valid and enforceable leaseholds to, all of its real property and valid and indefeasible ownership of all of its fixtures, equipment and other assets. No property of the City, for and on behalf of its Department of Aviation, is subject to liens that could individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(r) *Compliance with Rules and Regulations.* The City, for and on behalf of its Department of Aviation, is in compliance with all laws, ordinances, orders, rules and regulations applicable to it, noncompliance with which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and all cash and other assets of the Airport System are invested in accordance with its investment policy, as amended or otherwise modified from time to time. Neither the City nor the Department of Aviation has received any notice of noncompliance from the Federal Equal Employment Opportunity Commission or the Federal Occupational Safety and Health Administration which would have a Material Adverse Effect.

(s) *Tax-Exempt Status of Series 2021A Bonds.* Neither the City nor the Department of Aviation has taken any action or knows of any action that any other Person has taken, which would cause interest on the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds) to be included in the gross income of the recipients thereof for Federal income tax purposes (excluding treatment of interest on the Series 2021A Bonds as an item of tax preference for purposes of the federal alternative minimum tax).

(t) *Interest.* None of the Related Documents, the Series 2021A Bonds or the Series 2021A Credit Facility Bonds provide for any payments that would violate any applicable usury laws regarding permissible maximum rates of interest or the calculation or collection upon interest.

(u) *Federal Reserve Regulations.* No part of the proceeds of the Series 2021A Credit Facility Bonds will be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any margin stock (within the meaning of Regulation U of the FRB, as amended from time to time), or to extend credit to others for the purpose of purchasing or carrying any margin stock, or for any other purpose which would violate any of the regulations of the FRB.

(v) *Official Signatures.* The officials of the City, for and on behalf of its Department of Aviation, signing this Agreement and the other Related Documents to which the City, for and on behalf of its Department of Aviation, is party, has and had full power and authority to execute, deliver and perform under each such Related Document. Any agreement, certificate or request signed by or on behalf of any authorized representative of the City, for and on behalf of its Department of Aviation, and delivered to the Paying Agent or the Bank and the Holders shall be deemed a representation and warranty by the City, for and on behalf of its Department of Aviation, to the Bank and the Holders as to the truth, accuracy and completeness of the statements made by the City, for and on behalf of its Department of Aviation, therein.

(w) *Credit Facility Obligations.* The Series 2021A Bonds constitute “Bonds” and the Series 2021A Credit Facility Bonds constitute “Credit Facility Obligations” for purposes of the General Bond Ordinance and “Series 2021 Credit Facility Bonds” for the purposes of the Supplemental Bond Ordinance and are entitled to the security pledged therefor, and the Bank Obligations (other than the Senior Bond Obligations) under this Agreement are general, unsecured obligations of the City, for and behalf of its Department of Aviation, and payable from moneys in the Capital Fund. This Agreement constitutes a “Credit Facility” for purposes of the General Bond Ordinance.

(x) *No Junior Lien Obligation Cross-Default Provision in Bank Agreements.* The City, for and on behalf of its Department of Aviation, has not entered into, or otherwise consented to any credit agreement, reimbursement agreement, standby bond purchase agreement (or other similar agreement), liquidity agreement, direct securities purchase agreement or other agreement or instrument (or any amendment, supplement or modification thereto) (each a “*Bank Agreement*”) under which, directly or indirectly, any Person or Persons (each a “*Provider*”) undertake(s) to make a loan or provide funds to make payment of, or to purchase or provide liquidity support or credit enhancement, for Senior Bonds or Subordinate Bonds for and on behalf of its Department of Aviation, which Bank Agreement includes a Junior Lien Obligation Cross-Default Provision.

## **ARTICLE SIX COVENANTS**

The City, for and on behalf of its Department of Aviation, will do the following so long as the Bank or any Holder is an owner of the Series 2021A Credit Facility Bonds and any Bank Obligations remain outstanding under this Agreement, unless the Majority Holder shall otherwise consent in writing:

*Section 6.1. Performance of This and Other Agreements.* The City, for and on behalf of its Department of Aviation, shall punctually pay or cause to be paid all amounts payable on the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds and under this Agreement and the other Related Documents and observe and perform all of the conditions, covenants and requirements of this Agreement and the other Related Documents.

*Section 6.2. Further Assurances.* The City, for and on behalf of its Department of Aviation, shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Majority Holder, all such instruments and documents as in the opinion of the Majority Holder are necessary or advisable to carry out the intent and purpose of this Agreement and the Related Documents or to enable the requesting party to enforce any of its rights hereunder or thereunder and to provide for the payment of the Bank Obligations and for the perfection of the Lien on the Net Revenues securing the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds). At any time, and from time to time, upon request by the Majority Holder, the City, for and on behalf of its Department of Aviation, will, at the expense of the City, for and on behalf of its Department of Aviation, correct any defect, error or omission which may be discovered in the form or content of any of the Related Documents.

*Section 6.3. Books and Records; Inspection Rights.* The City, for and on behalf of its Department of Aviation, shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the City, for and on behalf of its Department of Aviation, and the Airport System; and at any reasonable time and from time to time upon reasonable notice thereof, permit the Majority Holder or any agents or representatives thereof, at the expense of the Majority Holder, to examine and make copies of and abstracts from the records and books of account of, and to the extent permitted by Applicable Law, visit the properties of, the City, for and on behalf of its Department of Aviation, and the Airport System and to discuss the affairs, finances and accounts of the Airport System with any of the City's or the Department of Aviation's officers, trustees and, with the consent of the City, for and on behalf of its Department of Aviation, independent auditors, for and on behalf of its Department of Aviation.

*Section 6.4. Reporting Requirements.* The City, for and on behalf of its Department of Aviation, shall furnish to the Bank:

(i) as soon as available and in any event within 270 days after the end of each Fiscal Year, a balance sheet of the Airport System as of the end of such Fiscal Year and the related statements of revenues, expenses, changes in retained earnings and cash flows for such Fiscal Year, all certified as to fairness of presentation and conformity with generally accepted accounting principles by a firm of independent accountants of nationally recognized standing and including supplemental information as required by the General Bond Ordinance, including a statement of compliance with the rate maintenance covenant as defined in the General Bond Ordinance, reported on by such firm of independent accountants as to the fairness of presentation in relation to the financial statements of the Airport System taken as a whole;

(ii) as soon as available and in any event within 90 days after the end of each of the first three fiscal quarters of each Fiscal Year, a balance sheet of the Airport System as of the end of such quarter and the related statement of revenues, expenses and changes in retained earnings for such quarter, all certified (subject to city confirmation) as to consistency of presentation and compliance with generally accepted accounting principles by the Deputy Manager of Aviation/Finance and Administration for the Airport System;



(iii) simultaneously with the delivery of each set of financial statements referred to in clause (i) and (ii) above, a certificate of the City, for and on behalf of its Department of Aviation, provided by the Manager stating that, to the best knowledge of the Manager, there exists on the date of such certificate no Event of Default or, if any Event of Default then exists, setting forth the details thereof and the action which the City, for and on behalf of its Department of Aviation, is taking or proposes to take with respect thereto;

(iv) promptly after process has been served on the City, for and on behalf of its Department of Aviation, and written notice thereof is received by an Authorized Officer, written notice of (A) the occurrence of any Event of Default, together with a statement of the Manager setting forth the details thereof and the action which the City, for and on behalf of its Department of Aviation, is taking or proposes to take with respect thereto, (B) any material violation or alleged violation by the City, for and on behalf of its Department of Aviation, of the Noise Law or of any other Applicable Law that could result in the termination of the authority of the City, for and on behalf of its Department of Aviation, to impose or collect PFCs, and (C) any commencement by the FAA of proceedings to terminate the authority of the City, for and on behalf of its Department of Aviation, to impose or collect PFCs;

(v) promptly after process has been served on the City, for and on behalf of its Department of Aviation, and written notice thereof is received by an Authorized Officer, notice of any action, suit or proceeding before any court or arbitrator or any governmental body, agency or official in which there is a reasonable probability of an adverse decision which could (A) have a Material Adverse Affect or (B) adversely affect the ability of the City, for and on behalf of its Department of Aviation, to fix, revise, charge and collect rentals, rates, fees and other charges for the use of the Airport System in such amounts and at such times as will enable the City, for and on behalf of its Department of Aviation, to comply with the provisions of Section 901 of the General Bond Ordinance;

(vi) promptly upon the mailing or other delivery thereof to the holders of Bonds, copies of all notices (including, without limitation, any notices pursuant to Section 1304 of the General Bond Ordinance) to such holders;

(vii) promptly upon the availability thereof, a hyperlink providing access to a copy of each official statement, offering memorandum or other disclosure documents relating to the offering of any Bonds or Subordinate Bonds, including a copy of each Report of the Airport Consultant as included in any such official statement, offering memorandum or other disclosure document relating to Senior Bonds or Subordinate Bonds; and

(viii) from time to time such additional information regarding the financial position, operations, business or prospects of the Airport System as the Bank may reasonably request.

The City, for and on behalf of its Department of Aviation, shall make all financial statements required to be delivered under Section 6.4(i), 6.4(ii), 6.4(vi).and 6.4(vii) available on <http://emma.msrb.org/> (or, upon prior written notice to the Lender, any other applicable online

system used by the City for the posting of financial statements), and the posting of any such financial statements on <http://emma.msrb.org> (or such other system) by no later than the deadlines required by Section 6.4(i) and 6.4(ii) shall be deemed to be compliance with these Sections. The City, for and on behalf of its Department of Aviation, may deliver any of the items required to be delivered to the Lender pursuant to Section 6.4 hereof by hard copy to the Lender at its address specified in Section 8.9 hereof or by e-mail transmission to the Lender at [brent.riley@bofa.com](mailto:brent.riley@bofa.com) and [glenda.beasley@bofa.com](mailto:glenda.beasley@bofa.com).

*Section 6.5. Retirement Plan.* The Airport System shall remain at all times in compliance with its obligations to fund the City's pension plan providing benefits for employees of the Department of Aviation of the City, for and on behalf of its Department of Aviation.

*Section 6.6. Debt.* The City, for and on behalf of its Department of Aviation, will not issue, incur, assume, create or have outstanding any Debt payable from Net Revenues or the Funds other than as expressly provided in or permitted by the General Bond Ordinance.

*Section 6.7. Liens.* (a) The City, for and on behalf of its Department of Aviation, will not create, incur or permit to exist any Lien of any kind on the Net Revenues or the Funds, other than as expressly provided in or permitted by the General Bond Ordinance.

(b) In no event shall any Lien on Net Revenues or the Funds securing any swap termination payment under any Swap Agreement entered into by the City, for and on behalf of its Department of Aviation, at any time after a tender of the Series 2021A Bonds pursuant to the terms hereof, be senior in priority to, or on parity with, the lien on Net Revenues or the payment of the Series 2021A Bonds (including the Senior Bond Obligations owed in respect of the Series 2021A Credit Facility Bonds), any other Bonds or any Obligations. In no event shall the City, for and on behalf of its Department of Aviation, agree to provide any collateral to support the obligations of the City, for and on behalf of its Department of Aviation, under any Swap Agreement entered into by the City, for and on behalf of its Department of Aviation, at any time after the date of a tender of the Series 2021A Bonds pursuant to the terms hereof, other than a Lien on Net Revenues subordinate to the Lien on Net Revenues securing the Series 2021A Bonds or the Senior Bond Obligations.

*Section 6.8. Related Documents.* (a) The City, for and on behalf of its Department of Aviation, will not, directly or indirectly, amend, supplement or otherwise modify, or consent to any amendment, supplement or other modification of, any Related Document unless it has notified the Bank of the substance of such amendment, supplement or other modification at least ten (10) Business Days prior to the effective date thereof.

(b) The City, for and on behalf of its Department of Aviation, further agrees that, without the prior consent of the Majority Holder, the City, for and on behalf of its Department of Aviation, will not, directly or indirectly, enter into or otherwise consent to any amendment, waiver, supplement, termination or other modification of any such Related Document, and will not accept the benefit of any waiver given thereunder, in any manner that (1) in the case of any such amendment, waiver, supplement, termination or other modification of the General Bond Ordinance, as supplemented by Supplemental Bond Ordinance, adversely affects (A) the ability of

the City, for and on behalf of its Department of Aviation, to perform its obligations thereunder or (B) the rights, security or interests of the Bank or any other Holder hereunder or thereunder or (2) in the case of any such amendment, waiver, supplement, termination or other modification of any other Related Document, materially and adversely affects (1) the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations hereunder or (2) the rights, security or interests of the Bank or any other Holder or under any such Related Document; *provided, however*, that this subsection 6.8(b) shall not prohibit the City, for and on behalf of its Department of Aviation, from issuing additional Bonds, Subordinate Bonds or Junior Lien Bonds or incurring Obligations, Subordinate Credit Facility Obligations or any other Subordinate Obligations, or Junior Lien Obligations, if the conditions precedent or otherwise applicable to the issuance of such bonds or the incurrence of such obligations (including, without limitation, under the General Bond Ordinance, the General Subordinate Bond Ordinance, or the General Junior Lien Ordinance, as the case may be), have been satisfied

*Section 6.9. Insurance.* The City, for and on behalf of its Department of Aviation, will maintain or cause to be maintained insurance for all of its Property comprising the Airport System with responsible and reputable insurance companies in such amounts and covering such risks as are required by the Ordinance and customarily maintained by entities similar to the City and the Department of Aviation. The City, for and on behalf of its Department of Aviation, shall furnish to Bank, upon written request, full information as to all insurance carried by it. The City, for and on behalf of its Department of Aviation, will maintain all of its Property comprising the Airport System in good condition and repair (normal wear and tear excepted), and pay and discharge the cost of repairs thereto or maintenance thereof.

*Section 6.10. Provisions to Facilitate Payments.* The City, for and on behalf of its Department of Aviation, shall cause to be included in each annual budget of the City, for and on behalf of its Department of Aviation, reasonable provisions for the payment of all amounts due and estimated to become due to the Holders with respect to the Series 2021A Bonds and the Series 2021A Credit Facility Bonds under this Agreement and the other Related Documents during the Fiscal Year covered by such budget. To the extent estimates are used, such estimates shall be made by the Deputy Manager of Aviation/Finance and Administration for the Airport System or any other appropriate official, in consultation with the Manager, in good faith and shall be based upon reasonable estimates of the principal and interest due and owing on the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds), expected to be outstanding, and the interest rates reasonably expected to be charged during the coming Fiscal Year for the remaining term of the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds) evidenced thereby. To the extent that amounts actually due and payable to the Holders with respect to the Series 2021A Bonds and the Series 2021A Credit Facility Bonds under this Agreement and the other Related Documents in any Fiscal Year exceed the amounts estimated and/or available therefor in an annual budget of the City, for and on behalf of its Department of Aviation, for such Fiscal Year, the City, for and on behalf of its Department of Aviation, shall take, or cause to be taken, as promptly as possible, all such actions (including, without limitation, amendments of such annual budget) as may be required to permit and facilitate the expenditure of additional moneys from all sources legally available for the payment of such amounts.

*Section 6.11. Credit Facilities.* In the event that the City, for and on behalf of its Department of Aviation shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement under which, directly or indirectly, any Person or Persons undertakes to issue a letter of credit or make, loan or provide funds to the City, for and on behalf of its Department of Aviation, to make payment of or to purchase Bonds, which Bank Agreement (or amendment, supplement or modification thereto) provides such Person with more restrictive and/or different financial covenants, more restrictive and/or more favorable events of default, or additional and/or greater rights and remedies than are provided to the Bank in this Agreement, such more restrictive and/or different financial covenants, more restrictive and/or more favorable events of default, and additional and/or greater rights and remedies shall automatically be deemed to be incorporated into this Section 6.11, and the Bank shall have the benefit of such more restrictive and/or different financial covenants, more restrictive and/or more favorable events of default, and additional and/or greater rights and remedies as if specifically set forth in this Section 6.11.

*Section 6.12. Rate Covenant.* The City, for and on behalf of its Department of Aviation, will at all times comply with the rate maintenance covenants set forth in Sections 901 of the General Bond Ordinance.

*Section 6.13. Disclosure.* To the extent an Authorized Officer has knowledge of the same, the City, for and on behalf of its Department of Aviation, will disclose to the Bank in writing any and all facts which result in, or could reasonably be expected to result in, a Material Adverse Effect.

*Section 6.14. Compliance with Other Covenants.* (a) From and after the date hereof and so long as this Agreement is in effect, except to the extent compliance in any case or cases is waived in writing by the Majority Holder, the City, for and on behalf of its Department of Aviation, agrees that it will, for the benefit of the Holders, comply with, abide by, and be restricted by all the agreements, covenants, obligations and undertakings contained in the provisions of the other Related Documents, regardless of whether any indebtedness is now or hereafter remains outstanding thereunder, together with the related definitions, exhibits and ancillary provisions, which are incorporated herein by reference, *mutatis mutandis*, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety, and without regard or giving effect to any amendment or modification of any provisions of any of the other Related Documents to which the City, for and on behalf of its Department of Aviation, is a party or any waiver of compliance therewith, no such amendment, modification or waiver to in any manner constitute an amendment, modification or waiver of the provisions thereof as incorporated herein unless consented to in writing by the Majority Holder.

(b) So long as any Bank Obligations hereunder remain payable, the City, for and on behalf of its Department of Aviation, shall continue to comply with the covenants and undertakings set forth in the General Bond Ordinance, including, without limitation, Sections 704 and Section 901 of the General Bond Ordinance, notwithstanding anything in the Ordinance limiting such compliance to when a “Bond” (as defined in the Ordinance) remains outstanding thereunder.

*Section 6.15. Corrective Action.* Promptly upon obtaining knowledge of any of the matters described in Section 6.04(iv)(B) or Section 6.04(iv)(C) hereof, the City, for and on behalf of its

Department of Aviation, will undertake, and cause to be undertaken, any corrective actions necessary to remedy any such violation or to resolve, by informal resolution, disputes concerning any such alleged violation. The City, for and on behalf of its Department of Aviation, will promptly and vigorously contest any action by the FAA to terminate the authority of the City, for and on behalf of its Department of Aviation, to impose or collect PFCs.

*Section 6.16. Taxes and Liabilities; Leases.* The City, for and on behalf of its Department of Aviation, will file all required tax returns and pay and discharge, or cause to be paid and discharged, promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its Property comprising the Airport System, or upon any part thereof, before the same shall become in default, to the extent such failure to pay or discharge would have a Material Adverse Effect, except for those matters which are being contested in good faith by appropriate action or proceedings or for which the City, for and on behalf of its Department of Aviation, has established adequate reserves in accordance with GAAP applied on a consistent basis and provide evidence of payment thereof to the Bank if the Bank so requests; *provided, however,* that the City, for and on behalf of its Department of Aviation, shall pay or cause to be paid all such taxes, assessments, charges or levies forthwith whenever foreclosure on any lien which attaches to any of the security for the Bank Obligations appears imminent. The City, for and on behalf of its Department of Aviation, shall pay, or cause to be paid, all rent or other sums required by any lease comprising a portion of the Airport System to which the City, for and on behalf of its Department of Aviation, is a party as the same becomes due and payable, perform all its obligations as tenant or lessee thereunder except to the extent that any such obligation is the subject of a good faith dispute and adequate reserves have been set aside on its books for such obligation.

*Section 6.17. Maintenance of Rating.* The City, for and on behalf of its Department of Aviation, shall cause to be maintained at all times at least two long-term unenhanced ratings on the Senior Bonds by any two of Moody's, S&P or Fitch of at least "Baa1" (or its equivalent) by Moody's and/or at least "BBB+" (or its equivalent) by S&P and/or Fitch.

*Section 6.18. Notice of Litigation or Other Proceedings.* The City, for and on behalf of its Department of Aviation, will give notice, as soon as practicable, (and, in any case, the City, for and on behalf of its Department of Aviation, shall use reasonable efforts to provide notice thereof within fifteen (15) Business Days) following receipt of notice thereof by an Authorized Officer, to the Bank of (i) the institution of any litigation, administrative proceeding or governmental investigation involving the City, for and on behalf of its Department of Aviation, which is not fully covered by insurance (subject to deductibles maintained by the City, for and on behalf of its Department of Aviation) which is expected to have a Material Adverse Effect or (ii) the entry of any judgment, decree or order against or involving the City, for and on behalf of its Department of Aviation, which in either case is expected to have a Material Adverse Effect. The City, for and on behalf of its Department of Aviation, shall also provide to the Bank concurrently with delivery to any other party, a copy of any notice required to be given by the City, for and on behalf of its Department of Aviation, under the Related Documents.

*Section 6.19. Notice of Events of Default.* The City, for and on behalf of its Department of Aviation, shall give immediate notice to the Bank if the City, for and on behalf of its Department

of Aviation, becomes aware of the occurrence of any Event of Default hereunder or any event of default under any other Related Document.

*Section 6.20. Proceeds of Series 2021A Bonds.* The Series 2021A Bonds are being issued for the purposes of effectuating the Series 2021A Refunding Project, as defined and described in the Supplemental Ordinance. None of such proceeds will be used, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System. The City, for and on behalf of its Department of Aviation, shall use the proceeds of the Series 2021A Bonds in compliance with all applicable legal and regulatory requirements of any Governmental Authority (including, without limitation, Regulations U and X of the Board of Governors of the Federal Reserve System and the Securities Exchange Act of 1934 and the Securities Act of 1933 and any regulations thereunder).

*Section 6.21. No Sovereign Immunity.* To the fullest extent permitted by law, the City, for and on behalf of its Department of Aviation, agrees not to assert any current or future right of sovereign immunity as a defense to any claim or cause of action based solely in contract under this Agreement or any other Related Document or, with respect to this Agreement or any other Related Document, or under the General Bond Ordinance, as supplemented by Supplemental Bond Ordinance.

*Section 6.22. Tax Exemption.* Neither City nor the Department of Aviation shall, directly or indirectly, take any action or omit to take any actions or permit to be taken or omitted on its behalf any action, that if taken or omitted, would adversely affect the excludability of interest on the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds from the gross income of the Bank thereof for Federal income tax purposes (excluding treatment of interest on the Series 2021A Bonds as an item of tax preference for purposes of the federal alternative minimum tax).

## **ARTICLE SEVEN DEFAULTS**

*Section 7.1. Events of Default and Remedies.* If any of the following events shall occur, each such event shall be an “*Event of Default*”:

(a) any material representation or warranty made by the City, for and on behalf of its Department of Aviation, in this Agreement (or incorporated herein by reference) or any material representation or warranty made by the City, for and on behalf of its Department of Aviation, in any of the other Related Documents or in any certificate, document, instrument, opinion or financial or other statement contemplated by or made or delivered pursuant to or in connection with this Agreement or with any of the other Related Documents, shall prove to have been incorrect, incomplete or misleading in any material respect when made;

(b) failure of the City for and on behalf of its Department of Aviation, to pay when due (i) the principal or purchase price of or interest or premium on the Series 2021A Bonds or the Series 2021A Credit Facility Bonds or (ii) any other Bank Obligation;

(c) default in the due observance or performance by the City, for and on behalf of its Department of Aviation, of any covenant set forth in Section 6.6, 6.7(b), 6.8(b), 6.10, 6.12, 6.14(a) (after any applicable grace period under any Related Document), 6.14(b), 6.16, 6.17, 6.20, 6.21 or 6.22 hereof;

(d) default in the due observance or performance by the City, for and on behalf of its Department of Aviation, of any term, covenant or agreement set forth in this Agreement (other than as set forth in any other Event of Default set forth in this Section 7.01) and the continuance of such default for 30 days after the earlier to occur of (i) written notice thereof from the Majority Holder or (ii) an Authorized Officer obtains actual knowledge of such default;

(e) any “*event of default*” under any Related Document (as defined respectively therein) shall have occurred.

*Section 7.2. Remedies.* If an Event of Default specified in Section 7.1 hereof shall occur and be continuing, the Majority Holder may:

(a) by written notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, declare the outstanding amount of the Bank 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;

(b) deliver a written notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, that an Event of Default has occurred and is continuing in order to cause a mandatory tender of the Series 2021A Bonds to the Bank or take such other remedial action pursuant to the terms of the General Bond Ordinance and the Supplemental Bond Ordinance;

(c) 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 City, for and on behalf of its Department of Aviation, under the Related Documents, whether for specific performance of any agreement or covenant of the City, for and on behalf of its Department of Aviation, or in aid of the execution of any power granted to the Bank or the Majority Holder in the Related Documents;

(d) cure any Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Majority Holder shall have no obligation to effect such a cure;

(e) 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 7.2(c)) and as otherwise available at law and at equity; and

(f) deliver a notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, that an Event of Default has occurred and is continuing and directing the Paying Agent to take such remedial action as is provided for in the General Bond Ordinance and any Supplemental Bond Ordinance.

*Section 7.3. Remedies Cumulative; Solely for the Benefit of Bank, the Majority Holder and the Holders.* To the extent permitted by, and subject to the mandatory requirements of, applicable Law, each and every right, power and remedy herein specifically given to the Bank, the Majority Holder and the Holders in the Related Documents shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Bank, the Majority Holder or the Holders, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Bank, the Majority Holder and the Holders specified herein are for the sole and exclusive benefit, use and protection of the Bank, the Majority Holder and the Holders, and the Bank, the Majority Holder and the Holders are entitled, but shall have no duty or obligation to the City, for and on behalf of its Department of Aviation, the Paying Agent or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Bank, the Majority Holder or the Holders hereunder or under any of the other Related Documents.

*Section 7.4. Waivers or Omissions.* No delay or omission by the Bank, the Majority Holder or the Holders in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the Bank, the Majority Holder or the Holders or to be acquiescence therein. No express or implied waiver by the Bank, the Majority Holder or the Holders of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

*Section 7.5. Discontinuance of Proceedings.* In case the Bank, the Majority Holder or the Holders 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, the Majority Holder or the Holders shall have the unqualified right so to do and, in such event, the City, for and on behalf of its Department of Aviation, and the Bank, the Majority Holder and the Holders shall be restored to their former positions with respect to the Bank Obligations, the Related Documents and otherwise, and the rights, remedies, recourse and powers of the Bank, the Majority Holder and the Holders hereunder shall continue as if the same had never been invoked.



**ARTICLE EIGHT  
MISCELLANEOUS**

*Section 8.1. Right of Setoff; Other Collateral.* (a) Upon the occurrence and during the continuance of an Event of Default, the Holders are hereby authorized at any time and from time to time without notice to the City, for and on behalf of its Department of Aviation (any such notice being expressly waived by the City, for and on behalf of its Department of Aviation), and to the fullest extent permitted by law, but in all events subject to Section 2.9 hereof, to setoff, to exercise any banker's lien or any right of attachment and apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held and other indebtedness at any time owing by a Holder to or for the account of the City, for and on behalf of its Department of Aviation (irrespective of the currency in which such accounts, monies or indebtedness may be denominated and such Holder is authorized to convert such accounts, monies and indebtedness into Dollars) against any and all of the Bank Obligations of the City, for and on behalf of its Department of Aviation, whether or not such Holder shall have made any demand for any amount owing to such Holder by the City, for and on behalf of its Department of Aviation.

(b) The rights of the Holders under this Section 8.1 are in addition to, in augmentation of, and, except as specifically provided in this Section 8.1, do not derogate from or impair other rights and remedies (including, without limitation, other rights of setoff) which the Holders may have.

*Section 8.2. Reimbursement.* In addition to any other amounts payable by the City, for and on behalf of its Department of Aviation, under this Agreement, the City, for and on behalf of its Department of Aviation, hereby agrees, to the extent permitted by law, to reimburse the Holders, promptly upon demand, in respect of all claims, demands, liabilities, damages, losses, reasonable costs, reasonable charges and reasonable expenses (including reasonable attorneys' fees) that the Holders may incur or be subject to solely as a direct consequence of (i) the execution and delivery of this Agreement, (ii) any breach by the City, for and on behalf of its Department of Aviation, or any official of the City, for and on behalf of its Department of Aviation, of any warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or any Related Document, including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default, and (iii) involvement in any legal suit, proceeding, or action as to which a Holder is involved solely as a direct consequence of execution and delivery of this Agreement, the holding or owning of any Series 2021A Bonds or any Series 2021A Credit Facility Bonds, its execution of this Agreement or any other event or transaction contemplated by any of the foregoing; *provided* that Holders shall not be entitled to reimbursement under this Section to the extent that claims, demands, liabilities, damages, losses, costs, charges and expenses to be reimbursed are the result of the gross negligence or willful misconduct of any such Holder; and *provided, further*, that Sections 2.10, 3.1, 3.4 and 8.12 shall control as to the liabilities, losses, costs, charges and expenses described therein. Nothing in this Section is intended to limit the City's obligations, for and on behalf of its Department of Aviation, contained in Sections 2.9 and 2.10 hereof.

*Section 8.3. Obligations Absolute.* Subject to Section 2.11 hereof, the obligations of the City, for and on behalf of its Department of Aviation, under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances.

*Section 8.4. Successors and Assigns; Participants.*

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the City, for and on behalf of its Department of Aviation, and its successors, transferees and assigns and shall inure to the benefit of the Holders and their respective permitted successors, transferees and assigns. The City, for and on behalf of its Department of Aviation, may not assign or otherwise transfer any of its rights or Bank Obligations hereunder without the prior written consent of the Majority Holder. Upon prior written notice to the City, for and on behalf of its Department of Aviation, the Majority Holder may, in its sole discretion and in accordance with applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Series 2021A Bonds (including Series 2021A Credit Facility Bonds) and the Related Documents in accordance with paragraph (b) or (c) of this Section. The Majority Holder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. Each Holder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section.

(b) *Assignments by Majority Holder to a Bank Transferee.* Without limitation of the foregoing generality, the Majority Holder may at any time sell or otherwise transfer to one or more transferees all or a portion of the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds) to a Person that is (i) an Affiliate of the Majority Holder, (ii) a trust or other custodial arrangement established by the Majority Holder or an Affiliate of the Majority Holder the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”), or “accredited investors” as defined in Rule 501 of Regulation D under the 1933 Act (each, a “Bank Transferee”) or (iii) a commercial bank. From and after the date of such sale or transfer, the Majority Holder (and its successors) shall continue to have all of the rights of the Holders, the Bank and the Majority Holder hereunder and under the other Related Documents as if no such transfer or sale had occurred; *provided, however*, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Majority Holder hereunder, (B) the City, for and on behalf of its Department of Aviation, shall be required to deal only with the Majority Holder with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Bank shall be entitled to enforce the provisions of this Agreement against the City, for and on behalf of its Department of Aviation.

(c) *Assignments by a Holder to a Non-Bank Transferee.* Without limitation of the foregoing generality, a Holder may at any time sell or otherwise transfer to one or more transferees which are not Bank Transferees (each a “Non-Bank Transferee”) all or a portion of the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds) if (i) written notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the

City, for and on behalf of its Department of Aviation, and the Majority Holder (if different than the transferring Holder) by such selling Holder and Transferee, and (ii) the Non-Bank Transferee shall have delivered to the City, for and on behalf of its Department of Aviation, and the Majority Holder, a purchaser letter substantially in the form of Exhibit D to the Bond Purchase Contract in which it certifies that it is a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act, or an “accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act (the “*Purchaser Letter*”).

From and after the date the City, for and on behalf of its Department of Aviation, and the Majority Holder have received an executed Purchaser Letter, (A) the Non-Bank Transferee thereunder shall be a party hereto and shall have the rights of the Bank hereunder with respect to the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds), and this Agreement and the other Related Documents shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Bank Transferee, and (B) if the transferring Bank shall have assigned its obligations under this Agreement in accordance with paragraph (a)(i) above, it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(d) *Participations.* The Majority Holder shall have the right to grant participations in all or a portion of the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds, this Agreement and the other Related Documents to one or more other banking institutions and such participants shall be entitled to the benefits of this Agreement, including, without limitation, Sections 2.10, 3.01, 3.04 and 8.02 hereof, to the same extent as if they were a direct party hereto. Notwithstanding the foregoing, the City, for and on behalf of its Department of Aviation, may look solely to the Majority Holder as the entity to whom performance of any of its obligations hereunder are owed.

(e) In addition to the rights of the Holder set forth above in this Section 8.04, each Holder may at any time pledge or grant a security interest in all or any portion of its rights or interests under the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds), this Agreement and/or the 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.

(f) Notwithstanding anything in this Section 8.04 to the contrary, no assignee or participant of the Majority Holder shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Holder not assigned its rights or interests hereunder or granted a participation to such participant hereunder or in the Series 2021A Credit Facility Bonds.

(g) The Majority Holder or any other Holder shall provide the City, for and on behalf of its Department of Aviation, prior written notice of any assignment or participation pursuant to this Section 8.4.

*Section 8.5. Survival of this Agreement.* All covenants, agreements, representations and warranties made in this Agreement shall continue in full force and effect so long as any Bank Obligations shall be outstanding and unpaid. The obligation of the City, for and on behalf of its Department of Aviation, to reimburse the Bank or any participant or assignee pursuant to Sections 2.10, 3.1, 3.4, 8.2 and 8.13 hereof shall survive the payment of the Series 2021A Bonds (including the Series 2021A Credit Facility Bonds) and termination of this Agreement.

*Section 8.6. Modification of this Agreement.* No amendment, modification or waiver of any provision of this Agreement and no consent to any departure by the City, for and on behalf of its Department of Aviation, therefrom, shall be effective unless the same shall be in writing and signed by the Majority Holder. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the City, for and on behalf of its Department of Aviation, in any case shall entitle the City, for and on behalf of its Department of Aviation, to any other or further notice or demand in the same, similar or other circumstances.

*Section 8.7. Waiver of Rights.* No course of dealing or failure or delay on the part of the Bank, the Majority Holder or any Holder in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank, the Majority Holder and the Holders under this Agreement are cumulative and not exclusive of any rights or remedies which the Bank, the Majority Holder or any Holder would otherwise have.

*Section 8.8. Severability.* In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. 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.

*Section 8.9. Notices.* Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto or referred to herein shall be deemed to have been given (i) in the case of notice by letter, when delivered, or (ii) in the case of notice by facsimile or email, upon confirmation of receipt, addressed as follows or to such other address, facsimile number or email address as any party hereto may designate by written notice to the other party hereto:

City and County of Denver, Colorado  
Manager of Finance  
201 W. Colfax Ave., Department 1010  
Denver, CO 80202  
Telephone:(720) 913-5500  
Facsimile:(720) 913-5180  
Email:[debtmanagement@denvergov.org](mailto:debtmanagement@denvergov.org)

with a copy to:

Denver International Airport  
SVP of Finance  
8500 Peña Blvd.  
AOB 8th Floor - Finance  
Denver, CO 80249  
Email: [Budget.Group@flydenver.com](mailto:Budget.Group@flydenver.com)

or if to the Bank, addressed to it at:

Bank of America, N.A.  
211 N Robinson 2nd Floor  
OK1-100-02-30  
Oklahoma City, Oklahoma 73102  
Attention: Brent Riley, Senior Vice President  
405-230-1717 Phone  
866-681-1873 Fax  
E-mail: [brent.riley@bofa.com](mailto:brent.riley@bofa.com)

with a copy to:

Bank of America, N.A.  
Mail Code TX1-301-18-01, 301 Commerce Street  
Suite 1810  
Fort Worth, Texas 76102  
Attention: Glenda Beasley  
817-390-6414 Phone  
866-493-8130 Fax  
E-mail: [glenda.beasley@bofa.com](mailto:glenda.beasley@bofa.com)

or if to the Paying Agent, addressed to it at:

U.S. Bank National Association  
100 Wall Street, Suite 600  
Mail Code EX-NY-WALL  
New York, New York 10005  
Attention: Global Corporate Trust Services  
(212) 951-8561 Phone  
(212) 509-3384 Fax  
E-mail: [wendy.kumar@usbank.com](mailto:wendy.kumar@usbank.com)

(b) Unless otherwise specified herein, each item to be delivered by the Borrower, for and on behalf of its Department of Aviation, pursuant to Section 6.4, by email transmission.

*Section 8.10. Governing Law; Venue; Waiver of Jury Trial.* (a) This Agreement shall be governed by and construed in accordance with the internal laws of the State, without giving effect to conflict of law principles.

(b) The City, for and on behalf of its Department of Aviation, and the Bank and each Holder hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any other Related Document or the transactions contemplated thereby.

*Section 8.11. Successors and Assigns.* Whenever in this Agreement the Bank or any Holder is referred to, such reference shall be deemed to include the successors of the Bank or such Holder and all covenants, promises and agreements by or on behalf of the City, for and on behalf of its Department of Aviation, which are contained in this Agreement shall inure to the benefit of any successors of the Bank or any Holder. The rights and duties of the City, for and on behalf of its Department of Aviation, hereunder, however, may not be assigned or transferred, except as specifically provided in this Agreement or with the prior written consent of the Bank, and all obligations of the City, for and on behalf of its Department of Aviation, hereunder shall continue in full force and effect notwithstanding any assignment by the City, for and on behalf of its Department of Aviation, of any of its rights or obligations under any of the Related Documents or any entering into, or consent by the City, for and on behalf of its Department of Aviation, to, any supplement or amendment to any of the Related Documents.

*Section 8.12. Taxes and Expenses.* The City, for and on behalf of its Department of Aviation, shall pay any and all stamp 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 and any related documents and agrees to reimburse the Holders for any and all liabilities resulting from any delay in paying or omission to pay such taxes and fees; *provided, however*, that the City, for and on behalf of its Department of Aviation, may conduct a reasonable contest of any such taxes to the extent such taxes exceed \$50,000 with the prior written consent of the Majority Holder.

*Section 8.13. Pledge and Security.* Subject only to the right of the City, for and on behalf of its Department of Aviation, to pay Operating and Maintenance Expenses, the Gross Revenues and all moneys and securities paid or to be paid to, or held or to be held in any fund or account under the General Bond Ordinance (except moneys and securities held in any Escrow Account and except as otherwise provided in the General Bond Ordinance as being unavailable to secure the payment of Bond Requirements) are hereby irrevocably pledged by the City, for and on behalf of its Department of Aviation, to secure the payment of the Series 2021A Bonds, the Series 2021A Credit Facility Bonds and its obligations under this Agreement, to the extent and with the priorities provided for herein and in the General Bond Ordinance, and Supplemental Bond Ordinance. This pledge shall be valid and binding from and after the Effective Date, and such moneys and securities, as received by the City, for and on behalf of its Department of Aviation, and hereby pledged, shall immediately be subject to the Lien of this pledge without any physical delivery, filing or further act. The Lien of this pledge and the contractual obligations hereby made shall have priority over any or all other liabilities and obligations of the City, for and on behalf of its Department of Aviation (except in respect of Bonds and any other Obligations it shall be *pari*

*passu*); and the Lien of this pledge shall be valid and binding against all Persons having claims of any kind in tort, contract or otherwise against the City, for and on behalf of its Department of Aviation (except as otherwise provided in the General Bond Ordinance), whether or not such Persons have notice thereof. Notwithstanding the foregoing, the provisions of this Section 8.13 shall not prohibit or otherwise restrict the ability of the City, for and on behalf of its Department of Aviation, to cause moneys to be disbursed from any fund or account held under the General Bond Ordinance on the terms and subject to the conditions specified therein.

*Section 8.14. Headings.* Section headings in this Agreement are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this Agreement.

*Section 8.15. Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original but all taken together to constitute one instrument. 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 4.1, 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 8.16. Entire Agreement.* This Agreement constitutes the entire understanding of the parties with respect to the subject matter thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

*Section 8.17. Agreement to Control in the Event of Conflict.* Notwithstanding anything set forth in Supplemental Bond Ordinance to the contrary, in the event that any provision, term or definition in Supplemental Bond Ordinance contradicts any term, provision or definition set forth herein, such term, provision or definition set forth herein shall hereby amend and supersede such term, provision or definition set forth in Supplemental Bond Ordinance.

*Section 8.18. USA PATRIOT Act Notice.* The Bank, on behalf of the Holders, hereby notifies the City, for and on behalf of its Department of Aviation, 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 Holders are required to obtain, verify and record information that identifies the City, for and on behalf of its Department of Aviation, which information includes the name and address of the City, for and on behalf of its Department of Aviation, and other information that will allow the Holders to identify the City, for and on behalf of its Department of Aviation, in accordance with the Patriot Act. The City, for and on behalf of its Department of Aviation, shall,

promptly following a request by the Bank, provide all documentation and other information that the Bank reasonably requests in order to comply with its ongoing obligations under applicable law or regulation, including, without limitation, “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, and shall comply with all applicable Bank Secrecy Act (“BSA”) laws and regulations, as amended.

Neither the City, for and on behalf of its Department of Aviation, nor, to the knowledge of the City, any Related Party, (a) is currently the subject of any Sanctions or (b) is located, organized or residing in any Designated Jurisdiction. The City, for and on behalf of its Department of Aviation, has conducted its business in compliance with anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

*Section 8.19. Assignment to Federal Reserve Bank.* Any Holder may assign and pledge all or any portion of the obligations owing to it (including, without limitation, the Series 2021A Credit Facility Bonds) to any Federal Reserve Bank or the United States Treasury as collateral security, *provided* that any payment in respect of such assigned obligations made by the City, for and on behalf of its Department of Aviation, to such Holder in accordance with the terms of this Agreement shall satisfy the City’s, for and on behalf of its Department of Aviation, obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

*Section 8.20. Treatment of Certain Information; Confidentiality* The Holders may disclose to any of their respective affiliates and any permitted (actual or potential) assignee, transferee or participant any information about the City, for and on behalf of its Department of Aviation, as the Holders considers appropriate.

*Section 8.21. 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 the other Related Documents), the City, for and on behalf of its Department of Aviation, 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 City, for and on behalf of its Department of Aviation, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) the City, for and on behalf of its Department of Aviation, has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the City, for and on behalf of its Department of Aviation, 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 (municipal, financial or otherwise), agent or fiduciary, for the City or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to the City 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 City, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the City. To the



fullest extent permitted by law, the City, for and on behalf of its Department of Aviation, 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.

**[SIGNATURES BEGIN ON THE FOLLOWING PAGE.]**

Please signify your agreement and acceptance of the foregoing by executing this Agreement in the space provided below.

Very truly yours,

BANK OF AMERICA, N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the City, for and on behalf of its Department of Aviation, has caused this Credit Facility and Reimbursement Agreement to be executed by the duly authorized officers on the date first written above.

(SEAL)

**CITY AND COUNTY OF DENVER, COLORADO, FOR  
AND ON BEHALF OF ITS DEPARTMENT OF AVIATION**

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Debra Johnson,  
Clerk and Recorder, *Ex-Officio*  
Clerk of the City and County of Denver

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Kristin M. Bronson, Attorney for the  
City and County of Denver

\_\_\_\_\_  
Chief Financial Officer/Manager of Finance

By \_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Manager of Aviation

Auditor \_\_\_\_\_

EXHIBIT A

NOTICE OF TENDER

The undersigned, a duly authorized officer of Bank of America, N.A. (the “*Bank*”), hereby certifies to U.S. Bank National Association (the “*Paying Agent*”) and the hereinafter defined Issuer, in accordance with the Credit Facility and Reimbursement Agreement, dated as of July 1, 2021 (the “*Agreement*”), between the City and County of Denver, Colorado, for and on behalf of its Department of Aviation, the Issuer (the “*Issuer*”), the Bank, relating to the Issuer’s \$15,800,000 Airport System Senior Revenue Bonds, Series 2021A (the “*Series 2021A Senior Bonds*”) (all capitalized terms herein having the meanings ascribed thereto in the Agreement), that:

1. An Event of Default (as defined in the Agreement) has occurred under Section 7.1 of the Agreement and pursuant to Section 7.2(b) of the Agreement, the Bank is exercising its right to cause a tender of the Series 2021A Bonds.

2. The Series 2021A Senior Bonds have been deemed tendered by the Bank pursuant to Section 7.2(b) of the Agreement.

3. Upon completion of the tender, the Paying Agent will [**register such Bonds, or if a Bond for which notice of tender for purchase has been given is not delivered, a new Bond issued in replacement of the undelivered Bond, in the name of the Bank or, if directed in writing by the Bank, its nominee or designee on the books maintained by the Paying Agent**] *OR* [**cause the beneficial ownership of such Bonds to be credited to the account of the Bank or, if directed in writing by the Bank, its nominee or designee with DTC and register such Bonds in the name of the Bank or its nominee or designee on the books maintained by the Paying Agent**], and will promptly deliver such Bonds as the Bank may otherwise direct in writing, and prior to such delivery will hold such Bonds in trust for the benefit of the Bank.

4. The Tender Date is \_\_\_\_\_, \_\_\_\_\_.

IN WITNESS WHEREOF, the Bank has executed and delivered this Notice of Tender as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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CREDIT FACILITY AND REIMBURSEMENT AGREEMENT

Dated as of July 1, 2021

BETWEEN

CITY AND COUNTY OF DENVER, COLORADO,  
for and on behalf of its Department of Aviation

and

BANC OF AMERICA PREFERRED FUNDING CORPORATION

Relating to:  
\$13,100,000 outstanding principal amount of  
City and County of Denver, Colorado, for and on behalf of  
its Department of Aviation  
Airport System Revenue Bonds,  
Series 2021B

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## Credit Facility and Reimbursement Agreement

(This Table of Contents is not a part of  
this Credit Facility and  
Reimbursement Agreement  
and is only for  
convenience of reference)

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EXHIBIT A - NOTICE OF TENDER



## CREDIT FACILITY AND REIMBURSEMENT AGREEMENT

This CREDIT FACILITY AND REIMBURSEMENT AGREEMENT dated as of July 1, 2021 (as amended, modified or supplemented from time to time, this “*Agreement*”), is entered into between the City and County of Denver, Colorado, for and on behalf of its Department of Aviation (the “*City*”), and Banc of America Preferred Funding Corporation, and its successors and assigns (the “*Bank*”).

### RECITALS

WHEREAS, the City has heretofore issued the Series 2021B Bonds (as hereinafter defined) pursuant to the terms of the hereinafter defined Ordinance;

WHEREAS, the City has determined to execute this Agreement in connection with the Series 2021B Bonds being issued to refund, by means of an exchange, the City and County of Denver, Colorado, Airport System Revenue Bonds Series 1992G; and

WHEREAS, the City has determined to execute this Agreement in order to provide a source of funding for the purchase by the Bank on the terms and conditions specified herein of the Series 2021B Bonds which are tendered; and

WHEREAS, the Bank is willing, upon the terms and conditions set forth in this Agreement, to hold the Series 2021B Bonds as Series 2021B Credit Facility Bonds (as hereinafter defined) upon the direction of a mandatory tender by the Bank;

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, the City, for and on behalf of its Department of Aviation, and the Bank, on behalf of itself and the Holders, hereby agree as follows:

### ARTICLE ONE DEFINITIONS

*Section 1.1. Definitions.* As used in this Agreement:

“*Affiliate*” means a corporation, partnership, association, joint venture, business trust, governmental entity or similar entity organized under the laws of any state that directly, or indirectly through one (1) or more intermediaries, Controls or is Controlled by, or is under common Control with, the City, the Department of Aviation or Bank, as may be applicable.

“*Agreement*” has the meaning set forth in the introductory paragraph hereto.

“*Airport*” means the Denver International Airport.

“*Airport System*” has the meaning set forth in the General Bond Ordinance.

“*Applicable Law*” means all applicable provisions of all constitutions, statutes, rules, regulations and all orders, judgments and decrees of all governmental bodies, courts and arbitrators.

“*Authorized Denominations*” has the meaning set forth in the Ordinance.

“*Authorized Officer*” means the Manager, the Acting Manager of Aviation, the Manager of Finance, the Chief Financial Officer, ex-officio Treasurer of the City, the Debt Administrator of the City or the City Attorney.

“*Bank*” means Banc of America Preferred Funding Corporation, a Delaware corporation, and its successors and assigns.

“*Bank Agreement*” has the meaning set forth in Section 5.1(x) hereof.

“*Bank Obligations*” means (i) the Senior Bond Obligations and (ii) the obligations of the City, for and on behalf of its Department of Aviation, under this Agreement to repay (a) all expenses and charges payable or reimbursable hereunder to the Bank, the Majority Holder or the other Holders arising under or in relation to this Agreement (including, without limitation, any amounts to reimburse the Bank, the Majority Holder or the other Holders for any advance or expenditures by it under any of such documents) and (b) all other payment obligations of the City, on behalf of its Department of Aviation, to the Bank, the Majority Holder or any other Holders arising under or in relation to this Agreement or the other Related Documents, in each case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

“*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 (iv) seven percent (7.00%).

“*Bond Counsel*” means Hogan Lovells US LLP or any other attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the validity of and the tax-exempt nature of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America and selected by the City, for and on behalf of its Department of Aviation.

“*Bond Documents*” means the General Bond Ordinance, Supplemental Bond Ordinance, the Bond Purchase Contract, the Paying Agent Agreement, the Tax Certificate and the Series 2021B Credit Facility Bonds.

“*Bond Purchase Contract*” means the Bond Purchase and Exchange Agreement dated July [13], 2021, between Banc of America Preferred Funding Corporation and the City.

“*Bond Requirements*” has the meaning set forth in the General Bond Ordinance.

“*Bonds*” means, collectively, any bonds issued pursuant to the General Bond Ordinance that are secured on a parity with the Series 2021B Bonds and the Series 2021B Credit Facility Bonds.

“*Business Day*” has the meaning set forth in the Supplemental Bond Ordinance.

“*Calculation Agent*” means Bank of America, N.A.

“*Capital Fund*” has the meaning set forth in the Ordinance.

“*Capital Lease*” means any lease of Property by any Person which in accordance with GAAP would be required to be capitalized on the balance sheet of such Person.

“*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.

“*City*” means the City and County of Denver, Colorado, for and on behalf of its Department of Aviation.

“*Closing Date*” means July [13], 2021.

“*Code*” means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, and all lawful regulations promulgated thereunder.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, through the right to elect not less than a majority of the members of its board of directors or other governing board, by contract or otherwise, “*Controlling*” and “*Controlled*” have meanings correlative thereto.

“*Credit Facility*” has the meaning set forth in the General Bond Ordinance.

“*Credit Facility Obligations*” has the meaning set forth in the General Bond Ordinance

“*Debt*” means, for any Person (without duplication), (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other

similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property, except trade accounts payable arising in the ordinary course of business, (d) all Capital Leases of such Person, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all Guarantees by such Person of Debt of other Persons and (i) all obligations of such Person under any Swap Agreement; *provided* that in no event shall the term “*Debt*” as used herein include any indebtedness of the City, for and on behalf of its Department of Aviation, which is payable solely from payments to be made by a Person other than the City, for and on behalf of its Department of Aviation.

“*Default*” means any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default.

“*Default Rate*” means the sum of the Base Rate from time to time in effect *plus* 4.00% per annum, payable on demand.

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to Sections of ERISA shall be construed also to refer to any successor Sections.

“*Escrow Account*” has the meaning set forth in the General Bond Ordinance.

“*Event of Default*” has the meaning set forth in Section 7.1 hereof.

“*Excess Interest*” has the meaning specified in Section 2.10 hereof.

“*FAA*” means the Federal Aviation Administration of the United States Department of Transportation and any successor thereto.

“*Federal Funds Rate*” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as determined by the Bank.

“*Fiscal Year*” has the meaning set forth in the General Bond Ordinance.

“*Fitch*” means Fitch, Inc., and its successors and assigns.

“*FRB*” means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

“*Funds*” means (i) all funds established under the General Bond Ordinance (except for moneys and securities held in any Escrow Account and except as otherwise provided in the General Bond Ordinance) and, (ii) to the extent pledged to the payment of the Bank Obligations, all funds and accounts established under the Supplemental Bond Ordinance.

“*GAAP*” means accounting principles generally accepted in the United States of America in effect from time to time, applied by the City, for and on behalf of its Department of Aviation, on a basis consistent with applicable Government Accounting Standards Board pronouncements and the City’s most recent financial statements, furnished to the Holders pursuant to Section 5.1(h) hereof.

“*General Bond Ordinance*” means Ordinance No. 0777, Series of 2018, adopted by the City, for and on behalf of its Department of Aviation, cited as the “*2018 Amended and Restated Airport System General Bond Ordinance*,” as amended and supplemented prior to the Effective Date and as it may be further amended and supplemented from time to time in accordance with the provisions of Section 6.8 hereof and the provisions thereof.

“*General Junior Lien Bond Ordinance*” means Ordinance No. 17-0972, Series of 2017 cited as the “*Airport System General Junior Lien Bond Ordinance*,” as amended and supplemented prior to the Effective Date hereof and as it may be amended and supplemented from time to time in accordance with the provisions thereof

“*General Subordinate Bond Ordinance*” means Ordinance No. 302, Series of 2013, titled as the “*Amended and Restated Airport System General Subordinate Bond Ordinance*,” as amended and supplemented prior to the Effective Date hereof and as it may be amended and supplemented from time to time in accordance with the provisions thereof.

“*Governmental Approval*” means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

“*Governmental Authority*” means any nation or government, any state, department, agency or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

“*Gross Revenues*” has the meaning set forth in the General Bond Ordinance on the date hereof, as such definition may be amended from time to time in accordance with the terms hereof and the General Bond Ordinance.

“*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.

“*Holder*” shall mean each registered owner of the Series 2021B Credit Facility Bonds, including the Bank.

“*Initial Index Rate Period*” has the meaning set forth in the Supplemental Bond Ordinance.

“*Junior Lien Bonds*” has the meaning set forth in the General Junior Lien Bond Ordinance.

“*Junior Lien Obligations*” has the meaning set forth in the General Junior Lien Bond Ordinance.

“*Junior Lien Obligation Cross-Default Provision*” means a provision in a Bank Agreement, pursuant to which the Provider is supporting bonds or other securities under the Ordinance secured senior to or on a parity with Senior Bonds, including the Series 2021B Bonds and the Series 2021B Credit Facility Bonds, the other Bank Obligations, and all other Senior Obligations, which provides for an event of default under such Bank Agreement upon the occurrence of (i) a failure by the City, for and on behalf of its Department of Aviation, to pay when due the principal, interest or redemption price of any Junior Lien Obligations or (ii) any event, default or event of default with respect to any Junior Lien Obligations which, pursuant to the provisions of any Contract related to such Junior Lien Obligations, permits the holders of such Junior Lien Obligations to accelerate such Junior Lien Obligations or require such Junior Lien Obligations to be prepaid prior to the stated maturity date thereof.

“*Laws*” means such federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

“*Lending Office*” means, with respect to the Bank, the office or offices of the Bank described as such in Section 8.09 hereof, or such other office or offices as the Bank may from time to time notify the City.

“*Lien*” means any mortgage, deed of trust, lien, security interest, assignment, pledge, charge, hypothecation or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“*Majority Holder*” means the Holders owning a majority of the aggregate principal amount of Series 2021B Credit Facility Bonds from time to time; *provided* that, the Majority Holder shall at all times be Banc of America Preferred Funding Corporation, any Affiliate of Banc of America Preferred Funding Corporation or any commercial bank. As of the Closing Date, the Bank shall be the Majority Holder.

“*Manager*” has the meaning set forth in the General Bond Ordinance.

“*Material Adverse Effect*” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, performance, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Department of Aviation of the City or the Airport System or the transactions contemplated by this Agreement or the Related Documents; (b) a material impairment of the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations under any Related Document to which it is a party; or (c) a material adverse change in, or a material adverse effect upon, the legality, validity, binding effect or enforceability against the City, for and on behalf of its Department of Aviation, of any Related Document to which it is a party.

“*Maximum Rate*” means the lesser of (i) twelve percent (12%) per annum and (ii) the maximum non-usurious lawful rate of interest permitted by law.

“*Moody’s*” means Moody’s Investors Service, Inc. and its successors and assigns.

“*Net Revenues*” means the Gross Revenues remaining after the deduction of Operation and Maintenance Expenses.

“*Noise Law*” means, collectively, the Noise Statute and the Noise Regulations.

“*Noise Regulations*” means 14 Code of Federal Regulations Part 161, as amended.

“*Noise Statute*” means the Federal Airport Noise and Capacity Act of 1990, as amended.

“*Notice of Tender*” means the form of Notice of Tender delivered by the Bank pursuant to the terms of Section 2.2 hereof and attached hereto as Exhibit A.

“*Obligations*” has the meaning set forth in the General Bond Ordinance.

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

“*Operation and Maintenance Expenses*” has the meaning set forth in the General Bond Ordinance.

“*Ordinance*” means that certain General Bond Ordinance as supplemented by the Supplemental Bond Ordinance and as otherwise amended and supplemented.

“*Outstanding*” has the same meaning herein as in the General Bond Ordinance.

“*Paying Agent*” means U.S. Bank National Association, as Paying Agent under Supplemental Bond Ordinance No. [\_\_\_\_], and any successor paying agent for the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds).

“*Paying Agent Agreement*” means that certain Paying Agent Agreement dated as of July [13], 2021, between the City and the Paying Agent, as amended, supplemented, modified or restated from time to time in accordance with the provisions of Section 6.08 hereof and thereof.

“*Person*” means an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*PFCs*” means the passenger facility charge imposed by the City, for and on behalf of its Department of Aviation, on passengers enplaned at the Airport pursuant to the PFC Regulations.

“*PFC Regulations*” means 14 CFR Part 158 of the Federal Aviation Regulations, as amended and supplemented, and any successor regulations of the FAA relating to PFCs.

“*Pledged Funds*” means the Bond Fund established under the General Bond Ordinance and, to the extent pledged to the payment of Bonds and Obligations, any other funds and accounts established under the General Bond Ordinance and the Supplemental Bond Ordinance.

“*Pricing Certificate*” means the pricing certificate delivered by the Treasurer of the City with respect to the Series 2021B Bonds pursuant to Supplemental Bond Ordinance No. [\_\_\_\_].

“*Prime Rate*” means on 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 such 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.

“*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.



“*Provider*” has the meaning set forth in Section 5.01(x) hereof.

“*Rating Agencies*” means S&P, Moody’s and Fitch.

“*Related Documents*” means this Agreement, the Bond Documents and any other documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder.

“*S&P*” means S&P Global Ratings, and its successors and assigns.

“*Sanction(s)*” means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*Senior Bond Rating*” means each long-term unenhanced rating assigned by Moody’s, S&P and/or Fitch to the Senior Bonds (each, a “*Senior Bond Rating*”).

“*Senior Bonds*” means “Bonds” as defined in the General Bond Ordinance.

“*Senior Bond Obligations*” means the obligations of the City to pay principal of and interest on the Series 2021B Credit Facility Bonds.

“*Senior Obligations*” means “*Obligations*” as defined in the General Bond Ordinance.

“*Series 2021B Bonds*” means the City’s Airport System Revenue Bonds, Series 2021B issued by the City, for and on behalf of its Department of Aviation, in the original aggregate principal amount of \$13,100,000.

“*Series 2021B Credit Facility Bonds*” means the Series 2021B Bonds registered for the account of the Bank or its transferee, nominee or designee pursuant to the terms of Section 2.1 hereof.

“*State*” means the State of Colorado.

“*Supplemental Bond Ordinance*” means the Supplemental Bond Ordinance No. [\_\_\_\_], which supplements the General Bond Ordinance, as amended, supplemented, modified, or restated from time to time in accordance with the terms hereof and thereof.

“*Swap Agreement*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing

(including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, 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.

“*Taxes*” means any and all present or future taxes, duties, levies, imposts, deductions, fees, assessments, charges or withholdings, and any and all liabilities with respect to the foregoing, including interest, additions to tax and penalties applicable thereto.

“*Tax Certificate*” means the tax certificate delivered by the City, for and on behalf of its Department of Aviation, in connection with the delivery of the Series 2021B Bonds substantially in such form as Bond Counsel may require and which shall be approved by the Bank, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof and thereof.

“*Tender Date*” means the Business Day on which the tender occurs following delivery of the Notice of Tender by the Bank.

“*Tender Period*” means the period from the Closing Date hereof to and including the earliest of the close of business on (a) the last day of the Initial Index Rate Period, (b) the date on which no Series 2021B Bonds are Outstanding, and (c) the date that Banc of America Preferred Funding Corporation or any of its Affiliates no longer own any of the Series 2021B Bonds.

“*Tender Price*” means 100% of the principal amount of the Series 2021B Bond deemed tendered in accordance with the terms of the Ordinance.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein shall have the same meanings herein as in the Ordinance. All references in this Agreement to times of day shall be references to New York time unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

## ARTICLE TWO

### TENDER OF BONDS

*Section 2.1. Commitment to Hold Series 2021B Bonds as Series 2021B Credit Facility Bonds.* The Bank agrees, on the terms and conditions contained in this Agreement, to hold the Series 2021B Bonds deemed tendered in accordance with the terms of the Ordinance, from time to time during the Tender Period at the Tender Price. The aggregate principal amount (or portion thereof) of any Series 2021B Bonds held by the Bank on and after any Tender Date shall be an

Authorized Denomination. Any Series 2021B Bonds so held shall thereupon constitute Series 2021B Credit Facility Bonds for purposes hereof and Series 2021 Credit Facility Bonds under the Supplemental Bond Ordinance No. [\_\_\_\_\_] and shall, from the date of such tender and while they are Series 2021B Credit Facility Bonds, bear interest at the Default Rate and have such other characteristics of Series 2021B Credit Facility Bonds as set forth herein and Series 2021 Credit Facility Bonds as provided in the Ordinance.

*Section 2.2. Method of Causing Tender.* If, on any Business Day during the Tender Period, the Bank delivers a Notice of Tender to the Paying Agent and City, the Series 2021B Bonds shall be deemed Series 2021B Credit Facility Bonds on the Tender Date set forth therein.

*Section 2.3. Payment Obligations.* (a) The City, for and on behalf of its Department of Aviation, hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all Bank Obligations owing to the Bank, the Majority Holder and the Holders, whether now existing or hereafter arising, irrespective of their nature, whether direct or indirect, absolute or contingent, with interest thereon at the rate or rates provided in the Related Documents for such Bank Obligations.

(b) The City, for and on behalf of its Department of Aviation, shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all reasonable costs and expenses of the Holders in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of their rights under this Agreement, the other Related Documents and such other documents as may be delivered in connection herewith or therewith, including, without limitation, the reasonable fees and expenses for counsel and other reasonably required consultants to such Holders in connection with advising such Holders as to their rights and remedies under this Agreement, the other Related Documents and such other documents;

(ii) a fee for each amendment of any Related Document or consent by the Bank, the Majority Holder or the Holders or waiver by the Bank, the Majority Holder or the Holders under any Related Document, in each case in a minimum amount of \$3,500, plus the reasonable fees and expenses of any counsel retained by the Holders in connection therewith; and

(iii) any amounts advanced by or on behalf of Bank, the Majority Holder or the Holders to the extent required to cure any Event of Default (or an event or condition which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default) or event of nonperformance hereunder or under any other Related Document, together with interest at the Default Rate.

In addition, if at any time any Governmental Authority shall require revenue or other documentary stamps or any other tax in connection with the execution or delivery of this Agreement or other Related Documents, then, if the City, for and on behalf of its Department of Aviation, lawfully may pay for such stamps, taxes or fees, the City, for and on behalf of its

Department of Aviation, shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the City, for and on behalf of its Department of Aviation, agrees, to the extent permitted by law, to save the Holders harmless from and against any and all liabilities with respect to or resulting from any delay of the City or the Department of Aviation in paying, or omission of the City or the Department of Aviation to pay, for such stamps, taxes and fees hereunder.

*Section 2.4. Rights of Bank Holders.* Upon holding Series 2021B Credit Facility Bonds after a deemed tender, the Bank shall be entitled to and, where necessary, shall be deemed assigned all rights, privileges and security accorded Holders as provided in the Series 2021B Bonds and in the Ordinance, other than the right (a) to tender such Series 2021B Credit Facility Bonds for purchase pursuant to Section 6.15 of Supplemental Bond Ordinance No. [\_\_\_\_], (b) to have such Series 2021B Bonds purchased upon an expiration or termination of this Agreement or (c) in any event, to have such Series 2021B Bonds purchased with amounts drawn hereunder; *provided, however,* that to the extent rights and privileges in addition to those granted to Holders of the Series 2021B Bonds under the Ordinance and the Series 2021B Bonds are provided to Holders of Series 2021B Credit Facility Bonds pursuant to this Agreement, the terms of this Agreement shall prevail and govern and any such additional rights and privileges shall be deemed to be incorporated in the Ordinance. Upon purchasing Series 2021B Credit Facility Bonds and the registration of such Series 2021B Credit Facility Bonds in the name of, for the benefit of, or at the direction of the Bank, as provided herein, the Bank shall be recognized by the City, for and on behalf of the Department of Aviation, and the Paying Agent as the true and lawful owners of the Series 2021B Credit Facility Bonds (or, in the case of Book Entry Bonds, the beneficial owners thereof), and the City, for and on behalf of the Department of Aviation, and the Paying Agent acknowledge that Series 2021B Credit Facility Bonds shall be considered Series 2021 Credit Facility Bonds for purposes of the Supplemental Bond Ordinance and shall be secured to the same extent as any other Holders of Bonds under the Ordinance, including, without limitation, the right to receive payments of principal and interest, and all rights under the Ordinance upon the occurrence of any “event of default” under the Ordinance, except to the extent the Ordinance and this Agreement provide to the Bank rights, privileges or obligations that are not applicable to Holders in general.

*Section 2.5. Computation of Interest.* All computations of interest payable by the City, for and on behalf of its Department of Aviation, under this Agreement shall be made on the basis of a year of 360 days and actual days elapsed. Interest shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof. All computations of fees and other amounts payable by the City, for and on behalf of its Department of Aviation, under this Agreement shall be made on the basis of a year of 360 days and actual days elapsed.

*Section 2.6. Payment.* All payments to be made by the City, for and on behalf of its Department of Aviation, other than the Senior Bond Obligations, shall be made in Dollars and immediately available funds by wire transfer pursuant to instructions provided by the Bank to the City, for and on behalf of its Department of Aviation, without condition or deduction for any counterclaim, defense, recoupment or setoff. If any payment to be made by the City, for and on behalf of its Department of Aviation, shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected

in computing interest or fees, as the case may be. For payments not made by direct debit, payments will be made to the Bank at the Lending Office not later than 3:00 p.m. on the date specified herein. All payments received by the Bank after 3:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

*Section 2.7. Late Payments.* If any amount with respect to the Series 2021B Credit Facility Bond or any Bank Obligation is not paid when due, such obligation shall bear interest until paid in full at the Default Rate.

*Section 2.8. Obligations Absolute.* The payment obligations of the City, for and on behalf of its Department of Aviation, 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, the Series 2021B Credit Facility Bonds or any of the other Related Documents;
- (b) any amendment or waiver of or any consent to departure from all or any of the Related Documents;
- (c) the existence of any claim, set-off, defense or other right which the City, for and on behalf of its Department of Aviation, may have at any time against the Bank, the Majority Holder any other Holder or any other Person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or
- (d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding this Section, the Bank acknowledges the City, for and on behalf of its Department of Aviation, may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The payment obligations of the City, for and on behalf of its Department of Aviation, 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.

*Section 2.9. Maximum Rate.* If the rate of interest payable on the Series 2021B Credit Facility Bonds shall exceed the Maximum Rate for any period for which interest is payable, then, to the extent permitted by law, (a) interest at the Maximum 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 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 Rate, at which time the City, for and on behalf of its Department of Aviation, shall pay to the Holders, with respect to amounts then payable to the Holders 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 Holders to equal the Maximum 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 Series 2021B Credit Facility Bonds and other Bank 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 Holders. Notwithstanding the foregoing, on the date on which no Series 2021B Credit Facility Bonds or other Bank Obligations remain unpaid, to the extent permitted by law, the City, for and on behalf of its Department of Aviation, shall pay the Holders a fee equal to any accrued and unpaid Excess Interest.

*Section 2.10. Optional Redemption.* The Series 2021B Credit Facility Bonds deemed tendered hereunder in accordance with the Ordinance, from time to time during the Tender Period, may be optionally redeemed by the City on any Business Day upon five (5) Business Days' written notice to the Bank.

*Section 2.11. Special Obligations.* Notwithstanding any other provision of this Agreement or any other Related Document to the contrary, the Series 2021B Credit Facility Bonds are special obligations of the City, for and on behalf of its Department of Aviation, payable solely from the Net Revenues and the Funds on parity with all other outstanding Senior Bonds issued pursuant to the Ordinance. The Series 2021B Credit Facility Bonds and all other Bank Obligations shall not (i) constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation or (ii) be considered or held to be general obligations of the City. The City does not pledge its full faith and credit and taxing power for the payment of the Bank Obligations. The obligations owed to the Holders (including the Bank) hereunder (other than amounts due on the Series 2021B Credit Facility Bonds) of the City, for and on behalf of its Department of Aviation, are general, unsecured obligations of the City, for and on behalf of its Department of Aviation, and payable from moneys in the Capital Fund.

### **ARTICLE THREE**

#### **TAXES, YIELD PROTECTION AND ILLEGALITY**

*Section 3.1. 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 the Bank or any other Holder;

(ii) subject the Bank or any other Holder 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 the Bank or any other Holder any other condition, cost or expense affecting this Agreement;

and the result of any of the foregoing shall be to increase the cost to the Bank or any other Holder with respect to this Agreement, the Series 2021B Credit Facility Bonds, or the making, maintenance or funding of the purchase price of the Series 2021B Credit Facility Bonds, or to reduce the amount of any sum received or receivable by the Bank or any other Holder hereunder (whether of principal, interest or any other amount) then, upon request of the Bank or any other Holder, the City, for and on behalf of its Department of Aviation, will pay to the Bank or any other Holder, such additional amount or amounts as will compensate the Bank or any other Holder for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank or any other Holder determines that any Change in Law affecting the Bank or any other Holder or the Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Bank's capital or liquidity or on the capital or liquidity of the Bank's holding company, if any, as a consequence of this Agreement or the Series 2021B Credit Facility Bonds to a level below that which the Bank or the Bank's holding company could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's holding company with respect to capital adequacy), then from time to time the City, for and on behalf of its Department of Aviation, will pay to the Bank, such additional amount or amounts as will compensate the Bank or the Bank's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Bank or any other Holder setting forth the amount or amounts necessary to compensate the Bank or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the City shall be conclusive absent manifest error. The City, for and on behalf of its Department of Aviation, shall pay the Bank 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 the Bank to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Bank's right to demand such compensation; *provided* that the City shall not be required to compensate the Bank pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that the Bank notifies the City of the Change in Law giving rise to such increased costs or reductions and of the Bank'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 six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

*Section 3.2. Reserved.*

*Section 3.3. Reserved.*

*Section 3.4. Taxes.* If any payments to the Bank under this Agreement are made from outside the United States, the City will not deduct any foreign taxes from any payments it makes to the Bank or any other Holder. If any such taxes are imposed on any payments made by the City (including payments under this paragraph), the City, for and on behalf of its Department of Aviation, will pay the taxes and will also pay to the Bank or any other Holder, at the time interest

is paid, any additional amount which the Bank or any other Holder specifies as necessary to preserve the after-tax yield the Bank or any other Holder would have received if such taxes had not been imposed. As soon as practicable after any payment of taxes by the City to a Governmental Authority, as provided in this Section 3.4, the City will deliver to 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 or any other Holder. The City will confirm that it has paid the taxes by giving the Bank or any other Holder official tax receipts (or notarized copies) within thirty (30) days after the due date.

*Section 3.5. Bank Statements; Survival of Obligations.* The Bank shall deliver a written statement of the Bank to the City, for and on behalf of its Department of Aviation, as to the amount due, if any, under Section 3.1 or 3.4 hereof. Such written statement shall set forth in reasonable detail the calculations upon which the Bank determined such amount and shall be final, conclusive and binding on the City, for and on behalf of its Department of Aviation, in the absence of manifest error. Unless otherwise provided herein, the amount specified in the written statement of the Bank shall be payable on demand after receipt by the City, for and on behalf of its Department of Aviation, of such written statement. The obligations of the City under Sections 3.1 and 3.4 hereof shall survive payment of the Bank Obligations and termination of this Agreement.

## **ARTICLE FOUR**

### **CONDITIONS PRECEDENT TO EFFECTIVENESS**

*Section 4.1. Conditions Precedent to Effectiveness.* As conditions precedent to the effectiveness of this Credit Facility and Reimbursement Agreement, the City, for and on behalf of its Department of Aviation, shall provide to the Bank on the Effective Date, each in form and substance satisfactory to the Bank and the Bank's counsel, Chapman and Cutler LLP (hereinafter, the "*Bank's counsel*"):

(a) *Authorizing Documents.* The following authorizing documents of the City, for and on behalf of its Department of Aviation:

(i) certified copies of the General Bond Ordinance, as supplemented by Supplemental Bond Ordinance, authorizing, among other things, the execution, delivery and performance by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents to which it is a party (on the dates each such Related Document was executed and delivered by the City, for and on behalf of its Department of Aviation), certified by the Clerk and Recorder of the City as being in full force and effect;

(ii) certified copies of all governmental and regulatory approvals, if any, necessary for the City, for and on behalf of its Department of Aviation, to execute, deliver and perform its obligations under the Related Documents to which the City, for and on behalf of its Department of Aviation, is a party;



(b) *Financing Documents.* The following Related Documents:

(i) an executed or certified copy of each document, instrument, certificate and opinion delivered pursuant to the General Bond Ordinance, as supplemented by the Supplemental Bond Ordinance, and the other Related Documents in connection with the execution and delivery of this Agreement and the issuance and delivery of the Series 2021B Bonds and the agreement to purchase the Series 2021B Credit Facility Bonds hereunder;

(ii) one fully registered Series 2021B Bond executed by the City, for and on behalf of its Department of Aviation, issued to and registered in the name of Cede & Co.; and

(c) *Opinions.* The following opinions, dated the Effective Date and addressed to the Bank or on which the Bank is otherwise expressly authorized to rely:

(i) a written opinion or opinions of the City Attorney, dated the Effective Date and addressed to the Bank, as to the due execution and delivery of this Agreement and the other Related Documents to which the City, for and on behalf of its Department of Aviation, is a party, the enforceability of this Agreement and the other Related Documents to which the City, for and on behalf of its Department of Aviation, is a party, and such other customary matters as the Bank may reasonably request;

(ii) the written opinion of Bond Counsel dated the Effective Date and addressed to the Bank, to the effect that (A) this Agreement and the other Related Documents have been, duly authorized, executed and delivered by the City, for and on behalf of its Department of Aviation, and are the legal, valid and binding obligations of the City, for and on behalf of its Department of Aviation, enforceable against the City, for and on behalf of its Department of Aviation, in accordance with their respective terms, except as enforceability may be limited by the valid exercise of judicial discretion and the constitutional powers of the United States of America and subject to valid bankruptcy, insolvency, reorganization or moratorium or other similar laws applicable to the City or the Department of Aviation, as applicable, and equitable principles relating to or affecting creditors' rights generally from time to time; (B) the execution and delivery by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents do not violate the constitution or laws of the State; (C) the City, for and on behalf of its Department of Aviation, has taken all actions, and has obtained all approvals, necessary to the authorization, execution, delivery and performance by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents; (D) interest on the Series 2021B Bonds or the Series 2021B Credit Facility Bonds is excluded from the gross income of any owner of the Series 2021B Bonds or the Series 2021B Credit Facility Bonds for federal income tax purposes (excluding treatment of interest on the Series 2021B Bonds or the Series 2021B Credit Facility Bonds as an item of tax preference for purposes of

the federal alternative minimum tax); (E) the Series 2021B Bonds constitute “Bonds” for purposes of the General Bond Ordinance and the Series 2021B Credit Facility Bonds constitute “Credit Facility Obligations” for purposes of the General Bond Ordinance and “Series 2021 Credit Facility Bonds” for purposes of Supplemental Bond Ordinance and are entitled to the benefit of the security pledged therefor; (F) the obligations of the City, for and on behalf of its Department of Aviation, to repay the Senior Bond Obligations and the Series 2021B Credit Facility Bonds pursuant to this Agreement are special obligations of the City, for and on behalf of its Department of Aviation, payable solely from the Net Revenues and the Pledged Funds on parity with all outstanding Bonds and any other Obligations issued pursuant to the General Bond Ordinance; (G) the Series 2021B Credit Facility Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended; and (H) the General Bond Ordinance, as supplemented by Supplemental Bond Ordinance, are each exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended. The Bank Obligations and other obligations (other than the Senior Bond Obligations) of the City, for and on behalf of its Department of Aviation, are general, unsecured obligations of the City, for and on behalf of its Department of Aviation, and payable from moneys in the Capital Fund.

(d) *Closing Certificates.* The following closing certificates of the City, for and on behalf of its Department of Aviation:

(i) a certificate signed by a duly authorized officer of the City, for and on behalf of its Department of Aviation, dated the Effective Date and stating that:

(A) the representations and warranties contained in Article Five of this Agreement are true and correct on and as of the Effective Date as though made on such date;

(B) no Event of Default or event or condition which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing, or would result from the execution, delivery or performance of this Agreement or any Related Document to which the City, for and on behalf of its Department of Aviation, is a party;

(C) except as provided by the City to the Bank in writing (or in a form otherwise acceptable to the Bank) on or before the Effective Date, there has been no event or circumstance since the date of the audited annual financial statements dated December 31, 2019, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(D) (1) the entering into of this Agreement is an arm’s length commercial transaction between the City, for and on behalf of its Department of Aviation and the Bank, (2) the City, for and on behalf of its

Department of Aviation, has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the entering into of this Agreement and (3) the Bank has not acted as a fiduciary in favor of the City or the Department of Aviation with respect to the Series 2021B Bonds or the Series 2021B Credit Facility Bonds or the process leading to the issuance of the Series 2021B Bonds and has no other obligations to the City or the Department of Aviation with respect to these transactions except as expressly set forth in this Agreement;

(ii) a certificate of the Treasurer of the City with respect to authorization and incumbency of the officers of the City, for and on behalf of its Department of Aviation, to execute on behalf of the City, for and on behalf of its Department of Aviation, this Agreement and the other documents to be delivered by the City, for and on behalf of its Department of Aviation, hereunder;

(e) *Additional Financial Information.* The following documents and other information of the City, for and on behalf of its Department of Aviation:

(i) the audited financial statements of the City for the Fiscal Year ended December 31, 2019, including balance sheets, income and cash flow statements;

(ii) the unaudited financial statements of the City for the fiscal quarters ended June 30, 2020 and September 30, 2020, including balance sheets and income and cash flow statements;<sup>1</sup>

(iii) a copy of the most recent Report of the Airport Consultant;

(iv) a list of all of the outstanding Swap Agreements of the City, for and on behalf of its Department of Aviation (including each respective Swap Agreement's mark to market valuation) and each swap counterparty thereto; and

(v) evidence that the unenhanced long-term credit rating from the Rating Agencies assigned to the Senior Bonds are not less than A1/A+/A+ for Moody's, S&P and Fitch, respectively.

*Section 4.2. Additional Conditions to Closing.* As additional conditions precedent to the obligation of the Bank to deliver this Agreement:

(a) *Credit Requirements.* Prior to the Effective Date, the Bank shall have determined, in its sole discretion, based in part upon the information and reports submitted by the City, for and on behalf of its Department of Aviation, that the City and the Department of Aviation meets the Bank's credit requirements;

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<sup>1</sup> To be updated if FY 2020 audit complete pre-closing.

(b) *Litigation.* Prior to the Effective Date, the Bank shall have received a written description of all actions, suits or proceedings pending or, to the knowledge of the City, for and on behalf of its Department of Aviation, threatened against the City, for and on behalf of its Department of Aviation, 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;

(c) *Other Matters.* On the Effective Date, the Related Documents shall be in full force and effect in the form theretofore approved by the Bank and none of the Related Documents shall have been amended, modified or supplemented other than as contemplated herein. There shall not have occurred any change or any development involving a prospective change in the financial or operating condition of the City, for and on behalf of its Department of Aviation, or its ability to pay its obligations with respect to the Bonds or this Agreement, from that set forth in the financial statements provided to the Bank that in the judgment of the Bank is material and adverse to the Bank nor any change in any law, rule, regulation (or the interpretation or administration thereof), that, in each case, may adversely affect the consummation of the transactions contemplated hereunder, as determined by the Bank in its sole discretion. The representations and warranties of the City, for and on behalf of its Department of Aviation, contained herein shall be true, complete and correct on the date hereof and on the Effective Date, as if made on the Effective Date and the City, for and on behalf of its Department of Aviation, shall have performed and complied with all agreements and conditions required by the Related Documents to be performed or complied with by it prior to the Effective Date. The City, for and on behalf of its Department of Aviation, shall not have failed to pay principal of or interest as and when due on any of its indebtedness payable from the Net Revenues and the Funds. 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 City, for and on behalf of its Department of Aviation, and the other parties to the Related Documents and matters contemplated by this Agreement as the Bank may reasonably request; and

(d) *Payment of Fees and Expenses.* On or prior to the Effective Date, the Bank shall have received reimbursement of the Bank's reasonable fees and expenses (including, without limitation, the reasonable fees and expenses of counsel to the Bank in an amount not to exceed \$[\_\_\_\_]) and any other fees incurred in connection with the transaction contemplated by the Related Documents. The fees of counsel to the Bank shall be paid directly to Chapman and Cutler LLP in accordance with the instructions provided by Chapman and Cutler LLP.

## ARTICLE FIVE

### REPRESENTATIONS

*Section 5.1. Representations of the City, for and on behalf of its Department of Aviation.* In order to induce the Bank to enter into this Agreement, the City, for and on behalf of its Department of Aviation, represents and warrants to the Bank and the Holders of the Series 2021B Credit Facility Bonds as follows:

(a) *Organization; Power and Authority.* The City is duly organized and validly existing as a municipal corporation and political subdivision under the laws of the State. The City, for and on behalf of its Department of Aviation, has full right and authority to enter into this Agreement, has or had the full right and authority to enter into the other Related Documents to which it is a party on the date of execution of such Related Documents and to perform each and all of the matters and things herein and therein provided for.

(b) *Due Authorization; No Violation.* The execution, delivery and performance by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents to which it is a party on the date of execution of such Related Documents and the issuance, execution and delivery of the Series 2021B Bonds and the Series 2021B Credit Facility Bonds on the respective dates of issuance, execution and delivery were duly authorized by all necessary action, and did not and will not violate any constitutional provisions or any law or any regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to the City or the Department of Aviation or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than the Lien of the General Bond Ordinance) upon any of the assets of the City or the Department of Aviation pursuant to the terms of, any resolution, ordinance, mortgage, indenture, agreement or instrument to which the City or the Department of Aviation is a party or by which it or any of its properties is bound.

(c) *Enforceability.* This Agreement, and each Related Document to which the City, for and on behalf of its Department of Aviation, is a party constitute the legal, valid and binding obligations of the City, for and on behalf of its Department of Aviation, enforceable against the City, for and on behalf of its Department of Aviation, in accordance with their respective terms, except as such enforceability may be subject to and limited by (w) applicable bankruptcy, reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally, (x) the exercise of judicial discretion, procedural and other defenses based on particular factual circumstances and equitable principles in appropriate cases, (y) the reasonable exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State, and (z) the exercise by the United States of powers delegated to it by the United States Constitution; *provided* that, while certain remedies and other provisions of this Agreement and each Related Document are subject to the aforesaid exceptions and limitations and, therefore, may not be enforceable in accordance with their

respective terms, such unenforceability would not preclude the enforcement of the obligations of the City, for and on behalf of its Department of Aviation, to pay the Senior Bond Obligations from the Net Revenues and Pledged Funds as provided in the Ordinance. The Series 2021B Bonds and the Series 2021B Credit Facility Bonds have been duly issued, executed and delivered in conformity with the General Bond Ordinance and the Supplemental Bond Ordinance and constitute legal, valid and binding obligations of the City, for and on behalf of its Department of Aviation, enforceable in accordance with their terms, except as such enforceability may be subject to and limited by (w) applicable bankruptcy, reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally, (x) the exercise of judicial discretion, procedural and other defenses based on particular factual circumstances and equitable principles in appropriate cases, (y) the reasonable exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State, and (z) the exercise by the United States of powers delegated to it by the United States Constitution; provided that, while certain remedies and other provisions of this Agreement and each other Related Document are subject to the aforesaid exceptions and limitations and, therefore, may not be enforceable in accordance with their respective terms, such unenforceability would not preclude the enforcement of the obligations of the City, for and on behalf of its Department of Aviation, to pay the Senior Bond Obligations from the Net Revenues and Pledged Funds as provided in the Ordinance, and in all events the Senior Bond Obligations shall be entitled to the benefit and security of the Ordinance, the Net Revenues and the Pledged Funds as provided in the Ordinance.

(d) *Status.* Under the terms of the General Bond Ordinance, the General Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance, the Net Revenues cannot secure any Debt of the City (including Debt for and on behalf of its Department of Aviation) other than as provided in or permitted by the General Bond Ordinance the General Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance. As of the Effective Date, the Series 2021B Bonds constitute the only Debt of the City or the City, for and on behalf of its Department of Aviation, that is secured by a Lien on the Net Revenues other than the other Senior Bonds, Obligations, Subordinate Bonds, Subordinate Credit Facility Obligations, and other Subordinate Obligations (all as defined in the General Bond Ordinance or the General Subordinate Bond Ordinance, as applicable) and Junior Lien Obligations and Junior Lien Bonds issued or incurred prior to the Effective Date. Under the terms of the General Bond Ordinance, the General Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance, the Net Revenues cannot secure any Debt of the City (including Debt for and on behalf of its Department of Aviation) other than Senior Bonds (including the Series 2021B Bonds), Obligations, Subordinate Bonds, Subordinate Credit Facility Obligations, other Subordinate Obligations (as defined in the General Bond Ordinance or the General Subordinate Bond Ordinance), and Junior Lien Obligations and Junior Lien Bonds. The Net Revenues cannot be used to pay any obligations of the City (including Debt for and on behalf of its Department of Aviation) other than the foregoing described Debt, Operation and Maintenance Expenses and any other lawful purposes.

(e) *Disclosure.* Except as provided by the City to the Bank in writing (or in a form otherwise acceptable to the Bank) on or before the Effective Date, no representation, warranty or other statement made by the City, for and on behalf of its Department of Aviation in this Agreement or any other Related Document to which it is a party or any other document or financial statement provided by the City, for and on behalf of its Department of Aviation, to the Bank or any Holder in connection with this Agreement, contains any untrue statement of a material fact or omits (as of the date made or furnished) any material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they are made. To the best of the knowledge of the City, for and on behalf of its Department of Aviation, there is no fact, which the City, for and on behalf of its Department of Aviation, has not disclosed to the Bank or any Holder in writing which materially adversely affects or, so far as the City, for and on behalf of its Department of Aviation, can now reasonably foresee, is likely to materially adversely affect the ability (financial or otherwise) of the City, for and on behalf of its Department of Aviation, to perform its obligations hereunder or under the Related Documents to which it is a party.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or, to the best knowledge of the City, for and on behalf of its Department of Aviation, threatened against or affecting the City, for and on behalf of its Department of Aviation or the Airport System, wherein an unfavorable decision, ruling or finding could reasonably be expected to result in a Material Adverse Effect.

(g) *No Defaults.* The City, for and on behalf of its Department of Aviation, is not in default under (i) any order, writ, injunction or decree of any court or governmental body or agency applicable to the Airport System, or (ii) any law or regulation, or (iii) any bonds or other Debt or obligations payable from or secured by the Net Revenues or amounts on deposit in the Funds, or (iv) any contract, agreement or instrument to which the City, for and on behalf of its Department of Aviation, is a party or by which it or its property is bound, in each case, which default could reasonably be expected to result in a Material Adverse Effect; and no event has occurred which with the giving of notice or the passage of time or both would constitute such a default.

(h) *Financial Statements and Condition.* Except as provided by the City to the Bank in writing (or in a form otherwise acceptable to the Bank) on or before the Effective Date, the audited balance sheet of the City as of December 31, 2019 and the related audited statements of earnings, changes in fund equity and cash flows of the City for the Fiscal Years then ended, and the accompanying footnotes thereon, dated December 31, 2019, reported on by BKD, LLP (“BKD”) independent certified public accountants, have been delivered to the Bank. Consistent with BKD’s opinion dated [June 19], [2020], the City believes these financial statements, as of the Effective Date, fairly present the financial condition of the City as at such dates and the results of the operations of the Airport System, for the periods covered by such statements, all in conformity with GAAP. Since December 31, 2019, except as provided by the City to the Bank in writing, (or in a form otherwise acceptable to the Bank) on or before the Effective Date, there has been no

material adverse change in the condition (financial or otherwise), business or operations of the Airport System or the City.

(i) *Consents.* No authorization, consent, order or other approval of, or registration or filing with, or taking of any other action in respect of or by, any court or governmental body, agency or other instrumentality is required for the valid execution, delivery or performance by the City, for and on behalf of its Department of Aviation, of this Agreement or was required for the valid execution, delivery or performance by the City, for and on behalf of its Department of Aviation, of the Related Documents to which the City, for and on behalf of its Department of Aviation, is a party or the issuance, execution, delivery and performance of the Series 2021B Bonds and the Series 2021B Credit Facility Bonds, except such as shall have been duly obtained, given or accomplished prior to the execution and delivery hereof or thereof.

(j) *Security.* The provisions of the General Bond Ordinance (including, without limitation, Section 203 thereof) create an irrevocable and first Lien (but not necessarily an exclusive first Lien) on the Net Revenues and Pledged Funds of the Airport System for the benefit of the holders of the Series 2021B Bonds, including the Series 2021B Credit Facility Bonds, on a parity with the Lien thereon in favor of the holders of Senior Bonds and Obligations (including, without limitation, the Bank and the Holders). The provisions of Section 203 of the General Bond Ordinance and Section 8.13 hereof create, with respect to the Senior Bond Obligations, including the Series 2021B Credit Facility Bonds, an irrevocable first Lien (but not necessarily an exclusive first Lien) on the Net Revenues of the Airport System for the benefit of the Bank and the Holders, on a parity with the Lien thereon in favor of the holders of Bonds and holders of other Obligations (the Lien in favor of the Bank and the Holders, the holders of the Bonds and the other Obligations shall be an exclusive first Lien). Such Liens are prior as against all other Persons having claims of any kind in tort, contract or otherwise, whether or not such Persons have notice thereof. No filing or recording of any instrument and no taking of any other action by any Person is necessary to maintain each such pledge as a valid and enforceable pledge or to maintain the priority thereof as stated in the preceding sentences.

(k) *Bond Documents.* The City, for and on behalf of its Department of Aviation, hereby makes to the Bank the same representations and warranties made by the City, for and on behalf of its Department of Aviation, in each Bond Document to which the City, for and on behalf of its Department of Aviation, is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference in this subparagraph (k) for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth in this subparagraph (k) in its entirety. No amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in the Bond Documents shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated in this subparagraph (k) by this reference, without the prior written consent of the Bank.



(l) *No Proposed Legal Changes.* There is no amendment, or to the knowledge of the City, for and on behalf of its Department of Aviation, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the Series 2021B Bonds or the Series 2021B Credit Facility Bonds, or the rights of any Holder thereof in its capacity as such, or the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations under this Agreement or the other Related Documents.

(m) *No Sovereign Immunity.* The City, for and on behalf its Department of Aviation, does not enjoy any defense on the grounds of immunity (sovereign or otherwise) with respect to its contractual obligations under this Agreement, the General Bond Ordinance or Supplemental Bond Ordinance.

(n) *Bankruptcy and Insolvency.* Gross Revenues (other than revenues from fuel taxes not derived from the ownership or operation of the Airport System and other components (if any) of Gross Revenues not derived from the ownership or operation or disposition of the Airport System) are “special revenues” (within the meaning of 11 U.S.C. § 902(2)(A)) and, accordingly, such Gross Revenues acquired by the City after the commencement of any case by the City under 11 U.S.C. §§ 901 *et seq.* shall remain subject to the Liens created by and under the General Bond Ordinance in favor of the holders of the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds) and the Bank. Under 11 U.S.C. § 922(d), the filing of a petition under 11 U.S.C. §§ 301 and 901 which commences such a case does not operate as a stay of application of such Gross Revenues to the payment of the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds) or any amounts payable under this Agreement in accordance with the provisions of 11 U.S.C. § 928, notwithstanding that such Gross Revenues are received and held by the City. Under 11 U.S.C. §§ 922(d), 927 and 928, the filing of a petition under 11 U.S.C. §§ 301 and 901 which commences such a case does not operate as a stay of the transfer of such Gross Revenues to the holders of the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds) or to the Bank to the extent of any amounts owing thereunder or hereunder. Pursuant to 11 U.S.C. § 926(b), no transfer of property (including, without limitation, Gross Revenues after payment of the necessary operating expenses of the Airport System pursuant to 11 U.S.C. § 928(b)) by the City, for and on behalf of its Department of Aviation, in respect of the holders of the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds) or the Bank or as a subrogee thereof is subject to avoidance under 11 U.S.C. § 547.

(o) *Environmental Matters.* Except as disclosed in writing to the Bank, the City, for and on behalf of its Department of Aviation, does not have knowledge that the operations of the Airport System are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are 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, which non-compliance or remedial action could reasonably be expected to result in a Material Adverse Effect.

(p) *ERISA.* Neither the City nor the Department of Aviation has ever established nor contributed to, nor is a party to, any “employee benefit plan” within the meaning of Section 3(3) of ERISA or any other form of bonus, incentive compensation, deferred compensation or other similar plan or arrangement, other than a “governmental plan” within the meaning of Section 414(d) of the Code or Section 3(32) of ERISA.

(q) *Title to Properties; Liens and Encumbrances.* The City, for and on behalf of its Department of Aviation, has good title in fee simple or valid and enforceable leaseholds to, all of its real property and valid and indefeasible ownership of all of its fixtures, equipment and other assets. No property of the City, for and on behalf of its Department of Aviation, is subject to liens that could individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(r) *Compliance with Rules and Regulations.* The City, for and on behalf of its Department of Aviation, is in compliance with all laws, ordinances, orders, rules and regulations applicable to it, noncompliance with which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and all cash and other assets of the Airport System are invested in accordance with its investment policy, as amended or otherwise modified from time to time. Neither the City nor the Department of Aviation has received any notice of noncompliance from the Federal Equal Employment Opportunity Commission or the Federal Occupational Safety and Health Administration which would have a Material Adverse Effect.

(s) *Tax-Exempt Status of Series 2021B Bonds.* Neither the City nor the Department of Aviation has taken any action or knows of any action that any other Person has taken, which would cause interest on the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds) to be included in the gross income of the recipients thereof for Federal income tax purposes (excluding treatment of interest on the Series 2021B Bonds as an item of tax preference for purposes of the federal alternative minimum tax).

(t) *Interest.* None of the Related Documents, the Series 2021B Bonds or the Series 2021B Credit Facility Bonds provide for any payments that would violate any applicable usury laws regarding permissible maximum rates of interest or the calculation or collection upon interest.

(u) *Federal Reserve Regulations.* No part of the proceeds of the Series 2021B Credit Facility Bonds will be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any margin stock (within the meaning of Regulation U of the FRB, as amended from time to time), or to extend credit to others for the purpose of purchasing or carrying any margin stock, or for any other purpose which would violate any of the regulations of the FRB.

(v) *Official Signatures.* The officials of the City, for and on behalf of its Department of Aviation, signing this Agreement and the other Related Documents to which the City, for and on behalf of its Department of Aviation, is party, has and had full power and authority to execute, deliver and perform under each such Related Document. Any agreement, certificate or request signed by or on behalf of any authorized representative of the City, for and on behalf of its Department of Aviation, and delivered to the Paying Agent or the Bank and the Holders shall be deemed a representation and warranty by the City, for and on behalf of its Department of Aviation, to the Bank and the Holders as to the truth, accuracy and completeness of the statements made by the City, for and on behalf of its Department of Aviation, therein.

(w) *Credit Facility Obligations.* The Series 2021B Bonds constitute “Bonds” and the Series 2021B Credit Facility Bonds constitute “Credit Facility Obligations” for purposes of the General Bond Ordinance and “Series 2021 Credit Facility Bonds” for the purposes of the Supplemental Bond Ordinance and are entitled to the security pledged therefor, and the Bank Obligations (other than the Senior Bond Obligations) under this Agreement are general, unsecured obligations of the City, for and behalf of its Department of Aviation, and payable from moneys in the Capital Fund. This Agreement constitutes a “Credit Facility” for purposes of the General Bond Ordinance.

(x) *No Junior Lien Obligation Cross-Default Provision in Bank Agreements.* The City, for and on behalf of its Department of Aviation, has not entered into, or otherwise consented to any credit agreement, reimbursement agreement, standby bond purchase agreement (or other similar agreement), liquidity agreement, direct securities purchase agreement or other agreement or instrument (or any amendment, supplement or modification thereto) (each a “*Bank Agreement*”) under which, directly or indirectly, any Person or Persons (each a “*Provider*”) undertake(s) to make a loan or provide funds to make payment of, or to purchase or provide liquidity support or credit enhancement, for Senior Bonds or Subordinate Bonds for and on behalf of its Department of Aviation, which Bank Agreement includes a Junior Lien Obligation Cross-Default Provision.

## **ARTICLE SIX COVENANTS**

The City, for and on behalf of its Department of Aviation, will do the following so long as the Bank or any Holder is an owner of the Series 2021B Credit Facility Bonds and any Bank Obligations remain outstanding under this Agreement, unless the Majority Holder shall otherwise consent in writing:

*Section 6.1. Performance of This and Other Agreements.* The City, for and on behalf of its Department of Aviation, shall punctually pay or cause to be paid all amounts payable on the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds and under this Agreement and the other Related Documents and observe and perform all of the conditions, covenants and requirements of this Agreement and the other Related Documents.

*Section 6.2. Further Assurances.* The City, for and on behalf of its Department of Aviation, shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Majority Holder, all such instruments and documents as in the opinion of the Majority Holder are necessary or advisable to carry out the intent and purpose of this Agreement and the Related Documents or to enable the requesting party to enforce any of its rights hereunder or thereunder and to provide for the payment of the Bank Obligations and for the perfection of the Lien on the Net Revenues securing the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds). At any time, and from time to time, upon request by the Majority Holder, the City, for and on behalf of its Department of Aviation, will, at the expense of the City, for and on behalf of its Department of Aviation, correct any defect, error or omission which may be discovered in the form or content of any of the Related Documents.

*Section 6.3. Books and Records; Inspection Rights.* The City, for and on behalf of its Department of Aviation, shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the City, for and on behalf of its Department of Aviation, and the Airport System; and at any reasonable time and from time to time upon reasonable notice thereof, permit the Majority Holder or any agents or representatives thereof, at the expense of the Majority Holder, to examine and make copies of and abstracts from the records and books of account of, and to the extent permitted by Applicable Law, visit the properties of, the City, for and on behalf of its Department of Aviation, and the Airport System and to discuss the affairs, finances and accounts of the Airport System with any of the City's or the Department of Aviation's officers, trustees and, with the consent of the City, for and on behalf of its Department of Aviation, independent auditors, for and on behalf of its Department of Aviation.

*Section 6.4. Reporting Requirements.* The City, for and on behalf of its Department of Aviation, shall furnish to the Bank:

(i) as soon as available and in any event within 270 days after the end of each Fiscal Year, a balance sheet of the Airport System as of the end of such Fiscal Year and the related statements of revenues, expenses, changes in retained earnings and cash flows for such Fiscal Year, all certified as to fairness of presentation and conformity with generally accepted accounting principles by a firm of independent accountants of nationally recognized standing and including supplemental information as required by the General Bond Ordinance, including a statement of compliance with the rate maintenance covenant as defined in the General Bond Ordinance, reported on by such firm of independent accountants as to the fairness of presentation in relation to the financial statements of the Airport System taken as a whole;

(ii) as soon as available and in any event within 90 days after the end of each of the first three fiscal quarters of each Fiscal Year, a balance sheet of the Airport System as of the end of such quarter and the related statement of revenues, expenses and changes in retained earnings for such quarter, all certified (subject to city confirmation) as to consistency of presentation and compliance with generally accepted accounting principles by the Deputy Manager of Aviation/Finance and Administration for the Airport System;

(iii) simultaneously with the delivery of each set of financial statements referred to in clause (i) and (ii) above, a certificate of the City, for and on behalf of its Department of Aviation, provided by the Manager stating that, to the best knowledge of the Manager, there exists on the date of such certificate no Event of Default or, if any Event of Default then exists, setting forth the details thereof and the action which the City, for and on behalf of its Department of Aviation, is taking or proposes to take with respect thereto;

(iv) promptly after process has been served on the City, for and on behalf of its Department of Aviation, and written notice thereof is received by an Authorized Officer, written notice of (A) the occurrence of any Event of Default, together with a statement of the Manager setting forth the details thereof and the action which the City, for and on behalf of its Department of Aviation, is taking or proposes to take with respect thereto, (B) any material violation or alleged violation by the City, for and on behalf of its Department of Aviation, of the Noise Law or of any other Applicable Law that could result in the termination of the authority of the City, for and on behalf of its Department of Aviation, to impose or collect PFCs, and (C) any commencement by the FAA of proceedings to terminate the authority of the City, for and on behalf of its Department of Aviation, to impose or collect PFCs;

(v) promptly after process has been served on the City, for and on behalf of its Department of Aviation, and written notice thereof is received by an Authorized Officer, notice of any action, suit or proceeding before any court or arbitrator or any governmental body, agency or official in which there is a reasonable probability of an adverse decision which could (A) have a Material Adverse Affect or (B) adversely affect the ability of the City, for and on behalf of its Department of Aviation, to fix, revise, charge and collect rentals, rates, fees and other charges for the use of the Airport System in such amounts and at such times as will enable the City, for and on behalf of its Department of Aviation, to comply with the provisions of Section 901 of the General Bond Ordinance;

(vi) promptly upon the mailing or other delivery thereof to the holders of Bonds, copies of all notices (including, without limitation, any notices pursuant to Section 1304 of the General Bond Ordinance) to such holders;

(vii) promptly upon the availability thereof, a hyperlink providing access to a copy of each official statement, offering memorandum or other disclosure documents relating to the offering of any Bonds or Subordinate Bonds, including a copy of each Report of the Airport Consultant as included in any such official statement, offering memorandum or other disclosure document relating to Senior Bonds or Subordinate Bonds; and

(viii) from time to time such additional information regarding the financial position, operations, business or prospects of the Airport System as the Bank may reasonably request.

The City, for and on behalf of its Department of Aviation, shall make all financial statements required to be delivered under Section 6.4(i), 6.4(ii), 6.4(vi).and 6.4(vii) available on <http://emma.msrb.org/> (or, upon prior written notice to the Lender, any other applicable online

system used by the City for the posting of financial statements), and the posting of any such financial statements on <http://emma.msrb.org> (or such other system) by no later than the deadlines required by Section 6.4(i) and 6.4(ii) shall be deemed to be compliance with these Sections. The City, for and on behalf of its Department of Aviation, may deliver any of the items required to be delivered to the Lender pursuant to Section 6.4 hereof by hard copy to the Lender at its address specified in Section 8.9 hereof or by e-mail transmission to the Lender at [brent.riley@bofa.com](mailto:brent.riley@bofa.com) and [glenda.beasley@bofa.com](mailto:glenda.beasley@bofa.com).

*Section 6.5. Retirement Plan.* The Airport System shall remain at all times in compliance with its obligations to fund the City's pension plan providing benefits for employees of the Department of Aviation of the City, for and on behalf of its Department of Aviation.

*Section 6.6. Debt.* The City, for and on behalf of its Department of Aviation, will not issue, incur, assume, create or have outstanding any Debt payable from Net Revenues or the Funds other than as expressly provided in or permitted by the General Bond Ordinance.

*Section 6.7. Liens.* (a) The City, for and on behalf of its Department of Aviation, will not create, incur or permit to exist any Lien of any kind on the Net Revenues or the Funds, other than as expressly provided in or permitted by the General Bond Ordinance.

(b) In no event shall any Lien on Net Revenues or the Funds securing any swap termination payment under any Swap Agreement entered into by the City, for and on behalf of its Department of Aviation, at any time after a tender of the Series 2021B Bonds pursuant to the terms hereof, be senior in priority to, or on parity with, the lien on Net Revenues or the payment of the Series 2021B Bonds (including the Senior Bond Obligations owed in respect of the Series 2021B Credit Facility Bonds), any other Bonds or any Obligations. In no event shall the City, for and on behalf of its Department of Aviation, agree to provide any collateral to support the obligations of the City, for and on behalf of its Department of Aviation, under any Swap Agreement entered into by the City, for and on behalf of its Department of Aviation, at any time after the date of a tender of the Series 2021B Bonds pursuant to the terms hereof, other than a Lien on Net Revenues subordinate to the Lien on Net Revenues securing the Series 2021B Bonds or the Senior Bond Obligations.

*Section 6.8. Related Documents.* (a) The City, for and on behalf of its Department of Aviation, will not, directly or indirectly, amend, supplement or otherwise modify, or consent to any amendment, supplement or other modification of, any Related Document unless it has notified the Bank of the substance of such amendment, supplement or other modification at least ten (10) Business Days prior to the effective date thereof.

(b) The City, for and on behalf of its Department of Aviation, further agrees that, without the prior consent of the Majority Holder, the City, for and on behalf of its Department of Aviation, will not, directly or indirectly, enter into or otherwise consent to any amendment, waiver, supplement, termination or other modification of any such Related Document, and will not accept the benefit of any waiver given thereunder, in any manner that (1) in the case of any such amendment, waiver, supplement, termination or other modification of the General Bond Ordinance, as supplemented by Supplemental Bond Ordinance, adversely affects (A) the ability of

the City, for and on behalf of its Department of Aviation, to perform its obligations thereunder or (B) the rights, security or interests of the Bank or any other Holder hereunder or thereunder or (2) in the case of any such amendment, waiver, supplement, termination or other modification of any other Related Document, materially and adversely affects (1) the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations hereunder or (2) the rights, security or interests of the Bank or any other Holder or under any such Related Document; *provided, however*, that this subsection 6.8(b) shall not prohibit the City, for and on behalf of its Department of Aviation, from issuing additional Bonds, Subordinate Bonds or Junior Lien Bonds or incurring Obligations, Subordinate Credit Facility Obligations or any other Subordinate Obligations, or Junior Lien Obligations, if the conditions precedent or otherwise applicable to the issuance of such bonds or the incurrence of such obligations (including, without limitation, under the General Bond Ordinance, the General Subordinate Bond Ordinance, or the General Junior Lien Ordinance, as the case may be), have been satisfied

*Section 6.9. Insurance.* The City, for and on behalf of its Department of Aviation, will maintain or cause to be maintained insurance for all of its Property comprising the Airport System with responsible and reputable insurance companies in such amounts and covering such risks as are required by the Ordinance and customarily maintained by entities similar to the City and the Department of Aviation. The City, for and on behalf of its Department of Aviation, shall furnish to Bank, upon written request, full information as to all insurance carried by it. The City, for and on behalf of its Department of Aviation, will maintain all of its Property comprising the Airport System in good condition and repair (normal wear and tear excepted), and pay and discharge the cost of repairs thereto or maintenance thereof.

*Section 6.10. Provisions to Facilitate Payments.* The City, for and on behalf of its Department of Aviation, shall cause to be included in each annual budget of the City, for and on behalf of its Department of Aviation, reasonable provisions for the payment of all amounts due and estimated to become due to the Holders with respect to the Series 2021B Bonds and the Series 2021B Credit Facility Bonds under this Agreement and the other Related Documents during the Fiscal Year covered by such budget. To the extent estimates are used, such estimates shall be made by the Deputy Manager of Aviation/Finance and Administration for the Airport System or any other appropriate official, in consultation with the Manager, in good faith and shall be based upon reasonable estimates of the principal and interest due and owing on the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds), expected to be outstanding, and the interest rates reasonably expected to be charged during the coming Fiscal Year for the remaining term of the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds) evidenced thereby. To the extent that amounts actually due and payable to the Holders with respect to the Series 2021B Bonds and the Series 2021B Credit Facility Bonds under this Agreement and the other Related Documents in any Fiscal Year exceed the amounts estimated and/or available therefor in an annual budget of the City, for and on behalf of its Department of Aviation, for such Fiscal Year, the City, for and on behalf of its Department of Aviation, shall take, or cause to be taken, as promptly as possible, all such actions (including, without limitation, amendments of such annual budget) as may be required to permit and facilitate the expenditure of additional moneys from all sources legally available for the payment of such amounts.

*Section 6.11. Credit Facilities.* In the event that the City, for and on behalf of its Department of Aviation shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement under which, directly or indirectly, any Person or Persons undertakes to issue a letter of credit or make, loan or provide funds to the City, for and on behalf of its Department of Aviation, to make payment of or to purchase Bonds, which Bank Agreement (or amendment, supplement or modification thereto) provides such Person with more restrictive and/or different financial covenants, more restrictive and/or more favorable events of default, or additional and/or greater rights and remedies than are provided to the Bank in this Agreement, such more restrictive and/or different financial covenants, more restrictive and/or more favorable events of default, and additional and/or greater rights and remedies shall automatically be deemed to be incorporated into this Section 6.11, and the Bank shall have the benefit of such more restrictive and/or different financial covenants, more restrictive and/or more favorable events of default, and additional and/or greater rights and remedies as if specifically set forth in this Section 6.11.

*Section 6.12. Rate Covenant.* The City, for and on behalf of its Department of Aviation, will at all times comply with the rate maintenance covenants set forth in Sections 901 of the General Bond Ordinance.

*Section 6.13. Disclosure.* To the extent an Authorized Officer has knowledge of the same, the City, for and on behalf of its Department of Aviation, will disclose to the Bank in writing any and all facts which result in, or could reasonably be expected to result in, a Material Adverse Effect.

*Section 6.14. Compliance with Other Covenants.* (a) From and after the date hereof and so long as this Agreement is in effect, except to the extent compliance in any case or cases is waived in writing by the Majority Holder, the City, for and on behalf of its Department of Aviation, agrees that it will, for the benefit of the Holders, comply with, abide by, and be restricted by all the agreements, covenants, obligations and undertakings contained in the provisions of the other Related Documents, regardless of whether any indebtedness is now or hereafter remains outstanding thereunder, together with the related definitions, exhibits and ancillary provisions, which are incorporated herein by reference, *mutatis mutandis*, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety, and without regard or giving effect to any amendment or modification of any provisions of any of the other Related Documents to which the City, for and on behalf of its Department of Aviation, is a party or any waiver of compliance therewith, no such amendment, modification or waiver to in any manner constitute an amendment, modification or waiver of the provisions thereof as incorporated herein unless consented to in writing by the Majority Holder.

(b) So long as any Bank Obligations hereunder remain payable, the City, for and on behalf of its Department of Aviation, shall continue to comply with the covenants and undertakings set forth in the General Bond Ordinance, including, without limitation, Sections 704 and Section 901 of the General Bond Ordinance, notwithstanding anything in the Ordinance limiting such compliance to when a “Bond” (as defined in the Ordinance) remains outstanding thereunder.

*Section 6.15. Corrective Action.* Promptly upon obtaining knowledge of any of the matters described in Section 6.04(iv)(B) or Section 6.04(iv)(C) hereof, the City, for and on behalf of its



Department of Aviation, will undertake, and cause to be undertaken, any corrective actions necessary to remedy any such violation or to resolve, by informal resolution, disputes concerning any such alleged violation. The City, for and on behalf of its Department of Aviation, will promptly and vigorously contest any action by the FAA to terminate the authority of the City, for and on behalf of its Department of Aviation, to impose or collect PFCs.

*Section 6.16. Taxes and Liabilities; Leases.* The City, for and on behalf of its Department of Aviation, will file all required tax returns and pay and discharge, or cause to be paid and discharged, promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its Property comprising the Airport System, or upon any part thereof, before the same shall become in default, to the extent such failure to pay or discharge would have a Material Adverse Effect, except for those matters which are being contested in good faith by appropriate action or proceedings or for which the City, for and on behalf of its Department of Aviation, has established adequate reserves in accordance with GAAP applied on a consistent basis and provide evidence of payment thereof to the Bank if the Bank so requests; *provided, however,* that the City, for and on behalf of its Department of Aviation, shall pay or cause to be paid all such taxes, assessments, charges or levies forthwith whenever foreclosure on any lien which attaches to any of the security for the Bank Obligations appears imminent. The City, for and on behalf of its Department of Aviation, shall pay, or cause to be paid, all rent or other sums required by any lease comprising a portion of the Airport System to which the City, for and on behalf of its Department of Aviation, is a party as the same becomes due and payable, perform all its obligations as tenant or lessee thereunder except to the extent that any such obligation is the subject of a good faith dispute and adequate reserves have been set aside on its books for such obligation.

*Section 6.17. Maintenance of Rating.* The City, for and on behalf of its Department of Aviation, shall cause to be maintained at all times at least two long-term unenhanced ratings on the Senior Bonds by any two of Moody's, S&P or Fitch of at least "Baa1" (or its equivalent) by Moody's and/or at least "BBB+" (or its equivalent) by S&P and/or Fitch.

*Section 6.18. Notice of Litigation or Other Proceedings.* The City, for and on behalf of its Department of Aviation, will give notice, as soon as practicable, (and, in any case, the City, for and on behalf of its Department of Aviation, shall use reasonable efforts to provide notice thereof within fifteen (15) Business Days) following receipt of notice thereof by an Authorized Officer, to the Bank of (i) the institution of any litigation, administrative proceeding or governmental investigation involving the City, for and on behalf of its Department of Aviation, which is not fully covered by insurance (subject to deductibles maintained by the City, for and on behalf of its Department of Aviation) which is expected to have a Material Adverse Effect or (ii) the entry of any judgment, decree or order against or involving the City, for and on behalf of its Department of Aviation, which in either case is expected to have a Material Adverse Effect. The City, for and on behalf of its Department of Aviation, shall also provide to the Bank concurrently with delivery to any other party, a copy of any notice required to be given by the City, for and on behalf of its Department of Aviation, under the Related Documents.

*Section 6.19. Notice of Events of Default.* The City, for and on behalf of its Department of Aviation, shall give immediate notice to the Bank if the City, for and on behalf of its Department

of Aviation, becomes aware of the occurrence of any Event of Default hereunder or any event of default under any other Related Document.

*Section 6.20. Proceeds of Series 2021B Bonds.* The Series 2021B Bonds are being issued for the purposes of effectuating the Series 2021B Refunding Project, as defined and described in the Supplemental Ordinance. None of such proceeds will be used, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System. The City, for and on behalf of its Department of Aviation, shall use the proceeds of the Series 2021B Bonds in compliance with all applicable legal and regulatory requirements of any Governmental Authority (including, without limitation, Regulations U and X of the Board of Governors of the Federal Reserve System and the Securities Exchange Act of 1934 and the Securities Act of 1933 and any regulations thereunder).

*Section 6.21. No Sovereign Immunity.* To the fullest extent permitted by law, the City, for and on behalf of its Department of Aviation, agrees not to assert any current or future right of sovereign immunity as a defense to any claim or cause of action based solely in contract under this Agreement or any other Related Document or, with respect to this Agreement or any other Related Document, or under the General Bond Ordinance, as supplemented by Supplemental Bond Ordinance.

*Section 6.22. Tax Exemption.* Neither City nor the Department of Aviation shall, directly or indirectly, take any action or omit to take any actions or permit to be taken or omitted on its behalf any action, that if taken or omitted, would adversely affect the excludability of interest on the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds from the gross income of the Bank thereof for Federal income tax purposes (excluding treatment of interest on the Series 2021B Bonds as an item of tax preference for purposes of the federal alternative minimum tax).

## **ARTICLE SEVEN DEFAULTS**

*Section 7.1. Events of Default and Remedies.* If any of the following events shall occur, each such event shall be an “Event of Default”:

(a) any material representation or warranty made by the City, for and on behalf of its Department of Aviation, in this Agreement (or incorporated herein by reference) or any material representation or warranty made by the City, for and on behalf of its Department of Aviation, in any of the other Related Documents or in any certificate, document, instrument, opinion or financial or other statement contemplated by or made or delivered pursuant to or in connection with this Agreement or with any of the other Related Documents, shall prove to have been incorrect, incomplete or misleading in any material respect when made;

(b) failure of the City for and on behalf of its Department of Aviation, to pay when due (i) the principal or purchase price of or interest or premium on the Series 2021B Bonds or the Series 2021B Credit Facility Bonds or (ii) any other Bank Obligation;

(c) default in the due observance or performance by the City, for and on behalf of its Department of Aviation, of any covenant set forth in Section 6.6, 6.7(b), 6.8(b), 6.10, 6.12, 6.14(a) (after any applicable grace period under any Related Document), 6.14(b), 6.16, 6.17, 6.20, 6.21 or 6.22 hereof;

(d) default in the due observance or performance by the City, for and on behalf of its Department of Aviation, of any term, covenant or agreement set forth in this Agreement (other than as set forth in any other Event of Default set forth in this Section 7.01) and the continuance of such default for 30 days after the earlier to occur of (i) written notice thereof from the Majority Holder or (ii) an Authorized Officer obtains actual knowledge of such default;

(e) any “*event of default*” under any Related Document (as defined respectively therein) shall have occurred.

*Section 7.2. Remedies.* If an Event of Default specified in Section 7.1 hereof shall occur and be continuing, the Majority Holder may:

(a) by written notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, declare the outstanding amount of the Bank 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;

(b) deliver a written notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, that an Event of Default has occurred and is continuing in order to cause a mandatory tender of the Series 2021B Bonds to the Bank or take such other remedial action pursuant to the terms of the General Bond Ordinance and the Supplemental Bond Ordinance;

(c) 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 City, for and on behalf of its Department of Aviation, under the Related Documents, whether for specific performance of any agreement or covenant of the City, for and on behalf of its Department of Aviation, or in aid of the execution of any power granted to the Bank or the Majority Holder in the Related Documents;

(d) cure any Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Majority Holder shall have no obligation to effect such a cure;

(e) 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 7.2(c)) and as otherwise available at law and at equity; and

(f) deliver a notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, that an Event of Default has occurred and is continuing and directing the Paying Agent to take such remedial action as is provided for in the General Bond Ordinance and any Supplemental Bond Ordinance.

*Section 7.3. Remedies Cumulative; Solely for the Benefit of Bank, the Majority Holder and the Holders.* To the extent permitted by, and subject to the mandatory requirements of, applicable Law, each and every right, power and remedy herein specifically given to the Bank, the Majority Holder and the Holders in the Related Documents shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Bank, the Majority Holder or the Holders, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Bank, the Majority Holder and the Holders specified herein are for the sole and exclusive benefit, use and protection of the Bank, the Majority Holder and the Holders, and the Bank, the Majority Holder and the Holders are entitled, but shall have no duty or obligation to the City, for and on behalf of its Department of Aviation, the Paying Agent or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Bank, the Majority Holder or the Holders hereunder or under any of the other Related Documents.

*Section 7.4. Waivers or Omissions.* No delay or omission by the Bank, the Majority Holder or the Holders in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the Bank, the Majority Holder or the Holders or to be acquiescence therein. No express or implied waiver by the Bank, the Majority Holder or the Holders of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

*Section 7.5. Discontinuance of Proceedings.* In case the Bank, the Majority Holder or the Holders 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, the Majority Holder or the Holders shall have the unqualified right so to do and, in such event, the City, for and on behalf of its Department of Aviation, and the Bank, the Majority Holder and the Holders shall be restored to their former positions with respect to the Bank Obligations, the Related Documents and otherwise, and the rights, remedies, recourse and powers of the Bank, the Majority Holder and the Holders hereunder shall continue as if the same had never been invoked.

**ARTICLE EIGHT  
MISCELLANEOUS**

*Section 8.1. Right of Setoff; Other Collateral.* (a) Upon the occurrence and during the continuance of an Event of Default, the Holders are hereby authorized at any time and from time to time without notice to the City, for and on behalf of its Department of Aviation (any such notice being expressly waived by the City, for and on behalf of its Department of Aviation), and to the fullest extent permitted by law, but in all events subject to Section 2.9 hereof, to setoff, to exercise any banker's lien or any right of attachment and apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held and other indebtedness at any time owing by a Holder to or for the account of the City, for and on behalf of its Department of Aviation (irrespective of the currency in which such accounts, monies or indebtedness may be denominated and such Holder is authorized to convert such accounts, monies and indebtedness into Dollars) against any and all of the Bank Obligations of the City, for and on behalf of its Department of Aviation, whether or not such Holder shall have made any demand for any amount owing to such Holder by the City, for and on behalf of its Department of Aviation.

(b) The rights of the Holders under this Section 8.1 are in addition to, in augmentation of, and, except as specifically provided in this Section 8.1, do not derogate from or impair other rights and remedies (including, without limitation, other rights of setoff) which the Holders may have.

*Section 8.2. Reimbursement.* In addition to any other amounts payable by the City, for and on behalf of its Department of Aviation, under this Agreement, the City, for and on behalf of its Department of Aviation, hereby agrees, to the extent permitted by law, to reimburse the Holders, promptly upon demand, in respect of all claims, demands, liabilities, damages, losses, reasonable costs, reasonable charges and reasonable expenses (including reasonable attorneys' fees) that the Holders may incur or be subject to solely as a direct consequence of (i) the execution and delivery of this Agreement, (ii) any breach by the City, for and on behalf of its Department of Aviation, or any official of the City, for and on behalf of its Department of Aviation, of any warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or any Related Document, including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default, and (iii) involvement in any legal suit, proceeding, or action as to which a Holder is involved solely as a direct consequence of execution and delivery of this Agreement, the holding or owning of any Series 2021B Bonds or any Series 2021B Credit Facility Bonds, its execution of this Agreement or any other event or transaction contemplated by any of the foregoing; *provided* that Holders shall not be entitled to reimbursement under this Section to the extent that claims, demands, liabilities, damages, losses, costs, charges and expenses to be reimbursed are the result of the gross negligence or willful misconduct of any such Holder; and *provided, further*, that Sections 2.10, 3.1, 3.4 and 8.12 shall control as to the liabilities, losses, costs, charges and expenses described therein. Nothing in this Section is intended to limit the City's obligations, for and on behalf of its Department of Aviation, contained in Sections 2.9 and 2.10 hereof.

*Section 8.3. Obligations Absolute.* Subject to Section 2.11 hereof, the obligations of the City, for and on behalf of its Department of Aviation, under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances.

*Section 8.4. Successors and Assigns; Participants.*

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the City, for and on behalf of its Department of Aviation, and its successors, transferees and assigns and shall inure to the benefit of the Holders and their respective permitted successors, transferees and assigns. The City, for and on behalf of its Department of Aviation, may not assign or otherwise transfer any of its rights or Bank Obligations hereunder without the prior written consent of the Majority Holder. Upon prior written notice to the City, for and on behalf of its Department of Aviation, the Majority Holder may, in its sole discretion and in accordance with applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Series 2021B Bonds (including Series 2021B Credit Facility Bonds) and the Related Documents in accordance with paragraph (b) or (c) of this Section. The Majority Holder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. Each Holder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section.

(b) *Assignments by Majority Holder to a Bank Transferee.* Without limitation of the foregoing generality, the Majority Holder may at any time sell or otherwise transfer to one or more transferees all or a portion of the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds) to a Person that is (i) an Affiliate of the Majority Holder, (ii) a trust or other custodial arrangement established by the Majority Holder or an Affiliate of the Majority Holder the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”), or “accredited investors” as defined in Rule 501 of Regulation D under the 1933 Act (each, a “Bank Transferee”) or (iii) a commercial bank. From and after the date of such sale or transfer, the Majority Holder (and its successors) shall continue to have all of the rights of the Holders, the Bank and the Majority Holder hereunder and under the other Related Documents as if no such transfer or sale had occurred; *provided, however*, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Majority Holder hereunder, (B) the City, for and on behalf of its Department of Aviation, shall be required to deal only with the Majority Holder with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Bank shall be entitled to enforce the provisions of this Agreement against the City, for and on behalf of its Department of Aviation.

(c) *Assignments by a Holder to a Non-Bank Transferee.* Without limitation of the foregoing generality, a Holder may at any time sell or otherwise transfer to one or more transferees which are not Bank Transferees (each a “Non-Bank Transferee”) all or a portion of the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds) if (i) written notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the

City, for and on behalf of its Department of Aviation, and the Majority Holder (if different than the transferring Holder) by such selling Holder and Transferee, and (ii) the Non-Bank Transferee shall have delivered to the City, for and on behalf of its Department of Aviation, and the Majority Holder, a purchaser letter substantially in the form of Exhibit D to the Bond Purchase Contract in which it certifies that it is a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act, or an “accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act (the “*Purchaser Letter*”).

From and after the date the City, for and on behalf of its Department of Aviation, and the Majority Holder have received an executed Purchaser Letter, (A) the Non-Bank Transferee thereunder shall be a party hereto and shall have the rights of the Bank hereunder with respect to the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds), and this Agreement and the other Related Documents shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Bank Transferee, and (B) if the transferring Bank shall have assigned its obligations under this Agreement in accordance with paragraph (a)(i) above, it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(d) *Participations.* The Majority Holder shall have the right to grant participations in all or a portion of the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds, this Agreement and the other Related Documents to one or more other banking institutions and such participants shall be entitled to the benefits of this Agreement, including, without limitation, Sections 2.10, 3.01, 3.04 and 8.02 hereof, to the same extent as if they were a direct party hereto. Notwithstanding the foregoing, the City, for and on behalf of its Department of Aviation, may look solely to the Majority Holder as the entity to whom performance of any of its obligations hereunder are owed.

(e) In addition to the rights of the Holder set forth above in this Section 8.04, each Holder may at any time pledge or grant a security interest in all or any portion of its rights or interests under the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds), this Agreement and/or the 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.

(f) Notwithstanding anything in this Section 8.04 to the contrary, no assignee or participant of the Majority Holder shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Holder not assigned its rights or interests hereunder or granted a participation to such participant hereunder or in the Series 2021B Credit Facility Bonds.

(g) The Majority Holder or any other Holder shall provide the City, for and on behalf of its Department of Aviation, prior written notice of any assignment or participation pursuant to this Section 8.4.

*Section 8.5. Survival of this Agreement.* All covenants, agreements, representations and warranties made in this Agreement shall continue in full force and effect so long as any Bank Obligations shall be outstanding and unpaid. The obligation of the City, for and on behalf of its Department of Aviation, to reimburse the Bank or any participant or assignee pursuant to Sections 2.10, 3.1, 3.4, 8.2 and 8.13 hereof shall survive the payment of the Series 2021B Bonds (including the Series 2021B Credit Facility Bonds) and termination of this Agreement.

*Section 8.6. Modification of this Agreement.* No amendment, modification or waiver of any provision of this Agreement and no consent to any departure by the City, for and on behalf of its Department of Aviation, therefrom, shall be effective unless the same shall be in writing and signed by the Majority Holder. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the City, for and on behalf of its Department of Aviation, in any case shall entitle the City, for and on behalf of its Department of Aviation, to any other or further notice or demand in the same, similar or other circumstances.

*Section 8.7. Waiver of Rights.* No course of dealing or failure or delay on the part of the Bank, the Majority Holder or any Holder in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank, the Majority Holder and the Holders under this Agreement are cumulative and not exclusive of any rights or remedies which the Bank, the Majority Holder or any Holder would otherwise have.

*Section 8.8. Severability.* In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. 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.

*Section 8.9. Notices.* Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto or referred to herein shall be deemed to have been given (i) in the case of notice by letter, when delivered, or (ii) in the case of notice by facsimile or email, upon confirmation of receipt, addressed as follows or to such other address, facsimile number or email address as any party hereto may designate by written notice to the other party hereto:

City and County of Denver, Colorado  
Manager of Finance  
201 W. Colfax Ave., Department 1010  
Denver, CO 80202  
Telephone:(720) 913-5500  
Facsimile:(720) 913-5180  
Email:[debtmanagement@denvergov.org](mailto:debtmanagement@denvergov.org)



with a copy to:

Denver International Airport  
SVP of Finance  
8500 Peña Blvd.  
AOB 8th Floor - Finance  
Denver, CO 80249  
Email: [Budget.Group@flydenver.com](mailto:Budget.Group@flydenver.com)

or if to the Bank, addressed to it at:

Bank of America, N.A.  
211 N Robinson 2nd Floor  
OK1-100-02-30  
Oklahoma City, Oklahoma 73102  
Attention: Brent Riley, Senior Vice President  
405-230-1717 Phone  
866-681-1873 Fax  
E-mail: [brent.riley@bofa.com](mailto:brent.riley@bofa.com)

with a copy to:

Bank of America, N.A.  
Mail Code TX1-301-18-01, 301 Commerce Street  
Suite 1810  
Fort Worth, Texas 76102  
Attention: Glenda Beasley  
817-390-6414 Phone  
866-493-8130 Fax  
E-mail: [glenda.beasley@bofa.com](mailto:glenda.beasley@bofa.com)

or if to the Paying Agent, addressed to it at:

U.S. Bank National Association  
100 Wall Street, Suite 600  
Mail Code EX-NY-WALL  
New York, New York 10005  
Attention: Global Corporate Trust Services  
(212) 951-8561 Phone  
(212) 509-3384 Fax  
E-mail: [wendy.kumar@usbank.com](mailto:wendy.kumar@usbank.com)

(b) Unless otherwise specified herein, each item to be delivered by the Borrower, for and on behalf of its Department of Aviation, pursuant to Section 6.4, by email transmission.

*Section 8.10. Governing Law; Venue; Waiver of Jury Trial.* (a) This Agreement shall be governed by and construed in accordance with the internal laws of the State, without giving effect to conflict of law principles.

(b) The City, for and on behalf of its Department of Aviation, and the Bank and each Holder hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any other Related Document or the transactions contemplated thereby.

*Section 8.11. Successors and Assigns.* Whenever in this Agreement the Bank or any Holder is referred to, such reference shall be deemed to include the successors of the Bank or such Holder and all covenants, promises and agreements by or on behalf of the City, for and on behalf of its Department of Aviation, which are contained in this Agreement shall inure to the benefit of any successors of the Bank or any Holder. The rights and duties of the City, for and on behalf of its Department of Aviation, hereunder, however, may not be assigned or transferred, except as specifically provided in this Agreement or with the prior written consent of the Bank, and all obligations of the City, for and on behalf of its Department of Aviation, hereunder shall continue in full force and effect notwithstanding any assignment by the City, for and on behalf of its Department of Aviation, of any of its rights or obligations under any of the Related Documents or any entering into, or consent by the City, for and on behalf of its Department of Aviation, to, any supplement or amendment to any of the Related Documents.

*Section 8.12. Taxes and Expenses.* The City, for and on behalf of its Department of Aviation, shall pay any and all stamp 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 and any related documents and agrees to reimburse the Holders for any and all liabilities resulting from any delay in paying or omission to pay such taxes and fees; *provided, however*, that the City, for and on behalf of its Department of Aviation, may conduct a reasonable contest of any such taxes to the extent such taxes exceed \$50,000 with the prior written consent of the Majority Holder.

*Section 8.13. Pledge and Security.* Subject only to the right of the City, for and on behalf of its Department of Aviation, to pay Operating and Maintenance Expenses, the Gross Revenues and all moneys and securities paid or to be paid to, or held or to be held in any fund or account under the General Bond Ordinance (except moneys and securities held in any Escrow Account and except as otherwise provided in the General Bond Ordinance as being unavailable to secure the payment of Bond Requirements) are hereby irrevocably pledged by the City, for and on behalf of its Department of Aviation, to secure the payment of the Series 2021B Bonds, the Series 2021B Credit Facility Bonds and its obligations under this Agreement, to the extent and with the priorities provided for herein and in the General Bond Ordinance, and Supplemental Bond Ordinance. This pledge shall be valid and binding from and after the Effective Date, and such moneys and securities, as received by the City, for and on behalf of its Department of Aviation, and hereby pledged, shall immediately be subject to the Lien of this pledge without any physical delivery, filing or further act. The Lien of this pledge and the contractual obligations hereby made shall have priority over any or all other liabilities and obligations of the City, for and on behalf of its Department of Aviation (except in respect of Bonds and any other Obligations it shall be *pari*

*passu*); and the Lien of this pledge shall be valid and binding against all Persons having claims of any kind in tort, contract or otherwise against the City, for and on behalf of its Department of Aviation (except as otherwise provided in the General Bond Ordinance), whether or not such Persons have notice thereof. Notwithstanding the foregoing, the provisions of this Section 8.13 shall not prohibit or otherwise restrict the ability of the City, for and on behalf of its Department of Aviation, to cause moneys to be disbursed from any fund or account held under the General Bond Ordinance on the terms and subject to the conditions specified therein.

*Section 8.14. Headings.* Section headings in this Agreement are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this Agreement.

*Section 8.15. Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original but all taken together to constitute one instrument. 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 4.1, 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 8.16. Entire Agreement.* This Agreement constitutes the entire understanding of the parties with respect to the subject matter thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

*Section 8.17. Agreement to Control in the Event of Conflict.* Notwithstanding anything set forth in Supplemental Bond Ordinance to the contrary, in the event that any provision, term or definition in Supplemental Bond Ordinance contradicts any term, provision or definition set forth herein, such term, provision or definition set forth herein shall hereby amend and supersede such term, provision or definition set forth in Supplemental Bond Ordinance.

*Section 8.18. USA PATRIOT Act Notice.* The Bank, on behalf of the Holders, hereby notifies the City, for and on behalf of its Department of Aviation, 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 Holders are required to obtain, verify and record information that identifies the City, for and on behalf of its Department of Aviation, which information includes the name and address of the City, for and on behalf of its Department of Aviation, and other information that will allow the Holders to identify the City, for and on behalf of its Department of Aviation, in accordance with the Patriot Act. The City, for and on behalf of its Department of Aviation, shall,

promptly following a request by the Bank, provide all documentation and other information that the Bank reasonably requests in order to comply with its ongoing obligations under applicable law or regulation, including, without limitation, “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, and shall comply with all applicable Bank Secrecy Act (“BSA”) laws and regulations, as amended.

Neither the City, for and on behalf of its Department of Aviation, nor, to the knowledge of the City, any Related Party, (a) is currently the subject of any Sanctions or (b) is located, organized or residing in any Designated Jurisdiction. The City, for and on behalf of its Department of Aviation, has conducted its business in compliance with anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

*Section 8.19. Assignment to Federal Reserve Bank.* Any Holder may assign and pledge all or any portion of the obligations owing to it (including, without limitation, the Series 2021B Credit Facility Bonds) to any Federal Reserve Bank or the United States Treasury as collateral security, *provided* that any payment in respect of such assigned obligations made by the City, for and on behalf of its Department of Aviation, to such Holder in accordance with the terms of this Agreement shall satisfy the City’s, for and on behalf of its Department of Aviation, obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

*Section 8.20. Treatment of Certain Information; Confidentiality* The Holders may disclose to any of their respective affiliates and any permitted (actual or potential) assignee, transferee or participant any information about the City, for and on behalf of its Department of Aviation, as the Holders considers appropriate.

*Section 8.21. 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 the other Related Documents), the City, for and on behalf of its Department of Aviation, 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 City, for and on behalf of its Department of Aviation, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) the City, for and on behalf of its Department of Aviation, has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the City, for and on behalf of its Department of Aviation, 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 (municipal, financial or otherwise), agent or fiduciary, for the City or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to the City 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 City, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the City. To the

fullest extent permitted by law, the City, for and on behalf of its Department of Aviation, 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.

**[SIGNATURES BEGIN ON THE FOLLOWING PAGE.]**

Please signify your agreement and acceptance of the foregoing by executing this Agreement in the space provided below.

Very truly yours,

BANK OF AMERICA, N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the City, for and on behalf of its Department of Aviation, has caused this Credit Facility and Reimbursement Agreement to be executed by the duly authorized officers on the date first written above.

(SEAL)

**CITY AND COUNTY OF DENVER, COLORADO, FOR  
AND ON BEHALF OF ITS DEPARTMENT OF AVIATION**

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Debra Johnson,  
Clerk and Recorder, *Ex-Officio*  
Clerk of the City and County of Denver

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Kristin M. Bronson, Attorney for the  
City and County of Denver

\_\_\_\_\_  
Chief Financial Officer/Manager of Finance

By \_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Manager of Aviation

Auditor \_\_\_\_\_

EXHIBIT A

NOTICE OF TENDER

The undersigned, a duly authorized officer of Bank of America, N.A. (the “*Bank*”), hereby certifies to U.S. Bank National Association (the “*Paying Agent*”) and the hereinafter defined Issuer, in accordance with the Credit Facility and Reimbursement Agreement, dated as of July 1, 2021 (the “*Agreement*”), between the City and County of Denver, Colorado, for and on behalf of its Department of Aviation, the Issuer (the “*Issuer*”), the Bank, relating to the Issuer’s \$13,100,000 Airport System Senior Revenue Bonds, Series 2021B (the “*Series 2021B Senior Bonds*”) (all capitalized terms herein having the meanings ascribed thereto in the Agreement), that:

1. An Event of Default (as defined in the Agreement) has occurred under Section 7.1 of the Agreement and pursuant to Section 7.2(b) of the Agreement, the Bank is exercising its right to cause a tender of the Series 2021B Bonds.

2. The Series 2021B Senior Bonds have been deemed tendered by the Bank pursuant to Section 7.2(b) of the Agreement.

3. Upon completion of the tender, the Paying Agent will [**register such Bonds, or if a Bond for which notice of tender for purchase has been given is not delivered, a new Bond issued in replacement of the undelivered Bond, in the name of the Bank or, if directed in writing by the Bank, its nominee or designee on the books maintained by the Paying Agent**] *OR* [**cause the beneficial ownership of such Bonds to be credited to the account of the Bank or, if directed in writing by the Bank, its nominee or designee with DTC and register such Bonds in the name of the Bank or its nominee or designee on the books maintained by the Paying Agent**], and will promptly deliver such Bonds as the Bank may otherwise direct in writing, and prior to such delivery will hold such Bonds in trust for the benefit of the Bank.

4. The Tender Date is \_\_\_\_\_, \_\_\_\_\_.

IN WITNESS WHEREOF, the Bank has executed and delivered this Notice of Tender as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_