

**SECOND AMENDED AND RESTATED
COLLATERAL AGENCY AND ACCOUNT AGREEMENT**

Dated as of [●], 2021

by and among

KIEWIT MERIDIAM PARTNERS LLC
as the Borrower

UNITED STATES DEPARTMENT OF TRANSPORTATION
an agency of the United States of America
acting by and through the Executive Director of the Build America Bureau
as TIFIA Lender

U.S. BANK NATIONAL ASSOCIATION
as the Intercreditor Agent on behalf of the Secured Creditors

and

U.S. BANK NATIONAL ASSOCIATION
as the Collateral Agent and the Securities Intermediary

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SECOND AMENDED AND RESTATED COLLATERAL AGENCY AND ACCOUNT AGREEMENT

This SECOND AMENDED AND RESTATED COLLATERAL AGENCY AND ACCOUNT AGREEMENT (this “**Agreement**”), dated as [●], 2021, is made by and among Kiewit Meridian Partners LLC, a Delaware limited liability company (the “**Borrower**”); United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (in its capacity as lender under the TIFIA Loan Agreement (defined below), the “**TIFIA Lender**”); U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, in its capacity as intercreditor agent on behalf of the Secured Creditors (as defined herein) (in such capacity, the “**Intercreditor Agent**”); U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, in its capacity as collateral agent on behalf of itself and the other Secured Parties (in such capacity, the “**Collateral Agent**”) and in its capacity as securities intermediary on behalf of itself and the other Secured Parties (in such capacity, the “**Securities Intermediary**”) and each other Secured Party that accedes to this Agreement in accordance with Article IX hereto. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings given to such terms in Exhibit A hereto. The rules of interpretation set forth in Exhibit A hereto shall apply to this Agreement.

RECITALS

A. High Performance Transportation Enterprise (“**HPTE**”), a government-owned business within and a division of the Colorado Department of Transportation (“**CDOT**”), Colorado Bridge Enterprise, a government-owned business within CDOT (“**BE**” and, together with HPTE, each individually an “**Enterprise**” and, together, the “**Enterprises**”), and the Borrower have entered into the Project Agreement, which grants the Borrower the exclusive right to design, construct, finance, operate and maintain the Project in each case in accordance with the Project Agreement.

B. Pursuant to that certain TIFIA Loan Agreement, dated as of December 19, 2017 (as amended by that certain First Amendment to TIFIA Loan Agreement, dated as of May 9, 2019, the “**2017 TIFIA Loan Agreement**”), between the Borrower and the TIFIA Lender, the TIFIA Lender made a loan (the “**2017 TIFIA Loan**”) to the Borrower on the terms and subject to the conditions set forth therein, the proceeds of which will be used to finance a portion of the Eligible Project Costs (as defined in the 2017 TIFIA Loan Agreement).

C. Pursuant to that certain Trust Indenture, dated as of December 1, 2017 (the “**Indenture**”), between BE, as Issuer (the “**Issuer**”), and U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, in its capacity as Trustee (in such capacity, the “**Trustee**”), the Issuer issued \$114,660,000 aggregate principal amount of Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project), Series 2017 (the “**Series 2017 Bonds**”), the proceeds from the sales of which were loaned to the Borrower pursuant to the terms of a Loan Agreement, dated as of December 21, 2017 (as amended by that certain First Amendment to Loan Agreement, dated as of May 9, 2019, and that certain Second Amendment to Loan Agreement, dated as of [●], 2021,

the “**Series 2017 Loan Agreement**”), between the Issuer and the Borrower, to be used to finance a portion of the Project Costs.

D. Pursuant to that certain Memorandum of Settlement, dated [●], 2021 (the “**Second Memorandum of Settlement**”), among the Enterprises, the Borrower and the Construction Contractor, the Enterprises agreed, among other things, to cooperate with the Borrower with respect to refinancing the 2017 TIFIA Loan and incurring additional Project Debt (as defined in the Project Agreement).

E. Pursuant to that certain First Supplemental Trust Indenture, dated as of [●], 2021 (the “**First Supplemental Indenture**”), between the Issuer and the Trustee, the Issuer issued (i) \$[●] aggregate principal amount of Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project), Series 2021A (Taxable) (the “**Series 2021A Bonds**”), and (ii) \$[●] aggregate principal amount of Colorado Bridge Enterprise Senior Project Infrastructure Bonds (Central 70 Project), Series 2021B (Taxable) (the “**Series 2021B Bonds**,” and together with the Series 2021A Bonds, the “**Series 2021 Bonds**”), the proceeds from the sales of which were loaned to the Borrower pursuant to the terms of a Loan Agreement, dated as of [●], 2021 (the “**Series 2021 Loan Agreement**”), between the Issuer and the Borrower, to be used to finance a portion of the Project Costs and, in the case of the proceeds of the Series 2021B Bonds, to prepay in full in cash the 2017 TIFIA Loan.

F. On [●], 2021, the 2017 TIFIA Loan was prepaid in full in cash pursuant to Section 10(b) of the 2017 TIFIA Loan Agreement and the 2017 TIFIA Loan Agreement was terminated pursuant to Section 39 thereof.

G. Pursuant to that certain TIFIA Loan Agreement, dated as of [●], 2021 (the “**TIFIA Loan Agreement**”), between the Borrower and the TIFIA Lender, the TIFIA Lender will make a loan (the “**TIFIA Loan**”) to the Borrower on the terms and subject to the conditions set forth therein, the proceeds of which will be used to finance a portion of the Eligible Project Costs.

H. Pursuant to that certain Amended and Restated Subordination and Intercreditor Agreement, dated as of about [●], 2021 (the “**Intercreditor Agreement**”), among the Collateral Agent, the Intercreditor Agent, the Trustee, and the TIFIA Lender, the parties thereto agreed upon and set forth their respective security rights with respect to their Security Interests in the Collateral and certain other matters, in the manner and to the extent set forth in the Intercreditor Agreement.

I. Pursuant to that certain Security Agreement, dated as of December 19, 2017 (as amended by that certain First Amendment to Security Agreement, dated as of [●], 2021, the “**Security Agreement**”), between the Borrower and the Collateral Agent and certain other Security Documents, the Borrower has granted a Security Interest in, to and under the Collateral (subject to Permitted Security Interests) to the Collateral Agent for the benefit of the Secured Parties, as security for the payment and performance of all Secured Obligations.

J. The Borrower, the TIFIA Lender, the Intercreditor Agent, the Collateral Agent and the Securities Intermediary entered into that certain Amended & Restated Collateral Agency

and Account Agreement, dated as of May 9, 2019 (the “**Existing Agreement**”) pursuant to which, among other things, the Intercreditor Agent, for and on behalf of the Secured Creditors, and the TIFIA Lender appointed U.S. Bank National Association, a national banking association, as Collateral Agent and Securities Intermediary under the Existing Agreement, and as Collateral Agent under the Security Agreement and Security Documents, and the Existing Agreement set forth the terms on which the Collateral Agent accepted such appointment and undertook to perform certain duties on behalf of all Secured Parties with respect thereto.

K. The Borrower, the TIFIA Lender, the Intercreditor Agent, the Collateral Agent and the Securities Intermediary have agreed that the Existing Agreement be amended and restated in its entirety.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree to amend and restate the Existing Agreement in its entirety to read as follows:

ARTICLE I DELIVERY OF FINANCING DOCUMENTS

True and correct copies of the Financing Documents have been, or as of the date hereof shall be, furnished to the Collateral Agent by the Borrower, and the Borrower agrees to furnish to the Collateral Agent prompt notice of any amendments or modifications thereto. Except with respect to Financing Documents to which it is a party, the Collateral Agent shall not be deemed to have knowledge of any such modification or amendment unless it has received such notice. The Borrower hereby agrees to furnish copies of all Additional Financing Documents and any amendments or modifications thereto to the Collateral Agent and the Intercreditor Agent promptly following the execution and delivery thereof. Notwithstanding anything herein to the contrary, the Collateral Agent shall not have any obligations under any Financing Document to which it is not a party.

ARTICLE II COLLATERAL AGENT

Section 2.01 Appointment. U.S. Bank National Association is hereby appointed as collateral agent for the benefit of the Secured Parties with respect to the Security Interests in the Collateral and the rights and remedies granted pursuant to the Security Documents. The Collateral Agent hereby accepts such appointment and agrees to act as Collateral Agent in the manner contemplated herein and in the Security Documents. The Collateral Agent is hereby authorized and directed to act in strict accordance with the terms of this Agreement notwithstanding any contrary provision in the other Security Documents with respect to Enforcement Actions and the application of any Collateral or the Proceeds thereof. The Collateral Agent hereby accepts and agrees to, and the Borrower hereby acknowledges and consents to, the foregoing authorization and direction made by the Intercreditor Agent, on behalf of the Secured Parties. Any party that shall become a Secured Party after December 19, 2017 pursuant to the terms hereof and the Intercreditor Agreement shall be deemed to have so acknowledged and consented to such appointment, authorization and direction of the Collateral Agent by the Secured Parties set forth in this Section 2.01.

Section 2.02 Duties and Responsibilities.

(a) Subject to the terms hereof, the Collateral Agent agrees, for the benefit of the Secured Parties, to administer and enforce this Agreement and the other Security Documents to which it is a party as Collateral Agent, and, among other remedies, to foreclose upon, collect and dispose of the Collateral and to apply the Proceeds therefrom, for the benefit of the Secured Parties, as provided herein and in the Intercreditor Agreement, and otherwise to perform its duties and obligations as the Collateral Agent hereunder and thereunder in accordance with the terms hereof and thereof; provided, however, that the Collateral Agent shall have no duties or responsibilities except those expressly set forth herein or in the other Security Documents to which it is a party, and no implied covenants or obligations shall be read into this Agreement or any such other Security Documents against the Collateral Agent. It is understood and agreed that the use of the term “agent” herein or in any other Financing Document (or any other similar term) with reference to the Collateral Agent is not intended to connote any fiduciary or other implied obligations arising under agency doctrine of any applicable Law.

(b) Notwithstanding anything contained herein to the contrary, the Collateral Agent shall not be required to exercise any discretion or take any discretionary action but shall only be required to act or refrain from acting (and shall be fully protected in so acting or refraining from acting) in accordance with this Agreement or upon the written instructions of the Intercreditor Agent, in each case, as specified herein or in the Intercreditor Agreement, and such instructions shall be binding upon the Collateral Agent and each of the Secured Parties; provided, that the Collateral Agent shall not be required to take any action which is contrary to any provision hereof or of the other Financing Documents to which the Collateral Agent is a party or applicable Law. The Collateral Agent shall have no liability for any failure or delay in taking any actions contemplated above as a result of a failure or delay on the part of the Intercreditor Agent to provide such instruction. This provision is intended solely for the benefit of the Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

(c) Notwithstanding any other provision of the Security Documents, in no event shall the Collateral Agent be required to foreclose on, or take possession of, any Collateral, if, in the reasonable judgment of the Collateral Agent, such action would be in violation of any applicable Law pertaining thereto, or if the Collateral Agent reasonably believes that such action would result in the incurrence of liability by the Collateral Agent for which it is not fully indemnified by the Borrower pursuant to Section 2.10 and Section 7.02 hereof.

(d) The Collateral Agent shall not be responsible to the other Secured Parties for (i) any recitals, statements, representations or warranties by the Borrower or any of the Secured Parties (other than its own) contained in this Agreement or the other Financing Documents, or any certificate or other document delivered by the Borrower or any of the other Secured Parties thereunder, (ii) the value, validity, effectiveness, genuineness, enforceability (other than as to the Collateral Agent with respect to such documents to which the Collateral Agent is a party) or sufficiency of this Agreement or any other document referred to or provided for herein or therein or of the Collateral held by the Collateral Agent under the Security Documents, (iii) the performance or observance by the Borrower or any of the Secured Parties (other than as to itself)

of any of their respective agreements contained herein or therein, nor shall the Collateral Agent be liable to the other Secured Parties because of the invalidity or unenforceability of any provisions of this Agreement (other than as to itself) or (iv) the validity, perfection, priority or enforceability of the Security Interests on any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder (except to the extent such action or omission to act constitutes gross negligence, bad faith or willful misconduct on the part of the Collateral Agent), the validity of the title of the Borrower to the Collateral owned by the Borrower, insuring the Collateral or the payment of Taxes, charges, assessments on the Collateral or otherwise as to the maintenance of the Collateral.

(e) Except when a mandatory action is required by the Collateral Agent under the Security Documents, the Collateral Agent may at any time request written instructions from the Intercreditor Agent as to a course of action to be taken by it hereunder and under any of the Security Documents or in connection herewith and therewith or any other matters relating hereto and thereto. The Intercreditor Agent shall promptly reply to any such request and the Collateral Agent shall be fully justified in failing or refusing to take any such action if it shall not have received such written instruction of the Intercreditor Agent. This provision is intended solely for the benefit of the Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any other party hereto.

(f) None of the Collateral Agent, the Securities Intermediary or any of their directors, officers, employees or agents shall be liable or responsible to the other Secured Parties for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence, bad faith or willful misconduct.

(g) In no event shall the Collateral Agent be required to execute and deliver any landlord lien waiver, estoppel or collateral access letter, or any account control agreement or any instruction or direction letter delivered in connection with such document that the Collateral Agent determines subjects it to personal liability, including agreements to indemnify any contractual counterparty.

Section 2.03 Authorization. The Collateral Agent is hereby authorized to (a) execute, deliver, and perform in such capacity under this Agreement, each other Financing Document to which the Collateral Agent is or is intended to be a party and any other related document, instrument, or agreement to which the Collateral Agent is or is intended to be a party, (b) exercise and enforce any and all rights, powers and remedies provided to the Collateral Agent under this Agreement, any other Financing Document to which the Collateral Agent is a party, any applicable Law, or any other document, instrument, or agreement to which the Collateral Agent is a party, in each case in accordance with the terms thereof, and (c) take any other action under and in accordance with this Agreement and any other Financing Document to which the Collateral Agent is a party reasonably incidental to the foregoing or in order to facilitate the issuance of new Secured Obligations permitted under, and in accordance with, each of the Financing Documents. Notwithstanding the foregoing, the Collateral Agent shall not commence an Enforcement Action except in accordance with written instructions given by the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement); provided, that if the Collateral Agent is prohibited by any court order or applicable Law from commencing any

Enforcement Action due to a lack of consent or direction of or from the Intercreditor Agent or the lack of the Intercreditor Agent as a party to such Enforcement Action, the Collateral Agent shall seek the requisite authority from, or joinder of, the Intercreditor Agent to commence such Enforcement Action but shall not be obligated to commence such Enforcement Action until such authority or joinder is obtained. All decisions with respect to the type of Enforcement Action which is to be commenced shall be made by, and all actions with respect to prosecution and settlement of such Enforcement Action shall require the written consent of, the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement), and the Collateral Agent shall not be required to take any Enforcement Action in the absence of any such written consent. In entering into or otherwise acting under any Financing Document, the Collateral Agent shall be entitled to all the rights, protections, immunities and indemnities granted to it hereunder. Subject to the provisions of this Agreement, the Collateral Agent will pursue the prosecution of any Enforcement Action that the Collateral Agent is so authorized or directed to initiate pursuant to this Agreement and the terms of the Intercreditor Agreement, subject to the Lenders Direct Agreement, to the extent applicable. The Collateral Agent shall deliver copies of all notices it receives on behalf of any of the Secured Parties or in connection with the Financing Documents or the Project to the Intercreditor Agent promptly upon receipt.

Section 2.04 Administrative Actions.

(a) The Collateral Agent may, but shall not be obligated to, take such action as it deems necessary to perfect or continue the perfection of the Security Interests on the Collateral held for the benefit of the other Secured Parties subject to the limitations set forth herein. The Collateral Agent shall not release any of the Collateral held by the Collateral Agent for the benefit of such Secured Parties, except: (i) upon the written direction of the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement); (ii) upon payment in full in cash of the Secured Obligations, as certified to the Collateral Agent by the Intercreditor Agent (which certification the Intercreditor Agent shall be required to provide promptly as provided in the last sentence of this paragraph); (iii) for Collateral consisting of a debt instrument if the related Indebtedness evidenced thereby has been paid in full in cash, as certified to the Collateral Agent by the Intercreditor Agent (which certification the Intercreditor Agent shall be required to provide promptly as provided in the last sentence of this paragraph); or (iv) in connection with the disposition of any assets of the Borrower or the Pledgors made in accordance with the terms of the Financing Documents or where such release is expressly permitted under the Security Documents. Upon the written request by the Collateral Agent or the Borrower at any time, the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) will confirm in writing (to the extent applicable) the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section and the Intercreditor Agent hereby agrees to provide such confirmations (or objections thereto) promptly in accordance with the Intercreditor Agreement.

(b) Any request to the Collateral Agent for a release of Collateral pursuant to Section 2.04(a)(iv) shall be accompanied by (i) the instrument or instruments for the Collateral Agent to execute and deliver or otherwise authorize the filing of and (ii) a certificate delivered to the Collateral Agent (with a copy to the Intercreditor Agent) by an Authorized Representative of the Borrower (upon which the Collateral Agent may conclusively rely) confirming the satisfaction of all conditions precedent to such release provided for by the Financing Documents.

Section 2.05 Determination of Amounts of Secured Obligations. Upon the written request of the Collateral Agent or the Borrower, the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement and this Agreement) shall promptly deliver to the Collateral Agent (with a copy to each other Secured Party that is a party hereto and the Borrower) a certificate, dated the date of delivery thereof and signed by the Intercreditor Agent, as to (a) the identity and address of each Secured Creditor (or representative thereof), (b) the principal amount of the Secured Obligations then outstanding held by each such Secured Creditor (provided that, with respect to the Trustee, such amount shall be the aggregate principal amount of all then outstanding Series 2017 Bonds and Series 2021 Bonds, with respect to any holder of Other Permitted Senior Secured Indebtedness (or representative thereof), such amount shall be the aggregate principal amount of such Other Permitted Senior Secured Indebtedness, and with respect to the TIFIA Lender, such amount shall be equal to the aggregate principal amount of the then outstanding TIFIA Loan), (c) in the case of any such certificate being delivered in contemplation of the application of amounts received by the Collateral Agent in respect of the Collateral pursuant to Article VI hereof, the amount of interest on the Secured Obligations owing and any other amounts in respect of the Secured Obligations owing to such Secured Creditor, as the case may be (in the case of any such other amounts, accompanied by appropriate evidence thereof), and/or (d) in the event that any of the Secured Obligations shall have become or been declared to be due and payable (whether at stated maturity, by required prepayment, redemption, declaration, acceleration, demand or otherwise), the principal amount of such Secured Obligations then due and payable to such Secured Creditor, as the case may be (to the extent that such information is different from that provided in clause (b) above); provided that each such Secured Creditor shall have not less than five (5) Business Days from receipt of a copy of any such certificate to review such certificate and provide any objections to information contained therein related to such Secured Creditor to the Collateral Agent. Absent receipt of notice of such objections from a Secured Creditor, the Collateral Agent shall be entitled to rely on certifications received by it from the Intercreditor Agent in accordance with the above for the purposes of determining the amount of the Secured Obligations then outstanding held by such Secured Creditor (provided that, with respect to the Trustee, such amount shall be the aggregate principal amount of all then outstanding Series 2017 Bonds and Series 2021 Bonds, with respect to any holder of Other Permitted Senior Secured Indebtedness (or representative thereof), such amount shall be the aggregate principal amount of such Other Permitted Senior Secured Indebtedness, and with respect to the TIFIA Lender, such amount shall be equal to the aggregate principal amount of the then outstanding TIFIA Loan); provided, that in the absence of the Collateral Agent's receipt of any certification requested by it pursuant to this sentence, the Collateral Agent shall be entitled (but not obligated) to take such action if the Collateral Agent shall have sufficient knowledge (acting reasonably) to make any determination required to be made in connection with such action.

Section 2.06 Employment of Agents. The Collateral Agent may, at the Borrower's reasonable cost and expense, employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Collateral Agent's gross negligence, bad faith or willful misconduct in employing or retaining, or relying on, any such counsel, accountants, appraisers, experts or advisers, may act and rely and shall be fully protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the

Borrower or by the Collateral Agent, in relation to any matter arising in the administration hereof or in the determination or discharging of its rights and duties hereunder, and shall not be responsible to Borrower for any act or omission on the part of any of them or for acting or relying in good faith on the opinion, advice or information obtained from such expert or advisor. In addition, the Collateral Agent shall not be liable to the Borrower for any acts or omissions of its nominees, correspondents, designees, agents, subagents or sub-custodians as it may reasonably require for the purpose of discharging its ministerial duties hereunder, except to the extent of its gross negligence, bad faith or willful misconduct in nominating, appointing, directing or instructing such Persons and so long as such Persons are permitted to act hereunder.

Section 2.07 Reliance of Collateral Agent. In connection with the performance of its duties hereunder, the Collateral Agent shall be entitled to rely conclusively upon, and shall be fully protected in acting or refraining from acting in accordance with, any written certification, notice, instrument, opinion, request, consent, order, approval, direction or other written communication (including any thereof by facsimile or electronic communication) of or from the Intercreditor Agent (including, but not limited to, instructions under Section 2.02(e)) or any other Secured Party that is a party hereto (to the extent not in violation of the terms hereof, of the Indenture, of the Intercreditor Agreement or of the other Financing Documents), which the Collateral Agent in good faith reasonably believes to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and it shall be entitled to rely conclusively upon the due execution, validity and effectiveness, and the truth, correctness and acceptability of, any provisions contained therein. The Collateral Agent shall not have any responsibility hereunder to make any investigation into the facts or matters stated in any notice, certificate, instrument, demand, request, direction, instruction, or other communication furnished to it. Whenever this Agreement (or any other Financing Document) specifies that any instruction, direction or consent by the Intercreditor Agent is to be given in accordance with the terms of the Intercreditor Agreement, the Collateral Agent shall be entitled to rely upon any such instruction, direction or consent by the Intercreditor Agent (which instruction, direction or consent need not state that it is given in accordance with the terms of the Intercreditor Agreement), and the Collateral Agent may presume without investigation that any such instruction, direction or consent by the Intercreditor Agent has been given in accordance with the terms of the Intercreditor Agreement. The Intercreditor Agent hereby agrees to give any instruction, direction or consent required to be given by it to the Collateral Agent in accordance with the terms of the Intercreditor Agreement.

Section 2.08 Non-Reliance on Collateral Agent. Each Secured Party that is a party hereto hereby expressly acknowledges that neither the Collateral Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Collateral Agent (other than any explicit representation or warranty made by the Collateral Agent) hereafter taken shall be deemed to constitute any representation or warranty by the Collateral Agent to any Secured Party or the Borrower. Except for any notices, reports and other documents expressly required to be maintained by the Collateral Agent or furnished to the other Secured Parties by the Collateral Agent hereunder or under the Intercreditor Agreement or other Security Documents to which it is a party, the Collateral Agent shall not have any duty or responsibility to provide any other Secured Party with any credit or other information concerning the business, operations, property, condition (financial or other), prospects or creditworthiness of the Borrower or the Sponsors. U.S. Bank National Association is entering into this Agreement, the Intercreditor Agreement and the other

Security Documents solely in its capacity as Collateral Agent and as Securities Intermediary (and to the extent applicable, as Trustee and Intercreditor Agent) and not in its individual capacity, and in no case shall U.S. Bank National Association (or any Person acting as successor Collateral Agent under this Agreement) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations of the Borrower or the Sponsors (as applicable) hereunder or thereunder, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under such party. This Section 2.08 shall survive the payment of all Secured Obligations. Except as provided in Section 2.12(e) hereof, the Collateral Agent shall have no obligation and shall incur no obligation for its failure to monitor or verify the filing of financing statements (or amendments or continuations thereto) and the information contained therein.

Section 2.09 Collateral Agent in Individual Capacity. The Collateral Agent and its Affiliates may make loans to, issue letters of credit in favor of, accept deposits from and generally engage in any kind of business with the Borrower, the Sponsors and their respective Affiliates as though the Collateral Agent were not the Collateral Agent hereunder and under the Security Documents. With respect to Secured Obligations owed to it, if any, the Collateral Agent shall have the same rights and powers under this Agreement and the Financing Documents as any other Secured Party and may exercise the same as though it were not the Collateral Agent, and the term “Secured Party” shall include the Collateral Agent in its individual capacity.

Section 2.10 Collateral Agent Under No Obligation. None of the provisions of the Intercreditor Agreement, this Agreement or the other Security Documents shall be construed to require the Collateral Agent to expend or risk its own funds or otherwise to incur any personal liability, financial or otherwise, in the performance of any of its duties hereunder or thereunder. The Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in it by the Intercreditor Agreement or the Security Documents unless the Collateral Agent shall have been offered and accepted security or indemnity from the Borrower or the Secured Parties directing the exercise of such rights or powers reasonably satisfactory to it (provided that in no event shall any Secured Party be required to provide such indemnity) against the costs, expenses and liabilities which might be incurred by it in exercising such rights or powers (including interest thereon from the time incurred until reimbursed); provided, however, that for purposes of this Section 2.10, the indemnification provided to the Collateral Agent by the Borrower pursuant to Section 7.02 is hereby acknowledged as acceptable.

Section 2.11 Resignation and Removal; Successor Collateral Agent; Individual Collateral Agent.

(a) Subject to the appointment and acceptance of a successor Collateral Agent as provided below, the Collateral Agent may resign at any time by giving at least forty-five (45) days’ prior written notice thereof to the other Secured Parties that are parties hereto and the Borrower, and the Collateral Agent may be removed at any time with or without cause by the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) upon forty-five (45) days’ written notice thereof to the Collateral Agent, the other Secured Parties that are parties hereto and the Borrower unless a shorter period of notice is required by the Intercreditor Agent. Upon any such resignation or removal, the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) shall have the right to appoint a

successor Collateral Agent which, so long as no Default or Event of Default has occurred and is continuing, shall be reasonably acceptable to the Borrower.

(b) If no successor Collateral Agent shall have been so appointed by the Intercreditor Agent within forty-five (45) days after the retiring Collateral Agent's giving of notice of resignation or the removal of the retiring Collateral Agent by the Intercreditor Agent in accordance with clause (a) above, then the retiring Collateral Agent may, on behalf of the Secured Parties, apply to a court of competent jurisdiction (with notice to the Intercreditor Agent and the Borrower) for the appointment of a successor Collateral Agent. In all such cases, the successor Collateral Agent shall (i) be a bank organized under the laws of the United States of America or any state thereof that has an office in the State of New York and which agrees to administer the Collateral in accordance with the terms hereof, of the Intercreditor Agreement and of the other Security Documents and the unsecured long-term debt of which shall be rated, at the time of appointment, no lower than "A", "A2" or the equivalent rating from any Nationally Recognized Rating Agency, (ii) have a total capital stock and unimpaired surplus of not less than \$500,000,000 and (iii) so long as no Default or Event of Default has occurred and is continuing, be reasonably acceptable to the Borrower. U.S. Bank National Association hereby represents and confirms that it meets the qualifications provided in the preceding sentence. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, obligations and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and responsibilities hereunder arising thereafter. After any retiring Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Agreement (including Section 2.14, Section 7.01 and Section 7.02) shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent. For the avoidance of doubt, no resignation or removal pursuant to this Section 2.11 shall be effective until (A) a successor for the Collateral Agent has been appointed in accordance with (and subject to) the provisions of this Section 2.11, (B) the resigning or removed Collateral Agent has transferred to its successor all of its rights and obligations in its capacity as the Collateral Agent under this Agreement and the other Financing Documents, (C) the resigning or removed Collateral Agent has assigned, transferred or delivered, as applicable, all Collateral held by it to the successor Collateral Agent, together with all records, instruments and other documents necessary or appropriate to execute such assignment, transfer or delivery to the successor Collateral Agent, (D) the resigning or removed Collateral Agent has executed and delivered to the successor Collateral Agent the amendments to the applicable financing statements, and has taken other actions as may be necessary or appropriate, in connection with the assignment, transfer or delivery to the successor Collateral Agent of the security interests created under the Security Documents, and (E) the successor Collateral Agent has executed and delivered an agreement to be bound by the terms of this Agreement and the other Financing Documents to which the Collateral Agent is a party and to perform all duties required of the Collateral Agent hereunder and thereunder.

(c) If at any time the Collateral Agent shall reasonably determine that it shall be necessary or appropriate under applicable Law or in order to permit action to be taken hereunder, the Collateral Agent and the Borrower (with written notice to the Intercreditor Agent and the other Secured Parties that are parties hereto) shall execute and deliver all instruments necessary to appoint any Person as a Co-Collateral Agent ("**Co-Collateral Agent**"), with respect

to all or any portion of the Collateral, in any case with such powers, rights, duties, obligations and immunities conferred upon the Collateral Agent hereunder as may be specified therein (but not in excess of or different from those set forth herein for the Collateral Agent). If the Borrower shall refuse to join in the execution of any such instrument within ten (10) Business Days of any written request therefor by the Collateral Agent or if any Event of Default shall have occurred and is continuing, the Collateral Agent may act under the foregoing provisions without the concurrence of the Borrower; and the Borrower hereby irrevocably makes, constitutes and appoints the Collateral Agent as the agent and attorney-in-fact for the same to act for it under the provisions of (and in accordance with) this paragraph.

Each Co-Collateral Agent shall, to the extent permitted by Law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers and obligations conferred or imposed upon the Collateral Agent may be conferred or imposed upon and may be exercised or performed by such Co-Collateral Agent as specified in the conferring instrument appointing such Co-Collateral Agent; and

(ii) no Collateral Agent shall be personally liable by reason of any act or omission of any other Collateral Agent or Co-Collateral Agent hereunder.

Any Co-Collateral Agent shall be required to meet the conditions of eligibility under Section 2.11(b), except in the case that such Co-Collateral Agent holds only an insubstantial amount of the Collateral, as determined by the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement), and shall otherwise be subject to the same terms and conditions regarding resignation and replacement.

Section 2.12 Books and Records; Reports.

(a) The Collateral Agent and, if appointed, a Co-Collateral Agent, shall at all times keep, or cause to be kept, proper books of record and accounts in which complete and accurate entries shall be made of all transactions relating to the Secured Obligations, Project Revenues and all Project Accounts (other than the Operating Account and any Other Operating Accounts, in each case, if not maintained by the Collateral Agent) established pursuant to this Agreement. Such books of record and accounts shall be available for inspection by the Intercreditor Agent and the Secured Parties that are parties hereto, or their respective agents or representatives duly authorized in writing, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

(b) Within fifteen (15) days after the end of each month, the Collateral Agent shall furnish to the Intercreditor Agent (and the Intercreditor Agent shall deliver to the other Secured Parties that are parties hereto or relevant representatives thereof) a report (which may be in the form of the customary account statements of the Collateral Agent) that shall set forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts (other than the Operating Account and any Other Operating Accounts, in each case, if not maintained with the Collateral Agent)

during such month. If available from the Collateral Agent, the Collateral Agent shall provide electronic statements upon request of the Borrower.

(c) Within sixty (60) days after the end of each year, the Collateral Agent shall furnish to the Intercreditor Agent (and the Intercreditor Agent shall deliver to the other Secured Parties that are parties hereto or relevant representatives thereof) and the Borrower a report setting forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts (other than the Operating Account and any Other Operating Accounts, in each case, if not maintained with the Collateral Agent) during the preceding year. The Collateral Agent shall provide electronic statements upon request of the Borrower.

(d) The Collateral Agent shall maintain records of all receipts, disbursements, and investments of funds with respect to the Project Accounts (other than the Operating Account and any Other Operating Accounts, in each case, if not maintained by the Collateral Agent) until the fifth (5th) anniversary of the date on which all of the Secured Obligations shall have been paid in full.

(e) On or prior to the date that is six (6) months prior to the expiration date of any UCC financing statement that has been filed with respect to the Collateral for which Collateral Agent is secured party and is known to the Collateral Agent, the Collateral Agent shall provide the Intercreditor Agent and the Borrower notice of the impending expiration date. The Borrower shall provide the Collateral Agent and the Intercreditor Agent evidence that the required continuation statement has been properly and timely filed promptly following such filing. This clause (e) is not intended to modify the responsibility of, the liability of, or provide a defense to, the Borrower under any Financing Document with respect to the filing of continuation statements or the maintenance of the Collateral Agent's perfected security interest in the Collateral with the priority contemplated by the Financing Documents.

Section 2.13 No Consequential Damages. In no event shall the Collateral Agent or the Securities Intermediary be liable to Borrower or the other Secured Parties under or in connection with the Financing Documents or the Material Project Contracts for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including lost profits, whether or not foreseeable, even if the Collateral Agent and/or Securities Intermediary has been advised of the possibility thereof and regardless of the form of action in which such damages are sought.

Section 2.14 Authorization of Collateral Agent to Recover Compensation, Fees and Expenses. To the extent that the Borrower fails to pay any amount required to be paid by it to the Collateral Agent pursuant to Section 7.01 and Section 7.02 hereof and after the delivery of written notice of such failure to the Borrower, the Collateral Agent is hereby authorized to transfer funds to reimburse itself for such amounts out of the following accounts in the following order of priority: (i) from the Equity Lock-Up Account and (ii) (x) prior to the Substantial Completion Date, from the Construction Account (to the extent permitted by the Financing Documents and applicable Law, including the Code and Treasury Regulations), and (y) upon and following the Substantial Completion Date, from the Revenue Account. Prior to making any transfer described in the preceding sentence, the Collateral Agent shall provide written notice to

the other Secured Parties providing a detailed description of the reason for the transfer and indicating the amount to be transferred to the Collateral Agent and the proposed date for such transfer. The provisions of this Section 2.14 shall survive the termination of the Financing Documents and the resignation or removal of the Collateral Agent until the amounts required to be paid to the applicable Collateral Agent pursuant to Section 7.01 and Section 7.02 hereof is paid in full.

Section 2.15 Force Majeure. In no event shall the Collateral Agent be responsible or liable to the Borrower or the other Secured Parties for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services not within the Collateral Agent's control, the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the Collateral Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 2.16 Additional Protections. The rights, privileges, protections and benefits given to the Collateral Agent or the Securities Intermediary, as the case may be, including its rights to be indemnified, are extended to, and shall be enforceable by, each agent, custodian and other Person employed to act hereunder by the Collateral Agent or the Securities Intermediary, as the case may be, including any Co-Collateral Agent, to the extent permitted to be so employed in accordance with the terms hereof; provided, however, that all such rights, privileges, protections and benefits are subject to the same limits and conditions imposed upon the Collateral Agent or the Securities Intermediary, as the case may be.

Section 2.17 No Liability for Clean-up of Hazardous Substances. In the event that the Collateral Agent, in connection with the exercise of its rights and duties hereunder, is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which the Collateral Agent believes may cause the Collateral Agent to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise may cause the Collateral Agent to incur liability under CERCLA or any other federal, state or local law, the Collateral Agent reserves the right, instead of taking such action, to either resign as the Collateral Agent in accordance with Section 2.11 or arrange for the transfer of the title or control of the asset to a court-appointed receiver to the extent such transfer is permitted by the terms of the Financing Documents unless such action is reasonably necessary to preserve the Collateral or protect the Security Interests in the Collateral and the Collateral Agent is (a) reasonably likely to be able to avail itself of a defense to liability under CERCLA or analogous state or local laws, and has had reasonable opportunity to conduct "all appropriate inquiry" as defined in 40 C.F.R. Part 312 or (b) reasonably expected to be indemnified by or on behalf of the Borrower for any losses, claims, damages and liabilities relating to such action pursuant to the terms herein; provided, however, that for purposes of this Section 2.17, the indemnification provided to the Collateral Agent by the Borrower pursuant to Section 7.02 is hereby acknowledged as acceptable. Except for such claims or actions arising directly from the gross negligence, bad faith or willful misconduct of

the Collateral Agent, the Collateral Agent shall not be liable to any Person for any environmental claims or contribution actions under any federal, state or local Law by reason of the Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of Hazardous Substances into the environment. If at any time after any foreclosure on the Collateral (or a transfer in lieu of foreclosure) upon the exercise of remedies in accordance with the Security Documents it is necessary or advisable for the Project to be possessed, owned, operated or managed by any Person (including the Collateral Agent) other than the Borrower, to the extent permitted by the terms of the Financing Documents and the Material Project Contracts, the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) shall appoint an appropriately qualified Person (excluding the Collateral Agent) to possess, own, operate or manage, as the case may be, the Project.

Section 2.18 Merger of the Collateral Agent. Any corporation or company into which the Collateral Agent shall be merged, or with which it shall be consolidated, or any corporation or company resulting from any merger or consolidation to which the Collateral Agent shall be a party, shall be the Collateral Agent under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, provided, that such resulting corporation or company shall meet the requirements of Section 2.11(b). Upon the occurrence of any such event the Collateral Agent shall promptly provide written notice thereof to the Intercreditor Agent (and the Intercreditor Agent shall deliver such notice to the other Secured Parties that are parties hereto or relevant representatives thereof) and the Borrower.

Section 2.19 Transfer to an Affiliate. In addition to any rights it may have under Section 2.18 or under any other provision of this Agreement or any other Security Document, each of the Collateral Agent and the Securities Intermediary may assign or transfer its rights under this Agreement and the other Security Documents to any Affiliate that meets the requirements of Section 2.11(b) subject to the prior written consent of the Borrower (so long as no Event of Default has occurred and is continuing) and the Intercreditor Agent.

ARTICLE III BORROWER REMAINS LIABLE

Anything herein to the contrary notwithstanding, (a) the Borrower shall remain liable under its contracts and agreements (including the Financing Documents to which it is a party) to its respective counterparties to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Collateral Agent of any of the rights hereunder shall not release the Borrower from any of its duties or obligations to its respective counterparties under its contracts and agreements, and (c) neither the Collateral Agent nor any of the other Secured Parties shall have any obligation or liability to the respective counterparties under the contracts and agreements of the Borrower to which the Collateral Agent or any of the other Secured Parties is not a party solely by reason of this Agreement, nor shall the Collateral Agent be obligated to perform any of the obligations or duties of the Borrower thereunder or to take any action to collect or enforce any claim for payment assigned thereunder. Notwithstanding the foregoing, if the Borrower fails to perform any agreement or obligation of the Borrower contained herein relating to the perfection or preservation of the Collateral, the Collateral Agent may (but shall not be obligated to) itself perform, or cause performance of, such agreement or obligation, and the reasonable and

documented expenses of the Collateral Agent incurred in connection therewith shall be payable by the Borrower under Article VII hereof.

ARTICLE IV REASONABLE CARE

The powers conferred on the Collateral Agent hereunder are being conferred solely to protect its interest in the Collateral for the benefit of the Secured Parties and shall not impose any duty upon it to exercise any such powers unless otherwise expressly provided. Except for the safe custody and preservation of the Collateral in its possession and the accounting for monies actually received, transferred or disbursed by it hereunder, the Collateral Agent shall have no other duty as to the Collateral, whether or not the Collateral Agent or any of the other Secured Parties has or is deemed to have knowledge of any matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to the Collateral. The Collateral Agent hereby agrees to exercise reasonable care in respect of the custody and preservation of the Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property.

ARTICLE V THE PROJECT ACCOUNTS

Section 5.01 Establishment of Project Accounts and Other Accounts.

(a) The following accounts were established and created on or prior to the date hereof or, to the extent any such accounts are not required to be opened by the date hereof, will be established and created at the written direction of the Borrower to the Collateral Agent (and the Borrower hereby agrees to deliver such direction) at such times as required under this Agreement, and shall be maintained by the Collateral Agent in the name of the Borrower (other than the Handback Reserve Account, which shall be opened in the name of the Borrower and one or both of the Enterprises in accordance with Section 4.1.a of Schedule 12 to the Project Agreement) (collectively, each such account, including, in each case, any sub-accounts established and created from time to time pursuant to the terms hereof therein, the “**Securities Accounts**”):

(i) the Construction Account, and within the Construction Account, the following sub-accounts, each of which, except for (A) the Performance Payment Sub-Account which was established as of May 9, 2019, and (B) the Series 2021A Bonds Proceeds Sub-Account, the Series 2021B Bonds Proceeds Sub-Account and the PA Settlement Payment Sub-Account which shall be established on or prior to the date hereof, were established on or prior to December 19, 2017:

- A. the Series 2017 Bonds Proceeds Sub-Account;
- B. the Series 2021A Bonds Proceeds Sub-Account;
- C. the Series 2021B Bonds Proceeds Sub-Account;

- D. the Equity Funding Sub-Account;
- E. the Milestone Payment Sub-Account;
- F. the Performance Payment Sub-Account; and
- G. the PA Settlement Payment Sub-Account;

(ii) the Series 2021B Bonds Capitalized Interest Account, which shall be established on or prior to the date hereof;

(iii) the Construction Reserve Account, which shall be established on or prior to the Substantial Completion Date;

(iv) the Revenue Account, which was established on or prior to December 19, 2017;

(v) the Senior Debt Service Account, and within the Senior Debt Service Account, the following sub-accounts, each of which shall be established on or prior to the Substantial Completion Date:

- A. the Senior Interest Payment Sub-Account; and
- B. the Senior Principal Payment Sub-Account;

(vi) the TIFIA Debt Service Account, and within the TIFIA Debt Service Account, the following sub-accounts, each of which shall be established on or prior to the Substantial Completion Date:

- A. the TIFIA Interest Payment Sub-Account; and
- B. the TIFIA Principal Payment Sub-Account;

(vii) the Debt Service Reserve Account, and within the Debt Service Reserve Account, the following sub-accounts, each of which shall be established on or prior to the Milestone Completion Date for Milestone 5A, except for the TIFIA Debt Service Reserve Sub-Account which shall be established on or prior to the Substantial Completion Date:

- A. the Series 2017 Bonds Debt Service Reserve Sub-Account;
- B. the Series 2021A Bonds Debt Service Reserve Sub-Account;
- C. the TIFIA Debt Service Reserve Sub-Account;

(viii) the Series 2021B Bonds Repayment Account, which shall be established on or prior to the Substantial Completion Date;

(ix) the Major Maintenance Reserve Account, which shall be established on or prior to the Substantial Completion Date;

(x) the O&M Reserve Account, which shall be established on or prior to the Substantial Completion Date;

(xi) the Handback Reserve Account, which shall be established on or prior to the date required under the Project Agreement;

(xii) the Termination Compensation Account, which was established on or prior to December 19, 2017;

(xiii) the Loss Proceeds Account, which was established on or prior to December 19, 2017

(xiv) the Mandatory Prepayment Account, which was established on or prior to December 19, 2017, and within the Mandatory Prepayment Account, the following sub-accounts;

A. the Series 2017 Bonds Mandatory Prepayment Sub-Account, which was established on or prior to December 19, 2017;

B. the Series 2021A Bonds Mandatory Prepayment Sub-Account, which shall be established on or prior to the date hereof;

C. the Series 2021B Bonds Mandatory Prepayment Sub-Account, which shall be established on or prior to the date hereof; and

D. the TIFIA Mandatory Prepayment Sub-Account, which shall be established on or prior to the date hereof;

(xv) the Series 2017 Rebate Fund, which was established on or prior to December 19, 2017;

(xvi) the Voluntary Prepayment Account, which shall be established on or prior to the Substantial Completion Date;

(xvii) the Equity Lock-Up Account, which shall be established on or prior to the Substantial Completion Date; and

(xviii) the Sponsor Cash Collateral Account, and within the Sponsor Cash Collateral Account, the following sub-accounts, which were established on or prior to December 19, 2017:

A. the Meridiam Sponsor Cash Collateral Sub-Account; and

B. the Kiewit Sponsor Cash Collateral Sub-Account.

Each Securities Account shall be identified in the manner set forth in Exhibit E and shall include each of the sub-accounts thereof set forth in this Agreement. Notwithstanding anything herein to the contrary, upon the written instruction of the Borrower (or, for the Handback Reserve Account, upon the written instruction of the Borrower and each Enterprise in whose name the Handback Reserve Account is opened), the Collateral Agent may from time to time hereafter establish and maintain additional sub-accounts within any of the Securities Accounts. Each such sub-account shall be a separately identified account with a separate and distinct name and account number and, upon establishment, shall be deemed a Securities Account hereunder. Each such sub-account shall be for the purposes and the term specified in such instruction, and deposits and withdrawals shall be permitted in those circumstances expressly provided for in any such instruction, which instructions shall in each case conform to the requirements and limitations applicable to the Securities Account with respect to which any such sub-account has been established. The Collateral Agent shall promptly, and in any event prior to establishing any such sub-account, provide written notice of any such request or instruction from the Borrower pursuant to this paragraph to the Intercreditor Agent (and the Intercreditor Agent shall promptly deliver such written notice to the Secured Parties that are parties hereto or relevant representatives thereof). Upon creation of any such sub-account, the Collateral Agent shall, by written notice, inform the Enterprises of each such sub-account's purposes, terms and instructions.

(b) Operating Account; Other Operating Accounts; Distribution Account.

(i) The Borrower hereby confirms that an operating account (the “**Operating Account**”) has been established with the Deposit Account Bank, and such account shall be maintained by the Deposit Account Bank in the name of the Borrower. The Operating Account shall constitute a Project Account and a Securities Account and shall be subject to the Security Interest of the Collateral Agent for the benefit of the Secured Parties. Amounts shall be deposited in the Operating Account only as, when and to the extent provided in Section 5.15(a), or from the proceeds of Voluntary Equity Contributions.

(ii) The parties hereto acknowledge that the Borrower may cause to be established from time to time in the Borrower's name certain accounts (in addition to the Project Accounts described in Section 5.01(a) and the Operating Account) if, in the reasonable judgment of the Borrower, the creation of such accounts will enable the Borrower to facilitate the construction and operations and maintenance of the Project, as permitted in and subject to the Series 2017 Loan Agreement, the Series 2021 Loan Agreement, the TIFIA Loan Agreement and any Additional Financing Documents, in connection with the construction and operations of the Project (collectively referred to as the “**Other Operating Accounts**”). The Borrower may from time to time hereafter establish and maintain such Other Operating Accounts with the Collateral Agent (or the Deposit Account Bank, so long as each such Other Operating Account is subject to a Control Agreement) and each such account shall constitute a Project Account. Each Other Operating Account shall be established for the purposes and the term specified in any such instruction and deposits and withdrawals shall be permitted in those circumstances expressly provided for in any such instruction, which deposits and withdrawals shall in each case, comply with the requirements and limitations applicable

to the Operating Account as set forth in this Agreement. Amounts shall be deposited in any Other Operating Account only as, when and to the extent provided in Section 5.15(a), or from the proceeds of Voluntary Equity Contributions.

(iii) A distribution account (the “**Distribution Account**”) shall be established and created with the Collateral Agent in the name of the Borrower on or prior to the Substantial Completion Date, but shall not constitute a Project Account and shall not be subject to the Security Interest of the Collateral Agent for the benefit of the Secured Parties and the Borrower shall have the exclusive right to withdraw or otherwise dispose of funds from the Distribution Account.

(c) The Collateral Agent shall promptly, and in any event prior to establishing any account pursuant to clause (b) of this Section 5.01 to be established after December 19, 2017, provide written notice of any request or instruction from the Borrower to establish such account to the Intercreditor Agent (and the Intercreditor Agent shall promptly deliver such written notice to the Secured Parties that are parties hereto or relevant representatives thereof). Upon creation of any account pursuant to clause (b) of this Section 5.01, the Collateral Agent shall, by written notice, inform the Enterprises of such account’s purposes, terms and instructions. The Operating Account, any Other Operating Accounts and the Distribution Account (each of which shall be a separately identified account with a separate and distinct name and account number) shall be identified in the manner set forth in Exhibit E.

(d) All of the Project Accounts shall be maintained by and shall be under the control of the Collateral Agent; provided that the Operating Account and the Other Operating Accounts may be maintained by the Deposit Account Bank and, in the case that any such account is maintained by the Deposit Account Bank, control of such account shall be effected pursuant to a Control Agreement. Except as expressly provided herein, the Borrower shall not have any right to withdraw funds from any Project Account (including sub-accounts). The Borrower hereby irrevocably authorizes the Collateral Agent to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Project Account in accordance with the terms of this Agreement. The Project Accounts shall be maintained at all times in the United States.

Section 5.02 Construction Account.

(a) Prior to the Substantial Completion Date, except for amounts required to be deposited in other Project Accounts pursuant to this Article V, all (i) net proceeds of the Series 2017 Bonds (in respect of the loan made pursuant to the Series 2017 Loan Agreement), (ii) net proceeds of the Series 2021 Bonds (in respect of the loans made pursuant to the Series 2021 Loan Agreement), (iii) proceeds of all Capital Contributions, (iv) Performance Payments and (v) Milestone Payments shall be deposited into the Construction Account (including the applicable sub-accounts thereof as set forth in Section 5.02(i)). On or prior to the SC Milestone Payment Date, all PA Settlement Payments shall be deposited into the PA Settlement Payments Sub-Account of the Construction Account. There also will be deposited into the Construction Account (or any sub-account thereof, as designated in any accompanying direction from the Borrower), all moneys received by the Borrower, in each case, not otherwise required or permitted to be deposited into another account pursuant to this Agreement, including proceeds of Permitted Indebtedness, amounts relating to change orders, other amounts relating to the

Material Project Contracts (including all delay liquidated damages), Voluntary Equity Contributions, other liquidated damages, proceeds of any delay in start-up and contingent business interruption insurance and loss of advance profits insurance received by the Borrower (net of any amounts payable therefrom to the Enterprises pursuant to Section 15.6 of the Project Agreement) that are transferred from the Loss Proceeds Account pursuant to Section 5.16(d), in each case to the extent received prior to the Substantial Completion Date. Pending any deposit into the Construction Account, the Borrower shall hold all such amounts coming into its possession in trust for the benefit of the Secured Parties.

(b) Subject to Section 5.26(a) and Section 5.02(i)(i)B, from time to time, upon receipt by the Collateral Agent of an Approved Construction Requisition at least three (3) Business Days prior to the applicable proposed transfer date which shall be a Business Day (each such date, being a “**Construction Funds Transfer Date**”), setting forth the amounts to be withdrawn from the Construction Account or the Construction Reserve Account (or any sub-account thereof) and the amounts to be transferred pursuant to this Section 5.02 (via wire transfer or by internal transfer between Project Accounts), the Collateral Agent is hereby instructed to make such transfers in accordance with such Approved Construction Requisition on such Construction Funds Transfer Date.

(c) Except as otherwise required by any applicable Law or the Tax Regulatory Agreement, at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, on the Milestone 5B Payment Date, the Collateral Agent shall transfer from available amounts on deposit in the Series 2021A Bonds Proceeds Sub-Account, the Series 2021B Bonds Proceeds Sub-Account, and the Equity Funding Sub-Account (i) to the Series 2017 Bonds Debt Service Reserve Sub-Account an amount equal to the Series 2017 Bonds Debt Service Reserve Required Balance, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such account; and (ii) to the Series 2021A Bonds Debt Service Reserve Sub-Account an amount equal to the Series 2021A Bonds Debt Service Reserve Required Balance, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such account, solely, in the case of clause (ii), from funds that do not constitute Series 2017 Bonds proceeds.

(d) At the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, on or before the SC Milestone Payment Date, the Collateral Agent shall transfer to the Operating Account an aggregate amount equal to \$[●] (such amount, the “**Performance Payment Start-Up Amount**”) from available amounts on deposit in the Equity Funding Sub-Account.

(e) On the SC Milestone Payment Date, the Borrower shall provide the Collateral Agent and the Intercreditor Agent with a SC Milestone Payment Date Certificate, executed by an Authorized Representative of the Borrower and the Lenders’ Technical Advisor, instructing the Collateral Agent to transfer (and promptly following receipt of such SC Milestone Payment Date Certificate, the Collateral Agent shall transfer) to (i) the Construction Reserve Account an aggregate amount equal to (A) any Project Costs incurred but not yet paid through and including the SC Milestone Payment Date plus (B) any amounts projected to be payable with respect to Construction Work for the period from the SC Milestone Payment Date to and including the Final Acceptance Date, in each case as confirmed by the Lenders’ Technical

Advisor (the “**Construction Completion Amount**”), (ii) the Series 2021B Bonds Repayment Account, the remainder (if any) of the funds in the Series 2021B Bonds Proceeds Sub-Account, and (iii) the applicable payees or accounts for the payment of any payments required to be made to the Construction Contractor pursuant to the First Memorandum of Settlement or the Second Memorandum of Settlement, in each case, from the PA Settlement Payments Sub-Account. The Construction Completion Amount shall be available to the Borrower pursuant to Approved Construction Requisitions delivered pursuant to Section 5.02(b) from time to time for the payment of the amounts described in clauses (i)(A) and (B) above.

(f) Except as otherwise required by any applicable Law or the Tax Regulatory Agreement, to the extent that on the SC Milestone Payment Date there are any funds remaining on deposit in the Construction Account (or in any sub-account thereof) after the transfer set forth in Section 5.02(e), such excess funds shall be transferred by the Collateral Agent on the SC Milestone Payment Date as follows:

(i) *First*, pro rata, to (A) the Series 2017 Bonds Debt Service Reserve Sub-Account in an amount which, together with the amount then on deposit in or credited to the Series 2017 Bonds Debt Service Reserve Sub-Account, equals the Series 2017 Bonds Debt Service Reserve Required Balance, and (B) the Series 2021A Bonds Debt Service Reserve Sub-Account in an amount which, together with the amount then on deposit in or credited to the Series 2021A Bonds Debt Service Reserve Sub-Account, equals the Series 2021A Bonds Debt Service Reserve Required Balance, solely, in the case of subclause (B), from funds that do not constitute Series 2017 Bonds proceeds;

(ii) *Second*, to the TIFIA Debt Service Reserve Sub-Account in an amount up to the TIFIA Debt Service Reserve Required Balance, solely from funds that do not constitute TIFIA Loan proceeds or Series 2017 Bonds proceeds;

(iii) *Third*, to the Mandatory Prepayment Account to the extent required pursuant to [Section 10(a)(iv)] of the TIFIA Loan Agreement, to be applied to the prepayment of the TIFIA Obligations, solely from funds that do not constitute TIFIA Loan proceeds or Series 2017 Bonds proceeds; and

(iv) *Fourth*, the remainder (if any) to the Revenue Account, subject to any limitations on uses of any remaining Series 2017 Bonds proceeds or Series 2021 Bonds proceeds described in Section 5.02(i)(i), Section 5.02(i)(ii), Section 5.02(i)(iii) or otherwise set forth in the Tax Regulatory Agreement.

(g) Following (i) the transfer set forth in Section 5.02(e) and (ii) all of the transfers set forth in Section 5.02(f), the Collateral Agent shall close the Construction Account and any sub-account thereof.

(h) Notwithstanding anything to the contrary herein, on the date hereof, the Collateral Agent shall make the transfers and disbursements of funds as specified in a funds flow memorandum, in form and substance satisfactory to the Trustee, the TIFIA Lender, the Borrower and the Collateral Agent. For the avoidance of doubt, Section 5.26 shall not apply to transfers made pursuant to this Section 5.02(h).

(i) Any amounts deposited into the Construction Account pursuant to Section 5.02(a) shall be deposited into sub-accounts thereof as set forth below. Any Approved Construction Requisition delivered pursuant to Section 5.02(b) shall apply funds on deposit in the following sub-accounts of the Construction Account subject to the conditions and limitations set forth below. Subject to Section 5.02(c), Section 5.02(d), Section 5.02(e) and Section 5.02(f), any funds on deposit in the following sub-accounts shall only be applied in accordance with an Approved Construction Requisition delivered pursuant to Section 5.02(b).

(i) Series 2017 Bonds Proceeds Sub-Account

A. All proceeds from the issuance of the Series 2017 Bonds, net of any original issue discount, underwriting discount or similar fee in respect thereof, received by the Borrower pursuant to the terms of the Series 2017 Loan Agreement, and any Account Interest or other earnings earned on such proceeds, shall be deposited in the Series 2017 Bonds Proceeds Sub-Account.

B. Moneys in the Series 2017 Bonds Proceeds Sub-Account shall be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs in compliance with the Series 2017 Loan Agreement, the Code and the Tax Regulatory Agreement.

C. Upon a date that is no earlier than five (5) years after the date of issuance of the Series 2017 Bonds and no later than five (5) years and sixty (60) days after the date of issuance of the Series 2017 Bonds, the remaining unspent proceeds of the Series 2017 Bonds, in each case, rounded down to the nearest multiple of \$5,000, from any remaining unspent Series 2017 Bonds proceeds on deposit in the Series 2017 Bonds Proceeds Sub-Account on such date (with respect to which, for the avoidance of doubt, no Secured Party shall have any right) shall be applied as follows, pursuant to one or more written directions of an Authorized Representative of the Borrower:

First, any applicable amount thereof shall be transferred to the Series 2017 Rebate Fund; and

Second, any remaining amount shall be transferred to the Series 2017 Bonds Mandatory Prepayment Sub-Account (for redemption of the Series 2017 Bonds in accordance with Section 4.03(a) of the Indenture);

provided, that no such transfer to the Mandatory Prepayment Account and redemption of the Series 2017 Bonds will be required if the Borrower has obtained an opinion of Bond Counsel stating that the failure to redeem any such Series 2017 Bonds will not adversely affect the exclusion of interest on such Series 2017 Bonds from gross income for federal or State income tax purposes and that such redemption is not required by State law.

(ii) Series 2021A Bonds Proceeds Sub-Account

A. Except for the Series 2021B Bonds Capitalized Interest Amount, which shall be deposited in the Series 2021B Bonds Capitalized Interest Account in accordance with Section 5.08, all proceeds from the issuance of the Series 2021A Bonds, net of

any original issue discount, underwriting discount or similar fee in respect thereof, received by the Borrower pursuant to the terms of the Series 2021 Loan Agreement, and any Account Interest or other earnings earned on such proceeds, shall be deposited in the Series 2021A Bonds Proceeds Sub-Account.

B. Moneys in the Series 2021A Bonds Proceeds Sub-Account shall be applied pursuant to (1) the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs in compliance with the Series 2021 Loan Agreement and (2) Section 5.02(c), Section 5.06(b)(ii), Section 5.06(c)(ii) or Section 5.07(b)(i) to fund the Series 2017 Bonds Debt Service Reserve Sub-Account, the Series 2021A Bonds Debt Service Reserve Sub-Account and the TIFIA Debt Service Reserve Sub-Account, as applicable.

(iii) Series 2021B Bonds Proceeds Sub-Account

A. Except for the proceeds from issuance of the Series 2021B Bonds applied to the prepayment in full in cash of the 2017 TIFIA Loan in accordance with Section 10(b) of the 2017 TIFIA Loan Agreement, all proceeds from the issuance of the Series 2021B Bonds, net of any original issue discount, underwriting discount or similar fee in respect thereof, received by the Borrower pursuant to the terms of the Series 2021 Loan Agreement, and any Account Interest or other earnings earned on such proceeds, shall be deposited in the Series 2021B Bonds Proceeds Sub-Account.

B. Moneys in the Series 2021B Bonds Proceeds Sub-Account shall be applied pursuant to (1) the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs in compliance with the Series 2021 Loan Agreement, (2) Section 5.02(c), Section 5.06(b)(ii), Section 5.06(c)(ii) or Section 5.07(b)(i) to fund the Series 2017 Bonds Debt Service Reserve Sub-Account, the Series 2021A Bonds Debt Service Reserve Sub-Account and the TIFIA Debt Service Reserve Sub-Account, as applicable, and (3) Section 5.02(e) to fund the Series 2021B Bonds Repayment Account.

(iv) Equity Funding Sub-Account

A. Except for amounts that are delivered to the Collateral Agent pursuant to the Equity Contribution Agreement and Voluntary Equity Contributions that are, in each case, deposited into other Project Accounts, the proceeds of any Capital Contributions and Voluntary Equity Contributions made in accordance with the Equity Contribution Agreement and the proceeds of any drawing upon any Equity Letter of Credit (or transfer from any Applicable Sponsor Cash Collateral Account) in accordance with Articles 2, 3 and 5 of the Equity Contribution Agreement shall in each case be deposited in the Equity Funding Sub-Account.

B. Moneys in the Equity Funding Sub-Account shall be applied (1) pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs, (2) pursuant to Section 5.02(c), Section 5.06(b)(ii), Section 5.06(c)(ii) or Section 5.07(b)(i) to fund the Series 2017 Bonds Debt Service Reserve Sub-Account, the Series 2021A Bonds Debt Service Reserve Sub-Account and the TIFIA Debt Service Reserve

Sub-Account, as applicable, and (3) pursuant to Section 5.02(d) to fund the Performance Payment Start-Up Amount.

(v) Milestone Payment Sub-Account

A. Proceeds from the Milestone Payments (and any Account Interest or other earnings earned on such proceeds) shall be deposited in the Milestone Payment Sub-Account.

B. Moneys in the Milestone Payment Sub-Account shall be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs.

(vi) Performance Payment Sub-Account

A. Proceeds from any Performance Payments (and any Account Interest or other earnings earned on such proceeds) received prior to the Substantial Completion Date shall be deposited in the Performance Payment Sub-Account.

B. Following the Milestone Completion Date for Milestone 5B, moneys in the Performance Payment Sub-Account shall be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, (1) Project Costs and (2) interest and Principal Related Payments payable with respect to the Series 2017 Bond Obligations and the Series 2021 Bond Obligations. For the avoidance of doubt, moneys on deposit in the Performance Payment Sub-Account shall not be withdrawn or transferred prior to the Milestone Completion Date for Milestone 5B.

(vii) PA Settlement Payments Sub-Account

A. Proceeds from any payments made to the Borrower pursuant to (1) that certain Memorandum of Settlement (the “**First Memorandum of Settlement**”), dated as of May 9, 2019, by and among the Enterprises, the Borrower and Construction Contractor (the “**First PA Settlement Payment**”) and (2) the Second Memorandum of Settlement (the “**Second PA Settlement Payment**”) (and any Account Interest or other earnings earned on such proceeds) on or prior to the SC Milestone Payment Date shall be deposited in the PA Settlement Payments Sub-Account.

B. Moneys in the PA Settlement Payments Sub-Account shall be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, (1) Project Costs, (2) any payments required to be made to the Construction Contractor pursuant to the First Memorandum of Settlement following Borrower’s receipt of the First PA Settlement Payment, (3) any payments required to be made to the Construction Contractor pursuant to the Second Memorandum of Settlement following Borrower’s receipt of the Second PA Settlement Payment, and (4) interest and Principal Related Payments payable with respect to the Series 2017 Bond Obligations and the Series 2021 Bond Obligations.

(viii) Other Sub-Accounts

A. Upon the written instruction of the Borrower, the Collateral Agent may hereafter establish and maintain additional sub-accounts of the Construction Account in accordance with Section 5.01(a) and Section 5.02(a). Prior to the Substantial Completion Date, the Borrower may deposit into such additional sub-accounts the proceeds of any Other Permitted Senior Secured Indebtedness permitted to be incurred by the Financing Documents. The Collateral Agent shall promptly, and in any event prior to establishing such sub-account, provide written notice of any such request or instruction from the Borrower pursuant to this paragraph to the Intercreditor Agent (and the Intercreditor Agent shall promptly deliver such written notice to the Secured Parties that are parties hereto or relevant representatives thereof). Upon creation of any such additional sub-accounts, the Borrower or the Collateral Agent shall, by written notice, inform the Enterprises of each such additional sub-account's purposes, terms and instructions.

B. Moneys in any such additional sub-accounts of the Construction Account shall be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs.

(j) Notwithstanding anything to the contrary set forth herein or in any other Financing Document, in connection with or following the taking of an Enforcement Action, any funds on deposit in the Construction Account shall be applied in the manner set forth in Section 6.06; provided, that:

(i) the Series 2017 Bonds Proceeds Sub-Account shall be pledged to the Collateral Agent pursuant to the Security Agreement and the Security Interest on the Series 2017 Bonds Proceeds Sub-Account (and all Account Interest or other earnings thereon) shall solely secure the obligations of the Borrower under the Series 2017 Loan Agreement and the related Security Interest of the Trustee and the Owners of the Series 2017 Bonds (such exclusive Security Interest to continue upon the occurrence of a Borrower Bankruptcy Related Event) with respect to amounts on deposit in the Series 2017 Bonds Proceeds Sub-Account from time to time, and such amounts shall be solely for the benefit of the Trustee on behalf of the Owners of such Series 2017 Bonds until such funds have been disbursed in accordance with this Section 5.02(j), and such amounts shall be solely applied to such obligations;

(ii) the Series 2021A Bonds Proceeds Sub-Account shall be pledged to the Collateral Agent pursuant to the Security Agreement and the Security Interest on the Series 2021A Bonds Proceeds Sub-Account (and all Account Interest or other earnings thereon) shall solely secure the obligations of the Borrower under the Series 2021 Loan Agreement with respect to the Series 2021A Bonds and the related Security Interest of the Trustee and the Owners of the Series 2021A Bonds (such exclusive Security Interest to continue upon the occurrence of a Borrower Bankruptcy Related Event) with respect to amounts on deposit in the Series 2021A Bonds Proceeds Sub-Account from time to time, and such amounts shall be solely for the benefit of the Trustee on behalf of the Owners of such Series 2021A Bonds until such funds have been disbursed in accordance with this Section 5.02(j), and such amounts shall be solely applied to such obligations;

(iii) the Series 2021B Bonds Proceeds Sub-Account shall be pledged to the Collateral Agent pursuant to the Security Agreement and the Security Interest on the Series 2021B Bonds Proceeds Sub-Account (and all Account Interest or other earnings on such thereon) shall solely secure the obligations of the Borrower under the Series 2021 Loan Agreement with respect to the Series 2021B Bonds and the related Security Interest of the Trustee and the Owners of the Series 2021B Bonds (such exclusive Security Interest to continue upon the occurrence of a Borrower Bankruptcy Related Event) with respect to amounts on deposit in the Series 2021B Bonds Proceeds Sub-Account from time to time, and such amounts shall be solely for the benefit of the Trustee on behalf of the Owners of such Series 2021B Bonds until such funds have been disbursed in accordance with this Section 5.02(j), and such amounts shall be solely applied to such obligations; and

(iv) any additional sub-account of the Construction Account established for the deposit of proceeds of any Other Permitted Senior Secured Indebtedness shall be pledged to the Collateral Agent pursuant to the Security Agreement and the Security Interest on any such additional sub-account (and all Account Interest or other earnings thereon) shall solely secure the obligations of the Borrower under the applicable Additional Financing Documents and the related Security Interest of the relevant Secured Parties (such exclusive Security Interest to continue upon the occurrence of a Borrower Bankruptcy Related Event) with respect to amounts on deposit in such additional sub-accounts from time to time, such amounts shall be solely for the benefit of such Secured Parties until such funds have been disbursed in accordance with this Section 5.02(j), and such amounts shall be solely applied to such obligations.

Section 5.03 Revenue Account.

(a) On and after the Substantial Completion Date, except for amounts required or permitted to be deposited in other Project Accounts pursuant to this Article V, all (i) Project Revenues and (ii) any other amounts received by the Borrower from any source whatsoever (including transfers from other Project Accounts from time to time as required by the terms of this Agreement), shall be deposited into the Revenue Account. Pending such deposit, the Borrower shall hold all such amounts coming into its possession in trust for the benefit of the Secured Parties.

(b) At the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, and subject to Section 6.06 hereof, beginning with the first Monthly Transfer Date after the Substantial Completion Date, the Collateral Agent shall make the following withdrawals, transfers and payments from the Revenue Account (and any sub-accounts thereof) as set forth in the applicable Funds Transfer Certificate, on each Monthly Transfer Date or Restricted Payment Date, as applicable, in the following amounts and in the following order of priority (it being agreed that (i) no amount shall be withdrawn on any date pursuant to any clause below (A) until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses shall have been withdrawn or set aside or (B) in respect of any items for which amounts have previously been transferred and (ii) each such transfer shall be made only to the extent there are sufficient amounts on deposit in the Revenue Account, on such date to make any such transfer):

First, on each Monthly Transfer Date, to the Operating Account and any Other Operating Account, an amount equal, together with amounts then on deposit therein, to the Operations and Maintenance Expenses, including expenditures with respect to Routine Maintenance and Renewal Expenditures, then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date; provided that transfers to the Operating Account or any Other Operating Account to pay Renewal Expenditures then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date may be made only to the extent that amounts on deposit in or credited to the Major Maintenance Reserve Account or the Handback Reserve Account, as applicable, are insufficient or, in respect of amounts on deposit in the Handback Reserve Account, unavailable in accordance with Section 4.4 or Section 4.5 of Schedule 12 to the Project Agreement to fully pay such Renewal Expenditures (and amounts necessary to pay Renewal Expenditures shall be drawn first from the Major Maintenance Reserve Account prior to being drawn from the Operating Account or any Other Operating Account);

Second, on each Monthly Transfer Date, (i) to the applicable payees or accounts for the payment of fees, costs and expenses then due and owing to the Secured Parties under the Financing Documents, if any, and to the payment of rating agency costs, and (ii) to the Series 2017 Rebate Fund, an amount equal to, together with any amount then on deposit therein, the amount required to fund any rebate then due and payable to the United States of America;

Third, on each Monthly Transfer Date, to the Major Maintenance Reserve Account the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account, equals the Major Maintenance Reserve Required Balance at such time;

Fourth, on each Monthly Transfer Date, to the Senior Interest Payment Sub-Account of the Senior Debt Service Account, for (i) payment of the interest payable on the Series 2017 Bonds on the next Interest Payment Date in an amount equal to (A) one-sixth (1/6th) of the amount of interest payable with respect to the Series 2017 Bond Obligations on the next Interest Payment Date, *plus* (B) the sum of any continuing shortfall in transfers under this clause (i) required to have been made on any preceding Monthly Transfer Date, *plus* (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, an Interest Payment Date, any other amount required to make the amount credited to the Senior Interest Payment Sub-Account sufficient to pay the interest payable with respect to the Series 2017 Bond Obligations on such Interest Payment Date; (ii) payment of the interest payable on the Series 2021A Bonds on the next Interest Payment Date in an amount equal to (A) one-sixth (1/6th) of the amount of interest payable with respect to the Series 2021A Bond Obligations on the next Interest Payment Date, *plus* (B) the sum of any continuing shortfall in transfers under this clause (ii) required to have been made on any preceding Monthly Transfer Date, *plus* (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, an Interest Payment Date, any other amount required to make the amount credited to the Senior Interest Payment Sub-Account sufficient to pay the interest payable with respect to the

Series 2021A Bond Obligations on such Interest Payment Date; and (iii) payment in respect of the interest payable on outstanding Applicable Senior Secured Obligations (excluding the Series 2017 Bond Obligations and the Series 2021 Bond Obligations) on the next Interest Payment Date in an amount equal to (A) the total aggregate amount of interest to be paid in respect of such outstanding Applicable Senior Secured Obligations on the next Interest Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Interest Payment Date, but not counting such Interest Payment Date if it is a Monthly Transfer Date, to, and including, such next Interest Payment Date plus (B) the sum of any continuing shortfall in transfers under this clause (iii) required to have been made on any preceding Monthly Transfer Date, plus (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, an Interest Payment Date, any other amount required to make the amount credited to the Senior Interest Payment Sub-Account sufficient to pay the interest payable with respect to such Applicable Senior Secured Obligations on such Interest Payment Date;

Fifth, on each Monthly Transfer Date, to the Senior Principal Payment Sub-Account of the Senior Debt Service Account, for (i) scheduled principal payments and mandatory sinking fund payments (collectively, “**Principal Related Payments**”) (to the extent such Principal Related Payments are not paid with amounts available in the Milestone Payment Sub-Account or the PA Settlement Payment Sub-Account), on each Monthly Transfer Date commencing six months before the first semiannual Principal Payment Date, in an amount equal to (A) one-sixth (1/6th) of the amount of Principal Related Payments payable with respect to the Series 2017 Bond Obligations on the next Principal Payment Date, *plus* (B) the sum of any continuing shortfall in transfers under this clause (i) required to have been made on any preceding Monthly Transfer Date, *plus* (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the Senior Principal Payment Sub-Account sufficient to pay the Principal Related Payments payable with respect to the Series 2017 Bond Obligations on such Principal Payment Date; (ii) Principal Related Payments (to the extent such Principal Related Payments are not paid with amounts available in the Milestone Payment Sub-Account or the PA Settlement Payment Sub-Account), on each Monthly Transfer Date commencing six months before the first semiannual Principal Payment Date, in an amount equal to (A) one-sixth (1/6th) of the amount of Principal Related Payments payable with respect to the Series 2021A Bond Obligations on the next Principal Payment Date, *plus* (B) the sum of any continuing shortfall in transfers under this clause (ii) required to have been made on any preceding Monthly Transfer Date, *plus* (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the Senior Principal Payment Sub-Account sufficient to pay the Principal Related Payments payable with respect to the Series 2021A Bond Obligations on such Principal Payment Date; and (iii) Principal Related Payments applicable to the Applicable Senior Secured Obligations (excluding the Series 2017 Bond Obligations and the Series 2021 Bond Obligations) (to the extent such Principal Related Payments are not paid with amounts available in the Milestone Payment Sub-Account or the PA Settlement Payment Sub-Account), in an amount equal to (A) the total aggregate amount of such Principal Related Payments to be paid in respect of such Applicable Senior Secured Obligations on the next Principal Payment Date divided by the number of Monthly

Transfer Dates from the immediately preceding Principal Payment Date, but not counting such Principal Payment Date if it is a Monthly Transfer Date, to, and including, such next Principal Payment Date, *plus* (B) the sum of any continuing shortfall in transfers under this clause (iii) required to have been made on any preceding Monthly Transfer Date, *plus* (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the Senior Principal Payment Sub-Account sufficient to pay the Principal Related Amounts payable with respect to such Applicable Senior Secured Obligations on such Principal Payment Date;

Sixth, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, on each Monthly Transfer Date, to the TIFIA Interest Payment Sub-Account of the TIFIA Debt Service Account, for payment of interest payable with respect to the TIFIA Obligations in an amount equal (i) to one-sixth (1/6th) of the amount of interest payable with respect to the TIFIA Obligations on the next Interest Payment Date, plus (ii) the sum of any continuing shortfall in transfers under this clause required to have been made on any preceding Monthly Transfer Date, plus (iii) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, an Interest Payment Date, any other amount required to make the amount credited to the TIFIA Interest Payment Sub-Account sufficient to pay the amount of interest payable with respect to the TIFIA Loan on such Interest Payment Date;

Seventh, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, on each Monthly Transfer Date, to the TIFIA Principal Payment Sub-Account of the TIFIA Debt Service Account, an amount equal to (i) one-sixth (1/6th) of the amount of Principal Related Payments to be paid with respect to the TIFIA Obligations on the next Principal Payment Date, plus (ii) the sum of any continuing shortfall in transfers under this clause required to have been made on any preceding Monthly Transfer Date, plus (iii) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the TIFIA Principal Payment Sub-Account sufficient to pay the Principal Related Payments payable with respect to the TIFIA Obligations on such Principal Payment Date;

Eighth, on each Monthly Transfer Date, to each sub-account of the Debt Service Reserve Account, including the Series 2017 Bonds Debt Service Reserve Sub-Account, the Series 2021A Bonds Debt Service Reserve Sub-Account and any such sub-account related to the Applicable Senior Secured Obligations (excluding the Series 2017 Bond Obligations and the Series 2021 Bond Obligations), the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account, equals the applicable Debt Service Reserve Required Balance at such time;

Ninth, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, on each Monthly Transfer Date, to the TIFIA Debt Service Reserve Sub-Account of the Debt Service Reserve Account, the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for

drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account, equals the TIFIA Debt Service Reserve Required Balance at such time;

Tenth, on each Monthly Transfer Date, to the O&M Reserve Account, the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account, equals the O&M Reserve Required Balance at such time;

Eleventh, on each Monthly Transfer Date on and after the date that is thirty-six (36) months prior to the expiration of the term of the Project Agreement, to the Handback Reserve Account, the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such account, equals the Handback Reserve Required Balance at such time or the Handback Reserve Required Balance required to be on deposit in the Handback Reserve Account prior to the next succeeding Monthly Transfer Date;

Twelfth, on each Monthly Transfer Date, to the Operating Account and any Other Operating Account, the aggregate amount required to pay any Discretionary Capital Expenditures then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date;

Thirteenth, on each Monthly Transfer Date, to the Voluntary Prepayment Account, an amount determined at the election of the Borrower as indicated in the applicable Funds Transfer Certificate to be applied to the prepayment or redemption of the Senior Secured Obligations or the TIFIA Obligations, as applicable;

Fourteenth, on any Calculation Date or other Restricted Payment Date, to the Equity Lock-up Account, all Applicable Excess Funds on deposit in the Revenue Account if any of the Restricted Payment Conditions have not been satisfied as of the applicable Restricted Payment Condition Satisfaction Date; and

Fifteenth, on any Calculation Date or other Restricted Payment Date, and subject to Section 5.14(a), to the Distribution Account, all Applicable Excess Funds on deposit in the Revenue Account; provided, that each Restricted Payment Condition was satisfied as of the applicable Restricted Payment Condition Satisfaction Date.

(c) If, on the date of any withdrawal or transfer from the Revenue Account for payment pursuant to any of clauses “Second”, “Fourth”, “Fifth” and “Eighth”, of Section 5.03(b), the amount required to be withdrawn and transferred from the Revenue Account pursuant to such clause exceeds the amount then on deposit in or credited to the Revenue Account after the withdrawals and transfers made pursuant to all applicable preceding clauses are completed, the amount on deposit in or credited to the Revenue Account at the time of application pursuant to such clause shall be transferred pro rata to each of the Persons (or Project Accounts) specified in such clause based on the respective amounts owed to such Persons (or otherwise required to be transferred) pursuant to such clause, as specified in the Funds Transfer

Certificate or as otherwise determined by the Collateral Agent (acting on the instructions of the Intercreditor Agent); provided that (i) the payments described in this paragraph shall be applied in accordance with the payment priorities set forth in Section 5.03(b) and (ii) the payments due at a particular level of the waterfall set forth in Section 5.03(b) shall be made in full before any payment is made at the next level.

(d) For the avoidance of doubt, after application of funds in the Revenue Account on any Monthly Transfer Date pursuant to Section 5.03(b), to the extent any funds remain in the Revenue Account, such funds shall remain in the Revenue Account for application in accordance with this Agreement.

(e) To the extent that the balance of funds on deposit in any Project Account with a required minimum balance exceeds such required minimum balance as of any Monthly Transfer Date, such excess funds will be transferred to the Revenue Account for application as contemplated by this Section 5.03, subject to Section 5.10 and Section 5.22.

Section 5.04 Senior Debt Service Account.

(a) The Senior Interest Payment Sub-Account shall be funded in accordance with and subject to clause “Fourth” of Section 5.03(b).

(b) The Senior Principal Payment Sub-Account shall be funded in accordance with and subject to clause “Fifth” of Section 5.03(b).

(c) Funds on deposit in the Senior Interest Payment Sub-Account shall be applied *pro rata* to pay accrued and unpaid interest due and payable on (i) the Series 2017 Bond Obligations, (ii) the Series 2021A Bond Obligations, and (iii) Applicable Senior Secured Obligations (excluding the Series 2017 Bond Obligations and the Series 2021 Bond Obligations).

(d) Funds on deposit in the Senior Principal Payment Sub-Account shall be applied *pro rata* (i) to pay Principal Related Payments that are due and payable on (i) the Series 2017 Bond Obligations, (ii) the Series 2021A Bond Obligations, and (iii) all Applicable Senior Secured Obligations (excluding the Series 2017 Bond Obligations and the Series 2021 Bond Obligations).

(e) Any funds applied pursuant to clause (c) or clause (d) of this Section 5.04 shall be transferred by the Collateral Agent to the Trustee for deposit into the applicable sub-account of the Series 2017 Debt Service Fund, the Series 2021A Debt Service Fund or other debt service fund applicable to the Series 2017 Bonds, the Series 2021A Bonds or other Applicable Senior Secured Obligations (excluding the Series 2017 Bond Obligations and the Series 2021 Bond Obligations), as the case may be.

Section 5.05 TIFIA Debt Service Account.

(a) (i) The TIFIA Interest Payment Sub-Account shall be funded in accordance with and subject to clause “Sixth” of Section 5.03(b) and (ii) the TIFIA Principal Payment Sub-Account shall be funded in accordance with and subject to clause “Seventh” of Section 5.03(b).

(b) Funds (i) on deposit in the TIFIA Interest Payment Sub-Account shall be applied to pay accrued and unpaid interest due and payable on all TIFIA Obligations and (ii) on deposit in the TIFIA Principal Payment Sub-Account shall be applied to pay Principal Related Payments that are due and payable on all TIFIA Obligations.

(c) From and after a Borrower Bankruptcy Related Event, payments of TIFIA Debt Service will be made from the Senior Debt Service Account with amounts funded in accordance with and subject to clauses “Fourth” and “Fifth” of Section 5.03(b) in accordance with Section 5.04.

Section 5.06 Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts.

(a) The sub-accounts of the Debt Service Reserve Account will each be established solely for the benefit of the relevant Secured Parties. Each such sub-account will be held by the Collateral Agent and the Security Interest thereon shall be maintained for the exclusive benefit of only such Secured Parties.

(b) Pursuant to Section 5.01(a), the Collateral Agent shall create a sub-account related to the Series 2017 Bonds under the Debt Service Reserve Account, in the name of the Borrower and titled the “**Series 2017 Bonds Debt Service Reserve Sub-Account**”, which shall be pledged to the Collateral Agent solely for the benefit of the Owners of the Series 2017 Bonds and the Trustee. The Series 2017 Bonds Debt Service Reserve Sub-Account shall be funded (i) on the Milestone 5A Payment Date, from available amounts on deposit in the Construction Account (subject to the Tax Regulatory Agreement) pursuant to Section 5.02(c) or from other amounts available to the Borrower, in an amount equal to the Series 2017 Bonds Debt Service Reserve Required Balance (as calculated on such date); (ii) after the Milestone 5A Payment Date until the SC Milestone Payment Date, on the last day of each month at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, from available amounts on deposit in the Series 2021A Bonds Proceeds Sub-Account, the Series 2021B Bonds Proceeds Sub-Account and the Equity Funding Sub-Account, the amounts, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such account, equals the Series 2017 Bonds Debt Service Reserve Required Balance at such time; and (iii) after the SC Milestone Payment Date, in accordance with clause “Eighth” of Section 5.03(b). Any amounts on deposit in the Series 2017 Bonds Debt Service Reserve Sub-Account in excess of the Series 2017 Bonds Debt Service Reserve Required Balance (including as a result of funding of the Series 2017 Bonds Debt Service Reserve Sub-Account with an Acceptable Letter of Credit) shall, subject to Section 5.22(d), be deposited into the Revenue Account for application pursuant to Section 5.03.

(c) Pursuant to Section 5.01(a), the Collateral Agent shall create a sub-account related to the Series 2021A Bonds under the Debt Service Reserve Account, in the name of the Borrower and titled the “**Series 2021A Bonds Debt Service Reserve Sub-Account**”, which shall be pledged to the Collateral Agent solely for the benefit of the Owners of the Series 2021A Bonds and the Trustee. The Series 2021A Bonds Debt Service Reserve Sub-Account shall be funded (i) on the Milestone 5A Payment Date, from available amounts on deposit in the

Construction Account pursuant to Section 5.02(c) or from other amounts available to the Borrower, in an amount equal to the Series 2021A Bonds Debt Service Reserve Required Balance (as calculated on such date); (ii) after the Milestone 5A Payment Date until the SC Milestone Payment Date, on the last day of each month at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, from available amounts on deposit in the Series 2021A Bonds Proceeds Sub-Account, the Series 2021B Bonds Proceeds Sub-Account and the Equity Funding Sub-Account, the amounts, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such account, equals the Series 2021A Bonds Debt Service Reserve Required Balance at such time; and (iii) after the SC Milestone Payment Date, in accordance with clause “Eighth” of Section 5.03(b). Any amounts on deposit in the Series 2021A Bonds Debt Service Reserve Sub-Account in excess of the Series 2021A Bonds Debt Service Reserve Required Balance (including as a result of funding of the Series 2021A Bonds Debt Service Reserve Sub-Account with an Acceptable Letter of Credit) shall, subject to Section 5.22(d), be deposited into the Revenue Account for application pursuant to Section 5.03.

(d) Funds on deposit in any sub-account of the Debt Service Reserve Account with respect to Applicable Senior Secured Obligations (each, a “**Senior Debt Service Reserve Sub-Account**”) shall be used by the Collateral Agent (without the requirement of a Funds Transfer Certificate) as follows:

(i) if on any Monthly Transfer Date immediately preceding or occurring on an Interest Payment Date or Principal Payment Date, as applicable, with respect to the Applicable Senior Secured Obligations, the funds on deposit in the Senior Interest Payment Sub-Account or the Senior Principal Payment Sub-Account available for the payment of such Applicable Senior Secured Obligations (in each case, after giving effect to the transfers contemplated in clause “Fourth” and “Fifth”, as applicable, of Section 5.03(b) solely with respect to the relevant Applicable Senior Secured Obligations) are insufficient to pay the principal, Redemption Price or interest on the relevant Applicable Senior Secured Obligations, as applicable, on the applicable Interest Payment Date or Principal Payment Date, funds on deposit in the relevant Senior Debt Service Reserve Sub-Account will be transferred to the Senior Interest Payment Sub-Account or the Senior Principal Payment Sub-Account, as applicable, for payment of interest or principal, as applicable, which shall become due and payable on the relevant Applicable Senior Secured Obligations as of such Interest Payment Date or Principal Payment Date, as applicable; and

(ii) following the taking of an Enforcement Action, moneys in each Senior Debt Service Reserve Sub-Account shall be applied in the manner set forth in Section 6.06.

(e) Notwithstanding any other provision of this Agreement to the contrary, the Borrower may, upon notice to the Collateral Agent and relevant Senior Secured Party, substitute all or any portion of the cash or Permitted Investments on deposit in any Senior Debt Service Reserve Sub-Account with an Acceptable Letter of Credit in favor of the Collateral Agent for purposes of the applicable Debt Service Reserve Required Balance; provided, however, that if

any proceeds of the Series 2017 Bonds are on deposit in any Senior Debt Service Reserve Sub-Account, an opinion of Bond Counsel that such substitution will not adversely affect the tax-exempt status of the Series 2017 Bonds shall be required.

Section 5.07 TIFIA Debt Service Reserve Sub-Account.

(a) The TIFIA Debt Service Reserve Sub-Account shall be solely for the benefit of the TIFIA Lender and shall not be subject to any Security Interest in favor of any Person other than the TIFIA Lender and shall be held by the Collateral Agent for the exclusive benefit of only the TIFIA Lender.

(b) The TIFIA Debt Service Reserve Sub-Account shall be funded (i) on or prior to the SC Milestone Payment Date, from available amounts on deposit in the Construction Account (from amounts other than those on deposit in the Series 2017 Bonds Proceeds Sub-Account and otherwise subject to the Tax Regulatory Agreement) pursuant to Section 5.02(f), or from other amounts available to the Borrower, in an amount equal to the TIFIA Debt Service Reserve Required Balance (as calculated on such date); and (ii) after the SC Milestone Payment Date, in accordance with clause “Ninth” of Section 5.03(b) or, upon and following the occurrence of a Borrower Bankruptcy Related Event, clause “Eighth” of Section 5.03(b). Any amounts on deposit in the TIFIA Debt Service Reserve Sub-Account in excess of the TIFIA Debt Service Reserve Required Balance (including as a result of funding of the TIFIA Debt Service Reserve Sub-Account with an Acceptable Letter of Credit) shall, subject to Section 5.22(d), be deposited into the Revenue Account for application pursuant to Section 5.03.

(c) To the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, funds on deposit in the TIFIA Debt Service Reserve Sub-Account shall be used by the Collateral Agent (without the requirement of a Funds Transfer Certificate) as follows (provided that upon and following the occurrence of a Borrower Bankruptcy Related Event, funds on deposit in the TIFIA Debt Service Reserve Sub-Account shall be applied in accordance with Section 5.06(d)):

(i) if on any Monthly Transfer Date immediately preceding or occurring on an Interest Payment Date or Principal Payment Date, as applicable, with respect to the TIFIA Obligations, the funds on deposit in the TIFIA Interest Payment Sub-Account or the TIFIA Principal Payment Sub-Account available for the payment of the TIFIA Obligations (in each case, after giving effect to the transfers contemplated in clauses “Sixth” and “Seventh” of Section 5.03(b)) are insufficient to pay the principal, interest or any mandatory prepayment of or on the TIFIA Obligations, as applicable, on the applicable Interest Payment Date or Principal Payment Date, funds on deposit in the TIFIA Debt Service Reserve Sub-Account will be transferred to the TIFIA Interest Payment Sub-Account or the TIFIA Principal Payment Sub-Account for payment of interest or principal, as applicable, which shall become due and payable on the TIFIA Obligations as of such Interest Payment Date or Principal Payment Date, as applicable; and

(ii) following the taking of an Enforcement Action, moneys in the TIFIA Debt Service Reserve Sub-Account shall be applied in the manner set forth in Section 6.06.

(d) The TIFIA Debt Service Reserve Sub-Account may be funded with an Acceptable Letter of Credit at the option of the Borrower and otherwise in accordance with the provisions of this Agreement.

Section 5.08 Series 2021B Bonds Capitalized Interest Account.

(a) Proceeds from the issuance of the Series 2021A Bonds in an amount equal to \$[●] (the “**Series 2021B Bonds Capitalized Interest Amount**”) shall be deposited in the Series 2021B Bonds Capitalized Interest Account. The Series 2021B Bonds Capitalized Interest Account shall be pledged to the Collateral Agent solely for the benefit of the Owners of the Series 2021B Bonds and the Trustee.

(b) Moneys in the Series 2021B Bonds Capitalized Interest Account shall be applied in accordance with a Funds Transfer Certificate pursuant to Section 5.26 and in accordance with the terms of the Series 2021 Loan Agreement to pay, or reimburse for a prior payment of, interest payable with respect to the Series 2021B Bond Obligations.

Section 5.09 Series 2021B Bonds Repayment Account.

(a) The Series 2021B Bonds Repayment Account shall be funded (i) in accordance with Section 5.02(e)(ii) and (ii) with the disbursement of the TIFIA Loan, which shall be deposited in the Series 2021B Bonds Repayment Account. The Series 2021B Bonds Repayment Account shall be pledged to the Collateral Agent solely for the benefit of the Owners of the Series 2021B Bonds and the Trustee.

(b) Moneys in the Series 2021B Bonds Repayment Account shall be applied in accordance with a Funds Transfer Certificate pursuant to Section 5.26 and in accordance with the terms of the TIFIA Loan Agreement to pay, or reimburse for a prior payment of, all interest and principal payable with respect to the Series 2021B Bond Obligations. For the avoidance of doubt, moneys on deposit in the Series 2021B Bonds Repayment Account shall not be applied to fund the TIFIA Debt Service Reserve Sub-Account.

Section 5.10 Major Maintenance Reserve Account.

(a) The Major Maintenance Reserve Account shall be funded in an amount not to exceed the Major Maintenance Reserve Required Balance in accordance with the terms of [Section 16(m)(ii)] of the TIFIA Loan Agreement and clause “Third” of Section 5.03(b) to fund the Renewal Expenditures. Any amounts on deposit in the Major Maintenance Reserve Account in excess of the Major Maintenance Reserve Required Balance shall be transferred to the Revenue Account to be applied, on the next succeeding Monthly Transfer Date, pursuant to Section 5.03(b).

(b) At the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, the Collateral Agent shall make withdrawals, transfers and

payments from the Major Maintenance Reserve Account from time to time for the payment of Renewal Expenditures, including work needed to satisfy the Performance Requirements (as defined in the Project Agreement), including condition ratings, throughout the term of the Project Agreement and at the handback of the Project to the Enterprises. Amounts necessary to pay Renewal Expenditures shall be drawn first from the Major Maintenance Reserve Account prior to being drawn from the Operating Account or any Other Operating Account.

(c) The amounts on deposit in the Major Maintenance Reserve Account may be replaced with an Acceptable Letter of Credit at the option of the Borrower (subject to the *proviso* of the definition of “Major Maintenance Reserve Required Balance”), and upon such replacement amounts on deposit in the Major Maintenance Reserve Account in excess of the Major Maintenance Reserve Required Balance shall, at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, be transferred to the Distribution Account, to the account of any Sponsor (or its designee) or other Affiliate of the Borrower, or otherwise as may be specified by the Borrower pursuant to Section 5.22(d).

(d) To the extent that the Major Maintenance Reserve Required Balance has been funded with an Acceptable Letter of Credit, notwithstanding anything else herein to the contrary, such letter of credit may be reduced (or increased) on any Calculation Date such that the amount on deposit in the Major Maintenance Reserve Account is at least equal to the Major Maintenance Reserve Required Balance and the Collateral Agent agrees that, at the written instruction of the Borrower, accompanied by a copy of the then-current Annual LTA Report, the Collateral Agent shall submit to the applicable bank a reduction certificate (or certificate to increase the stated amount, as applicable) with respect to such letter of credit and execute and deliver any related consents or notices required thereunder, in each case, promptly following recalculation of the Major Maintenance Reserve Required Balance on any such Calculation Date; provided that, following any such increase or reduction, the amount on deposit in the Major Maintenance Reserve Account is at least equal to the Major Maintenance Reserve Required Balance.

Section 5.11 O&M Reserve Account.

(a) The O&M Reserve Account shall be funded in an amount not to exceed the O&M Reserve Required Balance in accordance with the terms of [Section 16(m)(iii) of the TIFIA Loan Agreement and clause “Tenth” of Section 5.03(b)]. Any amounts on deposit in the O&M Reserve Account in excess of the O&M Reserve Required Balance shall, subject to Section 5.11(d) and Section 5.22(d), be transferred to the Revenue Account to be applied, on the next succeeding Monthly Transfer Date, pursuant to Section 5.03(b).

(b) For so long as the TIFIA Obligations remain outstanding and either (i) the O&M Contract or (ii) any Material O&M Contract with a scope of work that is substantially similar to or greater than the scope of work of the O&M Contract is in effect, the Borrower shall not make or direct any withdrawal, transfer or payment from the O&M Reserve Account without the prior written consent of the TIFIA Lender.

(c) Subject to Section 5.11(b), if on any Monthly Transfer Date, after giving effect to the transfers made or contemplated to be made pursuant to clause “First” of Section

5.03(b), the funds on deposit in the Operating Account and any Other Operating Account that are available for the payment of Operations and Maintenance Expenses are insufficient to pay the Operations and Maintenance Expenses (excluding Renewal Expenditures) then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date, at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, the Collateral Agent shall make withdrawals, transfers and payments from the O&M Reserve Account, in an aggregate amount up to the amount of such deficiency, for the payment of such Operations and Maintenance Expenses (including by and through transfer to the Operating Account and/or any Other Operating Account).

(d) The amounts on deposit in the O&M Reserve Account may be replaced in whole or in part with an Acceptable Letter of Credit at the option of the Borrower, and upon such replacement amounts on deposit in the O&M Reserve Account in excess of the O&M Reserve Required Balance shall, at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, be transferred to the Distribution Account, to the account of any Sponsor (or its designee) or other Affiliate of the Borrower, or otherwise as may be specified by the Borrower pursuant to Section 5.22(d).

(e) To the extent that the O&M Reserve Required Balance has been funded with an Acceptable Letter of Credit, notwithstanding anything else herein to the contrary, such letter of credit may be reduced (or increased) on any Calculation Date such that the full remaining stated amount thereof equals the O&M Reserve Required Balance and the Collateral Agent agrees that, at the written instruction of the Borrower, accompanied by a copy of the then-current Annual LTA Report, the Collateral Agent shall submit to the applicable bank a reduction certificate (or certificate to increase the stated amount, as applicable) with respect to such letter of credit and execute and deliver any related consents or notices required thereunder, in each case, promptly following recalculation of the O&M Reserve Required Balance in accordance with [Section 16(m)(iii)] of the TIFIA Loan Agreement; provided that, following any such increase or reduction, the remaining stated amount of such Acceptable Letter of Credit is at least equal to the O&M Reserve Required Balance.

Section 5.12 Voluntary Prepayment Account.

(a) The Voluntary Prepayment Account shall be funded in accordance with clause “Thirteenth” of Section 5.03(b).

(b) Funds in the Voluntary Prepayment Account shall be applied (subject to the Tax Regulatory Agreement) to prepay or redeem the TIFIA Obligations and the Senior Secured Obligations at the direction of the Borrower and in accordance with the terms of the Financing Documents.

Section 5.13 Equity Lock-Up Account.

(a) The Equity Lock-Up Account shall be funded in accordance with clause “Fourteenth” of Section 5.03(b).

(b) At the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, funds on deposit in the Equity Lock-Up Account may be

transferred to the Distribution Account on any Restricted Payment Date upon satisfaction of the Restricted Payment Conditions with respect to the Restricted Payment Date and also with respect to the Calculation Date immediately preceding such Restricted Payment Date; provided that (i) on each of the Restricted Payment Date and such immediately preceding Calculation Date, an Authorized Representative of the Borrower shall have delivered to the Collateral Agent a certification substantially in the form of Exhibit C to the effect that the Restricted Payment Conditions have been satisfied with respect to the applicable Restricted Payment Date and such Calculation Date, and (ii) prior to any such transfer on the Restricted Payment Date, an Authorized Representative of the Borrower shall have delivered to the Collateral Agent (A) Senior Coverage Certificates with respect to the applicable Calculation Dates and (B) a copy of any certificate (including the applicable TIFIA Coverage Certificates) delivered to the TIFIA Lender pursuant to [Section 17(d)(ix)] of the TIFIA Loan Agreement relating to the satisfaction of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) with respect to the Restricted Payment Date and such immediately preceding Calculation Date.

(c) Funds on deposit in the Equity Lock-Up Account shall be transferred to the Mandatory Prepayment Account for application in respect of mandatory prepayments required in accordance with Section 5.17 and the Financing Documents, which shall include the transfer to the Mandatory Prepayment Account of any amounts that have remained in the Equity Lock-Up Account for at least twenty-four (24) months as of any Calculation Date, which amounts shall be applied to the prepayment of the TIFIA Obligations.

Section 5.14 Distribution Account.

(a) The Distribution Account shall be funded in accordance with and subject to clause “Fifteenth” of Section 5.03(b) and Section 5.13(b); provided that, prior to any transfer pursuant to clause “Fifteenth” of Section 5.03(b) on a Restricted Payment Date, an Authorized Representative of the Borrower shall have delivered to the Collateral Agent (i) a certification substantially in the form of Exhibit C to the effect that the Restricted Payment Conditions have been satisfied with respect to the applicable Restricted Payment Date and (ii) (A) a Senior Coverage Certificate with respect to the applicable Calculation Date and (B) a copy of any certificate (including the applicable TIFIA Coverage Certificate) delivered to the TIFIA Lender pursuant to [Section 17(d)(ix)] of the TIFIA Loan Agreement relating to the satisfaction of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) with respect to the applicable Restricted Payment Date.

(b) Funds on deposit in the Distribution Account may be distributed to an account (or to such Person) as directed by the Borrower in its sole discretion, including to make Restricted Payments and Permitted Distributions.

Section 5.15 Operating Account.

(a) The Operating Account (and any Other Operating Account) shall be funded (i) in accordance with clauses “First” and “Twelfth” of Section 5.03(b), (ii) with amounts transferred from the Major Maintenance Reserve Account in accordance with Section 5.10(b), (iii) with amounts transferred from the O&M Reserve Account in accordance with Section 5.11(c), (iv) with amounts transferred from the Loss Proceeds Account in accordance with

Section 5.16(b) and (v) pursuant to transfers from the Construction Account (and the sub-accounts thereof) to facilitate the payment (or reimbursement of the prior payment) of Project Costs in accordance with Section 5.02 and subject to the Tax Regulatory Agreement.

(b) The Borrower shall apply amounts on deposit in the Operating Account (and any Other Operating Account) as follows: (i) amounts transferred thereto as described in clause (i) of Section 5.15(a) shall be applied to the payment of Operations and Maintenance Expenses or Discretionary Capital Expenditures, as the case may be; (ii) amounts transferred thereto as described in clause (ii) of Section 5.15(a) shall be applied to the payment of Renewal Expenditures; (iii) amounts transferred thereto as described in clause (iii) of Section 5.15(a) shall be applied to the payment of Project Costs in connection with the restoration of the Project; and (iv) amounts transferred thereto as described in clause (iv) of Section 5.15(a) shall be applied to the payment of Project Costs and for the purposes set forth in the Approved Construction Requisitions delivered pursuant to Section 5.02 and Section 5.26(a). For the avoidance of doubt, unless an Enforcement Action has been taken and has not ceased to be exercised by the Collateral Agent (acting on the instructions of the Intercreditor Agent), the Borrower shall have the right to make withdrawals from the Operating Account (and any Other Operating Account) without further approval from the Secured Parties. Any amounts (if any) on deposit in the Operating Account (and any Other Operating Account) from time to time that have been transferred to the Operating Account (or any Other Operating Account) as set forth in clauses (i) through (iv) of this Section 5.15(b), but have neither been used to pay, nor been allocated to the future payment of, such expenditures or costs, shall be taken into account (without duplication) when transferring amounts pursuant to the applicable clause of Section 5.15(a).

Section 5.16 Loss Proceeds Account.

(a) All Loss Proceeds shall to be deposited directly into the Loss Proceeds Account; provided that any Loss Proceeds deposited into the Loss Proceeds Account that are required to be deposited in the Physical Damage Proceeds Reserve (as defined in the Project Agreement) in accordance with Section 25.5.2 of the Project Agreement shall be promptly transferred to the Physical Damage Proceeds Reserve in accordance with Section 25.5.2.a of the Project Agreement, at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26. For the avoidance of doubt, any Physical Damage Proceeds that are returned to the Borrower by the Enterprises pursuant to Section 25.5.2.c of the Project Agreement (such proceeds, “**Returned Loss Proceeds**”) shall be deposited directly into the Loss Proceeds Account.

(b) Amounts on deposit in the Loss Proceeds Account shall be transferred to the Operating Account (and/or any Other Operating Account) or other accounts and/or payees in accordance with Funds Transfer Certificates (provided that such transfers to the Operating Account and/or any Other Operating Account shall take into account any unallocated amounts then on deposit therein pursuant to Section 5.15(b)) and such transferred amounts shall be applied to restoration of the Project or any portion thereof in accordance with the requirements of the Project Agreement (and the parties hereto acknowledge that Section 25.5.1 of the Project Agreement requires, as of December 19, 2017, that all insurance proceeds received under the Insurance Policies (as defined in the Project Agreement) in respect of physical property damage to the Work or the Project (excluding any delay in startup or business interruption insurance

maintained as part of such policies), shall be first applied to repair, reconstruct, reinstate and replace each part of the Work and the Project in respect of which such proceeds were received in accordance with Section 25 of the Project Agreement), provided that, if (i) the Loss Proceeds on deposit in the Loss Proceeds Account exceed the amount required to restore the Project or any portion thereof to the condition required by the Project Agreement or the Project Agreement requires restoration of the Project but does not specify that the Project or such affected portion thereof be restored to the condition existing prior to the event of loss or (ii) such Loss Proceeds will not be used to restore the Project due to (A) the Project Agreement not requiring that such proceeds be so applied, (B) such Loss Proceeds constituting Returned Loss Proceeds or (C) the waiver by the Enterprises, or other amendment, of Section 25.5.1 of the Project Agreement, unless required to be disposed of in another manner pursuant to the terms of such waiver or amendment (other than by transfer to the Distribution Account or other distribution to the Sponsors) (subject to any consent requirement in respect of such waiver or amendment pursuant to the Financing Documents), and the Financing Documents otherwise require prepayment of the Secured Obligations with such amounts (any amounts described in clause (i) or (ii) above, “**Net Loss Proceeds**”), such Net Loss Proceeds will be transferred to the Mandatory Prepayment Account to cause the extraordinary mandatory redemption or mandatory prepayment, as applicable, of the Senior Secured Obligations and the TIFIA Obligations on a *pro rata* basis and in accordance with the related Financing Documents. Any Loss Proceeds remaining in the Loss Proceeds Account after the transfers described in this Section 5.16(b) shall be transferred to the Revenue Account.

(c) If an amount of any insurance claim on deposit in or credited to Loss Proceeds Account has been paid out of moneys withdrawn from the Revenue Account in accordance with Section 5.03 hereof, then the Borrower may cause the transfer of moneys representing the proceeds of the claim from the Loss Proceeds Account to the Revenue Account.

(d) Proceeds in respect of business interruption or delay in startup insurance (net of any amounts payable therefrom to the Enterprises pursuant to Section 15.6 of the Project Agreement) shall be deposited into the Loss Proceeds Account and shall be withdrawn from the Loss Proceeds Account and transferred to (i) prior to the Substantial Completion Date, the Construction Account and (ii) on and after the Substantial Completion Date, the Revenue Account, in each case, in a manner commensurate with the period of interruption or delay for which such insurance is intended to correspond.

(e) Following the taking of an Enforcement Action, only Net Loss Proceeds and amounts deposited in accordance with clause (d) of this Section 5.16 shall be withdrawn from the Loss Proceeds Account and applied in the manner set forth in Section 6.06.

Section 5.17 Mandatory Prepayment Account.

(a) The Mandatory Prepayment Account shall be funded as follows:

(i) from Net Loss Proceeds transferred to the Mandatory Prepayment Account from the Loss Proceeds Account in accordance with Section 5.16(b);

(ii) from proceeds of any Termination Amount received from the Enterprises under the Project Agreement and transferred from the Termination Compensation Account to the Mandatory Prepayment Account in accordance with Section 5.21(b);

(iii) from amounts transferred from the Equity Lock-Up Account to the Mandatory Prepayment Account in accordance with Section 5.13(c);

(iv) from amounts transferred from the Series 2017 Bonds Proceeds Sub-Account in accordance with Section 5.02(i)(i)C; and

(v) from amounts transferred from the Construction Account in accordance with Section 5.02(f)(iii) to make a mandatory prepayment of the TIFIA Loan in accordance with [Section 10(a)(iv)] of the TIFIA Loan Agreement.

(b) Funds deposited into the Mandatory Prepayment Account will be transferred into the Series 2017 Bonds Mandatory Prepayment Sub-Account, the Series 2021A Bonds Mandatory Prepayment Sub-Account, the Series 2021B Bonds Mandatory Prepayment Sub-Account and/or the TIFIA Mandatory Prepayment Sub-Account and/or any other sub-account of the Mandatory Prepayment Account established for any other Secured Obligations in accordance with the provisions of this Section 5.17 for prepayment and redemption of the Series 2017 Bonds, the Series 2021A Bonds, the Series 2021B Bonds, the TIFIA Loan and any other Secured Obligations to the extent required to be repaid thereby (and solely to the extent expressly required, on a pro rata basis based on the then outstanding principal amounts of the TIFIA Loan, the Series 2017 Bonds, the Series 2021A Bonds, the Series 2021B Bonds, and such other Senior Secured Obligations) in accordance with the terms of the Financing Documents and the other provisions of this Agreement at such redemption prices and required prepayment amounts as and to the extent contemplated herein and therein; provided that amounts on deposit in the Series 2017 Bonds Mandatory Prepayment Sub-Account, the Series 2021A Bonds Mandatory Prepayment Sub-Account, the Series 2021B Bonds Mandatory Prepayment Sub-Account and/or the TIFIA Mandatory Prepayment Sub-Account and/or any other sub-account established for any other Secured Obligations shall be transferred by the Collateral Agent to (x) the Trustee for deposit into the applicable sub-account of the Series 2017 Debt Service Fund, the Series 2021A Debt Service Fund, the Series 2021B Debt Service Fund or other debt service fund applicable to the Series 2017 Bonds, the Series 2021A Bonds or the Series 2021B Bonds, as the case may be, (y) to the TIFIA Lender or (z) to any other applicable Secured Party (or representative or account thereof) for the mandatory redemption and/or mandatory prepayment of the related Secured Obligations, in each case at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26.

(c) Notwithstanding anything to the contrary herein and subject to Section 6.06(c) hereof, (i) the Series 2017 Bonds Mandatory Prepayment Sub-Account shall be pledged solely as collateral to secure the Series 2017 Bonds and shall be established solely for the benefit of the Owners of the Series 2017 Bonds, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such Owners, (ii) the Series 2021A Bonds Mandatory Prepayment Sub-Account shall be pledged solely as collateral to secure the Series 2021A Bonds and shall be established solely for the benefit of the Owners of the Series 2021A

Bonds, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such Owners, (iii) the Series 2021B Bonds Mandatory Prepayment Sub-Account shall be pledged solely as collateral to secure the Series 2021B Bonds and shall be established solely for the benefit of the Owners of the Series 2021B Bonds, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such Owners, (iv) the TIFIA Mandatory Prepayment Sub-Account shall be pledged solely as collateral to secure the TIFIA Loan and shall be established solely for the benefit of the TIFIA Lender, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only the TIFIA Lender and (v) any other sub-account of the Mandatory Prepayment Account established for any other Secured Obligations shall be pledged solely as collateral to secure the related Secured Obligations and shall be established solely for the benefit of the related Secured Parties, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such related Secured Parties.

Section 5.18 Handback Reserve Account.

(a) The Handback Reserve Account shall be established on or prior to the date required under the Project Agreement. The Handback Reserve Account shall be funded in an amount not to exceed the Handback Reserve Required Balance in accordance with clause “Eleventh” of Section 5.03(b) and the requirements of the Project Agreement. The Handback Reserve Account shall not constitute a Project Account and shall not be subject to the Security Interest of the Collateral Agent for the benefit of the Secured Parties.

(b) Any amounts on deposit in the Handback Reserve Account in excess of the Handback Reserve Required Balance shall, subject to Section 5.18(d) and Section 4.2.b.ii of Schedule 12 to the Project Agreement, be transferred to the Revenue Account to be applied, on the next succeeding Monthly Transfer Date, pursuant to Section 5.03(b).

(c) At the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.26, the Collateral Agent shall make withdrawals from the Handback Reserve Account to pay the costs of Handback Work; provided that no such transfer instruction shall be made by the Borrower except to the extent permitted under Section 4.4 of Schedule 12 to the Project Agreement.

(d) The amounts on deposit in the Handback Reserve Account may be replaced in whole or in part with an Acceptable Letter of Credit (which satisfies the requirements of a Handback Letter of Credit under and as defined in the Project Agreement) at the option of the Borrower, and upon such replacement amounts on deposit in the Handback Reserve Account in excess of the Handback Reserve Required Balance shall, at the instruction of the Borrower in accordance with Section 4.2.b.ii of Schedule 12 to the Project Agreement and a Funds Transfer Certificate pursuant to Section 5.26, be transferred to the Distribution Account, to the account of any Sponsor (or its designee) or other Affiliate of the Borrower.

(e) If the Termination Date (as defined in the Project Agreement) occurs prior to the issuance of a Handback Certificate (as defined in the Project Agreement), the amounts on deposit in the Handback Reserve Account as of the Termination Date shall be transferred to the Enterprises as may be specified to the Collateral Agent by the Enterprises.

Section 5.19 Construction Reserve Account.

(a) The Construction Reserve Account shall be funded on the SC Milestone Payment Date from available amounts on deposit in the Construction Account (and the sub-accounts thereof other than the Series 2017 Bonds Proceeds Sub-Account, the Series 2021A Bonds Proceeds Sub-Account and the Series 2021B Bonds Proceeds Sub-Account) pursuant to Section 5.02(e) up to the Construction Completion Amount.

(b) On the Final Acceptance Date, the Collateral Agent shall confirm that all transfers related to the Approved Construction Requisitions received by it have been made pursuant to Section 5.02(b), and on or prior to such date, an Authorized Representative of the Borrower shall deliver to the Collateral Agent and the Intercreditor Agent a copy, certified by such Authorized Representative as true and complete, of the Final Acceptance Certificate. On the Final Acceptance Date, all funds then on deposit in the Construction Reserve Account or any sub-accounts thereof, subject to any limitations on uses of any remaining Series 2017 Bonds proceeds set forth in the Tax Regulatory Agreement, shall be transferred to the Revenue Account pursuant to written notice by an Authorized Representative of the Borrower to the Collateral Agent and, as soon as practicable following such transfer, the Construction Reserve Account shall be closed.

Section 5.20 Sponsor Cash Collateral Account.

(a) The Applicable Sponsor Cash Collateral Account relating to each Sponsor shall be funded with (i) amounts received from, or on behalf of, such Sponsor in accordance with the Equity Contribution Agreement and (ii) the proceeds of any drawing upon such Sponsor's Equity Letter of Credit in accordance with the Equity Contribution Agreement.

(b) Funds in an Applicable Sponsor Cash Collateral Account shall be transferred to (i) the Equity Funding Sub-Account of the Construction Account on each Capital Contribution Date (as defined in the Equity Contribution Agreement) or (ii) the Collateral Agent in accordance with Section 5.1 of the Equity Contribution Agreement (for the avoidance of doubt, in each case of this clause (b), without transfer of such funds to the Revenue Account for application pursuant to Section 5.03(b) or satisfaction of the Restricted Payment Conditions).

Section 5.21 Termination Compensation Account.

(a) The Termination Compensation Account shall be funded with the Termination Amount, if any, received by the Borrower from the Enterprises in respect of a termination of the Project Agreement.

(b) In accordance with a Funds Transfer Certificate pursuant to Section 5.26, funds on deposit in the Termination Compensation Account shall be applied in the following order of priority:

First, to repay, prepay or redeem the outstanding Applicable Senior Secured Obligations in full by transfer to the Mandatory Prepayment Account to be applied in accordance with the terms hereof and of the applicable Financing Documents;

Second, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, to repay or prepay the outstanding TIFIA Obligations in full by transfer to the Mandatory Prepayment Account to be applied in accordance with the terms hereof and of the TIFIA Loan Agreement; and

Third, any remaining amounts shall be paid (for the avoidance of doubt, without the delivery of a Funds Transfer Certificate, transfer of such funds to the Revenue Account, application of funds pursuant to Section 5.03(b) or satisfaction of the Restricted Payment Conditions) to the Distribution Account;

provided that, except to the extent the TIFIA Obligations qualify as Applicable Senior Secured Obligations, in any case where the applicable Termination Amount is in an amount less than 100% of the Borrower's aggregate outstanding Indebtedness, the Termination Amount shall be allocated between the Applicable Senior Secured Obligations and the TIFIA Obligations *pro rata* based on the outstanding principal of such respective Indebtedness.

Section 5.22 Reserve Accounts; Reserve Letters of Credit.

(a) The Applicable Reserve Requirement of any Reserve Account may be funded from time to time by any Acceptable Reserve Letter of Credit (subject, in the case of the Major Maintenance Reserve Account, to the *proviso* of the definition of "Major Maintenance Reserve Required Balance").

(b) If, at any time:

(i) the issuer of any Applicable Reserve Letter of Credit fails to satisfy the requirements of a Qualified Issuer (notice of which shall promptly be provided by the Borrower to the Collateral Agent) and, within ten (10) days of the date on which the existing issuer ceased to be a Qualified Issuer, the Borrower fails to replace such Applicable Reserve Letter of Credit with either cash or another Acceptable Letter of Credit from a Qualified Issuer; or

(ii) any Applicable Reserve Letter of Credit will expire within thirty (30) days and (A) the Collateral Agent has received a notice from the issuer thereof that such Applicable Reserve Letter of Credit will not be renewed in accordance with its terms and (B) the Borrower has failed to replace such Applicable Reserve Letter of Credit, prior to the date that is thirty (30) days prior to the stated expiration date thereof, with either cash or another Acceptable Letter of Credit from a Qualified Issuer,

then the Collateral Agent shall make a drawing upon any such Applicable Reserve Letter of Credit in an amount equal to the full remaining stated amount under such Applicable Reserve Letter of Credit. The proceeds of any such drawing upon any such Applicable Reserve Letter of Credit shall be deposited into the Reserve Account to which such Applicable Reserve Letter of Credit was credited by the Collateral Agent.

(c) On any date that the Collateral Agent is required or permitted to withdraw funds from any Reserve Account, the Collateral Agent shall, in the following order of priority:

(i) first, withdraw available cash, if any, on deposit in such Reserve Account; (ii) second, liquidate Permitted Investments, if any, held in such Reserve Account and withdraw the proceeds of such liquidation; and (iii) third, make a *pro rata* drawing under each Applicable Reserve Letter of Credit (if any) in respect of such Reserve Account.

(d) At the written request of an Authorized Representative of the Borrower, the Collateral Agent shall release funds from any Reserve Account (subject, in the case of the Major Maintenance Reserve Account, to the *proviso* of the definition of “Major Maintenance Reserve Required Balance”) in the event that the Borrower has delivered (or has caused to be delivered) to the Collateral Agent an Applicable Reserve Letter of Credit in a stated amount at least equal to the amount of funds to be released from such Reserve Account; provided that, following such release, the amount on deposit in the applicable Reserve Account (taking into account the stated amount of any Acceptable Letters of Credit provided with respect to such Reserve Account) is at least equal to the Applicable Reserve Requirement. Any amounts so released shall be transferred directly (for the avoidance of doubt, without the delivery of a Funds Transfer Certificate, transfer of such funds to the Revenue Account for application pursuant to Section 5.03(b) or satisfaction of the Restricted Payment Conditions) to the Distribution Account, to the account of any Sponsor (or its designee) or other Affiliate of the Borrower, or otherwise as may be specified by the Borrower in a written direction to the Collateral Agent from an Authorized Representative of the Borrower on the date specified in such written direction. The Collateral Agent shall credit any such additional Applicable Reserve Letter of Credit to the applicable Reserve Account.

Section 5.23 Invasion of Accounts. One (1) Business Day prior to any Monthly Transfer Date on which disbursements are required to be made from the Revenue Account pursuant to clauses “First” through “Eleventh” under Section 5.03(b), if the amounts on deposit in the Revenue Account or credited thereto are not sufficient to make such disbursements, the Collateral Agent shall transfer on such date funds, *first*, from the Equity Lock-Up Account, *second*, from the Voluntary Prepayment Account, *third*, from the O&M Reserve Account, and *fourth*, from the Major Maintenance Reserve Account, in each case in order to fund deficiencies in such clauses “First” through “Eleventh” under Section 5.03(b); provided that (a) no amounts shall be withdrawn as set forth in this sentence until amounts sufficient as of the date of such deficiency for all the purposes specified under higher-ranking clauses shall have been withdrawn or set aside, in the amount of such deficiency and (b) for purposes of any mandatory prepayment of the TIFIA Loan with amounts on deposit in the Equity Lock-Up Account in accordance with Section 5.16, the funds in the Equity Lock-Up Account transferred to pay amounts pursuant to Section 5.03(b) shall be deemed withdrawn from the Equity Lock-Up Account in inverse order of deposits, with the deposits in respect of the most recent Restricted Payment Date being applied to such payments prior to deposits in respect of prior Restricted Payment Dates.

Section 5.24 Funds as Collateral. Any deposit made into the Project Accounts hereunder (except through clerical or other manifest error or in a manner that is otherwise inconsistent with this Agreement) shall be irrevocable and all cash, cash equivalents, Permitted Investments, instruments, and other Securities on deposit in the Project Accounts shall be subject to a Security Interest in favor of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Agreement and shall be held by the Collateral Agent as Collateral for the benefit of the Secured Parties as provided herein.

Section 5.25 Investment.

(a) Funds in the Project Accounts may be invested and reinvested only in Permitted Investments (at the risk and expense of the Borrower) in accordance with written instructions given to the Collateral Agent by the Borrower (prior to the occurrence of an Event of Default) or by the Intercreditor Agent (after the occurrence and during the continuance of an Event of Default). Unless an Event of Default has occurred and is continuing, the Borrower shall be entitled to instruct the Collateral Agent to liquidate Permitted Investments for purposes of effecting any such investment or reinvestment, upon permitted withdrawals from the respective accounts or for any other purpose permitted hereunder; provided, that absent such instruction, such amounts held in the Project Accounts shall be invested and reinvested in Permitted Investments as selected by the Borrower in advance (which may be in the form of a standing instruction). The Collateral Agent shall not be required to take any action with respect to investing the funds in any Project Account in the absence of written instructions by the Borrower or the Intercreditor Agent (to the extent provided in accordance with the terms hereof). The Collateral Agent shall not be liable for any loss resulting from any Permitted Investment or the sale or redemption thereof made in accordance with the terms hereof. If and when cash is required for disbursement in accordance with this Article V or Section 6.06 hereof, the Collateral Agent is authorized, in the event the Borrower fails to direct the Collateral Agent to do so in a timely manner and to the extent necessary to make payments required pursuant to this Article V or Section 6.06 hereof, to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Collateral Agent shall deem reasonable under the circumstances. The Borrower acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Borrower specifically waives receipt of such confirmations to the extent permitted by law. The Collateral Agent will provide the Borrower periodic cash transaction statements which shall include detail for all investment transactions made by the Collateral Agent hereunder.

(b) The Collateral Agent shall have no obligation to invest or reinvest the funds if all or a portion of the funds is deposited with (or instructions with respect to the same are given to) the Collateral Agent after 11 a.m. (E.S.T. or E.D.T., as applicable) on the day of deposit. Instructions to invest or reinvest that are received after 11 a.m. (E.S.T. or E.D.T., as applicable) will be treated as if received on the following Business Day.

(c) In the event the Collateral Agent does not receive investment instructions, the amounts held by the Collateral Agent pursuant to the provisions of this Agreement shall not be invested and the Collateral Agent shall not incur any liability for interest or income thereon.

(d) The parties hereto each acknowledge that non-deposit investment products are not obligations of or guaranteed by U.S. Bank National Association nor any of its affiliates, are not FDIC insured, and are subject to investment risks, including the possible loss of principal amount invested in one or more of the money market funds made available by the Collateral Agent and initially selected by the Borrower.

(e) Any investment direction contained herein may be executed through an affiliated broker or dealer of the Collateral Agent and any such affiliated broker or dealer shall be

entitled to such broker's or dealer's usual and customary fees for such execution as agreed to by the Borrower. It is agreed and understood that the Collateral Agent may earn fees associated with the investments outlined above to the extent previously agreed with the Borrower. Neither the Collateral Agent nor its affiliates shall have a duty to monitor the investment ratings of any Permitted Investments.

(f) Investments may be held by the Collateral Agent directly or through any clearing agency or depository (collectively, the “**Clearing Agency**”) including the federal reserve/treasury book-entry system for United States and federal agency securities, and The Depository Trust Company. The Collateral Agent shall not have any responsibility or liability for the actions or omissions to act on the part of any Clearing Agency.

Section 5.26 Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default.

(a) Each withdrawal or transfer of funds from the Construction Account or the Construction Reserve Account by the Collateral Agent on behalf of the Borrower in accordance herewith (other than with respect to certain transfers pursuant to Section 5.02(c), Section 5.02(d), Section 5.02(e), Section 5.02(f), Section 5.02(h), Section 5.06(b)(ii), Section 5.06(c)(ii) and Section 5.07(b)(ii), and upon closure of the Construction Account pursuant to Section 5.02(g)) shall be made pursuant to an Approved Construction Requisition in accordance with Section 5.02 and this Section 5.26(a). Amounts in the Construction Account and the Construction Reserve Account will be transferred by the Collateral Agent as directed in the applicable Construction Requisition Certificate to pay Project Costs (or to the Operating Account or any Other Operating Account for the payment therefrom of Project Costs) in accordance with Section 5.02 upon receipt by the Intercreditor Agent and the Collateral Agent of the following documents and satisfaction of the following conditions, as applicable, not later than the third (3rd) Business Day prior to the proposed Construction Funds Transfer Date (or such shorter period as is acceptable to the Collateral Agent and the Intercreditor Agent):

(i) to the extent applicable pursuant to the terms of this Section 5.26, a duly executed Construction Requisition Certificate from the Borrower (1) setting forth the amount(s) requested to be transferred on such Construction Funds Transfer Date and the applicable accounts or payees to which such amount(s) shall be transferred (with the description of each purpose therefor); and (2) certifying as to the following, as applicable, as of such date of transfer:

A. no Event of Default under the Series 2017 Loan Agreement or the Series 2021 Loan Agreement has occurred and is continuing (unless such disbursement will cure such Event of Default);

B. no Funding Shortfall exists; and

C. all amounts requisitioned in such Construction Requisition Certificate relate to Project Costs that have been incurred or are reasonably projected to be incurred within the next thirty-five (35) days and none have been the basis for a prior requisition that has been paid; and

(ii) a duly executed Technical Advisor Certificate certifying that, in the reasonable opinion of the Lenders' Technical Advisor:

A. for any funds to be applied to Project Costs for construction work under the Construction Contract, such funds are for payment in respect of actual work completed or work reasonably projected to be completed (except with respect to the initial funding of the Construction Reserve Account);

B. no Funding Shortfall exists;

C. all amounts requisitioned in the related Construction Requisition Certificate relate to Project Costs that have been incurred or are reasonably projected to be incurred within the next thirty-five (35) days and none have been the basis for a prior requisition that has been paid; and

D. Milestone Completion for Milestone 5B is reasonably expected to be achieved on or prior to the Longstop Date;

provided, however, that upon a determination by the Lenders' Technical Advisor that Milestone Completion for Milestone 5B will not occur on or prior to the Longstop Date, a transfer from the Construction Account (or any sub-account thereof) will be allowed so long as Lenders' Technical Advisor is satisfied with the Borrower's remedial plan demonstrating that Milestone Completion for Milestone 5B can be achieved on or prior to the Longstop Date, which satisfaction must be evidenced by certification thereof by the Lenders' Technical Advisor; provided, further, however, that none of the foregoing requirements of this clause (ii) will apply to transfers on any Construction Funds Transfer Date of amounts with respect to Project Costs constituting administrative expenses of the Borrower, including personnel, insurance and lease expenses;

provided, further, that, (x) with respect to the payment of Project Costs constituting the payment of interest on the Senior Secured Obligations or the TIFIA Loan, fees payable to any Agent, other Secured Parties or any rating agencies, or the costs of issuance of the Senior Secured Obligations or the TIFIA Loan, the requirements of clause (i)(1) of this Section 5.26(a) will be the sole condition to the transfer on any Construction Funds Transfer Date of amounts to pay such Project Costs and (y) with respect to transfers on a Construction Funds Transfer Date on or after the SC Milestone Payment Date from amounts in the Construction Reserve Account (including any sub-account thereof) comprising the Construction Completion Amount to pay Project Costs, each of the conditions described in foregoing clauses (i) and (ii) of this Section 5.26(a) will apply to the applicable transfer other than clause (i)(2)(B) and clauses (ii)(B) and (ii)(D) of this Section 5.26(a).

(b) Except as provided in Section 5.06(d), Section 5.07(c), Section 5.14, Section 5.22(d) and Section 5.26(f), each withdrawal or transfer of funds from the Project Accounts (other than from the Construction Account or the Construction Reserve Account (subject to Section 5.02(c), Section 5.02(d), Section 5.02(e), Section 5.02(f) and Section 5.02(h), Section 5.06(b)(ii), Section 5.06(c)(ii) and Section 5.07(b)(ii), with respect to each of which a

Funds Transfer Certificate will be provided) or the Operating Account or the Other Operating Accounts) by the Collateral Agent on behalf of the Borrower will be made pursuant to an executed Funds Transfer Certificate delivered to the Collateral Agent (with respect to withdrawals or transfers from the Reserve Account, no more frequently than once per month), which certificate will be provided and prepared by the Borrower and will contain a certification by the Borrower, as applicable, that such withdrawal or transfer complies with the requirements of this Agreement.

(c) Unless a shorter period is acceptable to the Collateral Agent, such Funds Transfer Certificate relating to each applicable Project Account (other than the Construction Account, the Construction Reserve Account, the Operating Account or the Other Operating Accounts) will be delivered to the Collateral Agent no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn or transferred. In the event that a Funds Transfer Certificate does not comply with the requirements of this Agreement and the other Financing Documents, the Collateral Agent has the right to reject such certificate and the Borrower will not be entitled to cause the proposed withdrawal or transfer until it has submitted a revised and compliant certificate.

(d) The Borrower shall, in the absence of an Event of Default that has occurred and is continuing, be entitled to withdraw funds from all of the Project Accounts contemplated herein for the purposes (and in accordance with the terms) set forth herein. For the avoidance of doubt, subject to the following clause (f), the Borrower will have the right to withdraw or cause to be transferred funds from the Operating Account, solely for the purposes set forth in Section 5.15, at any time without approval or consent of the Intercreditor Agent, the Collateral Agent, or any other Person, so long as such withdrawal is effected in accordance with the terms of this Agreement.

(e) The Borrower shall deliver to the Collateral Agent at least two (2) Business Days prior to each Restricted Payment Date (i) a Senior Coverage Certificate with respect to the immediately preceding Calculation Date or the Restricted Payment Date if such date is a Calculation Date and (ii) a copy of the certificate (including the applicable TIFIA Coverage Certificate) delivered to the TIFIA Lender pursuant to [Section 17(d)(ix)] of the TIFIA Loan Agreement with respect to the satisfaction of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) as of the immediately preceding Calculation Date or the Restricted Payment Date if such date is a Calculation Date.

(f) Notwithstanding anything to the contrary contained in this Agreement, upon receipt of a notice of an Event of Default and during the continuance of the related Event of Default, the Intercreditor Agent may (i) in connection with or following the taking of an Enforcement Action, without consent of the Borrower, instruct the Collateral Agent in writing to apply proceeds of the Project Accounts to the payment of Secured Obligations, in accordance with the terms of this Agreement and the Intercreditor Agreement and in the order set forth in Section 6.06, so long as such payments are on account of amounts due under the Financing Documents in respect of such Secured Obligations and (ii) at any time prior to the taking of an Enforcement Action, instruct the Collateral Agent to apply the proceeds of the Project Accounts in the order set forth in Section 5.03(b); provided, that in the case of this clause (ii), amounts on deposit in the Construction Account, the Construction Reserve Account, any Senior Debt Service

Reserve Sub-Account and the TIFIA Debt Service Reserve Sub-Account may only be applied in accordance with the provisions of Section 5.02, Section 5.06 and Section 5.07, respectively.

Section 5.27 Termination of Project Accounts. Upon the payment in full in cash of the Secured Obligations, this Agreement will terminate, and the Collateral Agent will, within thirty (30) days of receipt of a request from the Borrower, countersigned by the Intercreditor Agent, and at the expense of the Borrower, close the Project Accounts (other than the Operating Account and the Other Operating Accounts which will remain in existence at the full discretion of the Borrower) and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by the Borrower. Thereafter, the Collateral Agent will be released from any further obligation to (a) comply with Entitlement Orders originated by the Intercreditor Agent to the extent that any of the Project Accounts (other than the Operating Account and the Other Operating Accounts) is a “securities account” under the applicable provision of the UCC or (b) comply with instructions originated by the Intercreditor Agent, to the extent that any of the Project Accounts (other than the Operating Account and the Other Operating Accounts) is a “deposit account” under the applicable provision of the UCC or (c) comply with any obligation under any Financing Document except as specifically provided herein or therein, in each case as contemplated herein or therein. Nothing contained in this Section 5.27 will be construed to modify or otherwise affect the Collateral Agent’s Security Interest in the Project Accounts and the funds therein, prior to such closure and liquidation and/or transfer in accordance with the terms hereof.

Section 5.28 Securities Intermediary.

(a) The Securities Accounts shall be established and maintained as securities accounts (within the meaning of Section 8-501(a) of the UCC) with a securities intermediary. Each of the parties to this Agreement, including the Intercreditor Agent and Collateral Agent on behalf of the Secured Parties, hereby agrees that U.S. Bank National Association (or any successor thereto) shall act as the securities intermediary (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) (in such capacity, the “**Securities Intermediary**”) under and for the purposes of this Agreement and for so long as U.S. Bank National Association (or any successor thereto) is the Collateral Agent.

(b) The Securities Intermediary hereby accepts and agrees to act as such under this Agreement and represents and warrants that it is as of December 19, 2017, and shall be for so long as it is the Securities Intermediary hereunder, a banking corporation or a national bank that in the ordinary course of its business maintains securities accounts for others, meets the requirements and qualifications set forth in the first sentence of Section 5.28(e) and is acting in that capacity hereunder. The Securities Intermediary agrees with the parties hereto that each of the Securities Accounts shall be an account to which Financial Assets may be credited and undertakes to treat the Collateral Agent as entitled to exercise the rights that comprise such Financial Assets. The Securities Intermediary agrees with the parties hereto that each item of property credited to each Securities Account shall be treated as a Financial Asset. Each of the Collateral Agent and the Securities Intermediary represents and warrants that it has not entered into any agreement or taken any other action that gives any Person other than the Collateral Agent control over any of the Securities Accounts or that is otherwise inconsistent with this

Agreement. Each of the Collateral Agent and the Securities Intermediary agrees that it shall not become a party to any agreement or take any action that gives any Person other than the Collateral Agent control over any of the Securities Accounts or that is otherwise inconsistent with this Agreement. The Securities Intermediary agrees that any Financial Assets credited to such Securities Accounts, or any “securities entitlement” (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, shall not be subject to any Security Interest or right of set-off in favor of the Securities Intermediary or anyone claiming through the Securities Intermediary (other than the Collateral Agent). The Securities Intermediary hereby represents that, except for the claims and interests of the Collateral Agent and the Borrower in the Securities Accounts, the Securities Intermediary has no knowledge of, and has received no notice of, any claim to, or interest in, any Securities Account. If any Person asserts any lien (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against any Securities Account, the Securities Intermediary, upon obtaining written notice thereof, will promptly notify the Collateral Agent, the Intercreditor Agent and the Borrower thereof.

(c) It is the intent of the Collateral Agent and the Borrower that the Collateral Agent (for the benefit of the Secured Parties) be the Entitlement Holder with respect to the Securities Accounts. In any event, the Securities Intermediary hereby agrees that it will comply with Entitlement Orders with respect to the Securities Accounts originated by the Collateral Agent without further consent by the Borrower or any other Person. The Securities Intermediary covenants that it will not agree with any Person other than the Collateral Agent to comply with Entitlement Orders with respect to the Securities Accounts originated by any Person or entity other than the Collateral Agent. The Collateral Agent authorizes the Securities Intermediary to follow Entitlement Orders issued by the Borrower unless and until the Securities Intermediary receives an Entitlement Order from the Collateral Agent. Without limiting the Securities Intermediary’s ability to comply with Entitlement Orders originated by the Collateral Agent, the Collateral Agent covenants with the Borrower that it shall not provide any such Entitlement Order unless an Event of Default shall have occurred and be continuing.

(d) The Securities Intermediary shall not change the name or account number of any Securities Account without the prior written consent of the Collateral Agent and the Borrower and at least five (5) Business Days’ prior notice to the Intercreditor Agent and the Enterprises, and shall not change the Entitlement Holder. The Securities Intermediary shall at all times act as a “securities intermediary” (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) in maintaining the Securities Accounts and shall credit to each Securities Account each Financial Asset to be held in or credited to each Securities Account pursuant to this Agreement. To the extent, if any, that the Collateral Agent is deemed to hold directly, as opposed to having a security entitlement in, any Financial Asset held by the Securities Intermediary for the Collateral Agent, the Securities Intermediary hereby agrees that it is holding such Financial Asset as the agent of the Collateral Agent and hereby expressly acknowledges and agrees that it has received notification of the Collateral Agent’s security interest in such Financial Asset and that it is holding possession of such Financial Asset for the benefit of the Collateral Agent.

(e) Each Securities Account shall remain held at all times by a “securities intermediary” (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-

entry securities, in the applicable Federal Book-Entry Regulations) that is a bank organized under the laws of the United States of America or any state thereof that has offices in the State of New York with unsecured long-term debt which shall be rated no lower than “A”, “A2” or the equivalent rating from any Nationally Recognized Rating Agency and that has a total capital stock and unimpaired surplus of not less than \$500,000,000. The Securities Intermediary shall give notice to the Collateral Agent and the Borrower of the location of the Securities Accounts and of any change thereof prior to the use or change thereof. If at any time the Securities Intermediary shall fail to meet such requirements and qualifications set forth in the first sentence above, the Borrower shall replace the Securities Intermediary as soon as practicable with a qualifying Securities Intermediary.

(f) Any income received by the Collateral Agent with respect to the balance from time to time on deposit in each Securities Account, including any interest or capital gains on investments in overnight securities made with amounts on deposit in each Securities Account, shall be credited to the applicable Securities Account. All right, title and interest in and to the cash amounts on deposit from time to time in each Securities Account together with any investments in overnight securities from time to time made pursuant to this Section 5.28 shall constitute part of the Collateral for the Secured Obligations and shall be held for the benefit of the Secured Parties and the Borrower as their interests shall appear hereunder and shall not constitute payment of the Secured Obligations (or any other obligations to which such funds are provided hereunder to be applied) until applied thereto as provided in this Agreement.

(g) In the event that, notwithstanding the last sentence of clause (b) above, the Securities Intermediary has or subsequently obtains by agreement, operation of Law or otherwise a Security Interest in any of the Securities Accounts, or any Financial Asset credited thereto, or any “securities entitlement” (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, the Securities Intermediary hereby agrees that such Security Interest shall be subordinate to the Security Interest of the Collateral Agent.

(h) The “securities intermediary’s jurisdiction” of the Securities Intermediary for purposes of the UCC (or the Uniform Commercial Code of any other jurisdiction to the extent applicable) is the State of New York.

(i) Terms used in Section 5.27 and this Section 5.28 that are defined in the UCC and not otherwise defined in this Agreement shall have the meaning set forth in the UCC. Without limiting the foregoing, the term “securities intermediary” shall, with respect to book-entry securities, have the meanings given to it, as applicable to the types of security under: 31 C.F.R. Part 357 (sale and issue of marketable book-entry Treasury bills, notes and bonds); 12 C.F.R. Part 615 (book-entry securities of the Farm Credit Administration and related conditions); 12 C.F.R. 987 (book-entry securities of the Financial Federal Housing Board), 12 C.F.R. Part 1511 (book-entry securities of the Resolution Funding Corporation); 24 C.F.R. Part 81 (book-entry securities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation); 31 C.F.R. Part 354 (book-entry securities of the Student Loan Marketing Association); 18 C.F.R. Part 1314 (book-entry securities of Tennessee Valley Authority); and 24 C.F.R. Part 350 (book-entry securities of Government National Mortgage Association). The term “Securities Account” when used in Section 5.27 and this Section 5.28 shall refer to each of

the Operating Account and each Other Operating Account, if any such account is maintained by the Collateral Agent.

(j) To the extent that any Project Account or, to the extent that it is maintained with the Collateral Agent, the Operating Account or any Other Operating Account, is not considered a “securities account” (within the meaning of Section 8-501(a) of the UCC), such Project Account and/or the Operating Account, as the case may be, shall be deemed to be a “deposit account” (as defined in Section 9-102(a)(29) of the UCC), which the Collateral Agent shall maintain with the Securities Intermediary acting not as a securities intermediary but as a “bank” (within the meaning of Section 9-102(a)(8) of the UCC) and, in such circumstances, the “bank’s jurisdiction” of the Securities Intermediary for purposes of the UCC (or the Uniform Commercial Code of any other jurisdiction to the extent applicable) is the State of New York. The Securities Intermediary hereby agrees to comply with any and all instructions originated by the Collateral Agent directing disposition of funds in the Project Accounts (and the Operating Account and/or any Other Operating Account, if maintained by the Collateral Agent) without any further consent of the Borrower. The Collateral Agent authorizes the Securities Intermediary to comply with any instructions with respect to any such deposit accounts from the Borrower unless and until the Securities Intermediary receives instructions with respect to any such deposit accounts from the Collateral Agent. Without limiting the Securities Intermediary’s ability to comply with any instructions with respect to any such deposit accounts from the Collateral Agent, the Collateral Agent covenants with the Borrower that it shall not provide any such instructions unless an Event of Default shall have occurred and be continuing.

Section 5.29 Change of Deposit Account Bank.

(a) Upon ten (10) Business Days’ written notice to the Intercreditor Agent, the Collateral Agent and the Enterprises, the Deposit Account Bank may be changed to another bank by the Borrower at its sole discretion; provided, that such bank satisfies the requirements for the Deposit Account Bank set forth in the definition thereof. If the Deposit Account Bank at any time gives notice that it no longer wishes to act as the Deposit Account Bank or that it will no longer be subject to the terms of a Control Agreement, or that it will no longer act upon the instructions of the Borrower or the Collateral Agent in accordance with the applicable Control Agreement as a result of its determination that such action would result in the violation of any applicable Law, rule or regulation or for any other reason (a “**Termination Notice**”), the Borrower shall promptly (and, to the extent possible, prior to the effective date of such Termination Notice) appoint a replacement Deposit Account Bank; provided, that the Borrower delivers a written opinion from qualified counsel to the effect that after the appointment of such replacement Deposit Account Bank, the Collateral Agent will remain perfected in any accounts held thereunder; provided, further, that such bank satisfies the requirements for the Deposit Account Bank set forth in the definition thereof. Each of the Operating Account and each Other Operating Account shall at all times be maintained with a single Deposit Account Bank. The Borrower shall notify the Collateral Agent and the Intercreditor Agent of any Termination Notice promptly upon receipt thereof by the Borrower.

(b) Each Deposit Account Bank shall be required, prior to becoming the Deposit Account Bank, to (i) enter into one or more Control Agreements with the Borrower and the Collateral Agent and carry out such further acts as the Collateral Agent may reasonably

request in order to perfect the Security Interest of the Collateral Agent in the Operating Account, any Other Operating Account and any other relevant Project Accounts and (ii) agree to provide the reports similar to the reports required to be provided pursuant to Section 2.12(b) and Section 2.12(c) hereof.

Section 5.30 Inadequately Identified Amounts. In the event that the Collateral Agent receives any amount which is inadequately or incorrectly identified as to the Project Account into which such amount is to be credited, the Collateral Agent shall notify the Borrower (with a copy of such notice to the Intercreditor Agent) of such event and shall request instructions as to the Project Account into which such amount should be credited. With respect to any such amount received prior to the Substantial Completion Date, the Collateral Agent shall credit such amount to the Construction Account and with respect to any such amount received on or after the Substantial Completion Date, the Collateral Agent shall credit such amount to the Revenue Account, in each case until such time as the Collateral Agent receives instructions from the Borrower in accordance herewith stating that such amount should be credited to another Project Account in accordance with the Financing Documents, in which case the Collateral Agent shall credit such amount to the Project Account designated by the Borrower.

Section 5.31 Tax Reporting. All Account Interest or other earnings, if any, relating to the Project Accounts shall be reported to the Internal Revenue Service and, to the extent applicable, all state and local taxing authorities under the name and taxpayer identification number of the Borrower. The Borrower shall prepare or cause to be prepared any tax returns or other forms or information required to be filed in connection with any such earnings. The Collateral Agent does not have any interest in the Collateral deposited hereunder but is serving as collateral agent only and having only possession thereof. The Borrower shall pay or reimburse the Collateral Agent upon request for any transfer taxes or other Taxes relating to the Collateral incurred in connection herewith and shall indemnify and hold harmless the Collateral Agent from any amounts that it is obligated to pay in the way of such Taxes to the extent paid by the Collateral Agent in respect of the Collateral. The Borrower will provide the Collateral Agent with appropriate W-9 forms for taxpayer identification numbers, number certifications, or W-8 forms for non-resident alien certifications. This paragraph shall survive notwithstanding any termination of this Agreement or the resignation or removal of the Collateral Agent.

ARTICLE VI COLLATERAL AND REMEDIES

Section 6.01 Administration of Collateral. The Account Collateral shall be held by the Collateral Agent for the benefit of the Secured Parties pursuant to the terms hereof and the other applicable Security Documents and shall be administered by the Collateral Agent in the manner contemplated hereby and thereby.

Section 6.02 Knowledge of Event of Default. Notwithstanding anything to the contrary contained in this Agreement or any document executed in connection with any of the Secured Obligations, the Collateral Agent, unless a responsible officer of the Collateral Agent shall have actual knowledge thereof, shall not be deemed to have any knowledge of any Event of Default unless and until it shall have received written notice from the Borrower, the Intercreditor Agent or any other Secured Party referring to this Agreement, describing such Event of Default

in reasonable detail and stating that such notice is a “Notice of Default”. If the Collateral Agent receives any such notice from a Person other than the Intercreditor Agent, the Collateral Agent shall deliver a copy thereof to the other Secured Parties that are parties hereto (or representatives thereof) and the Enterprises, and if the Collateral Agent receives any such notice from a Person other than the Borrower, the Collateral Agent also shall deliver a copy thereof to the Borrower, the Secured Parties that are parties hereto and the Enterprises. Upon receipt of notice of an Event of Default, the Collateral Agent shall deliver notice thereof to the Sponsors as provided in Section 5.1 of the Equity Contribution Agreement.

Section 6.03 Enforcement of Remedies. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent shall, subject to the other provisions of this Agreement, take such Enforcement Action with respect to such Event of Default as shall be directed by the Intercreditor Agent, acting in accordance with the terms of the Intercreditor Agreement (with a copy to the Enterprises) (a “**Direction Notice**”); provided that, in the absence of a Direction Notice, the Collateral Agent may (but shall not be obligated to) take such action (with written notice thereof to the Intercreditor Agent (which shall deliver such notice to the other Secured Parties that are parties hereto or the representatives thereof and to the Enterprises) or refrain from taking such action with respect to such Event of Default as it shall deem in the best interests of the Secured Parties and solely to the extent permitted hereunder or pursuant to the other Security Documents. Upon receipt by the Collateral Agent of a Direction Notice, the Collateral Agent shall seek to enforce the Security Documents (with prior notice thereof to the Enterprises and, to the extent not in violation of Law or court order, the Borrower) and to realize upon the Collateral in accordance with such Direction Notice and otherwise in accordance with the terms hereof and of the Security Documents; provided, however, that the Collateral Agent shall not be obligated to follow any Direction Notice if the Collateral Agent reasonably determines that such Direction Notice is in conflict with any provisions of any applicable law or any Security Document, and the Collateral Agent shall not, under any circumstances except in the event of gross negligence, fraud, bad faith or willful misconduct, be liable to any Secured Party, the Borrower or any other Person for following a Direction Notice.

Section 6.04 Remedies of the Secured Parties. Unless otherwise consented to in writing by the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement), no Secured Party, individually or together with any other Secured Parties (excepting the Collateral Agent in its capacity as a Secured Party), shall have the right, nor shall it (i) exercise or enforce any of the rights, powers or remedies which the Collateral Agent is authorized to exercise or enforce under this Agreement or any of the other Security Documents, (ii) sue for or institute any creditor’s process (including an injunction garnishment, execution or levy, whether before or after judgment) in respect of any Secured Obligation (whether or not for the payment of money) owing to it under or in respect of any Financing Document, (iii) take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding in relation to, the Borrower, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Borrower, or (iv) apply for any order for an injunction or specific performance in respect of the Borrower in relation to any of the Financing Documents. Notwithstanding the foregoing, the Secured Parties hereby expressly acknowledge the TIFIA Lender’s rights to take actions in accordance with [Sections 4.5 and 4.6] of the Intercreditor Agreement, subject to the terms of the Intercreditor Agreement.

Section 6.05 Secured Party Information.

(a) In the event that the Collateral Agent proceeds to foreclose upon, collect, sell or otherwise dispose of or take any other action with respect to any or all of the Collateral or to enforce any provisions of the Security Documents or takes any other action pursuant to this Agreement or any provision of the Security Documents or requests directions from the Intercreditor Agent as provided herein, upon the request of the Collateral Agent, each of the other Secured Parties (or any agent of or representative for such Secured Party) shall promptly deliver a written notice to the Collateral Agent and each of the other Secured Parties that are parties hereto setting forth (i) the aggregate amount of Secured Obligations owing to such Secured Party under the applicable Financing Documents as of the date specified by the Collateral Agent in such request and (ii) such other information as the Collateral Agent may reasonably request.

(b) In connection with any Intercreditor Vote (as defined in the Intercreditor Agreement), upon request by the Intercreditor Agent, the Borrower shall promptly provide a notice to the Intercreditor Agent and the Collateral Agent of the identity of any Non-Voting Secured Creditor (as defined in the Intercreditor Agreement) and the outstanding principal amount of Secured Obligations held by such Non-Voting Secured Creditor.

Section 6.06 Application of Proceeds.

(a) Subject to clauses (b) and (c) of this Section 6.06, after the taking of an Enforcement Action, all Proceeds received by the Collateral Agent derived from the funds set forth in clauses (i)-(vi) below pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents shall be applied as follows (provided, that any such proceeds which are to be used to pay any amounts to the Owners of Series 2017 Bonds or Series 2021 Bonds shall be paid to the Trustee for deposit into the applicable accounts of the Series 2017 Debt Service Fund, the Series 2021A Debt Service Fund, the Series 2021B Debt Service Fund or other debt service fund applicable to the Series 2017 Bonds or Series 2021 Bonds, as the case may be):

(i) All amounts on deposit in, and all Proceeds attributable to, the Series 2017 Bonds Proceeds Sub-Account of the Construction Account shall be transferred to the Trustee in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement as set forth in Section 5.02(j), first to pay for the *pro rata* payment of all accrued and unpaid interest on the Series 2017 Bonds, and second, if any unpaid principal of any such Series 2017 Bonds is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts;

(ii) All amounts on deposit in, and all Proceeds attributable to, the Series 2021A Bonds Proceeds Sub-Account of the Construction Account shall be transferred to the Trustee in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement as set forth in Section 5.02(j), first to pay for the *pro rata* payment of all accrued and unpaid interest on the Series 2021A Bonds, and second, if any unpaid principal of any such Series 2021A

Bonds is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts;

(iii) All amounts on deposit in, and all Proceeds attributable to, each of the Series 2021B Bonds Proceeds Sub-Account of the Construction Account and the Series 2021B Bonds Capitalized Interest Account shall be transferred to the Trustee in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement as set forth in Section 5.02(j), first to pay for the *pro rata* payment of all accrued and unpaid interest on the Series 2021B Bonds, and second, if any unpaid principal of any such Series 2021B Bonds is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts;

(iv) All amounts on deposit in, and all Proceeds attributable to, any additional sub-account of the Construction Account established pursuant to the terms hereof for the deposit of proceeds of any Other Permitted Senior Secured Indebtedness shall be transferred to the relevant Secured Parties with respect to such sub-account in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement as set forth in Section 5.02(j), first to pay for the *pro rata* payment of all accrued and unpaid interest on the relevant Other Permitted Senior Secured Indebtedness, and second, if any unpaid principal of any such Other Permitted Senior Secured Indebtedness is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts;

(v) All amounts on deposit in, and all Proceeds attributable to, the Senior Debt Service Reserve Sub-Accounts or TIFIA Debt Service Reserve Sub-Account shall be transferred to the relevant Secured Parties with respect to such sub-account in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement as set forth in Section 5.06(a) and Section 5.07(a), as applicable, first to pay for the *pro rata* payment of all accrued and unpaid interest on the relevant Secured Obligations and second, if any unpaid principal of any such Secured Obligations is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts; and

(vi) All amounts on deposit in, and all Proceeds attributable to, any sub-account of the Mandatory Prepayment Account shall be transferred to the relevant Secured Parties with respect to such sub-account in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement as set forth in Section 5.15(c), first to pay for the *pro rata* payment of all accrued and unpaid interest on the relevant Secured Obligations and second, if any unpaid principal of any such Secured Obligations is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts.

(b) Following the taking of an Enforcement Action, notwithstanding any provision contrary in this Agreement or any other Financing Document (but, subject to Section 5.02(j), Section 5.06(a), Section 5.07(a), Section 5.16(e), Section 5.17(c) and clause (a) of this Section 6.06), the Collateral Agent, as directed by the Intercreditor Agent, will have the right to direct the application of all amounts on deposit in or credited to the Project Accounts, and to

otherwise deal with the Collateral, without the need for consent of, or any other action by, the Borrower or any other Secured Party. Subject to the prior application of the funds as described in clause (a) of this Section 6.06, following the taking of an Enforcement Action, all Proceeds received by the Collateral Agent pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents, including Net Loss Proceeds, Termination Amounts, Asset Sale Proceeds or proceeds from the sale or disposition of Collateral or other Enforcement Action and amounts available in or otherwise transferred from the Project Accounts shall be applied promptly by the Collateral Agent as directed by the Intercreditor Agent as follows (provided, that any such proceeds which are to be used to pay any amounts to the Owners of Series 2017 Bonds or Series 2021 Bonds shall be paid to the Trustee for deposit into the applicable accounts of the Series 2017 Debt Service Fund, the Series 2021A Debt Service Fund, the Series 2021B Debt Service Fund or other debt service fund applicable to the Series 2017 Bonds or Series 2021 Bonds, as the case may be):

First, to the *pro rata* payment of the unpaid fees, administrative costs, expenses and indemnities due and payable to the Secured Parties under the Financing Documents, if any;

Second, to the *pro rata* payment of all accrued and unpaid interest due and payable (including default interest) on all Applicable Senior Secured Obligations;

Third, to the *pro rata* payment of any unpaid principal of any Applicable Senior Secured Obligation that is due and payable (by acceleration or otherwise);

Fourth, to the *pro rata* payment of all accrued and unpaid redemption or prepayment premiums due and payable, if any, on all Applicable Senior Secured Obligations;

Fifth, to the *pro rata* payment of all other amounts, if any, due and payable under the Financing Documents to the Senior Secured Parties with respect to any Applicable Senior Secured Obligations;

Sixth, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, to the payment of all amounts due and payable in respect of the TIFIA Obligations; and

Seventh, upon the payment in full of all Secured Obligations in accordance with clauses "First" through "Sixth" hereof, to pay to the Borrower, or as may be directed by the Borrower, or as a court of competent jurisdiction may direct, any Proceeds then remaining.

(c) If at any time any Secured Party (other than the TIFIA Lender) shall for any reason obtain any payment or distribution upon or with respect to the Secured Obligations contrary to the terms of this Agreement or the Intercreditor Agreement, whether as a result of the Collateral Agent's exercise of any Enforcement Action in respect of the Collateral or otherwise, such Secured Party agrees that it shall have received such amounts in trust, and shall promptly remit such amount so received in error to the Collateral Agent to be applied in accordance with the terms of this Agreement.

Section 6.07 Reliance on Information. For purposes of applying payments received in accordance with this Article VI, the Collateral Agent shall be entitled to rely upon the information received by, and upon the request of, the Collateral Agent for such purpose, pursuant to Section 2.05 and Section 6.05 of this Agreement, with respect to the amounts of the outstanding Secured Obligations owed to the Secured Parties and the amount of any proceeds distributed from the Project Accounts. In the event that the Collateral Agent, in its reasonable discretion, determines that it is unable to determine the amount or order of payments that should be made hereunder, the parties hereto agree that the Collateral Agent shall have the right, at its option, to deposit with, or commence an interpleader proceeding in respect of, such funds in a court of competent jurisdiction for a determination by such court as to the correct application of such funds hereunder.

ARTICLE VII COMPENSATION, INDEMNITY AND EXPENSES

Section 7.01 Compensation; Fees and Expenses. The Borrower hereby agrees to pay to the Collateral Agent for its own account compensation in such amount as separately agreed upon in writing between the Borrower and the Collateral Agent. In addition, the Borrower shall pay on the next Monthly Transfer Date falling at least ten (10) Business Days after written demand from the Collateral Agent the amount of any and all other reasonable and documented out-of-pocket expenses incurred by the Collateral Agent, including the reasonable and customary fees, charges and disbursements of any counsel for the Collateral Agent, in connection with (a) the preparation of amendments and waivers hereunder and under the other Security Documents requested by the Borrower; (b) the enforcement of the rights or remedies of the Collateral Agent under this Agreement or any other Security Document, including all reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Secured Obligations; (c) the sale of, collection from or other realization upon, the Collateral in accordance with the terms hereof, of the Intercreditor Agreement and of the other Security Documents; and (d) lien and security interest searches and filings in connection with the Collateral. The Borrower also agrees to reimburse the Intercreditor Agent for the reasonable and documented fees and expenses incurred by the Intercreditor Agent as contemplated by Section 2.2(a)(iv) of the Intercreditor Agreement.

Section 7.02 Borrower Indemnification. The Borrower shall indemnify each of the Collateral Agent, the Securities Intermediary, the Intercreditor Agent and any Co-Collateral Agent, and each of their respective officers, directors, employees, agents and attorneys-in-fact (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Security Document, the Intercreditor Agreement or, in each case, any agreement or instrument contemplated thereby to which such Indemnitee is a party or the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated thereby, (ii) any actual or alleged presence or Release of Hazardous Substance by the Borrower on or from the Project, (iii) any actual claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee or the Borrower is a party thereto or

(iv) the costs and expenses incurred by an Indemnitee in enforcing this Article VII against the Borrower; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related fees, charges, disbursements or expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee. The obligations of the Borrower under this Section 7.02 shall survive the payment in full of the Secured Obligations, any resignation or removal of the Collateral Agent and the Securities Intermediary pursuant to Section 2.11 hereof, the resignation or removal of the Intercreditor Agent pursuant to Section 2.6 or 2.7, as applicable, of the Intercreditor Agreement and the termination of this Agreement pursuant to Article VIII hereof.

ARTICLE VIII TERMINATION

Upon termination of this Agreement pursuant to Section 5.27 of this Agreement, all rights to the Collateral as shall not have been sold or otherwise applied, in each case, pursuant to the terms hereof shall revert to the Borrower, its successors or assigns, or otherwise as a court of competent jurisdiction may direct. Upon any such termination, the Collateral Agent shall, at the Borrower's direction and expense, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

ARTICLE IX ACCESSION

Section 9.01 Accession Generally. Any Person that is to become a party to this Agreement on or after such Person's accession to the Intercreditor Agreement (an "**Acceding Party**"), including any Person that replaces any Secured Creditor party to this Agreement, shall accede to this Agreement by delivering to the Collateral Agent (with a copy to the Intercreditor Agent and the Borrower) an Accession Agreement, duly executed by that Acceding Party. Upon the execution of such Accession Agreement by an Acceding Party and the Collateral Agent, and acknowledged by the Borrower, such Acceding Party shall be a Secured Creditor hereunder and shall be bound by and subject to the terms and conditions of this Agreement.

Section 9.02 Collateral Agent Instructions. The Collateral Agent is authorized and instructed to promptly execute any Accession Agreement duly executed and delivered to the Collateral Agent by an Acceding Party, which is acknowledged by the Borrower and accompanied by a fully executed accession agreement to the Intercreditor Agreement.

ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.01 Further Assurances. The Borrower agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action as necessary (or as the Collateral Agent or the Intercreditor Agent shall reasonably request) to perfect and maintain perfected the Security Interests created and/or perfected hereunder and under the other Security Documents and to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder and thereunder.

Section 10.02 Amendments; Waivers.

(a) Effective as of the date hereof, this Agreement amends and restates the Existing Agreement in its entirety. Each of the parties hereto agrees and confirms that all of its rights, liabilities and obligations under the Existing Agreement arising on or prior to the date hereof (including all security interests) continue in full force and effect, as amended and restated in accordance with the terms of this Agreement, and that this Agreement shall not be deemed to amend, release, novate or terminate any of such rights, liabilities or obligations except as expressly provided in this Agreement. Each reference to the “Collateral Agency Agreement” in any Financing Document or Material Project Contract shall be deemed to be a reference to the Existing Agreement as amended and restated hereby.

(b) Any term, covenant, agreement or condition of this Agreement or any of the other Security Documents may be amended or waived only by an instrument in writing signed by each of the Collateral Agent (acting upon the instruction of the Intercreditor Agent), the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) and the Borrower (or the applicable Sponsor solely with respect to each Pledge Agreement); provided, that the consent of the Securities Intermediary shall be required for any amendment to Section 5.28 hereof or any other amendment that would modify the rights or obligations of the Securities Intermediary.

(c) The waiver (whether express or implied) by the Collateral Agent of any breach of the terms or conditions of this Agreement, and the consent (whether express or implied) of the Intercreditor Agent shall not prejudice any remedy of the Collateral Agent or the Intercreditor Agent in respect of any continuing or other breach of the terms and conditions hereof, and shall not be construed as a bar to any right or remedy which the Collateral Agent or the Intercreditor Agent would otherwise have on any future occasion under this Agreement.

(d) No failure to exercise nor any delay in exercising, on the part of the Collateral Agent or any other Secured Party, of any right, power or privilege under this Agreement shall operate as a waiver thereof. No single or partial exercise by the Collateral Agent or any other Secured Party of any right, power or privilege under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege available to it. All remedies hereunder and under the other Security Documents are cumulative and are not exclusive of any other remedies that may be available to the Collateral Agent, whether at law, in equity or otherwise.

Section 10.03 Successors and Assigns.

(a) This Agreement and the other Security Documents shall be binding upon and inure to the benefit of the Collateral Agent, the Securities Intermediary, the Borrower, the Intercreditor Agent, the other Secured Parties that are parties hereto, any Acceding Party and their respective successors and permitted assigns. Each Secured Party that is not a party hereto shall be an express third party beneficiary of this Agreement.

(b) Upon the acceptance of any appointment of a successor Intercreditor Agent in accordance with the Intercreditor Agreement, such successor Intercreditor Agent shall

thereupon succeed to and become vested with all the rights, powers, privileges and duties of the Intercreditor Agent hereunder. The successor Intercreditor Agent shall promptly provide notice to the Collateral Agent (with a copy to the other Secured Parties that are parties hereto, the Borrower and the Enterprises) of its appointment as successor Intercreditor Agent.

(c) Nothing contained in this Agreement or any other Security Document is intended to limit the right of any Secured Party to assign, transfer or grant participations in its rights in its respective Secured Obligations and Financing Documents.

Section 10.04 Notices. Unless otherwise expressly provided herein, all notices, instructions, consents, requests, directions and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or email, as follows:

(i) if to the Borrower:

Kiewit Meridiam Partners LLC
3543 E. 46th Ave.
Denver, Colorado 80216
Attention: Paulo Andre
Telephone: (512) 970-8983
Email: Paulo.Andre@c70-kmp.com

with copies to:

Meridiam I-70 East CO, LLC
c/o Meridiam Infrastructure North America Corporation
605 Third Avenue, 36th Floor
New York, New York 10158
Attention: Jonathan Dingle
Telephone: (212) 798-8686
Facsimile: (212) 798-8690
Email: j.dingle@meridiam.com

Kiewit C70 Investors, LLC
c/o Kiewit Development Company
1550 Mike Fahey Street
Omaha, Nebraska 68102
Attention: J. Samuel Gilmore
Telephone: (402) 342-2052
Email: sam.gilmore@kiewit.com

(ii) if to the Intercreditor Agent:

U.S. Bank National Association, as Intercreditor Agent
Global Corporate Trust Services

950 17th Street, DN-CO-5GCT
Denver, Colorado 80202
Attention: Gretchen L. Middents
Telephone: (303) 585-4596
Email: gretchen.middents@usbank.com

(iii) if to the Collateral Agent and Securities Intermediary:

U.S. Bank National Association, as Collateral Agent and Securities
Intermediary
Global Corporate Trust Services
950 17th Street, DN-CO-5GCT
Denver, Colorado 80202
Attention: Gretchen L. Middents
Telephone: (303) 585-4596
Email: gretchen.middents@usbank.com

(iv) if to the Enterprises:

High Performance Transportation Enterprise
2829 W. Howard Place
Denver, Colorado 80204
Attention: Nicholas J. Farber, HPTE Director
Telephone: (720) 248-8544
Email: Nicholas.farber@state.co.us

Colorado Bridge Enterprise
2829 W. Howard Place
Denver, Colorado 80204
Attention: Stephen Harelson, P.E., Chief Engineer
Telephone: (303) 757-9204
Email: stephen.harelson@state.co.us

with a copy to:

Office of the Attorney General
Transportation Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203
Attention: Andrew Gomez, Assistant Attorney General
Telephone: (720) 508-6638
Email: andrew.gomez@coag.gov

(v) if to the TIFIA Lender:

Build America Bureau
United States Department of Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of Credit Programs
Email: BureauOversight@dot.gov

(vi) if to the Trustee:

U.S. Bank National Association, as Trustee
Global Corporate Trust Services
950 17th Street, DN-CO-5GCT
Denver, Colorado 80202
Attention: Gretchen L. Middents
Telephone: (303) 585-4596
Email: gretchen.middents@usbank.com

All instructions required under this Agreement to be delivered by the Borrower shall be delivered to the Collateral Agent in writing, in either original, electronic document format (e.g. pdf) or facsimile form, executed by an Authorized Representative. The identity of such Authorized Representatives, as well as their specimen signatures, shall be delivered to the Collateral Agent substantially in the form of a duly completed and executed Incumbency Certificate substantially in the form of Exhibit F and shall remain in effect until such party notifies the Collateral Agent of any change by delivery of a replacement duly completed and executed Incumbency Certificate substantially in the form of Exhibit F. In its capacity as Collateral Agent, the Collateral Agent will accept all instructions and documents complying with the above under the indemnities provided in this Agreement, and reserves the right to refuse to accept any instructions or documents which fail to comply with the terms hereof; provided, that in the event of any such refusal by the Collateral Agent, the Collateral Agent shall promptly notify the relevant Authorized Representative executing the instructions or delivering the documents of such non-compliance and provide a reasonable time period for the correction thereof. Further to this procedure, the Collateral Agent reserves the right to telephone an Authorized Representative of the Intercreditor Agent, or the Borrower to confirm the details of such instructions or documents if they are not already on file with it as standing instructions, and the Collateral Agent agrees that it will promptly telephone an Authorized Representative of the Intercreditor Agent or the Borrower, as applicable, if the Collateral Agent has determined that it will refuse to accept any instructions or documents which fail, or appear to fail, to comply. The Collateral Agent and the parties hereto agree that the above constitutes a commercially reasonable security procedure.

Any party hereto may change its address, email address or facsimile number for notices and other communications hereunder by notice to the Borrower, the Collateral Agent, the TIFIA Lender and the Intercreditor Agent. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and, if given in accordance with this

Section, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or, in the case of notice given by mail, overnight delivery service, facsimile or email, when deposited in the mail, one Business Day after delivery to the overnight courier, or when sent by fax or email, as applicable; provided that any notice to be served on the Collateral Agent or the Intercreditor Agent shall be effective only when actually received by the applicable Agent, marked for the attention of the department or officer specified by the Collateral Agent or the Intercreditor Agent for such purpose.

Section 10.05 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page to this Agreement by electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement. Each party hereto acknowledges and agrees that they may execute this Agreement, and any variation or amendment hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 10.06 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and construed in accordance with the laws of the State of New York. Each of the parties hereto hereby irrevocably (a) consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York and of the United States District Court of the Southern District of New York sitting in New York County, in any suit, action or proceeding arising out of or relating to this Agreement and (b) WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH ANY OF THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 10.07 Captions. The headings of the several articles and sections and clauses of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 10.08 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 10.09 Collateral Agent's Rights.

(a) If at any time the Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Collateral (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of such property), the Collateral Agent is authorized to comply therewith in any manner it or legal counsel of its own choosing reasonably deems appropriate, and if the Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or

administrative process, the Collateral Agent shall not be liable to any of the parties hereto or to any other Person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(b) In the event of any dispute between or conflicting claims by or among the Borrower and the Secured Parties with respect to any property being held by the Collateral Agent in connection with this Agreement or the other Security Documents, the Collateral Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such property so long as such dispute or conflict shall continue, and the Collateral Agent shall not be or become liable in any way to the Borrower or the Secured Parties for failure or refusal to comply with such conflicting claims, demands or instructions. The Collateral Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Collateral Agent or (ii) the Collateral Agent shall have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. Any court order, judgment or decree shall be accompanied by a certification of the presenting party, reasonably satisfactory to the Collateral Agent, to the effect that said order, judgment or decree represents a final adjudication of the rights of the parties by a court of competent jurisdiction, and that the time for appeal from such order, judgment or decree has expired without an appeal having been perfected. The Collateral Agent shall act on such court order and certification without further question.

(c) To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. When any account or sub-account is opened, the Collateral Agent shall be entitled to such information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

Section 10.10 Compliance with the Project Agreement.

(a) Each of the parties hereto acknowledges and agrees to Sections 27.3.1, 27.3.2, 27.4.2 through 27.4.4 and 33.3 of the Project Agreement.

(b) Notwithstanding anything to the contrary herein, any grant, assignment, mortgage, pledge, encumbrance, lien, charge or security interest made or created in violation of Sections 27.3.1 and 27.3.2 of the Project Agreement shall be null and void.

(c) Notwithstanding anything to the contrary herein, any amendment or waiver of any of this Agreement's provisions that would result in a violation of Part B of Schedule 16 to the Project Agreement shall be null and void unless approved by the Enterprises in accordance with the Project Agreement.

Section 10.11 Patriot Act Notification. The Collateral Agent hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, Title III of Pub. L., 107-56 (signed into law October 26, 2001) (the “**Patriot Act**”), the Collateral Agent may be required to obtain, verify, record and update certain information that identifies the Borrower, which information includes the name, address, tax identification number and other information regarding the Borrower that will allow the Collateral Agent and Intercreditor Agent to identify the Borrower in accordance with the Patriot Act.

Section 10.12 Events Occurring on Days That Are Not Business Days. Other than as expressly set forth in this Agreement, if the date for making any payment or the last day for the performance of any act or the exercising of any right under this Agreement is a day that is not a Business Day, such payment shall be made, such act shall be performed and such right shall be exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date herein.

Section 10.13 Role of the Intercreditor Agent. The Intercreditor Agent shall be entitled to all of its rights, benefits, protections and immunities set forth in the Intercreditor Agreement. Notwithstanding anything to the contrary herein, the Intercreditor Agent shall not be obligated to provide any consents, directions, determinations, acceptances, rejections or other similar actions pursuant to this Agreement unless it shall have first been so directed by the Required Creditors (as defined in the Intercreditor Agreement) pursuant to the Intercreditor Agreement, and the Intercreditor Agent shall have no liability for taking any such actions in accordance with such directions and shall not be liable for any failure or delay in taking such actions resulting from any failure or delay by such parties in providing such directions.

[The remainder of this page intentionally left blank; signature pages immediately follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

KIEWIT MERIDIAM PARTNERS LLC,
as Borrower

By: _____
Name: Paulo Andre
Title: Project Manager

U.S. BANK NATIONAL ASSOCIATION,
as the Collateral Agent and the Securities
Intermediary on behalf of itself and the other
Secured Parties

By: _____
Name: Gretchen L. Middents
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,
as the Intercreditor Agent on behalf of the
Secured Creditors

By: _____
Name: Gretchen L. Middents
Title: Vice President

UNITED STATES DEPARTMENT OF
TRANSPORTATION, acting by and through
the Executive Director of the Build America
Bureau

By: _____
Name:
Title:

EXHIBIT A

DEFINITIONS AND RULES OF INTERPRETATION

Defined Terms

“**2017 TIFIA Loan**” has the meaning specified in the recitals to this Agreement.

“**2017 TIFIA Loan Agreement**” has the meaning specified in the recitals to this Agreement.

“**Acceding Party**” has the meaning specified in Section 9.01.

“**Acceptable Credit Rating**” means, with respect to any Person (other than an individual), the rating of such Person’s unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues an Acceptable Letter of Credit or a repurchase agreement with respect to any Project Account under clause (c) of the definition of “Permitted Investments” in the TIFIA Loan Agreement, ‘A+’, ‘A1’ or the equivalent rating from at least one (1) Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable, and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from at least one (1) Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

“**Acceptable Letter of Credit**” means an irrevocable standby letter of credit, which (a) is denominated in United States dollars and drawable and payable in the United States of America, (b) is without recourse to the Borrower, (c) is issued in favor of the Collateral Agent by a Qualified Issuer, (d) is not secured by any Collateral, (e) has a term of at least one (1) year from the date of issuance (provided that, in the case of a letter of credit issued as a replacement for a letter of credit with less than one year (1) remaining until its stated expiration date, the term of such replacement letter of credit shall end no earlier than the end of the term of the original letter of credit) and (f) allows the Collateral Agent to make a draw thereunder (i) upon the presentation to the issuing bank of a certificate that conforms to the requirements set forth in such letter of credit stating that the Collateral Agent is drawing funds thereunder pursuant to the relevant Financing Document, (ii) during the thirty (30) day period prior to expiry (unless replaced with an Acceptable Letter of Credit), (iii) upon downgrade of the issuing bank such that it is no longer a Qualified Issuer, if such letter of credit has not been replaced within ten (10) days of such downgrade, and (iv) if such letter of credit is used to fund any Reserve Account, when funds would otherwise be drawn from such Reserve Account.

“**Accession Agreement**” means an Accession Agreement substantially in the form attached as Exhibit I to this Agreement.

“**Account Collateral**” has the meaning specified in the Security Agreement.

“**Account Interest**” means the interest income earned on any Project Account received by Borrower.

“**Additional Financing Documents**” means any documents or instruments (other than those explicitly referred to in the definition of “Financing Documents” (other than clause (q) thereof)) evidencing, documenting, securing or otherwise relating to Other Permitted Senior Secured Indebtedness incurred by the Borrower.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person; provided, that “**control**” (including its correlative meanings – “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

“**Agent**” means the Trustee, the Collateral Agent and the Intercreditor Agent and, if applicable, any Designated Representative (as defined in the Intercreditor Agreement) that is a trustee or agent acting on behalf of an Additional Secured Party (as defined in the Intercreditor Agreement).

“**Agreement**” means this Second Amended and Restated Collateral Agency and Account Agreement, dated as of [●], 2021, by and among the Borrower, the Collateral Agent, the Securities Intermediary and the TIFIA Lender and each other Secured Party that accedes thereto in accordance with Article IX hereof.

“**Annual LTA Report**” means the report and the related certificate of the Lenders’ Technical Advisor delivered to the TIFIA Lender pursuant to [Section 16(l)] of the TIFIA Loan Agreement.

“**Applicable Excess Funds**” means all funds remaining on deposit in the Revenue Account, after application pursuant to clauses “First” through “Thirteen” of Section 5.03(b), on any Calculation Date or Restricted Payment Date, as applicable.

“**Applicable Reserve Letter of Credit**” means, with respect to any Reserve Account, an Acceptable Letter of Credit delivered to the Collateral Agent to fund all or a portion of the Applicable Reserve Requirement relating to such Reserve Account in accordance with the terms of this Agreement.

“**Applicable Reserve Requirement**” means (a) with respect to any Senior Debt Service Reserve Sub-Account, the applicable Senior Debt Service Reserve Required Balance; (b) with respect to the TIFIA Debt Service Reserve Sub-Account, the TIFIA Debt Service Reserve Required Balance; (c) with respect to the Major Maintenance Reserve Account, the Major Maintenance Reserve Required Balance; (d) with respect to the O&M Reserve Account, the O&M Reserve Required Balance, and (e) with respect to the Handback Reserve Account, the Handback Reserve Required Balance.

“Applicable Senior Secured Obligations” means the aggregate of (a) all Senior Secured Obligations and (b) upon and following the occurrence of a Borrower Bankruptcy Related Event, the TIFIA Obligations.

“Applicable Sponsor Cash Collateral Account” means, as applicable, (a) the Meridiam Sponsor Cash Collateral Sub-Account or (b) the Kiewit Sponsor Cash Collateral Sub-Account, each as established and created as a sub-account of the Sponsor Cash Collateral Account in the name of the Borrower pursuant to Section 5.01.

“Approved Construction Requisition” means a Construction Requisition Certificate and, to the extent required under Section 5.26(a), a Technical Advisor Certificate that, in each case, satisfies the conditions of Section 5.02 and Section 5.26(a) applicable to the funds to be withdrawn from the Construction Account or the Construction Reserve Account, as applicable, and, if applicable, the Project Costs to be paid, in each case, with respect to any Construction Funds Transfer Date.

“Asset Sale Proceeds” means the proceeds of any conveyance, lease, transfer, sale, assignment or disposition of (including in any sale-leaseback transaction) any material property, business or assets of the Project, whether now owned or hereafter acquired.

“Authorized Representative” means the project manager, financial manager, chief executive officer, president, any senior vice president, chief financial officer or other authorized signatory of the Borrower.

“Bankruptcy Event” means, with respect to any Person:

- (a) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person, or of a substantial part of the assets of such Person, under any insolvency law or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or a substantial part of such Person’s assets and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed, undischarged or unbonded for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or
- (b) Such Person shall have (i) applied for or consented to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of such Person’s assets, or (ii) generally not been paying its debts as they become due unless such debts are the subject of a bona fide dispute, or (iii) made a general assignment for the benefit of creditors, or (iv) consented to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commenced a voluntary proceeding under any insolvency law, or filed a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any insolvency law, or (vi) filed an answer admitting the material allegations of a petition filed against it in any proceeding

referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing.

“Bankruptcy Related Event” has the meaning specified in the TIFIA Loan Agreement.

“Base Case Financial Model” means a mechanically sound financial model delivered as of [the date hereof], prepared by the Borrower and approved by the Model Auditor, forecasting the revenues and expenditures of the Project for time periods through the end of the Term (as defined in the Project Agreement) and based upon the assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender as of [the date hereof].

“BE” has the meaning specified in the recitals to this Agreement.

“Bond Counsel” means Kutak Rock LLP or other attorneys selected by the Issuer, with the consent of the Borrower, which consent shall not be unreasonably withheld, who have nationally recognized expertise in the issuance of municipal securities, the interest on which is excluded from gross income for federal and state income tax purposes.

“Borrower” has the meaning specified in the preamble to this Agreement.

“Borrower Bankruptcy Related Event” means a Bankruptcy Related Event, but solely to the extent such Bankruptcy Related Event occurs with respect to the Borrower.

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

“Calculation Date” means each June 30 and December 31 occurring after the Substantial Completion Date.

“Capital Contribution Date” has the meaning specified in the Equity Contribution Agreement.

“Capital Contributions” has the meaning specified in the Equity Contribution Agreement.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one (1) year which are capitalized in accordance with GAAP; provided that for purposes hereof, “Capital Expenditures” shall not include Renewal Expenditures.

“Casualty Event” means an event (or series of related events) which causes (or cause) all or any portion of the Collateral or the Project to be damaged, destroyed or rendered unfit for its intended use for any reason whatsoever, other than an Event of Eminent Domain.

“CDOT” has the meaning specified in the recitals to this Agreement.

“**CERCLA**” has the meaning specified in Section 2.17.

“**Clearing Agency**” has the meaning specified in Section 5.25(f).

“**Co-Collateral Agent**” has the meaning specified in Section 2.11(c).

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

“**Collateral**” means all real and personal property of the Borrower or any Sponsor that is, or is intended to be, subject to the security interests or Security Interests created pursuant to any of the Security Documents, including the following: (a) all Project Revenues; (b) all accounts, general intangibles and contract or other rights to receive Project Revenues whether existing at December 19, 2017 or thereafter acquired, and the proceeds thereof and all other general intangibles of the Borrower, including all rights under the Equity Contribution Agreement and all Material Project Contracts now existing or hereafter entered into; (c) all assignable permits and other Governmental Approvals; (d) any leasehold interest, subleasehold interest, license, concession, occupancy agreement or rental contract in, or other right to use or occupy, the Project or any real property used by or in connection with the Project; (e) all revenues, funds and bank accounts under the Series 2017 Loan Agreement, the Series 2021 Loan Agreement and all other agreements instruments and documents executed and delivered pursuant to or in connection with the Series 2017 Loan Agreement, the Series 2021 Loan Agreement and any Additional Financing Documents, including the proceeds of Other Permitted Senior Secured Indebtedness, including the investments thereof, together with any other collateral securing the Senior Secured Obligations and all other deposit accounts and securities accounts of the Borrower (except to the extent the security interest in such Collateral is created for the sole benefit of the holders of certain Senior Secured Obligations as set forth in the Security Documents); (f) all membership interests in the Borrower owned directly by the Sponsors, and (g) all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the foregoing; provided that, notwithstanding the foregoing, in no event shall the Collateral include any Excluded Assets.

“**Collateral Agent**” has the meaning specified in the preamble to this Agreement.

“**Construction Account**” means the “Construction Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**Construction Completion Amount**” has the meaning specified in Section 5.02(e).

“**Construction Contract**” means the Design and Construction Contract for the Central 70 Project, between the Borrower and the Construction Contractor, dated as of November 21, 2017, as amended by the First Amendment to the Design and Construction Contract, dated December 21, 2017, the Second Amendment to the Design and Construction Contract, dated as of May 9, 2019, the Third Amendment to the Design and Construction Contract, dated as of December 11, 2019, and the Fourth Amendment to the Design and Construction Contract, dated as of [●], 2021, and any replacement contract entered into by the Borrower in accordance with the terms of the Financing Documents.

“Construction Contractor” means Kiewit Infrastructure Co.

“Construction Direct Agreement” means the Direct Agreement, dated as of December 19, 2017, by and among the Construction Contractor, the Borrower and the Collateral Agent, and any replacement contract entered into in accordance with the terms of the Financing Documents.

“Construction Funds Transfer Date” has the meaning specified in Section 5.02(b).

“Construction Guarantee” means the Guarantee, dated as of November 21, 2017, provided by the Construction Guarantor in favor of the Borrower.

“Construction Guarantee Direct Agreement” means the Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.), dated as of December 19, 2017, by and among the Construction Guarantor, the Borrower and the Collateral Agent.

“Construction Guarantor” means Kiewit Infrastructure Group Inc.

“Construction Letter of Credit” means any one or more letters of credit for the account of, or on behalf of, the Construction Contractor delivered to and for the benefit of the Borrower pursuant to Part 1, Article 11.3 of the Construction Contract.

“Construction Letter of Credit Consent to Assignment” means any consent to assignment by the Borrower of the letter of credit proceeds of any Construction Letter of Credit to the Collateral Agent (for the benefit of the Secured Parties) made by the issuing bank of such Construction Letter of Credit.

“Construction Period” has the meaning specified in the Construction Contract.

“Construction Requisition Certificate” means a certificate prepared by the Borrower in accordance with the terms of this Agreement substantially in the form of Exhibit G to this Agreement containing the certifications by the Borrower required by this Agreement with respect to a requested transfer of funds from the Construction Account or the Construction Reserve Account.

“Construction Reserve Account” means the “Construction Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Construction Work” has the meaning specified in the Project Agreement.

“Control Agreement” means a deposit account control agreement among the Borrower, the Collateral Agent and the Deposit Account Bank with respect to the Operating Account (or any Other Operating Account) in substantially the form attached as Exhibit D to this Agreement, or otherwise in form and substance reasonably satisfactory to the Intercreditor Agent and the TIFIA Lender.

“DBRS” means DBRS Limited.

“Debt Service Payment Commencement Date” has the meaning specified in the TIFIA Loan Agreement.

“Debt Service Reserve Account” means the “Debt Service Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Debt Service Reserve Required Balance” means, individually and collectively, as applicable, any Senior Debt Service Reserve Required Balance or the TIFIA Debt Service Reserve Required Balance.

“Default” means any event or circumstance that, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

“Deposit Account Bank” means U.S. Bank National Association, at which the Borrower has elected to maintain the Operating Account (and any Other Operating Account, if any) in accordance with this Agreement, which bank (which must be a single bank with respect to all such accounts) (a) is organized under the laws of the United States of America or any state thereof, (b) has unsecured long-term debt which shall be rated no lower than “A-”, “A3” or the equivalent rating from any Nationally Recognized Rating Agency and (c) has a total capital stock and unimpaired surplus of not less than \$500,000,000, and any Person appointed to replace such Person pursuant to Section 5.29.

“Direct Agreements” means, collectively, (a) the Construction Direct Agreement, (b) the Construction Guarantee Direct Agreement, (c) the O&M Direct Agreement and (d) the Lenders Direct Agreement.

“Direction Notice” has the meaning specified in Section 6.03.

“Discretionary Capital Expenditures” means any Capital Expenditures (other than Capital Expenditures required to be incurred pursuant to the Project Agreement) that have been certified as being reasonable by the Lenders’ Technical Advisor.

“Distribution Account” has the meaning specified in Section 5.01(b)(iii).

“Dollars”, “U.S. Dollars” or “\$” means the lawful currency of the United States of America.

“Electronic Signature” means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, any other similar state laws based on the Uniform Electronic Transactions Act, as amended from time to time.

“Eligible Project Costs” has the meaning specified in the TIFIA Loan Agreement.

“Enforcement Action” means any action, whether by judicial proceedings or otherwise, to enforce or exercise any of the rights and remedies (a) pursuant to the Security Documents against the Collateral or the Borrower or (b) in respect of an Equity Letter of Credit or the Equity Contribution Agreement, in each case, upon the occurrence and during the continuance of an Event of Default, subject to the terms of the Intercreditor Agreement.

“Enterprise” and **“Enterprises”** each has the meaning specified in the recitals to this Agreement.

“Equity Commitment” has the meaning specified in the TIFIA Loan Agreement.

“Equity Contribution Agreement” means the Amended and Restated Equity Contribution Agreement, dated as of [●], 2021, among the Borrower, the Sponsors and the Collateral Agent.

“Equity Contributions” means the contributions made by the Sponsors pursuant to the Equity Contribution Agreement and, if made after the date on which Capital Contributions in an aggregate amount equal to the Aggregate Capital Commitment (as defined in the Equity Contribution Agreement) have been made in accordance with the Equity Contribution Agreement, pursuant to the Operating Agreement.

“Equity Funding Sub-Account” means the “Equity Funding Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Equity Letter of Credit” means each Kiewit Equity Letter of Credit and Meridiam Equity Letter of Credit, each as defined in the Equity Contribution Agreement.

“Equity Lock-Up Account” means the “Equity Lock-Up Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Event of Default” means any of the events identified as an “Event of Default” under any Financing Document.

“Event of Eminent Domain” means any action (or series of related actions) by any Governmental Authority (a) by which such Governmental Authority appropriates, confiscates, condemns, expropriates, nationalizes, seizes or otherwise takes all or any portion of the Collateral or the Project or (b) by which such Governmental Authority assumes custody or control (other than as permitted pursuant to, and subject to compliance with, the Project Agreement) of all or any portion of the Project, in each case that is reasonably anticipated to last for more than one hundred twenty (120) consecutive days.

“Excluded Assets” has the meaning provided in the Security Agreement.

“Existing Agreement” has the meaning specified in the recitals to this Agreement.

“FDIC” means the Federal Deposit Insurance Corporation.

“Federal Book-Entry Regulations” means (a) the United States Department of the Treasury’s regulations governing “Securities” (as defined in 31 C.F.R. § 357.2) issued by the United States Treasury and maintained in the form of entries in the federal reserve banks’ book-entry system known as the Treasury/Reserve Automated Debt Entry System (TRADES), as such regulations are set forth in 31 C.F.R. Part 357 and (b) regulations analogous and substantially similar to the regulations described in clause (a) above governing any other automated book-entry system operated by the United States federal reserve banks in which securities issued by government sponsored enterprises are issued, recorded, transferred and maintained in book-entry form.

“Fee Letter” means that certain fee letter, dated November 6, 2017, entered into by and between the Borrower and U.S. Bank National Association, in its capacity as Escrow Agent (as defined in the Project Agreement), Collateral Agent, Trustee, Intercreditor Agent and Securities Intermediary.

“Final Acceptance Certificate” means the Enterprises’ certificate issued pursuant to Section 5(a) of Part 6 of Schedule 3 (*Commencement and Completion Mechanics*) of the Project Agreement confirming that the Final Acceptance Date has occurred.

“Final Acceptance Date” has the meaning specified in the Project Agreement.

“Financing Documents” means:

- (a) the Indenture (and the First Supplemental Indenture and any other Supplemental Indenture executed with respect thereto);
- (b) the Series 2017 Bonds;
- (c) the Series 2017 Loan Agreement;
- (d) the Series 2017 Note;
- (e) the Series 2021A Bonds;
- (f) the Series 2021A Note;
- (g) the Series 2021B Bonds;
- (h) the Series 2021B Note;
- (i) the Series 2021 Loan Agreement;
- (j) the TIFIA Loan Agreement;
- (k) the TIFIA Note;
- (l) the Equity Contribution Agreement;
- (m) this Agreement;

- (n) any Direct Agreement;
- (o) the other Security Documents;
- (p) the Intercreditor Agreement;
- (q) any Additional Financing Documents;
- (r) the Fee Letter; and
- (s) any other agreement, document or instrument relating to the foregoing and designated as a Financing Document in writing by the Borrower and the Intercreditor Agent.

“**First Memorandum of Settlement**” has the meaning specified in Section 5.02(i)(vii).

“**First PA Settlement Payment**” has the meaning specified in Section 5.02(i)(vii).

“**First Supplemental Indenture**” has the meaning specified in the recitals to this Agreement.

“**Fitch**” means Fitch Ratings, Inc.

“**Funding Shortfall**” means any circumstance where on any date prior to the Substantial Completion Date, the aggregate amount of funds available to the Borrower from the Series 2017 Bonds, the Series 2021 Bonds, the TIFIA Loan, the Equity Commitment, Milestone Payments, Performance Payments, PA Settlement Payments and other payments owed under the Project Agreement and any other source of funds permitted under the Financing Documents during the Construction Period is less than the aggregate of:

- (a) the aggregate amount of all Project Costs incurred by the Borrower for the design and construction of the Project, which, in each case, are due and payable but have not yet been paid; and
- (b) the aggregate amount of Project Costs required to be incurred by the Borrower for the design and construction of the Project required to achieve the Substantial Completion Date (as approved by the Lenders’ Technical Advisor in its reasonable belief).

“**Funds**” has the meaning specified in the Indenture.

“**Funds Transfer Certificate**” means a certificate prepared by the Borrower in accordance with the terms of this Agreement substantially in the form of Exhibit B attached to this Agreement containing the certifications by the Borrower required by this Agreement with respect to a requested transfer of funds.

“**GAAP**” means generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America.

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

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

“**Handback Reserve Account**” means the “Handback Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**Handback Reserve Required Balance**” means the amount, if any, required to fund the Handback Reserve Account to the level required by the Project Agreement.

“**Handback Work**” has the meaning specified in the Project Agreement.

“**Hazardous Substance**” has the meaning specified in the Project Agreement.

“**Hedge Contract**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

“**HPTE**” has the meaning specified in the recitals to this Agreement.

“**Indebtedness**” of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person in respect of letters of credit, bankers’ acceptances, bank guaranties, surety bonds or similar extensions of credit, (g) all obligations of such Person in respect of Hedge Contracts, (h) indebtedness secured by a Security Interest on property owned or being purchased by such Person, whether or not such indebtedness shall have been assumed by such Person or is limited in recourse and (i) all Indebtedness of others referred to in clauses (a) through (h) above and other payment obligations (collectively,

“**Guaranteed Indebtedness**”) guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Guaranteed Indebtedness or to advance or supply funds for the payment or purchase of such Guaranteed Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Guaranteed Indebtedness or to assure the holder of such Guaranteed Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss.

“**Indemnitee**” has the meaning specified in Section 7.02.

“**Indenture**” has the meaning specified in the recitals to this Agreement.

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

“**Intercreditor Agent**” has the meaning specified in the preamble to this Agreement.

“**Intercreditor Agreement**” has the meaning specified in the recitals to this Agreement.

“**Interest Payment Date**” means (a) for the Series 2017 Bonds, each June 30 and December 31, or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing on June 30, 2018 and continuing for so long as the Series 2017 Bonds are outstanding, (b) for the Series 2021 Bonds, each June 30 and December 31, or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing on December 31, 2021 and continuing for so long as the Series 2021 Bonds are outstanding, (c) for the TIFIA Loan, each June 30 and December 31, or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing on [●], 2023 and (d) for any other Secured Obligations, the date or dates on which interest is payable on such Secured Obligations as set forth in the documents pursuant to which such Secured Obligations were incurred.

“**Investment**” in any Person means any loan or advance to such Person, any purchase or other acquisition of any equity interests or Indebtedness or the assets comprising a division or business unit or a substantial part or all of the business of such Person, any capital contribution to such Person or any other direct or indirect investment in such Person, including any acquisition by way of a merger or consolidation (or similar transaction) and any arrangement pursuant to which the investor incurs Indebtedness of the types referred to in (h) or (i) of the definition of “Indebtedness” in respect of such Person.

“**Issuer**” has the meaning specified in the recitals to this Agreement.

“**Kiewit Sponsor Cash Collateral Sub-Account**” means the “Kiewit Sponsor Cash Collateral Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Law” means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date of the Project Agreement including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Relevant Authority.

“Lenders Direct Agreement” means the Lenders Direct Agreement, by and among the Enterprises, the Borrower and the Collateral Agent, dated as of December 19, 2017, as amended by the First Amendment to Lenders Direct Agreement, dated as of [●], 2021.

“Lenders’ Technical Advisor” means Turner & Townsend cm2r Inc. or any successor thereto selected by the Borrower and reasonably acceptable to the Required Creditors and not objected to by the TIFIA Lender pursuant to [Section 23] of the TIFIA Loan Agreement.

“Longstop Date” has the meaning specified in the Project Agreement.

“Loss Event” means a Casualty Event or an Event of Eminent Domain.

“Loss Proceeds” means all payments and proceeds received by the Borrower as a result of a Loss Event, including Physical Damage Proceeds; provided that in no event shall any Third Party Liability Insurance Proceeds constitute “Loss Proceeds”.

“Loss Proceeds Account” means the “Loss Proceeds Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Major Maintenance Reserve Account” means the “Major Maintenance Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Major Maintenance Reserve Required Balance” means (a) on the SC Milestone Payment Date, \$[●] and (b) at any time thereafter, as of any Calculation Date, an amount equal to the aggregate of (i) one hundred percent (100%) of expected Renewal Expenditures for the 12-month period following such Calculation Date, (ii) seventy-five percent (75%) of expected Renewal Expenditures for the next succeeding 12-month period (i.e., year 2), (iii) fifty percent (50%) of expected Renewal Expenditures for the next succeeding 12-month period (i.e., year 3), and (iv) twenty-five percent (25%) of expected Renewal Expenditures for the next succeeding 12-month period (i.e., year 4), in each case initially based on the forecast of estimated Renewal Expenditures with respect to the Project set forth in the Lenders’ Technical Advisor Report delivered in accordance with [Section 13(a)(ix)] of the TIFIA Loan Agreement and updated annually pursuant to the Annual LTA Report to reflect the Lenders’ Technical Advisor’s ongoing analysis of funding requirements for Renewal Work and Handback Work; provided that, notwithstanding anything to the contrary set forth herein or in any other Financing Document, on any date described in clause (a) or (b) above, the amount of cash on deposit in the Major Maintenance Reserve Account shall be equal to at least one hundred percent (100%) of expected Renewal Expenditures for the 12-month period following such date.

“Mandatory Prepayment Account” means the “Mandatory Prepayment Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Material O&M Contract” means the O&M Contract, any renewals or replacements thereof entered into in accordance with the terms of the Financing Documents, and any other contract (or series of related contracts) between the Borrower and any Person (or any Affiliate thereof) with respect to the performance of a material portion of the O&M Work; provided that, for the avoidance of doubt, the Construction Contract is not a Material O&M Contract.

“Material Project Contracts” means:

- (a) the Project Agreement;
- (b) the Construction Contract;
- (c) each Construction Guarantee; and
- (d) each Material O&M Contract;

in each case as amended, supplemented or replaced in accordance with the terms of the Financing Documents.

“Meridiam Sponsor Cash Collateral Sub-Account” means the “Meridiam Sponsor Cash Collateral Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Milestone 5A” has the meaning specified in the Project Agreement.

“Milestone 5A Payment” means the Milestone Payment in respect of the achievement of the Milestone 5A under the Project Agreement that is made by the Enterprises pursuant to Part 1 of Schedule 4 and Schedule 5 of the Project Agreement.

“Milestone 5A Payment Date” means the date of the Milestone 5A Payment.

“Milestone 5B” has the meaning specified in the Project Agreement.

“Milestone 5B Payment” means the Milestone Payment in respect of the achievement of the Milestone 5B under the Project Agreement that is made by the Enterprises pursuant to Part 1 of Schedule 4 and Schedule 5 of the Project Agreement.

“Milestone 5B Payment Date” means the date of the Milestone 5B Payment.

“Milestone Completion” has the meaning specified in the Project Agreement.

“Milestone Completion Date” has the meaning specified in the Project Agreement.

“Milestone Payments” has the meaning specified in the Project Agreement.

“**Milestone Payment Sub-Account**” means the “Milestone Payment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**Model Auditor**” means Mazars Global Infrastructure (US) LLC or any successor thereto selected by the Borrower and reasonably acceptable to the Required Creditors.

“**Monthly Transfer Date**” means the last day of each month occurring after the Substantial Completion Date; provided, that if such day is not a Business Day, the Monthly Transfer Date shall be the immediately preceding Business Day.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Nationally Recognized Rating Agency**” means S&P, Moody’s, Fitch or DBRS or any other nationally recognized statistical rating organization, identified by the Securities and Exchange Commission.

“**Net Cash Flow**” means, with respect to any period, an amount equal to (a) the sum of (without duplication) (i) all Project Revenues received by the Borrower during such period (excluding (A) the proceeds of the loan or other extensions of credit made to the Borrower by the Issuer pursuant to the Series 2017 Loan Agreement, the Series 2021 Loan Agreement, the TIFIA Loan and any other Permitted Indebtedness, (B) any equity contributions, loans or similar extensions of credit or investments in the Borrower made by or on behalf of any Sponsor, (C) Milestone Payments and any Termination Amounts under the Project Agreement, (D) liquidated damages (other than delay liquidated damages actually received by the Borrower), Loss Proceeds (other than in respect of business interruption or delay in start-up insurance actually received by the Borrower), third party revenues, and other extraordinary, non-recurring items, and (E) interest earned on, and income derived from Permitted Investments with respect to, amounts in any Reserve Account, but only to the extent such interest and income are credited to the balance of such Reserve Account for purposes of determining whether the applicable reserve requirement is satisfied), (ii) amounts withdrawn from the Major Maintenance Reserve Account during such period and applied to the payment of Renewal Expenditures, and (iii) for any Calculation Period (each, an “**Applicable Calculation Period**”), transfers during such period from any Reserve Account (other than the Debt Service Reserve Account or any sub-account thereof) to the Revenue Account solely to the extent of amounts on deposit in such Reserve Account in excess of the relevant reserve requirement for the Applicable Calculation Period (provided that, for purposes of the calculation of Net Cash Flow, the released amount from any such Reserve Account counted for purposes of the determination of Net Cash Flow shall be no greater than the relevant reserve requirement for the immediately preceding Calculation Period minus the relevant reserve requirement for the Applicable Calculation Period), minus (b) the sum of the following (without duplication):

- (i) all Operations and Maintenance Expenses paid during such period;
- (ii) any federal or state income tax liability paid by the Borrower or on its behalf during such period;

(iii) to the extent not otherwise excluded from Project Revenues for any reason, the amount of any deductions from Performance Payments payable to, or penalties payable by, the Borrower pursuant to the Project Agreement; and

(iv) deposits to any Reserve Account (other than the Debt Service Reserve Account, the O&M Reserve Account or any sub-account thereof) under this Agreement during such period.

For purposes of determining Net Cash Flow for any period, the interest earned on, and income derived from Permitted Investments with respect to, amounts in any Project Account shall (x) for any historical calculation, be equal to actual interest and income earned for the relevant period, and (y) with respect to projected amounts, be calculated in accordance with the assumptions set forth in the most recent Revised Financial Model.

“**Net Loss Proceeds**” has the meaning specified in Section 5.16(b).

“**O&M Contract**” means the Maintenance Contract for the Central 70 Project, dated as of November 21, 2017, as amended by the First Amendment to the Maintenance Contract, dated as of December 21, 2017, and the Second Amendment to the Maintenance Contract dated as of [●], 2021, between the Borrower and the O&M Contractor, and any replacement contract entered into by the Borrower in accordance with the terms of the Financing Documents.

“**O&M Contractor**” means Roy Jorgensen Associates, Inc.

“**O&M Direct Agreement**” means the Direct Agreement, dated as of December 19, 2017, by and among the O&M Contractor, the Borrower and the Collateral Agent, and any replacement contract entered into in accordance with the terms of the Financing Documents.

“**O&M Letter of Credit**” means any one or more letters of credit for the account of, or on behalf of, the applicable subcontractor delivered to and for the benefit of the Borrower pursuant to any Material O&M Contract.

“**O&M Letter of Credit Consent to Assignment**” means any consent to assignment by the Borrower to the Collateral Agent (for the benefit of the Secured Parties) of the letter of credit proceeds of any O&M Letter of Credit made by the issuing bank of such O&M Letter of Credit.

“**O&M Reserve Account**” means the “O&M Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**O&M Reserve Required Balance**” means (a) on the SC Milestone Payment Date, \$[●] and (b) at any time thereafter, as of any Calculation Date, an amount equal to fifty percent (50%) of the expected Operations and Maintenance Expenses (excluding Renewal Expenditures) that will become due and payable by the Borrower in the twelve (12) consecutive months following such Calculation Date, based on the most recent Revised Financial Model.

“**O&M Work**” has the meaning specified in the Project Agreement.

“**Operations and Maintenance Expenses**” means all actual cash maintenance and operation costs incurred and paid or forecast to be incurred and paid in connection with the

operation and maintenance of the Project, including Renewal Expenditures, other amounts (including Capital Expenditures) required to be incurred pursuant to the terms of the Project Agreement, payment for taxes (other than income taxes), insurance, consumables, advertising or marketing, payments pursuant to any agreements for the management, operation or maintenance of the Project, including payments to Affiliates under contracts with such Affiliates that are described in clause (ii) of [Section 17(g)] of the TIFIA Loan Agreement, payments of fees, costs, expenses and indemnities payable in respect of the TIFIA Obligations and the Senior Secured Obligations (including amounts owing to the Agents) pursuant to the Financing Documents, payments under real property agreements, management costs, fees and expenses of consultants and advisors, environmental mitigation costs, fees paid to rating agencies, and general and administrative expenses, but excluding in all cases Discretionary Capital Expenditures, Restricted Payments that would otherwise be considered Operations and Maintenance Expenses, payments in respect of Indebtedness other than as explicitly set forth in this definition, and noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“Operating Account” has the meaning specified in Section 5.01(b)(i).

“Operating Agreement” means the Operating Agreement of Kiewit Meridiam Partners LLC, by and between the Sponsors, dated as of November 20, 2017.

“Other Operating Accounts” has the meaning specified in Section 5.01(b)(ii).

“Other Permitted Senior Secured Indebtedness” means (a) additional senior secured Indebtedness that is equal as to priority in payment and security with respect to the Collateral as the Series 2017 Bond Obligations and the Series 2021 Bond Obligations and (i), for so long as the TIFIA Obligations remain outstanding, that is incurred in accordance with requirements for “Additional Senior Obligations” in the TIFIA Loan Agreement and (ii) with respect to which a Nationally Recognized Rating Agency has confirmed that the incurrence of such senior secured Indebtedness shall not result in a downgrade of the rating of (A) the Series 2017 Bonds below the rating in effect on December 21, 2017, or (B) the Series 2021 Bonds below the rating in effect on [●], 2021; provided that the holders of such additional senior secured Indebtedness or their representatives shall be subject to the Intercreditor Agreement; and (b) without duplication, “Additional Senior Obligations” as defined in the TIFIA Loan Agreement (and meeting the requirements therefor set forth in the TIFIA Loan Agreement) with respect to which a Nationally Recognized Rating Agency has confirmed that the incurrence of such senior secured Indebtedness shall not result in a downgrade of the rating of (A) the Series 2017 Bonds below the rating in effect on December 21, 2017, or (B) the Series 2021 Bonds below the rating in effect on [●], 2021.

“Outstanding TIFIA Loan Balance” means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the TIFIA Loan, as determined in accordance with [Section 7] of the TIFIA Loan Agreement.

“Owner” of (a) a Series 2017 Bond means the registered owner of such Series 2017 Bond, (b) a Series 2021A Bond means the registered owner of such Series 2021A Bond, and (c)

a Series 2021B Bond means the registered owner of such Series 2021B Bond, in each case, as shown in the registration records of the Trustee.

“PA Settlement Payment Sub-Account” means the “PA Settlement Payment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“PA Settlement Payments” means (a) the First PA Settlement Payment and (b) the Second PA Settlement Payment.

“Patriot Act” has the meaning specified in Section 10.11.

“Performance Payment” means any monthly payment payable by the Enterprises to the Borrower pursuant to Section 11.2, Part 2 of Schedule 4 and Part 2 of Schedule 6 to the Project Agreement.

“Performance Payment Start-Up Amount” has the meaning specified in Section 5.02(d).

“Performance Payment Sub-Account” means the “Performance Payment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Performance Requirements” has the meaning specified in the Project Agreement.

“Permitted Distribution” means any Restricted Payment permitted pursuant to satisfaction or waiver of the Restricted Payment Conditions.

“Permitted Indebtedness” means any Indebtedness to the extent permitted by the terms of the Financing Documents (including the TIFIA Loan Agreement prior to the termination thereof).

“Permitted Investments” means any investments to the extent permitted by the terms of the Financing Documents (including the TIFIA Loan Agreement prior to the termination thereof).

“Permitted Security Interest” means any Security Interests to the extent permitted by the Financing Documents (including the TIFIA Loan Agreement prior to the termination thereof).

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Physical Damage Proceeds” means, subject to Section 25.5 of the Project Agreement, all insurance proceeds received under the Insurance Policies (as defined in the Project Agreement) by the Borrower with respect to physical property damage to Work or the Project (excluding any startup or business interruption insurance maintained as a part of such policies), provided that in no event shall any Third Party Liability Insurance Proceeds constitute “Physical Damage Proceeds”.

“Pledge Agreements” means (a) that certain Pledge Agreement, dated as of December 19, 2017, by and between Meridiam I-70 East CO, LLC and the Collateral Agent, and (b) that certain Pledge Agreement, dated as of December 19, 2017, by and between Kiewit C70 Investors, LLC and the Collateral Agent.

“Pledgors” means the Sponsors, each in its capacity as “Pledgor” under its respective Pledge Agreement.

“Principal Payment Date” means (a) for the Series 2017 Bonds, the dates upon which any principal amounts thereunder are scheduled to be paid (including any mandatory sinking fund redemption date in respect of a Principal Related Payment) as set forth in the Indenture, or, if any such date is not a Business Day, then the Business Day immediately succeeding such date, (b) for the Series 2021 Bonds, the dates upon which any principal amounts thereunder are scheduled to be paid (including any mandatory sinking fund redemption date in respect of a Principal Related Payment) as set forth in the First Supplemental Indenture, or, if any such date is not a Business Day, then the Business Day immediately succeeding such date, (c) for the TIFIA Loan, each June 30 and December 31 (and any mandatory prepayment date), or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing with the Debt Service Payment Commencement Date, and (d) for any other Senior Secured Obligations, the date or dates on which principal of such Senior Secured Obligations are due and payable (including any mandatory sinking fund redemption date in respect of a Principal Related Payment) as set forth in the documents pursuant to which such Senior Secured Obligations were incurred.

“Principal Related Payments” has the meaning specified in clause “Fifth” of Section 5.03(b).

“Proceeds” means “proceeds” as such term is defined in the UCC or under other relevant law and, in any event, shall include (a) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with respect to, any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Borrower, in each case with respect to any of the Collateral, (b) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (c) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or payable under or in connection with any of the Collateral (whether or not in connection with the sale, lease or other disposition of the Collateral).

“Project” has the meaning specified in the Project Agreement.

“Project Accounts” means, collectively, (a) each of the Securities Accounts (other than the Handback Reserve Account), (b) the Operating Account, (c) any Other Operating Account and (d) each such other account specified or to be specified as being a “Project Account” in this Agreement, including any sub-accounts thereof, from time to time.

“Project Agreement” means that certain Project Agreement for the Central 70 Project, by and among the Enterprises and the Borrower, dated as of November 21, 2017, as amended by the First Amendment to the Project Agreement, dated December 21, 2017, the Second Amendment to the Project Agreement, dated as of May 9, 2019, the Third Amendment to the Project Agreement, dated as of December 11, 2019, and the Fourth Amendment to Project Agreement, dated as of [●], 2021, which, inter alia, grants the Borrower the exclusive right to design, build, finance, operate and maintain of the Project.

“Project Costs” means all costs and expenses paid or incurred or to be paid or incurred in connection with or incidental to the acquisition, design, construction, rehabilitation, equipping, operations, maintenance, commissioning and financing of the Project, including legal, administrative, engineering, planning, design, insurance, due diligence development and financing costs, the contract price of the Construction Contract, amounts payable under all construction, engineering, technical and other contracts entered into by the Borrower in connection with performing its obligations under the Project Agreement and in accordance with the Financing Documents, all financing costs, including debt service payments, costs of issuance, fees, interest during construction, initial working capital costs, funding of reserves, including the Construction Reserve Account, the Major Maintenance Reserve Account, the TIFIA Debt Service Reserve Sub-Account, the Series 2017 Bonds Debt Service Reserve Sub-Account, the Series 2021A Bonds Debt Service Reserve Sub-Account, the O&M Reserve Account and any other reserves contemplated by the Financing Documents, any development fees payable to the Sponsors on December 21, 2017, in accordance with the Base Case Financial Model from the proceeds of the Series 2017 Bonds, mobilization payments under the Construction Contract or the O&M Contract, all administrative costs, including budgeted overhead and operating expenses, and any taxes (other than income taxes), assessments or governmental charges payable by the Borrower or the Sponsors in connection with the Project.

“Project Document” means the Material Project Contracts and any other agreement entered into by the Borrower in connection with the Project.

“Project Revenues” means all amounts received by the Borrower derived from or related to the construction, operation and maintenance of the Project, including: (a) payments under the Project Agreement, including Performance Payments, Milestone Payments and any Termination Amounts, or under any other Material Project Contract (including warranty payments or delay liquidated damages); (b) interest earned on amounts held in any Project Account and all income derived from Permitted Investments; (c) proceeds from business interruption and delay in start-up insurance policies; (d) all proceeds of the sale or other disposition of any assets of the Borrower; (e) Borrower revenues from any lease or other contract relating to the Project to which the Borrower is a party; and (f) all other amounts received and otherwise retainable by the Borrower arising or derived from or paid in respect of the Project.

“Qualified Issuer” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“Redemption Price” has the meaning specified in the Indenture.

“**Release**” has the meaning specified in the Project Agreement.

“**Relevant Authority**” means the government of the United States of America, the State, the cities and counties within the State and any other agency, or subdivision of any of the foregoing, including any federal, state or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the State or the cities and counties within the State. “Relevant Authority” shall not include the Enterprises.

“**Renewal Expenditures**” means amounts payable by the Borrower with respect to performance Renewal Work (including work needed to satisfy Performance Requirements) and Handback Work.

“**Renewal Work**” has the meaning specified in the Project Agreement.

“**Required Creditors**” has the meaning specified in the Intercreditor Agreement.

“**Reserve Account**” means each of (a) each Senior Debt Service Reserve Sub-Account; (b) the TIFIA Debt Service Reserve Sub-Account; (c) the Major Maintenance Reserve Account; and (d) the O&M Reserve Account.

“**Restricted Payment**” means (a) any payment of a dividend or other distribution of property in respect of any equity interest of the Borrower or in respect of any redemption, repurchase or other acquisition thereof (or other withdrawal of capital from the Borrower), (b) any payment of any amounts in respect of Sponsor Subordinated Loans or of other amounts in respect of any debt for borrowed money owed by the Borrower to any holder of an outstanding equity interest in the Borrower, (c) any other payment to any Affiliate of the Borrower or of any holder of an equity interest in the Borrower, (d) any transfer of funds from the Revenue Account or the Equity Lock-Up Account to the Distribution Account, and (e) prior to the termination of the TIFIA Loan Agreement, any payment of Subordinated Management Fees; provided, that, notwithstanding anything contained herein, the following shall not constitute Restricted Payments: (i) the transfer or withdrawal of funds from any Project Account following substitution of an Acceptable Letter of Credit for cash on deposit in such Project Account in accordance with the applicable terms of the Financing Documents; (ii) amounts required to be paid by the Borrower to the Construction Contractor under the Construction Contract; (iii) any Technical Assistance and Management Services Fees; (iv) any development fees payable to the Sponsors on December 21, 2017, in accordance with the Base Case Financial Model from the proceeds of the Series 2017 Bonds; (v) any fees payable to the Sponsors or any affiliate thereof in respect of Equity Letters of Credit to the extent scheduled in the Base Case Financial Model; and (vi) the payment or reimbursement of other Project Costs, subject to clauses (a) through (e) of this definition, shall not be deemed to be Restricted Payments.

“**Restricted Payment Condition Satisfaction Date**” means, for any transfer (x) from the Revenue Account to the Distribution Account pursuant to clause “Fifteenth” of Section 5.03(b) or (y) from the Equity Lock-Up Account to the Distribution Account pursuant to Section 5.13(b), with respect to:

- (a) (i) the “Restricted Payment Conditions” set forth in clauses (iii) and (iv) of [Section 17(d)] of the TIFIA Loan Agreement and (ii) the restricted payment conditions set forth in clauses (a), (b), (c), (d) and (g) of the definition of “Restricted Payment Conditions” herein, the Calculation Date immediately preceding the applicable Restricted Payment Date or the Restricted Payment Date if such date is a Calculation Date;
- (b) the “Restricted Payment Condition” set forth in clause (ii) of [Section 17(d)] of the TIFIA Loan Agreement, the Monthly Transfer Date immediately preceding the applicable Restricted Payment Date; and
- (c) the “Restricted Payment Conditions” set forth in clauses (i), (v), (vi), (vii), (viii) and (ix) of [Section 17(d)] of the TIFIA Loan Agreement, the applicable Restricted Payment Date.

“Restricted Payment Conditions” means:

- (a) any Project Account (or sub-account) required to be established and any Reserve Account required to be established and funded as of such date is fully funded to its required level as of such date or, to the extent permitted under the Financing Documents and the Project Agreement, replaced with an Acceptable Letter of Credit;
- (b) the Borrower has provided a written certification to the Collateral Agent (a **“Senior Coverage Certificate”**) that (i) the Total Debt Service Coverage Ratio as of the immediately preceding Calculation Date or the Restricted Payment Date if such date is a Calculation Date (provided that the applicable Calculation Period shall be less than twelve (12) months for any such Calculation Date or Restricted Payment Date occurring prior to the first anniversary of the Substantial Completion Date) is equal to at least 1.20:1.00 and (ii) the Total Debt Service Coverage Ratio as of the four (4) consecutive Calculation Dates following the immediately preceding Calculation Date, or the Restricted Payment Date if such date is a Calculation Date, is projected to be at least 1.20:1.00;
- (c) no Event of Default or Default pursuant to the terms of the Financing Documents has occurred and is continuing or would exist as a result of the transfer of funds to the Distribution Account;
- (d) the Substantial Completion Date has occurred and the Borrower has received the SC Milestone Payment;
- (e) none of the Series 2021B Bonds are outstanding;
- (f) prior to the termination of the TIFIA Loan Agreement, each of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) has been satisfied or waived by the TIFIA Lender in accordance with the TIFIA Loan Agreement; and

- (g) the Enterprises have not exercised their right to terminate the Project Agreement in respect of a Developer Default (as defined in the Project Agreement) or they have rescinded any and all notices of termination delivered by either of them with respect to such termination right.

“Restricted Payment Date” means any Calculation Date or any date occurring within ten (10) Business Days thereafter.

“Returned Loss Proceeds” has the meaning specified in Section 5.16(a).

“Revenue Account” means the “Revenue Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Revised Financial Model” means the Base Case Financial Model, as it may be updated from time to time pursuant to the terms of the Financing Documents.

“Routine Maintenance” has the meaning specified in the Project Agreement.

“Rule” means Rule 15c2-12(b)(5) under the Securities Exchange Act of 1934, as amended.

“S&P” means S&P Global Ratings, a S&P Global Inc. business.

“SC Milestone Payment” means the Milestone Payment in respect of the achievement of the Substantial Completion Date under the Project Agreement that is made by the Enterprises pursuant to Part 1 of Schedule 4 and Schedule 5 of the Project Agreement.

“SC Milestone Payment Date” means the date of the SC Milestone Payment.

“SC Milestone Payment Date Certificate” means a certificate prepared by the Borrower in accordance with the terms of this Agreement substantially in the form of Exhibit J to this Agreement containing the certifications by the Borrower required by this Agreement with respect to a requested transfer of the Construction Completion Amount to the Construction Reserve Account from the Construction Account.

“Second Memorandum of Settlement” has the meaning specified in the recitals to this Agreement.

“Second PA Settlement Payment” has the meaning specified in Section 5.02(i)(vii).

“Secured Creditors” means, collectively and without duplication, (a) the Owners of the Series 2017 Bonds, (b) the Owners of the Series 2021 Bonds, (c) the Trustee, (d) the holders of any Other Permitted Senior Secured Indebtedness and (e) the TIFIA Lender.

“Secured Obligations” means (a) the Senior Secured Obligations and (b) the TIFIA Obligations.

“Secured Parties” means, collectively, the Senior Secured Parties and the TIFIA Lender.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

“Securities Accounts” has the meaning specified in Section 5.01(a).

“Securities Intermediary” has the meaning specified in the preamble to this Agreement.

“Security Agreement” has the meaning specified in the recitals to this Agreement.

“Security Documents” means the collective reference to (a) this Agreement; (b) the Security Agreement; (c) each Pledge Agreement; (d) the Equity Contribution Agreement; (e) each Equity Letter of Credit; (f) the Direct Agreements; (g) each Control Agreement; (h) any other agreement, document or instrument hereafter entered into or delivered by the Borrower or any other Person which purports to create a Security Interest in favor of the Collateral Agent for the benefit of the Secured Parties; (i) each Construction Letter of Credit Consent to Assignment; (j) each O&M Letter of Credit Consent to Assignment and (k) all UCC financing statements and other filings, recordings or registrations required by the Financing Documents to be filed or made in respect of any such Security Document.

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

“Senior Coverage Certificate” has the meaning specified in the clause (b) of the definition of “Restricted Payment Conditions”.

“Senior Debt Service” means, with respect to the Senior Secured Obligations, for any period, as of any date of calculation, an amount equal to the sum of all principal and interest and fees with respect to the Senior Secured Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Senior Secured Obligations due in such period, payment shall be assumed to be made in accordance with any amortization schedule established for such Senior Secured Obligations.

“Senior Debt Service Account” means the “Senior Debt Service Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Senior Debt Service Reserve Required Balance” means, individually and collectively, (a) the Series 2017 Bonds Debt Service Reserve Required Balance, (b) the Series 2021A Bonds Debt Service Reserve Required Balance and (c) the required reserve balance applicable to any

Senior Debt Service Reserve Sub-Account established with respect to any other Senior Secured Obligations pursuant to the related Additional Financing Documents.

“**Senior Debt Service Reserve Sub-Account**” has the meaning specified in Section 5.06(d).

“**Senior Interest Payment Sub-Account**” means the “Senior Interest Payment Sub-Account” of the Senior Debt Service Account established and created in the name of the Borrower pursuant to Section 5.01.

“**Senior Principal Payment Sub-Account**” means the “Senior Principal Payment Sub-Account” of the Senior Debt Service Account established and created in the name of the Borrower pursuant to Section 5.01.

“**Senior Secured Obligations**” means (a) the Series 2017 Bond Obligations, (b) the Series 2021 Bond Obligations and (c) any obligations of the Borrower comprising Other Permitted Senior Secured Indebtedness, in each case, including all amounts that would be owed by the Borrower pursuant to the Series 2017 Loan Agreement, the Series 2021 Loan Agreement or other Additional Financing Document relating to Other Permitted Senior Secured Indebtedness, but for the fact that collection or receipt of such amounts is unenforceable or not allowed or allowable due to a pending Bankruptcy Event of the Borrower.

“**Senior Secured Parties**” means (a) the Agents, the Securities Intermediary, the Issuer, the Owners of the Series 2017 Bonds, the Owners of the Series 2021 Bonds and any holders of (and any representatives of) any Other Permitted Senior Secured Indebtedness, if any, and (b) upon and following the occurrence of a Borrower Bankruptcy Related Event, the TIFIA Lender and each TIFIA Assignee.

“**Series 2017 Bond Obligations**” means, without duplication, all payment obligations of the Borrower under the Indenture and the Series 2017 Loan Agreement with respect to the Series 2017 Bonds.

“**Series 2017 Bonds**” has the meaning specified in the recitals to this Agreement.

“**Series 2017 Bonds Debt Service Reserve Required Balance**” means, (a) on the Milestone 5A Payment Date, \$[●], and (b) as of any date of determination thereafter, an amount equal to the principal and interest on the Series 2017 Bonds that will become due and payable by the Borrower in the six (6) consecutive months following such date of determination.

“**Series 2017 Bonds Debt Service Reserve Sub-Account**” has the meaning specified in Section 5.06(b).

“**Series 2017 Bonds Mandatory Prepayment Sub-Account**” means the “Series 2017 Bonds Mandatory Prepayment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**Series 2017 Bonds Proceeds Sub-Account**” means the “Series 2017 Bonds Proceeds Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Series 2017 Debt Service Fund” has the meaning specified in the Indenture.

“Series 2017 Loan Agreement” has the meaning specified in the recitals to this Agreement.

“Series 2017 Note” has the meaning specified in the Series 2017 Loan Agreement.

“Series 2017 Rebate Fund” means the fund of the same name established by the Indenture held by the Trustee for the sole benefit of the United States of America for the purpose of complying with Section 148 of the Code and the Treasury Regulations promulgated pursuant thereto. Funds in the Series 2017 Rebate Fund shall be used to make rebate payments to the United States of America.

“Series 2021 Bond Obligations” means the Series 2021A Bond Obligations and the Series 2021B Bond Obligations.

“Series 2021 Bonds” has the meaning specified in the recitals to this Agreement.

“Series 2021 Loan Agreement” has the meaning specified in the recitals to this Agreement.

“Series 2021A Bond Obligations” means, without duplication, all payment obligations of the Borrower under the Indenture and the Series 2021 Loan Agreement with respect to the Series 2021A Bonds.

“Series 2021A Bonds” has the meaning specified in the recitals to this Agreement.

“Series 2021A Bonds Debt Service Reserve Required Balance” means, (a) on the Milestone 5A Payment Date, \$[●], and (b) as of any date of determination thereafter, an amount equal to the principal and interest on the Series 2021A Bonds that will become due and payable by the Borrower in the six (6) consecutive months following such date of determination.

“Series 2021A Bonds Debt Service Reserve Sub-Account” has the meaning specified in Section 5.06(c).

“Series 2021A Bonds Mandatory Prepayment Sub-Account” means the “Series 2021A Bonds Mandatory Prepayment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Series 2021A Bonds Proceeds Sub-Account” means the “Series 2021A Bonds Proceeds Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Series 2021A Debt Service Fund” has the meaning specified in the First Supplemental Indenture.

“Series 2021A Note” has the meaning specified in the Series 2021 Loan Agreement.

“**Series 2021B Bond Obligations**” means, without duplication, all payment obligations of the Borrower under the Indenture and the Series 2021 Loan Agreement with respect to the Series 2021B Bonds.

“**Series 2021B Bonds**” has the meaning specified in the recitals to this Agreement.

“**Series 2021B Bonds Capitalized Interest Account**” means the “Series 2021B Bonds Capitalized Interest Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**Series 2021B Bonds Capitalized Interest Amount**” has the meaning specified in Section 5.08(a).

“**Series 2021B Bonds Mandatory Prepayment Sub-Account**” means the “Series 2021B Bonds Mandatory Prepayment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**Series 2021B Bonds Proceeds Sub-Account**” means the “Series 2021B Bonds Proceeds Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**Series 2021B Bonds Repayment Account**” means the “Series 2021B Bonds Repayment Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**Series 2021B Debt Service Fund**” has the meaning specified in the First Supplemental Indenture.

“**Series 2021B Note**” has the meaning specified in the Series 2021 Loan Agreement.

“**Sponsor Cash Collateral Account**” means the “Sponsor Cash Collateral Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**Sponsor Subordinated Loans**” means unsecured Indebtedness of the Borrower to an Affiliate of the Borrower, in the form of shareholder loans made to the Borrower, that is (a) pledged to the Collateral Agent for the benefit of the Secured Parties, (b) applied to pay Project Costs, (c) repayable solely from monies released from the Distribution Account and (d) subject to subordination terms reasonably satisfactory to the TIFIA Lender.

“**Sponsors**” means each of (a) Meridiam I-70 East CO, LLC and (b) Kiewit C70 Investors, LLC.

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

“**Subordinated Management Fees**” means management and other fees pursuant to a TAMSA that are not Technical Assistance and Management Services Fees.

“**Substantial Completion Date**” has the meaning specified in the Project Agreement.

“Supplemental Indenture” has the meaning specified in the Indenture.

“TAMSA” means any technical assistance and management services agreement, including secondment employment and personnel agreements, entered into between the Borrower and the Sponsors (or affiliates thereof).

“Tax Regulatory Agreement” means (a) one or more certificates or agreements that sets forth the Issuer’s and the Borrower’s expectations regarding the investment and use of proceeds of the Series 2017 Bonds and other matters relating to Bond Counsel’s opinion regarding the federal income tax treatment of interest on the Series 2017 Bonds, including any instructions delivered by Bond Counsel in connection with any such certificate or agreement; and (b) any amendment or modification of any such certificate or agreement that is accompanied by an opinion of Bond Counsel stating that the amendment or modification will not adversely affect the exclusion of interest on the Series 2017 Bonds from gross income for federal income tax purposes.

“Taxes” means any and all present or future income, stamp, transfer, turnover and other taxes, levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and any and all interest, penalties, claims or other liabilities arising under or relating thereto, including those on any of the Secured Parties or on payments to be made to or received by any of them from the Borrower under this Agreement.

“Technical Advisor Certificate” means a certificate prepared by the Lenders’ Technical Advisor substantially in the form of Exhibit H to this Agreement.

“Technical Assistance and Management Services Fees” means any compensation owed by the Borrower pursuant to any TAMSA for services provided to the Borrower; provided that any Technical Assistance and Management Services Fees shall be as set forth in the Base Case Financial Model at December 21, 2017, or as set forth in any subsequent operating budget certified as reasonable by the Lenders’ Technical Advisor.

“Termination Amount” has the meaning specified in the Project Agreement.

“Termination Compensation Account” means the “Termination Compensation Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Termination Notice” has the meaning specified in Section 5.29(a).

“Third Party Liability Insurance Proceeds” means insurance proceeds, if any, payable to or received by the Borrower under workers’ compensation, unemployment insurance or other similar forms of governmental insurance or benefits or to compensate third party liability claims.

“TIFIA Assignee” means any Person holding any portion of the TIFIA Loan as a result of an assignment from the TIFIA Lender in accordance with Section 12.2 of the Intercreditor Agreement.

“**TIFIA Coverage Certificate**” has the meaning specified for “Coverage Certificate” in the TIFIA Loan Agreement.

“**TIFIA Debt Service**” means, with respect to any Calculation Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on [Exhibit I] of the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, and (b) due and payable on such Calculation Date in accordance with [Section 9] of the TIFIA Loan Agreement.

“**TIFIA Debt Service Account**” means the “TIFIA Debt Service Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**TIFIA Debt Service Reserve Required Balance**” means, (a) on the SC Milestone Payment Date, \$[●], and (b) as of any date of determination thereafter, an amount equal to one hundred percent (100%) of TIFIA Debt Service that will become due and payable by the Borrower in the six (6) consecutive months following such date of determination.

“**TIFIA Debt Service Reserve Sub-Account**” means the “TIFIA Debt Service Reserve Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**TIFIA Interest Payment Sub-Account**” means the “TIFIA Interest Payment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“**TIFIA Lender**” has the meaning specified in the preamble to this Agreement.

“**TIFIA Loan**” has the meaning specified in the recitals to this Agreement.

“**TIFIA Loan Agreement**” has the meaning specified in the recitals to this Agreement.

“**TIFIA Mandatory Prepayment Sub-Account**” means the “TIFIA Mandatory Prepayment Sub-Account” of the Mandatory Prepayment Account established and created in the name of the Borrower pursuant to Section 5.01.

“**TIFIA Note**” means the promissory note delivered by the Borrower in substantially the form of Exhibit A to the TIFIA Loan Agreement.

“**TIFIA Obligations**” means any obligations of the Borrower incurred under or in connection with the TIFIA Loan Agreement, including all such amounts that would be owed by the Borrower but for the fact that collection or receipt of such amounts is unenforceable or not allowed or allowable due to a pending proceeding by or against the Borrower under any Insolvency Law.

“**TIFIA Principal Payment Sub-Account**” means the “TIFIA Principal Payment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01.

“Total Debt Service Coverage Ratio” means, as of any Calculation Date, the ratio of (a) Net Cash Flow to (b) the sum of (i) Senior Debt Service and (ii) TIFIA Debt Service, in the case of clauses (a) and (b) above, for the Calculation Period ending on such Calculation Date.

“Treasury Regulations” means the temporary, proposed or final federal income tax regulations promulgated by the U.S. Department of the Treasury, together with the other published written guidance thereof, as applicable.

“Trustee” has the meaning specified in the recitals to this Agreement.

“Uniform Commercial Code” or **“UCC”** means the Uniform Commercial Code, as the same may, from time to time, be in effect in the State of New York; provided that if, with respect to any financing statement or by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term **“UCC”** shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof or any other Financing Document or any financing statement relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

“U.S. Government” means the United States of America and its departments and agencies.

“Voluntary Equity Contributions” means any Equity Contributions that do not constitute Capital Contributions.

“Voluntary Prepayment Account” means the **“Voluntary Prepayment Account”** established and created in the name of the Borrower pursuant to Section 5.01.

“Work” has the meaning specified in the Project Agreement.

Rules of Interpretation

1. The incorporation by reference of definitions or other terms from other agreements shall survive any termination of such agreements until this Agreement is terminated as provided in Article VIII hereof.
2. Definitions of terms shall apply equally to the singular and plural forms of the terms defined.
3. The use in this Agreement of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.
4. The word “will” shall be construed to have the same meaning and effect as the word “shall”.
5. A reference to a Law includes any amendment or modification to such Law, and all regulations, rulings and other Laws promulgated under such Law.
6. A reference to a Person shall be construed to include its successors and permitted assigns.
7. Except as otherwise expressly specified, all accounting terms have the meanings assigned to them by GAAP, as in effect from time to time.
8. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.
9. Any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented and/or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents). All references to incorporated provisions and definitions with respect to the Project Agreement shall also be subject to Section 2.1 of the Project Agreement.
10. The words “herein,” “hereof,” “hereto,” “hereby,” “hereunder” and other words of similar import in this Agreement refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and, if this Agreement has been amended, such words shall refer to this Agreement as so amended.

11. References to “days” means calendar days, unless the term “Business Days” shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.
12. The terms lease and license shall include sub-lease and sub-license, as applicable, and as may be allowed under this Agreement, any other Financing Documents and the Project Agreement, as applicable.
13. All references in this Agreement to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to the applicable UCC.
14. The term “money” or “funds” includes any cash, check, deposit, investment security or other form in which any of the foregoing are held hereunder.