
CONTINUING COVENANTS AGREEMENT

BETWEEN

DISTRICT OF COLUMBIA

AND

U.S. BANK NATIONAL ASSOCIATION

DATED DECEMBER 18, 2014

DISTRICT OF COLUMBIA
PILOT REVENUE NOTE
(THE YARDS PROJECT)
SERIES 2014

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CONTINUING COVENANTS AGREEMENT

This CONTINUING COVENANTS AGREEMENT (this “*Agreement*”) is dated December 18, 2014, by and between THE DISTRICT OF COLUMBIA (the “*District*”) and U.S. BANK NATIONAL ASSOCIATION (the “*Bank*”).

BACKGROUND

A. The Payments In Lieu of Taxes Act, effective April 5, 2005 D.C. Law 15-293: D.C. Code, 2001 Ed. § 1-308.01 et. seq., as the same has or may in the future be amended, (collectively, the “*PILOT Act*”) permits the District of Columbia to enter into written agreements providing for payments in lieu of taxes (“*PILOT Agreements*”) for the purpose of financing the development costs of projects that qualify under Section 490 of the District of Columbia Home Rule Act, approved December 24, 1993 P.L. 93-198; 87 Stat. 774; D.C. Code, 2001 Ed. § 1-201.01 et. seq., as the same has or may in the future be amended (collectively, the “*Home Rule Act*”).

B. The District and Forest City SEFC, LLC (the “*Project Developer*”) have entered into an Amended and Restated SEFC Development Agreement dated as of December 1, 2007, a First Amendment to Amended and Restated SEFC Development Agreement dated as of December 1, 2008, a Second Amendment to Amended and Restated SEFC Development Agreement dated as of March 1, 2010, a Third Amendment to Amended and Restated SEFC Development Agreement dated as of August 1, 2010 and a Fourth Amendment, dated as of December 1, 2014 (collectively, the “*Development Agreement*”). Pursuant to the authority set forth in the PILOT Act, the Home Rule Act and Resolution 16-658, the “Payment In Lieu of Taxes Revenue Series 2014 Note Southeast Federal Center Project Approval Resolution of 2006” adopted by the Council of the District of Columbia (the “*Council*”) on June 6, 2006 (the “*2006 Resolution*”), as amended by the “Southeast Federal Center Payment in Lieu of Taxes Revision Emergency Approval Resolution of 2007” adopted by the Council on July 10, 2007 (the “*Emergency Resolution*” and the 2006 Resolution, as amended by the Emergency Resolution, the “*Resolution*”), the District determined to provide the Project Developer with financing for the development costs of public infrastructure associated with the phased development (the “*SEFC Development*”) of an approximately 42 acre site located in the southeast quadrant of the District and consisting of a portion of the Southeast Federal Center located within the SEFC PILOT Area (as defined in the Development Agreement) subject to the terms and conditions set forth in the Development Agreement.

C. In order to provide funds to pay for development costs of public infrastructure associated with a portion of the SEFC Development (the “*Infrastructure Improvements*”), the Bank has agreed to advance funds (the “*Loan*”) to or for the account of the District, pursuant to and in accordance with the provisions of the Resolution and this Agreement.

D. The District has agreed to execute and deliver to the Bank its PILOT Revenue Note, Series 2014 (The Yards Project) (the “*Series 2014 Note*”) to evidence its obligation to make the payments due to the Bank under the Loan as provided in this Agreement, all things necessary to make this Agreement, the valid, binding and legal limited obligations of the District, have been done and performed and the execution and delivery of this Agreement and the execution and delivery of the Series 2014 Note, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, in consideration of the foregoing and the undertakings herein set forth and intending to be legally bound, the parties hereto agree as follows:

SECTION 1. DEFINITIONS; INTERPRETATION.

As used in this Agreement, the terms defined in this Section 1 or elsewhere in this Agreement (including the preamble hereto and the recitals above) have the respective meanings indicated. Defined terms are capitalized throughout this Agreement, unless otherwise indicated.

“*Affiliate*” means a corporation, partnership, association, joint venture, business trust or similar entity organized under the laws of any state that directly, or indirectly through one or more intermediaries Controlled by the Bank, Controls or is Controlled by, or is under common Control with, the Bank.

“*Agreement*” means this Continuing Covenants Agreement dated December 18, 2014, as amended, supplemented or otherwise modified in accordance with the terms hereof.

“*Amendment Fee*” shall have the meaning set forth in the Fee Letter.

“*Anti-Terrorism Law*” means any law applicable to the District relating to terrorism or money laundering, including Executive Order No. 13224 and the USA Patriot Act.

“*Applicable Law*” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, and judgments and decrees of all courts (whether at law or in equity), applicable to the parties.

“*Applicable Spread*” means a rate per annum by which the Bank Interest Rate on the then-outstanding principal amount of the Series 2014 Note may change up or down based upon the applicable debt service coverage on the Series 2014 Note and any outstanding Parity Debt, measured twice annually no later than each May 31 and November 30 by the Bank, based upon the information provided by the District pursuant to Section 2(f) of this Agreement. The Bank shall provide a copy of such measurement to the District within three Business Days of its calculation.

<i>Debt Service Coverage Ratio*</i>	<i>Applicable Spread</i>
At or above 1.30x	0
1.20x to and including 1.29x	██████████
1.10x to and including 1.19x	██████████
Below 1.10x	See below**

* Debt Service Coverage Ratio for purposes of calculation of the Applicable Spread is equal to actual PILOT Payments for the preceding six month period ending March 31 or September 30, as applicable, plus the Minimum Revenue Fund Balance, divided by the sum of (1) actual interest and Facility Fees paid on the Series 2014 Note and any outstanding Parity Debt for the preceding six month period ending March 31 or September 30, as applicable, plus (2) one-half of the sum of the outstanding principal amount of the Series 2014 Note divided by 20, plus (3) the scheduled principal paid on outstanding Parity Debt during the preceding six month period ending March 31 or September 30, or if the outstanding Parity Debt is not subject to amortization, one-half of the sum of the outstanding principal amount of the Parity Debt as of the last day of the preceding six month period ending March 31 or September 30, as applicable divided by 20.

** In the event the Debt Service Coverage Ratio is less than 1.10x, notwithstanding Section 2(f) of this Agreement, the Bank Interest Rate means, for any day, a rate of interest per annum equal to the sum of the Base Rate in effect on such day plus four and one-half percent (4.50%);

provided that subject to the provisions of Section 35 hereof, the Bank Interest Rate shall not exceed the Maximum Rate.

“*Authorized Loan Amount*” means \$29,400,000, that being the maximum principal amount of the Loan that may be outstanding at any time, which amount maybe be reduced by the District pursuant to the provisions of Section 5 hereof.

“*Authorized Delegate*” means the Chief Financial Officer, the District Treasurer, or any officer or employee of the executive office of the Mayor to whom the Mayor has delegated or to whom the foregoing individuals have subdelegated any of the Mayor’s functions under Section 422(6) of the Home Rule Act.

“*Bank*” means, initially, U.S. Bank National Association, and its successors and assigns, and any Bank Transferee pursuant to the provisions of Section 17(b) hereof.

“*Bank Interest Rate*” shall have the meaning given to that term in Section 2(f) of this Agreement.

“*Base Rate*” means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one percent (1.00%), (ii) the Federal Funds Rate in effect at such time *plus* one and one-half (1.50%), or (iv) seven and one-half percent (7.50%), provided that subject to the provisions of Section 35 hereof, the Base Rate shall not exceed the Maximum Rate.

“*Bond Counsel*” means Orrick, Herrington & Sutcliffe LLP.

“*Borrowing Coverage Capacity Test*” means, as of each testing date pursuant to Sections 7(a)(vii) and 7(b)(ii), a determination that:

(i) the expected PILOT Payments to be received for the succeeding 12 months by the District based on the most recent property and assessment rolls, as adjusted for any new construction and activity in the PILOT area, as set forth in each Borrowing Coverage Capacity Test Certification will be at least 1.30 times annual debt service on (A) the aggregate outstanding principal amount of the Series 2014 Note plus any requested advance of the Series 2014 Note as of the testing date calculated based on a 20-year level debt service structure assuming an interest rate equal to the 20-year “BBB” Municipal Market Data General Obligation Yield (“MMD”) published on the calculation date, or a comparable index selected by the Bank, and consented to by District which consent shall not be unreasonably withheld, in the event MMD is no longer published and (B) any outstanding Parity Debt (using the annual debt service for Parity Debt or the same assumptions used for the Series 2014 Note if the Parity Debt is not amortizing), and

(ii) the actual PILOT Payments for the preceding 12 months are at least 1.10 times annual debt service on the aggregate outstanding principal amount of (A) the Series 2014 Note plus any requested advance of the Series 2014 Note as of the testing date calculated based on a 20-year level debt service structure assuming an interest rate equal to the 20-year “BBB” MMD published on the calculation date, or a comparable index selected by the Bank, and consented to by District which consent shall not be unreasonably withheld, in the event MMD is no longer published and (B) any outstanding Parity Debt (using the annual debt service for Parity Debt or the same assumptions used for the Series 2014 Note if the Parity Debt is not fully amortizing).

“*Borrowing Coverage Capacity Test Certification*” means a certificate delivered by the District, substantially in the form attached as Exhibit D, evidencing compliance with the Borrowing Coverage Capacity Test Certification or the requirements to issue Parity Debt.

“*Breach*” means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time and/or giving of notice, would constitute a CCA Covenant Breach.

“*Breach Rate*” means, for any day, a rate of interest per annum equal to the sum of the Base Rate in effect on such day plus four and one-half percent (4.50%); *provided* that subject to the provisions of Section 35 hereof, the Breach Rate shall not exceed the Maximum Rate.

“*Business Day*” means any day which is not (i) a Saturday or a Sunday, (ii) another day of the year on which banks in the District of Columbia or the state of New York are required or authorized by law or by executive order to close, or (iii) a day on which banking institutions in the city in which the principal office designated by the Bank for receipt of payments on the Series 2014 Note are required or authorized to remain closed.

“*CCA Covenant Breach*” shall have the meaning set forth in Section 11 of this Agreement.

“*Certificate for Reimbursement*” shall have the meaning set forth in Section 12(c) of this Agreement.

“*Certificate of Tax Reimbursement*” shall have the meaning set forth in Section 13(c) of this Agreement.

“*Change in Law*” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Applicable Laws, (b) any change in any Applicable Laws or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to the Third Basel Accord adopted by the Basel Committee on Banking Supervision, shall in each case be deemed to be a “*Change in Law*”, regardless of the date enacted, adopted or issued.

“*Closing Date*” means the date on which the initial Loan advance is made by the Bank and the Series 2014 Note is delivered by the District to the Bank, which shall be December 18, 2014.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations and rulings issued thereunder.

“*Collection Agent*” means Wells Fargo Bank N.A., as successor to Wachovia Bank.

“*Computation Date*” means the second New York Banking Day immediately preceding each LIBOR Index Reset Date.

“*Contingency Fund*” means the Contingency Fund created in accordance with Section 4(c) of this Agreement.

“*Control*” or any variant thereof means the ownership of, or power to vote (i) 51% of the outstanding capital stock of a corporation, the membership interests of a limited liability company, or the

partnership interests of a partnership; or (ii) 100% of the membership interests of the managing members of a limited liability company or of the partnership interests of the general partners of a partnership.

“*Debt Service Reserve Fund*” means the Debt Service Reserve Fund created in accordance with Section 4(d) of this Agreement.

“*District*” means the District of Columbia, a body corporate, its successors and assigns.

“*Draw Fee*” shall have the meaning given to that term in the Fee Letter.

“*Excess Interest*” means the amount of interest that would be payable on the Series 2014 Note if the Maximum Rate did not apply, to the extent such amount is greater than the amount of interest calculated at the Maximum Rate.

“*Excess Interest Commencement Date*” shall have the meaning set forth in Section 35 hereof.

“*Executive Order No. 13224*” means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“*Excluded Taxes*” means, with respect to the Bank, (i) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank is organized or in which its principal office is located, and (ii) any branch profits taxes imposed by the United States or any similar tax imposed by the District of Columbia.

“*Facility Fee*” shall have the meaning given to that term in the Fee Letter.

“*FASB*” means the Financial Accounting Standards Board of the Financial Accounting Foundation or any successor thereto.

“*Federal Funds Rate*” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Bank on such day on overnight transactions as determined in good faith by the Bank absent manifest error.

“*Fee Letter*” means that certain Fee Agreement, dated as of the date of this Agreement, between the Bank and the District.

“*Financing Documents*” means, collectively, this Agreement, the Series 2014 Note and the Fee Letter.

“*Foundry Lofts Debt Payments*” means those payments in lieu of taxes derived from the SEFC PILOT Area as more specifically described in Exhibit A to the PILOT Agreement by and between the District of Columbia and SEFC 160, LLC dated as of August 1, 2010 that are required to make debt

service payments on the Foundry Note outstanding as of the Closing Date, together with the fees due to the Foundry Lofts Paying Agent.

“*Foundry Lofts Paying Agent*” means, initially, The Bank of New York Mellon, N.A.

“*Foundry Note*” means the District of Columbia PILOT Revenue Note (Foundry Lofts Project) Series 2010, issued on August 19, 2010, in the aggregate principal amount of \$5,660,000.

“*GAAP*” means accounting principles generally accepted in the United States as applied to local government units as prescribed by the pronouncements of the GASB and the FASB, consistently applied and maintained throughout the period indicated and consistent with the prior financial practice of the District, except for changes permitted by GASB, FASB or any similar accounting authority of comparable standing.

“*GASB*” means the Governmental Accounting Standards Board of the Financial Accounting Foundation or any successor thereto.

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

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“*Included Taxes*” means Taxes other than Excluded Taxes.

“*Interest Payment Date*” means the first Business Day of each calendar month, commencing February 2, 2015, and any date on which the Series 2014 Note is subject to optional or mandatory redemption or tender.

“*Laws*” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“*LIBOR Index*” means, for each Computation Date, the rate per annum equal to the London Interbank Offered Rate, as reported on Reuters Screen LIBOR01 Page or any successor thereto, at approximately 11:00 a.m. London time two New York Banking Days before the next succeeding LIBOR Index Rate Reset Date, for U.S. Dollar deposits (for delivery on the next succeeding LIBOR Index Reset Date) with a term equivalent to one month, such rate to be rounded up to the nearest 1/16th of one percent. The Bank’s internal records of applicable interest rates shall be determinative in the absence of manifest error. In the absence of the London Interbank Offered Rate, or in the event it cannot be determined, US Bank will select a successor rate, which will be subject to consent by the District, which consent shall not be unreasonably withheld. In the event US Bank and the District cannot agree to a successor interest rate after five Business Days, the LIBOR Index Rate shall be the lesser of (a) Federal Funds Rate plus 180 basis points, or (b) the Maximum Rate.

“*LIBOR Index Rate*” means a per annum rate of interest established on each Computation Date equal to the lesser of (a) the sum of (i) 75% of the LIBOR Index plus (ii) 170 basis points (1.70%) and (b) the Maximum Rate.

“*LIBOR Index Reset Date*” means the first day of each calendar month.

“*Loan*” means the advance of funds by the Bank to or for the account of the District, the repayment obligation for which is evidenced by the Series 2014 Note.

“*Loan Origination Fee*” means a one-time fee paid by the District to the Bank in accordance with the Fee Letter.

“*Mandatory Repurchase Date*” means, initially, December 18, 2019, subject to extension as set forth in Section 3 of this Agreement.

“*Mandatory Tender Repurchase Price*” means an amount equal to 100% of the aggregate principal amount of the Series 2014 Note subject to mandatory repurchase on the Mandatory Repurchase Date and any accrued interest thereon to but not including the Mandatory Repurchase Date.

“*Maturity Date*” means December 1, 2037.

“*Maximum Rate*” means an interest rate per annum equal to the lesser of (a) the maximum non-usurious rate of interest on the relevant obligation permitted by applicable law, and (b) twelve percent (12%).

“*Minimum Revenue Fund Balance*” means \$100,000.

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

“*New York Banking Day*” means a day on which banks in New York are open for business and dealing in offshore dollars.

“*Obligations*” means all amounts payable by the District, and all other obligations to be performed by the District, pursuant to this Agreement and, subject to Section 14, the Fee Letter (including, without limitation, all Payment Obligations and obligations of the District to pay any amounts to reimburse the Bank for any advances or expenditures by it under any of such documents).

“*OFAC*” shall have the meaning set forth in Section 26(b)(iv) hereof.

“*Optional Redemption Premium*” means a dollar amount that is the product of (a) the Bank Interest Rate in effect on the date of such prepayment, (b) the stated principal amount of the Series 2014 Note and (c) a fraction, the numerator of which is equal to the number of days from and including the date of such redemption to and including the Mandatory Repurchase Date, and the denominator of 360.

“*Other Taxes*” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies charged or levied against the District arising from any payment made hereunder or under any other Financing Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Financing Document.

“*Parity Debt*” means any other bonds, bond anticipation notes and similar obligations of the District payable from and secured by PILOT Payments on parity with the Series 2014 Note issued in

accordance with the provisions of Section 10(d) of this Agreement; provided, however, that no such Parity Debt shall have a lien on, or a claim to, any amounts on deposit in the Debt Service Reserve Fund or the Contingency Fund.

“*Paying Agent*” shall mean U.S. Bank National Association Global Corporate Trust Services serving as payment agent for the Note, pursuant to the Paying Agent Agreement.

“*Paying Agent Agreement*” shall mean the Paying Agent Agreement dated December 18, 2014, between the District and the Paying Agent.

“*Payment Obligations*” shall have the meaning set forth in Section 2(j) of this Agreement.

“*Permitted Investments*” shall mean (a) direct non-callable, non-prepayable obligations of, or obligations unconditionally guaranteed by, the United States as to the full and timely payment thereof, (b) obligations issued or guaranteed by agencies or instrumentalities of the United States which are rated not less than the credit rating assigned to the United States by any Rating Agency, (c) certificates of deposit issued by banks, trust companies and savings and loan associations assigned short-term credit ratings of not less than P-1 by Moody’s and A-1 by S&P and which are members of the Federal Deposit Insurance Corporation, which deposits are fully and continuously secured or collateralized by a perfected security interest in favor of or for the benefit of the Paying Agent on behalf of the District in obligations specified in (a) or (b) above, which shall at all times have a market value (exclusive of accrued interest), at least equal to the value at maturity of the deposit so secured (including accrued interest), (d) repurchase agreements with government bond primary dealers which are assigned short-term credit ratings of not less than P-1 by Moody’s and A-1 by S&P and report to the Federal Reserve Bank of New York, provided that such repurchase agreements are in a form acceptable to the Paying Agent and are continuously secured or collateralized by a perfected security interest in favor of the Paying Agent on behalf of the District in obligations described in clause (a) or (b) above, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such repurchase agreements, (e) deposits in accounts with banks, trust companies or savings and loan associations which are assigned short-term credit ratings of not less than P-1 by Moody’s and A-1 by S&P, provided that such deposits are fully insured by the Federal Deposit Insurance Corporation and mature not later than the earlier of 30 days from the date of acquisition of the deposit or the date needed to pay principal of and interest on the Series 2014 Note, (f) money market funds consisting of investments specified in (a) and/or (b), including any such funds advised by, administered to or otherwise affiliated with the Paying Agent or any of its affiliates, (g) non-AMT tax exempt obligations that are rated, at the time of purchase, in the highest rating category by Moody’s or S&P, or (h) money market mutual funds (including funds of the Paying Agent or affiliates) registered under the Investment Company Act of 1940, as amended, which: (i) as a stated primary investment criterion are to invest in non-AMT tax exempt obligations, and (ii) are rated, at the time of purchase, in the highest long-term rating category by Moody’s or S&P.

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

“*PILOT Certification*” means a certificate to be delivered by the District to the Bank, substantially in the form attached hereto as Exhibit C, on or before each November 1, commencing November 1, 2015, showing (i) the amount of PILOT Payments expected to be collected in the next succeeding twelve-month period, based on the amounts certified to District for properties subject to PILOT Payments in the SEFC PILOT Area, (ii) financial projections setting forth the ability of the PILOT Payments to satisfy the Payment Obligations for the coming twelve-month period, (iii) a statement of PILOT Payments received in the prior twelve-month period, and (iv) a certification of real property tax

rates and assessed values for each building (existing and those currently under construction) in the SEFC Development.

“*PILOT Parcels*” means the parcels of property in the SEFC Development from which the PILOT Payments are to be derived.

“*PILOT Payments*” means all Payment in Lieu of Taxes Payments derived from the SEFC PILOT Area, net of Foundry Lofts Debt Payments.

“*Prime Rate*” means on any day, the rate of interest in effect for such day as publicly announced from time to time by the Bank as its “prime rate.” The “*prime rate*” is a rate set by the Bank based upon various factors including the Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change. The Prime Rate is not necessarily the lowest or best rate of interest offered by the Bank.

“*Rating Agency*” means either Moody’s or S&P.

“*Recaptured Interest*” means an amount equal to the difference between (i) the amount of interest that would have accrued on the Series 2014 Note if interest had been calculated at the Maximum Rate during a fiscal year, and (ii) the amount of interest that actually accrued on the Series 2014 Note at interest rates lower than the Maximum Rate for such fiscal year, to be repaid from the Contingency Fund.

“*Recaptured Interest Commencement Date*” shall have the meaning set forth in Section 35 hereof.

“*Reimbursement Obligation*” shall have the meaning given to that term in Section 4(b) of this Agreement

“*Revenue Fund*” means the Revenue Fund established in accordance with Section 4(a) of this Agreement.

“*SEFC PILOT Area*” shall have the meaning ascribed to such term in the Development Agreement.

“*Series 2014 Note*” shall have the meaning ascribed to such term in the recitals hereto.

“*S&P*” means Standard & Poor’s Ratings Service, Inc.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority as a result of the actions of the District or the District’s failure to act, including any interest, fines, additions to tax or penalties applicable thereto.

“*USA Patriot Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

In this Agreement (i) in the computation of a period of time from a specified date to a later specified date, unless otherwise indicated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”; (ii) all accounting terms not specifically defined herein

shall be construed in accordance with generally accepted accounting principles consistently applied, except as otherwise stated or defined herein; (iii) the singular includes the plural and the plural, the singular; (iv) words importing any gender include the other genders; (v) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute to which reference is made and all regulations promulgated pursuant to such statutes; (vi) references to “writing” include printing, photocopy, typing, and other means of reproducing words in a tangible visible form; (vii) the words “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; (viii) references to Sections (or sub-divisions of sections), Appendices and Schedules are to those of this Agreement unless otherwise indicated; (ix) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, modifications, changes and waivers to such instruments, but only to the extent that such amendments, modifications, changes and waivers are permitted or not prohibited by the terms of this Agreement or the affected agreement or contractual instruments; and (x) references to Persons include their respective permitted successors and assigns.

SECTION 2. PURCHASE OF THE SERIES 2014 NOTE; PAYMENT OBLIGATIONS.

(a) *Principal Amount.* Subject to paragraph (d) below, (i) the maximum stated principal amount of the Series 2014 Note is hereby limited to \$34,800,000 and (ii) the total outstanding principal amount of the Loan at any time is hereby expressly limited to the Authorized Loan Amount.

(b) *Draw-Down Funding.* The Loan is originated on a draw-down basis. Upon making the initial advance of the Loan and receiving the Series 2014 Note substantially in the form attached as Exhibit A hereto, the Bank shall be entitled to all rights and privileges accorded to the holder of the Series 2014 Note (including the right to receive payments of principal and accrued interest with respect to the Series 2014 Note). The Bank shall be recognized by the District as the true and lawful absolute owner of the Series 2014 Note, free from any claims, liens, security, interests, equitable interest and other interests of the District, except as such interests might exist under the terms of the Series 2014 Note with respect to all owners. The Bank shall hold the sole legal and beneficial interest in and to the Series 2014 Note, subject to no lien, security interest, or claim of the District, or any Person claiming through the District, other than the Bank, except for consensual liens or other security interests as may be created by the Bank. The proceeds of the Loan shall be advanced by the Bank directly to the District as and when needed to pay costs of the Infrastructure Improvements in accordance with the disbursement provisions of Section 7 of this Agreement.

(c) *Origination Date; Maturity.* The Loan shall be originated on the Closing Date and shall mature on the Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(d) *Principal.* The outstanding principal amount of the Series 2014 Note and of the Loan as of any given date shall be the total amount advanced by the Bank to or for the account of the District, less any payments of principal of the Series 2014 Note previously received from the District, including regularly scheduled principal payments and voluntary and mandatory prepayments.

(e) *Monthly Statements.* The Bank shall keep a record of all principal advances and principal repayments made under the Series 2014 Note and shall provide the District with monthly statements of the outstanding principal balance of the Series 2014 Note and the Loan, and the Paying Agent shall provide monthly statements of the Revenue Fund, Contingency Fund and the Debt Service Reserve Fund setting forth the amounts on deposit therein, investment earnings thereon, and deposits to and withdrawals therefrom.

(f) *Interest Rate.* The Series 2014 Note will bear interest at the Bank Interest Rate as established in accordance with the terms hereof. For purposes of this Agreement, the Bank Interest Rate as of each Interest Payment Date shall be equal to the lesser of (a) the LIBOR Index Rate then in effect plus the Applicable Spread and (b) the Maximum Rate. The District shall certify to the Bank, in a certificate substantially in the form attached hereto as Exhibit E, on or before each May 15 and November 15, commencing May 15, 2015, the actual PILOT payments received for the six-month period ending on the prior March 31 or September 30, respectively, to determine the Applicable Spread as of the six-month testing date commencing on the next following June 1 or December 1, respectively.

(g) *Breach Rate.* From and after the occurrence of a CCA Covenant Breach hereunder, but only for so long as such CCA Covenant Breach shall be continuing, the Series 2014 Note and any other amounts due hereunder shall accrue interest at the Breach Rate.

(h) *Mandatory Repurchase Date.* The Series 2014 Note shall be subject to mandatory purchase by the District at the Mandatory Tender Repurchase Price on the Mandatory Repurchase Date.

(i) *Excess Interest.* If at any time the Bank Interest Rate or the Breach Rate payable on the Series 2014 Note or under this Agreement shall exceed the Maximum Rate for any day for which interest is payable, any Excess Interest arising on any Interest Payment Date shall be paid in accordance with Section 35.

(j) *Payment Obligations.* The obligations of the District to pay the Bank (i) the principal of and interest on the Series 2014 Note as set forth in this Section 2, plus (ii) the Facility Fee are collectively referred to as the "Payment Obligations".

(k) *Facility Fee.* The Facility Fee will be payable in accordance with the provisions of the Fee Letter.

SECTION 3. EXTENSION.

The District may request an extension of the Mandatory Repurchase Date in writing within a time period of 365 days (but not less than 180 days, unless approved in writing by the Bank) prior to the then-existing Mandatory Repurchase Date. The Bank will respond in writing within 45 Business Days of receipt of such written request. The Bank's determination to accept or reject such request shall be within the Bank's sole and absolute discretion. The failure of the Bank to respond to such extension request shall be deemed a denial of the request, and the District shall continue to be required to repurchase the Note on the Mandatory Repurchase Date. The terms of each extension of the Mandatory Repurchase Date will be determined by mutual agreement of the District and Bank after such analysis and due diligence as the Bank may require.

SECTION 4. FUNDS AND ACCOUNTS; METHOD OF PAYMENT.

(a) *Revenue Fund.*

(i) There is hereby created a DC PILOT Revenue Note, Series 2014 Revenue Fund (the "*Revenue Fund*") to be established and maintained by the Paying Agent. The District shall cause (A) the Collection Agent to deliver to the Paying Agent for deposit in the Revenue Fund all PILOT Payments received by the Collection Agent and (B) the Foundry Lofts Paying Agent to deliver to the Paying Agent for deposit in the Revenue Fund all PILOT Payments received by the Foundry Lofts Paying Agent net of the Foundry Lofts Debt Payments.

(ii) PILOT Payments on deposit in the Revenue Fund shall be used to (A) meet the District's Payment Obligations as they become due, including the payment of interest on the first Business Day of each month, commencing February 2, 2015, and the Facility Fee on the first Business Day of each calendar quarter, commencing April 1, 2015, and to pay regularly scheduled interest payments and fees on any Parity Debt as they become due and payable, without further requisition from the District and (B) to make the payments called for in paragraphs (iii) and (iv) below.

(iii) On each March 1 and September 1, beginning March 1, 2015, the Paying Agent shall apply amounts on deposit in the Revenue Fund (A) first to replenish any prior unreimbursed draws on the Debt Service Reserve Fund and any debt service reserve funds on any Parity Debt, and in the event such amounts are insufficient to fully replenish the Debt Service Reserve Fund or any debt service reserve funds on any Parity Debt, such funds shall be applied pro-rata, (B) second, allocated on a pro rata basis (calculated based on outstanding principal amounts of the Series 2014 Note and any Parity Debt), (i) to pay the outstanding principal on the Series 2014 Note and (ii) to fund, at the District's discretion, any debt service obligations on any Parity Debt in amounts directed by the District in writing to the Paying Agent and signed by an Authorized Delegate, with the subsequent balance to be the Minimum Revenue Fund Balance.

(iv) On the Mandatory Repurchase, any amount on deposit in the Revenue Fund as of such Mandatory Repurchase Date, shall be allocated on a pro rata basis (calculated based on outstanding principal amounts of the Series 2014 Note and any Parity Debt), (i) to pay the outstanding principal on the Series 2014 Note and (ii) to fund, at the District's discretion, any debt service obligations on any Parity Debt.

(b) [Reserved].

(c) *Contingency Fund.* There is hereby created a DC PILOT Revenue Note, Series 2014 Contingency Fund (the "*Contingency Fund*"), which shall be a fund in the initial amount of \$100,000, to be held by the Paying Agent, and funded from PILOT Payments collected by the District prior to the Closing Date, which shall be used in the event that amounts are owed under the terms of Sections 12, 13, 31 excluding 31(a) and 31(b), or 35 of this Agreement. Amounts remaining on deposit in the Contingency Fund on the Mandatory Repurchase Date shall be used to make the payment due to the Bank on the Mandatory Repurchase Date.

(d) *Debt Service Reserve Fund.* There is hereby created a DC PILOT Revenue Note, Series 2014 Debt Service Reserve Fund (the "*Debt Service Reserve Fund*"), which shall be a fund in the amount of \$2,000,000, to be held by the Paying Agent and funded from PILOT Payments collected by the District prior to the Closing Date. In the event the Paying Agent needs to draw on the Debt Service Reserve Fund to make satisfy any Payment Obligations due on an Interest Payment Date, the District shall replenish such amount within 12 months of it being drawn. Any undrawn portion of the Debt Service Reserve Fund as of the Mandatory Repurchase Date shall be used to make the Payment Obligations due to the Bank on the Mandatory Repurchase Date.

(e) *Method of Payment.* The Paying Agent shall apply amounts on deposit in the Revenue Fund to the payment of interest on the Series 2014 Note and the Facility Fee as they become due to the Bank, without further direction or request from the District. In the event amounts on deposit in the Revenue Fund are not sufficient to make any Payment Obligation, the Paying Agent shall draw from the Debt Service Reserve Fund to make such payment.

All payments of principal, interest and purchase price of the Series 2014 Note shall be payable in accordance with its terms. All payments of fees and other amounts to be made by the District to the Paying Agent under this Agreement shall be made not later than 12:00 noon (New York City time) on the date when due and shall be made in lawful money of the United States of America (in freely transferable U.S. dollars) and in immediately available funds at the Paying Agent in New York City. All payments made after 12:00 noon (New York City time) shall be deemed to have been made on the next Business Day following the date when such payment was due.

(f) *Paying Agent.* The Paying Agent and the District shall enter into a Paying Agent Agreement, pursuant to which the Paying Agent will perform paying agent functions, including (i) establishing and maintaining the funds and accounts created pursuant to this Agreement, (ii) providing the monthly statements required in paragraph 2(e) above, (iii) receiving PILOT Payments from the District and depositing or applying them in accordance with the provisions of this Agreement and (iv) making any transfers of moneys required or permitted by the terms of this Agreement. The Bank hereby acknowledges that in the event that Parity Debt is issued, the Paying Agent Agreement may be amended, supplemented or superseded in order to allow for the transfers contemplated in Section 4(a), without further Bank approval.

(g) *Investment Earnings.* On each March 1 and September 1, beginning March 1, 2015, all investment earnings from amounts on deposit in the Revenue Fund, the Debt Service Reserve Fund and the Contingency Fund shall be credited to the Revenue Fund. Funds shall be invested in Permitted Investments pursuant to the written direction of the District.

SECTION 5. REDEMPTION.

The District may optionally redeem the Series 2014 Note in whole or in part prior to the Mandatory Repurchase Date on any Interest Payment Date upon three (3) Business Days prior written notice to the Bank; *provided, however*, that if any such optional redemption occurs, the District shall pay to the Bank the Optional Redemption Premium. Notwithstanding the foregoing, any prepayment of the Series 2014 Note resulting from (i) the application of PILOT Payment proceeds on deposit in the Revenue Fund, (ii) the refinancing of the Series 2014 Note by debt paid solely from PILOT Payments (other than a private or direct placement with another financial institution, in which case the Optional Redemption Premium will be payable) and including, but not limited to, General Obligation Bonds, Income Tax Secured Bonds or Tax-Increment Bonds of the District or (iii) paid from cash on hand of the District shall not be considered an optional redemption and shall not be subject to the Optional Redemption Premium. The District shall have the right to reduce the Authorized Loan Amount without penalty upon three (3) Business Days prior written notice to the Bank.

SECTION 6. CERTAIN SECURITY GRANTED BY THE DISTRICT.

The Payment Obligations are secured by, and the District hereby grants to the Bank a first priority security interest in, the PILOT Payments, and any amounts on deposit in the Revenue Fund (subject to the provisions regarding any Parity Debt), the Debt Service Reserve Fund and the Contingency Fund. In addition, the District hereby grants to the Bank a right of set off against, funds accounted for in the Revenue Fund, Debt Service Reserve Fund and Contingency Fund.

SECTION 7. CONDITIONS PRECEDENT.

(a) *Initial Draw.*

As conditions precedent to the obligation of the Bank to purchase the Series 2014 Note and make the initial advance of Loan proceeds, the District shall have provided to the Bank, on or before the Closing Date:

- (i) payment of the Loan Origination Fee;
- (ii) true and correct copies of all governmental approvals, if any, necessary for the District to execute, deliver and perform its obligations under the Financing Documents;
- (iii) the written opinion of the Office of the District's Attorney General addressed to the Bank, dated the Closing Date and in form and substance satisfactory to the Bank;
- (iv) the written opinion of Bond Counsel and a reliance letter addressed to the Bank, dated the Closing Date and in form and substance satisfactory to the Bank;
- (v) a certificate dated as of the Closing Date of the District as to the incumbency of the signatories to each Financing Document to which it is a party and attaching copies of resolution(s) authorizing the execution, delivery and performance of such Financing Documents;
- (vi) a certificate of the District, signed by an Authorized Delegate of the District, dated the Closing Date, stating that on the Closing Date: (A) the representations and warranties contained herein and in the Financing Documents are true and correct on and as of the Closing Date as though made on such date and (B) no CCA Covenant Breach has occurred and is continuing, or would result from the purchase of the Series 2014 Note by the Bank, the execution and delivery of this Agreement or any other Financing Document to which the District is a party, and no event has occurred and is continuing which would constitute a CCA Covenant Breach but for the requirement that notice be given or time elapse or both;
- (vii) a Borrowing Coverage Capacity Test Certification setting forth, based on the initial advance of the Loan, confirmation of the Borrowing Coverage Capacity Test;
- (viii) executed counterparts of the Financing Documents;
- (ix) receipt of all fees, costs and expenses payable to the Bank and its counsel as of the Closing Date by or on behalf of the District;
- (x) audited financial statements of the District for the twelve-month period ending on September 30, 2013;
- (xi) a certificate of the District, signed by an Authorized Delegate of the District, dated the Closing Date, stating that on the Closing Date, to the District's best knowledge, there has been no amendment or proposed amendment to the Home Rule Act of the District of Columbia or any published administrative interpretation of the Home Rule Act of the District of Columbia or any District of Columbia law, or any published Attorney General of the District of Columbia opinion or judicial decision interpreting any of the foregoing, and there is no legislation that has passed by the Council of the District of Columbia, in each case, that could materially

adversely affect any security for the Series 2014 Note or the District's ability to repay when due its obligations under this Agreement, the Series 2014 Note and the other Financing Documents;

(xii) a certificate of the District, signed by an Authorized Delegate of the District, dated the Closing Date, stating that on the Closing Date, to the District's best knowledge, the District has received all consents, licenses, approvals, validations and authorizations of, and filings, registrations, validations and declarations by or with, and formal exemptions from, any court or any Governmental Authority having competent jurisdiction over the District, or other Person required in connection with, the execution, delivery, performance, validity and enforceability of this Agreement and the Financing Documents (including the Series 2014 Note) to which the District is or will be a party and that the same are in full force and effect;

(xiii) certification of the District's real property tax rates for Fiscal Year 2015;

(xiv) as of the Closing Date, written verification of the most recent assessed values of the PILOT Parcels;

(xv) to the best of the District's knowledge, verification that all of the buildings located on the PILOT Parcels (excluding the parcel on which the building known as "Building N" is to be constructed) are available for occupancy and that there are no current disputes or actions taken with respect to challenges to any existing PILOT Payments;

(xvi) to the extent known to the District, notice of any adverse material litigation or adverse changes in the SEFC Development;

(xvii) re-affirmation of PILOT Payments expected for Fiscal Year 2015.

(xviii) funding of the Debt Service Reserve Fund;

(xix) funding of the Contingency Fund; and

(xx) such other documents, certificates and opinions as the Bank or its counsel may reasonably request and the acceptability of such documents, certificates and opinions to such counsel.

(b) *Subsequent Draws.*

The District may request draws of additional advances of Loan proceeds after the initial draw on the Closing Date by providing a written request to the Bank not less than seven Business Days prior to the requested funding date. Each advance subsequent to the initial advance shall be made by the Bank on the next Interest Payment Date not less than seven Business Days after receipt of such written request by the District, substantially in the form attached hereto as Exhibit F. The following conditions to the funding of each installment of the Loan subsequent to the initial advance shall be satisfied as a condition precedent to funding by the Bank:

(i) payment of the Draw Fee from the Revenue Fund, at the written direction of the District;

(ii) delivery of a Borrowing Coverage Capacity Test Certification, confirming that the Borrowing Coverage Capacity Test has been met, when taking into account the amount to be drawn;

(iii) delivery of a certificate setting forth the Debt Service Coverage Ratio is no less than 1.10x, calculated as set forth in the definition of Applicable Spread, as of the immediately preceding six month period ending March 31 or September 30, as applicable, prior to the date of such additional advance of Loan proceeds;

(iv) there have not been any unreimbursed draws on the Debt Service Reserve Fund;
and

(v) delivery of a certificate of the District, signed by an Authorized Delegate of the District, dated the date of the draw request, stating that as of such date: (A) the representations and warranties contained herein and in the Financing Documents remain true and correct on and as of that date as though made on such date and (B) no CCA Covenant Breach has occurred and is continuing, or would result from the delivery of the advance amount by the Bank.

SECTION 8. REPRESENTATIONS AND WARRANTIES OF THE DISTRICT.

The District represents and warrants, as of the Closing Date, that:

(a) *Authority.* The District is duly organized and validly existing as a body corporate for municipal purposes. The District has the requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and the other Financing Documents to which it is or will be a party.

(b) *Authorization; Legal, Valid and Binding Obligations.* The execution and delivery by the District of this Agreement and the other Financing Documents to which the District is or will be a party have been duly authorized by all necessary legislative action of the District, and no further approval, authorization or consent is required by law or otherwise. This Agreement and such other Financing Documents constitute the legal, valid and binding special obligations of the District, and are enforceable in accordance with their respective terms, except as such enforceability may be limited by insolvency, moratorium or other laws or equitable principles relating to the enforcement of creditors' rights generally, and by general principles of equity. The payment of principal of and interest on the Series 2014 Note is not subject to appropriation. Each of the Financing Documents is or will be in full force and effect on the Closing Date.

(c) *No Conflict.* Neither the execution and delivery by the District of this Agreement and the other Financing Documents to which the District is or will be a party, nor the consummation of the transactions contemplated hereby or thereby nor performance or compliance with the provisions hereof or thereof, will (i) violate any law, rule or regulation or any order, writ, judgment, injunction, decree or award of any court, arbitrator or Governmental Authority having competent jurisdiction over the District, (ii) violate or conflict with, or constitute a default under, any mortgage, indenture, contract or other undertaking by which the District or any of its property or assets is bound, or (iii) except as provided in this Agreement, result in the creation or imposition of any security interest, lien, charge, claim or encumbrance pursuant to the terms thereof.

(d) *Consents and Approvals.* All consents, approvals, validations and authorizations of, and filings, registrations, validations and declarations by or with, and formal exemptions from, any court or any Governmental Authority having competent jurisdiction over the District, or other Person required in connection with, the execution, delivery, performance, validity and enforceability of this Agreement and the Financing Documents (including the Series 2014 Note) to which the District is or will be a party have been obtained and are in full force and effect.

(e) *Litigation.* Except to the extent disclosed to the Bank in writing, there is no action, suit, proceeding, inquiry or investigation before or by any court, arbitrator, public board or other body of competent jurisdiction pending or, to the best knowledge of the District, threatened against or affecting the District wherein an unfavorable decision, ruling or finding would have a material adverse effect on the transactions contemplated by this Agreement or the other Financing Documents, or which would adversely affect the validity or enforceability of, or the authority or ability of the District to perform its obligations under, this Agreement and the other Financing Documents to which it is a party.

(f) *No Violations.* The District is not in violation of any material term of any bond or indenture agreement to which it is a party and to which PILOT Payments are pledged for the payment thereof.

(g) *No Defaults.* Each Financing Document to which the District is a party is a legal, valid and binding obligation of the District, has not been terminated, cancelled or waived in any material respect and is in full force and effect, and the District is not in default under any such Financing Document.

(h) *Financial Statements.* The statements of financial position of the District as of September 30, 2013, and the related statements of activities and statements of cash flows for the fiscal year then ended and the auditors' reports with respect thereto, correctly and fairly present the financial position, changes in financial position and results of operations of the District at and for the period ended on such date, and were prepared in accordance with GAAP. Since September 30, 2013, there has been no event that would materially adversely change the District's ability to perform its obligations hereunder.

(i) *Accurate Information.* All information, reports and other papers and data with respect to the District furnished to the Bank were, at the time the same were so furnished, accurate in all material respects. Any financial, budget and other projections furnished to the Bank were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of delivery of such financial, budget or other projections, and represented and, as of the date of this representation, represent the District's best estimate of its future financial performance. No fact is known to the District and no transaction or event has occurred that materially adversely affects or could materially adversely affect the security for any of the Series 2014 Note or the District's ability to repay when due its obligations under this Agreement, any of the Series 2014 Note and the other Financing Documents. Taken as a whole, the documents furnished and statements made to the Bank in connection with the negotiation, preparation or execution of this Agreement and the other Financing Documents, as of the date so furnished or made, did not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. Except for such amendments supplied by the District to the Bank in conjunction with the delivery of this Agreement, there have been no amendments or supplements to the Financing Documents.

(j) *No Proposed Legal Changes.* There is no amendment or, to the best knowledge of the District, proposed amendment to the Home Rule Act of the District of Columbia or any published administrative interpretation of the Home Rule Act of the District of Columbia or any District of Columbia law, or any published Attorney General of the District of Columbia opinion or judicial decision interpreting any of the foregoing, and there is no legislation that has passed by the Council of the District of Columbia, in each case, that could materially adversely affect any security for any of the Series 2014 Note or the District's ability to repay when due its obligations under this Agreement, any of the Series 2014 Note and the other Financing Documents.

(k) *Compliance with Laws.* To the best knowledge of the District, with regard to noncompliance that would have a material adverse effect on the District's ability to perform its obligations under the Financing Documents, the District is in material compliance with all statutes, rules, regulations, orders, writs, judgments, injunctions, decrees or awards of any Governmental Authority having jurisdiction over the District or the ownership or use of its property or assets, the conduct of its business or the premises occupied by it or to which it is otherwise subject.

(l) *Interest Rate.* The terms of this Agreement and the Financing Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

(m) [Reserved]

(n) *Regulation U.* The District is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System); and no proceeds of the Series 2014 Note have been or will be used to extend credit to others for the purpose of purchasing or carrying any margin stock.

(o) *Tax-Exempt Status.* The District has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Series 2014 Note from gross income for Federal income tax purposes or the exemption of such interest from taxation by the District of Columbia, except for inheritance, estate and gifts taxes.

(p) *Purchased Note.* The Series 2014 Note purchased by the Bank pursuant to the terms hereof will be transferred to the Bank free and clear of all security interests, liens, charges or encumbrances of any Person other than the Bank, except for consensual liens or other security interests as may be created by the Bank.

(q) *Validity of Lien.* The lien granted hereunder on the PILOT Payments is a valid and enforceable lien securing the payment of the Series 2014 Note and the Payment Obligations.

SECTION 9. AFFIRMATIVE COVENANTS OF THE DISTRICT.

The District covenants and agrees with the Bank that, so long as the Bank owns all or any portion of the Series 2014 Note or until the full and final payment and satisfaction of all of the Obligations to the Bank, unless the Bank shall otherwise consent in writing, that:

(a) *Reporting Requirements.* The District shall keep, or cause to be kept, proper books of record and account in which full, true and correct entries will be made reflecting all financial transactions of the District in accordance with GAAP, consistently applied, and will furnish to the Bank a copy of each of the following:

(i) as soon as available, and in any event within two hundred seventy (270) days after the close of each fiscal year of the District, the most recent audited statements of financial position, the related statements of activities and statements of cash flows for the fiscal year then ended and the auditors' reports with respect thereto;

(ii) concurrently with the furnishing of the financial statements under Section 9(a)(i) hereof, a certificate signed by an Authorized Delegate of the District stating that (A) the District has complied with all of the terms, provisions and conditions of this Agreement and the other Financing Documents to which it is a party, (B) to the best of his/her knowledge, the District has

kept, observed, performed and fulfilled each covenant, provision and condition of this Agreement and the other Financing Documents to which it is a party, required on its part to be performed, and (C) to the best of his/her knowledge, no Breach or CCA Covenant Breach has occurred or, if such Breach or CCA Covenant Breach has occurred, specifying the nature of such Breach or CCA Covenant Breach, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Breach or CCA Covenant Breach;

(iii) forthwith and, in any event, within seven (7) Business Days after the District obtains actual knowledge thereof, a certificate of the District setting forth the occurrence of any Breach or CCA Covenant Breach, the details thereof and the action which the District is taking or proposes to take with respect thereto;

(iv) promptly after becoming known to any officer of the District upon whom process has been legally served or promptly after becoming known to an officer of the District, notice of any action, suit, proceeding, inquiry or investigation before or by any court, arbitrator, public board or other body of competent jurisdiction against or affecting the District wherein an unfavorable decision, ruling or finding would have a material adverse effect on the transactions contemplated by this Agreement or the Financing Documents, or which would adversely affect the validity or enforceability of or the authority or ability of the District to perform its obligations under, this Agreement and the other Financing Documents to which it is a party;

(v) copies of any communications delivered or received by it under any of the Financing Documents (unless, with respect to communications received by it under any of the Financing Documents, the same are required to be furnished by the sender thereof directly to the Bank under the terms of such Financing Documents or such communication is sent by the Bank), or from any taxing authority with respect to the transactions contemplated hereby;

(vi) to the extent known to the District, notice of any additional property in the SEFC PILOT Area transferred to the SEFC Developer by the Federal Government;

(vii) to the extent known to the District, notice of any appeal of taxes or challenges to assessed valuation or the real property tax rates for any parcel in the SEFC Development, that would have a material adverse effect on the ability of the District to perform its obligations under the Financing Documents;

(viii) on or before November 1 of each year, commencing November 1, 2015, the PILOT Certification; and

(ix) such other information respecting the ability of the District to perform its obligations under the Financing Documents, as the Bank may from time to time reasonably request.

(b) *Compliance with Laws.* The District shall comply with all applicable statutes, rules, regulations, orders, writs, judgments, injunctions, decrees or awards of any Governmental Authority having jurisdiction over the District or the ownership or use of its property or assets, the premises occupied by it or to which it is otherwise subject, except as to those statutes, rules, regulations, orders, writs, judgments, injunctions, decrees or awards for which noncompliance would not have a material adverse effect on the ability of the District to perform its obligations under the Financing Documents; *provided, however,* that the District may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the District's power and authority to execute this

Agreement and the other Financing Documents to which it is a party or to perform its obligations and pay all amounts payable by it hereunder and thereunder.

(c) *Inspection Rights.* To the extent permitted by law and any applicable confidentiality agreement, the District shall at all reasonable times during regular business hours, upon the written request of the Bank, with reasonable notice provided to the District by the Bank, permit the Bank by its representatives to inspect, to the extent permitted by law, the properties, books of account, records, reports and other papers of the District related to the SEFC Development, SEFC PILOT Area and PILOT Payments, to take copies and extracts therefrom, and to discuss the affairs, finances and accounts of the District with the chief financial officer of the District or the independent public accountants of the District. The District will afford and procure a reasonable opportunity to make any such inspection, and the District will furnish to the Bank any and all information as the Bank may reasonably request related to the SEFC Development, SEFC PILOT Area and PILOT Payments, with respect to the performance by the District of the District's covenants in this Agreement; *provided*, that such inspection shall not interfere with the normal business of the District and the District incurs no out-of-pocket expenses as a result thereof; *provided further, however*, that from and after the occurrence and during the continuance of any CCA Covenant Breach, the costs of any inspection by the Bank or the furnishing of any information to the Bank shall be, subject to the provisions of Section 14 hereof, for the account of the District.

(d) *Keeping of Records and Books of Account.* Keep or cause to be kept proper records and books of account, including proper records and books of account in which correct and complete entries will be made subject to year-end adjustments in accordance with GAAP, reflecting all of its financial transactions with respect to PILOT Payments and the SEFC PILOT Area.

(e) *Maintenance of Approvals, Filings and Registrations.* At all times maintain in effect, renew and comply with all the terms and conditions of all consents, licenses, approvals and authorizations as may be necessary or appropriate under any applicable law or regulation for the execution, delivery and performance of the Financing Documents to which it is party, and to make such Financing Documents legal, valid, binding and enforceable, in accordance with their terms.

(f) *Further Assurance.* Execute and deliver to the Bank all such documents and instruments and do all such other acts and things as may be reasonably necessary or required by the Bank to enable the Bank to exercise and enforce its rights under the Financing Documents and to record and file and re-record and re-file all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the Bank to validate, preserve and protect the position of the Bank under the Financing Documents.

(g) *Notices.* The District will promptly furnish, or cause to be furnished, to the Bank (i) upon its having knowledge thereof, notice of the occurrence of any CCA Covenant Breach or Breach and (ii) such further financial and other information with respect to the SEFC Development, the SEFC PILOT Area and PILOT Payments as the Bank may reasonably request from time to time.

SECTION 10. NEGATIVE COVENANTS OF THE DISTRICT.

The District covenants and agrees with the Bank that, so long as the Bank owns all or any portion of the Series 2014 Note or until the full and final payment and satisfaction of all of the Obligations to the Bank, unless the Bank shall otherwise consent in writing, that the District will not, directly or indirectly:

(a) *Tax-Exemption.* Take any action or omit to take any action which, if taken or omitted, would adversely affect (i) the exclusion of interest on the Series 2014 Note from gross income for federal

income tax purposes; or (ii) the exemption of such interest from taxation by the District of Columbia, except for inheritance, estate and gift taxes.

The District will not make, or give its consent to the Bank or any other Person, to make, any use of the proceeds of the Series 2014 Note or of any moneys which may be deemed to be gross proceeds of the Series 2014 Note pursuant to Section 148 of the Code which, if such use will cause any the Series 2014 Note to be "arbitrage bonds" within the meaning of said Section 148 and the regulations in effect thereunder at the time of such use and applicable to obligations issued on the date of issuance of the Series 2014 Note. Without limiting the generality of the foregoing, the District covenants that it will comply with the instructions and requirements of the Tax Certificate and Agreement regarding arbitrage rebate under section 148 of the Code. This covenant shall survive payment in full or defeasance of the Series 2014 Note.

(b) *Amendments to Financing Documents.* Amend, modify, terminate or grant, or permit the amendment, modification of, termination of or grant of any waiver under, or consent to, or knowingly permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, termination of, modification of, or grant of a waiver under the Financing Documents that could have a material adverse effect on (A) the ability of the District to perform its obligations under the Financing Documents or (B) the rights, interests, security or remedies of the Bank, without the prior written consent of the Bank as required under Section 21 hereof (which such consent shall not be unreasonably withheld).

(c) *Waiver of Sovereign Immunity.* To the extent the defense of sovereign immunity is waivable by law, the District will not, directly or indirectly assert any immunity it may have as a government entity from lawsuits with respect to the enforcement of any of the obligations of the District under this Agreement, provided, however, that this paragraph shall not be deemed to constitute a waiver by the District of any procedural requirement under Applicable Law or binding upon, the District relating to the notice of claims against the District.

(d) *Additional Parity Debt.* From and after the later of (i) the third anniversary of the Closing Date or the date that the Authorized Loan Amount is first fully drawn, and so long as no CCA Covenant Breach has occurred and is continuing hereunder, the District may issue Parity Debt, but only (i) to the extent permitted by, and in accordance with the terms of, the Development Agreement and (ii) to the extent that such Parity Debt would not result in a failure to meet the Borrowing Coverage Capacity Test, treating the proposed Parity Debt as a Loan advance.

(e) *Ratings and CUSIP Numbers.* The Series 2014 Note will not be (i) assigned a separate rating by any Rating Agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of offering document, official statement or other disclosure documentation, or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service.

(f) *Amendment of Development Agreement.* The District will not amend the Development Agreement in any manner that would adversely impact its ability to perform its obligations hereunder without the prior written consent of the Bank, which consent shall not be unreasonably conditioned, withheld or delayed.

SECTION 11. EVENTS OF CCA COVENANT BREACH AND REMEDIES.

(a) If any of the following events shall occur and be continuing (each such event shall be a “CCA Covenant Breach”):

(i) any representation or warranty made by the District in any Financing Document or in any certificate, agreement, report instrument or statement contemplated by or made or pursuant to or in connection with this Agreement shall prove to have been false or misleading in any material respect when made;

(ii) failure of the District to make any payment of the principal of or interest on the Series 2014 Note or any other Payment Obligation as and when due;

(iii) failure of the District to make any payment of any amount when due under this Agreement (other than a Payment Obligation) and such default shall continue for thirty (30) days after written notice of such default shall have been given to the District by the Bank;

(iv) failure of the District to observe or perform the covenants set forth in Sections 9(a)(iii), 9(c) (but only with respect to the right to inspect and not the payment of the costs of such inspection), 9(f) or 10 of this Agreement;

(v) failure of the District to observe or perform any other covenant set forth in this Agreement and such failure shall have continued for 180 consecutive days; *provided* that if the District is diligently seeking to cure such CCA Covenant Breach it may, by written notice to the Bank (which shall include detailed information regarding the actions being taken to cure), request up to an additional sixty (60) days to cure such CCA Covenant Breach, and the Bank shall not unreasonably reject such request;

(vi) the District makes an assignment for the benefit of creditors, enters into a composition agreement with creditors, files a petition in bankruptcy (to the extent permitted by law), is unable generally to pay its debts as they come due, is insolvent or bankrupt or there is entered any order or decree granting relief in any involuntary case commenced against the District under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or if the District petitions or applies to any tribunal or governmental entity for any receiver, trustee, liquidator, assignee, custodian or sequestrator (or other similar official) of the District or of any substantial part of the District’s assets, or the District commences any case or proceeding in a court of law for a reorganization, readjustment of debt, dissolution, liquidation or other similar procedure under the law or statutes of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the District any such case or proceeding in a court of law which remains undismissed or shall not be discharged or vacated, or such jurisdiction shall not be relinquished or the District shall not have commenced proceedings to dismiss such case, within sixty (60) days after commencement, or the District by any act indicates its consent to, approval of, or acquiescence in any such case or proceeding in a court of law, or to an order for relief in an involuntary case commenced against the District under any such law, or to the appointment of any receiver, trustee, liquidator, assignee, custodian, sequestrator (or other similar official) for the District or a substantial part of the District’s assets, or if the District takes any action for the purposes of effecting the foregoing; or if the District becomes a debtor in a bankruptcy case or otherwise adjusts its debts under judicial administration or otherwise restructures its debts generally or is insolvent, bankrupt or unable to meet its debts as they become due;

(vii) any material provision of this Agreement or any of the other Financing Documents shall cease to be valid and binding; or the District shall deny that it has any or further liability hereunder or under any of the other Financing Documents;

(viii) the District shall default in the payment of any principal of or premium, if any, or interest on any of its Parity Debt, or the District shall default in the performance of any agreement (including any Financing Document) under which any such Parity Debt is created if the effect of such default is to cause such Parity Debt to become, or to permit any holder or beneficiary thereof, or a trustee on behalf thereof, with notice if required, to declare such Parity Debt to be due prior to its normal maturity, after any applicable cure and payment periods, or a moratorium shall have been imposed by or with respect to the District with respect to any of its Parity Debt, or the occurrence of any of the foregoing may (in the reasonable judgment of the Bank) have a material adverse effect on the ability of the District to perform its obligations hereunder or under any Financing Document to which it is a party;

(ix) a “CCA Covenant Breach” occurs as defined in any of the other Financing Documents;

(x) any Parity Debt is declared to be in default by the holder thereof, and the holder of the Parity Debt has accelerated the maturity of the Parity Debt;

(xi) any draw on the Debt Service Reserve Fund is not fully replenished within 12 months of the draw with such obligation of the District limited to the use of PILOT Payments to fund such replenishment; or

(xii) the District contests its Payment Obligation.

(b) Upon the occurrence of a CCA Covenant Breach set forth above in sections 11(a)(ii) and (iii), the Bank may apply amounts on deposit in the Revenue Fund (subject to the provisions regarding any Parity Debt), the Debt Service Reserve Fund and the Contingency Fund (in that order) to immediately pay principal of and interest on the Series 2014 Note due. Upon the occurrence of any other CCA Covenant Breach, the Bank may exercise, or cause to be exercised, any and all remedies it may have under any Financing Document or as otherwise available at law or in equity, including, without limitation, bringing an action for specific performance, mandamus or injunctive relief.

(c) Notwithstanding the exercise of any other remedies provided for herein, upon the occurrence and during the continuance of any CCA Covenant Breach, the Series 2014 Note and any amounts due hereunder shall bear interest at the Breach Rate.

SECTION 12. INCREASED COSTS.

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, liquidity coverage ratio, leverage ratio, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Bank;

(ii) subject the Bank to any Tax of any kind whatsoever with respect to this Agreement or the Series 2014 Note, or change the basis of taxation of payments to the Bank in respect thereof (except for Excluded Taxes or Other Taxes covered by Section 13 and the imposition of, or any change in the rate of any Excluded Tax payable by the Bank); or

(iii) impose on the Bank any other condition, cost or expense affecting this Agreement or the Series 2014 Note;

and the result of any of the foregoing shall be to increase the cost to any the Bank with respect to this Agreement, the Series 2014 Note, or the making, maintenance or funding of the purchase price of the Series 2014 Note, or to reduce the amount of any sum received or receivable by the Bank hereunder (whether of principal, interest or any other amount) then, upon written request of the Bank pursuant to a Certificate for Reimbursement, the District shall promptly pay to the Bank, such additional amount or amounts as will compensate the Bank, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank determines that any Change in Law affecting the Bank regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Bank's capital or liquidity as a consequence of this Agreement, or ownership of the Series 2014 Note, to a level below that which the Bank could have achieved but for such Change in Law (taking into consideration the Bank's policies with respect to capital adequacy), then upon written request of the Bank pursuant to a Certificate for Reimbursement, the District shall pay to the Bank, such additional amount or amounts as will compensate the Bank for any such reduction suffered.

(c) *Certificates for Reimbursement.* Within one hundred eighty (180) days of notice or knowledge of a Change in Law, the Bank shall deliver a written certificate for reimbursement ("*Certificate for Reimbursement*") setting forth (i) the specific Change in Law that results in the cost increase in subsection (a) or the Capital Requirements set forth in subsection (b), (ii) the amount necessary to compensate the Bank, (iii) the reason such amounts are necessary, as specified in paragraph (a) or (b) of this Section and the calculation thereof in reasonable detail, and (iv) a copy of the applicable Change in Law. Such Certificate for Reimbursement shall be delivered to the District and shall be conclusive absent manifest error. The District shall pay the Bank the amount shown as due in such Certificate for Reimbursement as promptly as possible.

(d) *Delay in Requests.* Failure or delay on the part of the Bank to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's right to demand such compensation.

(e) *Obligation of the District.* Any obligation of the District to make a payment under the provisions of (a) or (b) shall be subject and limited to the amounts in the Contingency Fund. The Bank shall return any payment made to it by the District by virtue of the provisions of (a) or (b) of this Section for the period for which it is determined that there was no basis for any such payment.

SECTION 13. TAXES.

(a) *Payments Free of Taxes.* Any and all payments to the Bank by or on account of any obligation of the District hereunder or under the Series 2014 Note shall be made free and clear of and without reduction or withholding for any Included Taxes or Other Taxes; *provided* that if the District shall be required by Applicable Law to deduct any Included Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the District shall make such deductions and (iii) the District shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) *Payment of Other Taxes by the District.* Without limiting the provisions of paragraph (a) above, the District shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) *Reimbursement by the District.* The District shall reimburse the Bank, within thirty (30) days after demand together with a written certificate of tax reimbursement (“*Certificate of Tax Reimbursement*”) therefor, for the full amount of any Included Taxes or Other Taxes (including Included Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Bank and any penalties, interest and reasonable expenses arising therefrom or with respect thereto. The Certificate of Tax Reimbursement shall specify: (i) the amount of the tax payment made by the Bank on behalf of the District and evidence of such payment, (ii) the amount of the tax levied, (iii) a copy of the Applicable Law authorizing the tax levy by the relevant Governmental Authority, and (iv) a detailed calculation and breakdown of the amount of the tax payment, penalties and interest paid, and the Bank’s expenses arising therefrom. Nothing in this section shall impair, limit or waive the District’s right to contest the tax levied.

(d) *Evidence of Payments.* As soon as practicable after any payment of Included Taxes or Other Taxes by the District to a Governmental Authority pursuant to clause (a) or (b) above, the District shall deliver to the Bank, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank.

(e) *Treatment of Certain Refunds.* If the Bank has received a refund of any Taxes or Other Taxes as to which it has been reimbursed by the District pursuant to this Section (including additional amounts paid by the District pursuant to this Section), it shall pay to District an amount equal to such refund (but only to the extent of reimbursement payments made, or additional amounts paid, under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out of pocket expenses of the Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the District, upon the request of the Bank, agrees to repay the amount paid over pursuant to this Section (plus any interest or other charges imposed by the relevant Governmental Authority) to the Bank, in the event the Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Bank be required to pay any amount to the District pursuant to this paragraph (e) if the payment of which would place the Bank in a less favorable net after Tax-position than the Bank would have been in if the additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require the Bank to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the District or any other Person.

(f) *Obligation of the District.* Any obligation of the District to make a payment under the provisions of (a) or (b) shall be subject and limited to the amounts in the Contingency Fund. The District shall have no obligation to make any payment under the provisions of (a) or (b) of this Section with respect to any Participant unless the event giving rise to such payment would apply to the Bank if the Bank had not granted a participation interest to such Participant

SECTION 14. COSTS AND EXPENSES.

(a) All requests that the District make payments pursuant to Sections 7(b)(i), 9(c) or 20, or as otherwise specifically required by this Agreement, or any subsequent agreement are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351, 1511-1519 (2004) (the “*Federal ADA*”), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 ~ 355.08 (2013 Supp.) (the “*D.C. ADA*” and (i) and (ii) collectively, as amended from time to time, the “*Anti-Deficiency Acts*”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the District in anticipation of an appropriation by Congress for such purpose, and the District’s legal liability

for the payment of any amount under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

(b) The foregoing provisions of this Section 14 do not create or constitute a present financial obligation of the District to the Bank or anyone else.

(c) The foregoing provisions of this Section 14 do not create or constitute a future financial obligation of the District to the Bank or anyone else.

(d) The Mayor shall exercise all lawful authority available to him/her to satisfy the requests for payment that may arise under this Section 14. The Mayor of the District or other appropriate official shall, for each fiscal period, include in the budget application submitted to the Council of the District the amount necessary to fund the requests for payment under this Section 14 for such fiscal period or relating to any previous fiscal period. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay the amount and any other amount under this Section 14 for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District will not be liable to make any payments under this Section 14 in such period or until appropriated funds for such purposes are available, and the unavailability of such funds shall not constitute a CCA Covenant Breach.

(e) Notwithstanding the foregoing, no officer, elected or appointed official, employee, director, member or other natural person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section 14.

(f) No District officer, elected or appointed official, employee or agent is authorized to obligate or expend any amount under this Section 14 unless such amount has been appropriated by Act of Congress and is lawfully available.

SECTION 15. OBLIGATIONS ABSOLUTE.

Except as otherwise stated herein, the obligations of the District under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation, the following circumstances:

(a) any amendment or waiver of or any consent to departure from all or any of the other Financing Documents;

(b) without waiving its right to contest claims, the existence of any claim, set-off, defense or other rights which the District may have at any time against the Bank (other than the defense of payment to the Bank in accordance with the terms of this Agreement), or any other person or entity, whether in connection with this Agreement, the Financing Documents or any unrelated transaction; and

(c) any statement proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever.

SECTION 16. LIABILITY OF THE BANK.

Neither the Bank nor any of the officers, directors, employees or agents thereof shall be liable or responsible for any of the following: (a) the use that may be made of this Agreement or any amounts

made available by the Bank hereunder or for any acts or omissions of the District in connection therewith; (b) the validity, sufficiency or genuineness of documents (except for the validity and enforceability of the Bank's obligations hereunder), or of any endorsement(s) thereon. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation. The foregoing provisions of this section shall not be construed to exculpate the Bank from any act of the Bank which constitutes negligence or willful misconduct.

SECTION 17. SUCCESSORS AND ASSIGNS.

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the District, its successors, transferees and assigns and shall inure to the benefit of the Bank. The District may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank. The Bank may not assign, sell or transfer this Agreement or its interest in the Series 2014 Note prior to the Mandatory Repurchase Date.

(b) Notwithstanding the foregoing, the Bank may at any time pledge or grant a security interest in all or any portion of its rights under the Series 2014 Note, this Agreement and the Financing Documents to secure obligations of the Bank to a Federal Reserve Bank without notice to or consent by the District; *provided* that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such Federal Reserve Bank for the Bank as a party hereto or cause any additional expense or obligation by the District.

SECTION 18. CALCULATIONS.

Unless otherwise stated, all fees and interest on amounts owing the Bank under this Agreement or the Fee Letter shall be computed on the basis of the actual number of days elapsed over a year of 360 days, which shall include the first day on which fees are payable or any such amount is due, as the case may be, but shall exclude the day on which payment is made.

SECTION 19. PAYMENTS DUE ON A DAY OTHER THAN A BUSINESS DAY.

If any payment to the Bank would become due and payable on other than a Business Day, such payment shall instead become due on the next succeeding Business Day and interest shall be payable thereon at the rate herein specified during such extension.

SECTION 20. SURVIVAL OF THIS AGREEMENT.

Subject to Section 14 of this Agreement, all covenants, agreements, representations and warranties made in this Agreement shall continue in full force and effect until no amounts hereunder shall be outstanding or unpaid, it being understood that the agreements of the District found in Sections 2, 12, 13, 14 and 15 hereof shall survive the termination of this Agreement and payment in full of such obligations (*provided* that any such obligations which are limited to accruing in a particular fiscal year shall continue to be limited to accruing in such fiscal year). Whenever in this Agreement the Bank is referred to, such reference shall be deemed to include the successors and assigns of the Bank and all covenants, promises and agreements by or on behalf of the District which are contained in this Agreement shall inure to the benefit of the successors and assigns of the Bank. The rights and duties of the District, however, may not be assigned or transferred, except as specifically provided in this Agreement or with the prior written consent of the Bank, and all obligations of the District hereunder shall continue in full force and effect notwithstanding any assignment by the District of any of its rights or obligations under any of the Financing Documents.

SECTION 21. MODIFICATION OF FINANCING DOCUMENTS.

No amendment, modification or waiver of any provision of any Financing Document shall be effective unless the same shall be in writing and signed by the Bank and the District and no consent to any departure by the District therefrom, shall, in any event, be effective unless the same shall be in writing and signed by the Bank. Any such amendment, modification or waiver shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the District in any case shall entitle the District to any other or further notice or demand in the same, similar or other circumstances.

SECTION 22. NO WAIVER OF RIGHTS BY THE BANK.

No course of dealing or failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under any Financing Document shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. The rights of the Bank under the Financing Documents are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have.

SECTION 23. SEVERABILITY.

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 24. GOVERNING LAW; VENUE.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; PROVIDED THAT THE AUTHORITY, DUTIES AND OBLIGATIONS OF THE DISTRICT HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE DISTRICT OF COLUMBIA. ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERIES 2014 NOTE INVOLVING THE BANK SHALL BE BROUGHT IN THE APPROPRIATE DISTRICT OF COLUMBIA COURT HAVING JURISDICTION OVER SUCH MATTER.

SECTION 25. WAIVER OF SPECIAL DAMAGES; WAIVER OF JURY TRIAL.

The District shall not assert, and waives, any claim against the Bank, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages or damages otherwise recoverable pursuant to statute) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions, or the use of the proceeds thereof.

THE DISTRICT AND THE BANK HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OBLIGATIONS OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 26. ANTI-TERRORISM LAWS.

The District hereby represents and warrants that:

(a) The District is not in violation of any Anti-Terrorism Law applicable to the District or engaged in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Neither the District nor any of its agents acting or benefiting in any capacity in connection with this Agreement or other transactions hereunder, is any of the following (each a “*Blocked Person*”);

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(ii) a Person or entity with which the Bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iii) a Person or entity that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order No. 13224;

(iv) a Person or entity that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control (“OFAC”) at its official website: <http://www.treas.gov/ofachllsdn.pdf> or any replacement website or other replacement official publication of such list;

(v) a Person who is affiliated with a Person listed above; or

(vi) a Person who is listed on any other list of terrorist or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable executive order. The above-referenced lists contained in this Section 26 are collectively referred to as the “OFAC Lists.”

(c) Neither the District nor, to its knowledge, any of its agents acting in any capacity in connection with this Agreement or other transactions hereunder (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked

Person or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224.

(d) The District and its agents shall not (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224, (iii) permit the transfer of any interest in either the District or its agents to any Blocked Person or any beneficial owner of such Blocked Person or (iv) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order No. 13224 or the USA Patriot Act. The District acknowledges that pursuant to the requirements of the USA Patriot Act, the Bank is required to obtain, verify and record information that identifies the District.

SECTION 27. NOTICE.

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, or sent by overnight mail, with return receipt, or five (5) days following mailing by registered or certified mail, postage prepaid, to the parties at the following addresses. Any of the foregoing parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communication shall be sent.

The Bank:

U.S. Bank National Association

[REDACTED]

The District:

District of Columbia
John A. Wilson Building
Office of the Chief Financial Officer

[REDACTED]

With a copy to:

Government of the District of Columbia



With a copy to:

Office of the Attorney General
Government of the District of Columbia



SECTION 28. HEADINGS.

The table of contents and captions in this Agreement are for convenience of reference only and shall not define or limit the provisions of this Agreement.

SECTION 29. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same instrument.

SECTION 30. ENTIRE AGREEMENT.

This Agreement sets forth the entire agreement between the District and the Bank covering the subject matter of this Agreement and the terms of this Agreement shall supersede the terms of any commitment letter or other agreement covering the subject matter of this Agreement between the District and the Bank.

SECTION 31. OTHER COSTS AND EXPENSES.

The District agrees to pay on the Closing Date, subject to the amounts provided for in the Fee Letter, (a) the Loan Origination Fee and (b) the Counsel Fees. In addition, the District agrees to pay on demand, subject and limited to the amounts on deposit in the Contingency Fund, all reasonable costs and expenses of the Bank (in an amount to be determined and mutually agreed upon) in connection with and any waivers or supplements or amendments to this Agreement and the other Financing Documents, and all other instruments and documents delivered under or in connection with this Agreement (including, but not limited to, the Amendment Fee in connection with each amendment, fees and expenses of appraisers, accountants, and other professionals, and costs of property and lien searches related thereto. Subject and limited to amounts on deposit in the Contingency Fund, the District agrees to pay all reasonable costs and

expenses of the Bank in connection with the enforcement of this Agreement and the other Financing Documents, and all other instruments and documents to be delivered under or in connection with this Agreement, including the reasonable fees and expenses of counsel and the reasonable fees and expenses of appraisers, accountants, and other professionals. Such costs and expenses shall include all costs and expenses (including the reasonable fees and expenses of counsel for the Bank) incurred in connection with: (A) the protection, exercise or enforcement of the Bank's rights as holder of the Series 2014 Note (but not with respect to the Bank's relationships with any parties to whom the Bank has assigned or sold a participation in the Series 2014 Note) with respect to the PILOT Payments; and (B) the assertion, protection, exercise or enforcement of the Bank's rights as holder of the Series 2014 Note (but not with respect to the Bank's relationships with any parties to whom the Bank has assigned or sold a participation in the Series 2014 Note) in any proceeding under the United States Bankruptcy Code, including without limitation the preparation, filing and prosecution of (i) proofs of claim, (ii) motions for relief from the automatic stay, (iii) motions for adequate protection and (iv) complaints, answers and other pleadings in adversary proceedings by or against the Bank or relating in any way to any of the PILOT Payments. Such costs and expenses also shall include the fees and expenses of counsel for the Bank in advising the Bank as to its rights and responsibilities under this Agreement or any of the other Financing Documents and in representing the Bank in any legal proceeding relating thereto upon a CCA Covenant Breach.

SECTION 32. EVIDENCE OF DEBT.

The Bank shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the District resulting from this Agreement and the amounts of principal, interest and fees payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such account or accounts shall be conclusive evidence of the existence and amounts of the obligations of the District therein recorded, absent manifest error.

SECTION 33. NO FIDUCIARY RELATIONSHIP.

The District acknowledges and agrees that its dealings with the Bank are solely in the nature of a debtor/creditor relationship and that in no event shall the Bank be considered to be a partner or joint venturer of the District. Also, the District represents and warrants that it has independently evaluated the business transaction and has not relied upon, nor will it rely upon, the expertise, advice or other comments or statements of the Bank (including agents of the Bank), if any, in deciding to pursue such undertaking. As the District is experienced in business, in no event shall the Bank owe any fiduciary or similar obligations to it in connection with the subject transaction.

SECTION 34. RIGHTS CUMULATIVE.

All rights, powers and remedies herein given to the Bank are cumulative and not alternative, and are in addition to all statutes or rules of law; any forbearance or delay by the Bank in exercising the same shall not be deemed to be a waiver thereof, and the exercise of any right or partial exercise thereof shall not preclude the further exercise thereof, and the same shall continue in full force and effect until specifically waived by an instrument in writing executed by the Bank.

SECTION 35. INTEREST LIMITATION.

Notwithstanding anything to the contrary contained herein or in any of the other Financing Documents, and subject and limited to amounts on deposit in the Contingency Fund, if the rate of interest payable on the Series 2014 Note or under this Agreement shall exceed the Maximum Rate for any day for which interest is payable (each such date referred to herein as an "*Excess Interest Commencement Date*"), then (i) interest for such day shall be payable at the Maximum Rate, and Excess Interest shall be deferred

until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time (and continuing thereafter until all deferred Excess Interest is fully paid to the Bank) the District shall pay to the Bank such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate; *provided, however*, that (1) if on any one or more previous days during the fiscal year in which an Excess Interest Commencement Date occurs (each such day referred to herein as a “*Recaptured Interest Commencement Date*”), the rate of interest paid in accordance with the terms of this Agreement was less than the Maximum Rate, Excess Interest relating to such Excess Interest Commencement Date shall not be deferred to a future date, but rather the District shall pay to the Bank on such Excess Interest Commencement Date such portion of Recaptured Interest as will cause the rate of interest paid on the Series 2014 Note from the beginning of such fiscal year up to and including the Excess Interest Commencement Date, to equal the Maximum Rate; and (2) the total liability of the District for payment of interest pursuant hereto and under the Series 2014 Note shall not exceed, in any fiscal year, the amount of interest that would have been payable during such fiscal year if the applicable interest rate on the Series 2014 Note had been equal to the Maximum Rate for such entire fiscal year.

SECTION 36. DISCLOSURE

The Bank shall not make a public offering of the Series 2014 Note, and the District will not be responsible for the provision of any public disclosure with respect to the Series 2014 Note, or to any party other than the Bank. On or after the Closing Date, the District may disclose the transaction to the market in the form of notice of the transaction, and post redacted transaction documents, other than the Fee Letter, which redaction shall be subject to review by the Bank prior to disclosure by the District.

[Signatures appear on the next page]

IN WITNESS WHEREOF, the parties hereto have caused this Continuing Covenants Agreement to be duly executed, sealed and delivered as of the Closing Date.

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name: Jeffrey C. Heckman
Title: Senior Vice President

ATTEST:

DISTRICT OF COLUMBIA

By: _____

By: _____
Jeffrey Barnette
Deputy Chief Financial Officer and
Treasurer

[SEAL]

EXHIBIT A

FORM OF SERIES 2014 NOTE

THIS NOTE MAY NOT BE TRANSFERRED, PLEDGED, ASSIGNED OR SOLD WITHOUT THE EXPRESS WRITTEN CONSENT OF THE DISTRICT AND ANY TRANSFER, PLEDGE, ASSIGNMENT OR SALE WITHOUT THE CONSENT OF THE DISTRICT SHALL BE INVALID AND OF NO EFFECT.

No: R-1

**DISTRICT OF COLUMBIA
PILOT REVENUE NOTE
(THE YARDS PROJECT)
SERIES 2014**

<u>Principal Amount</u>	<u>Date of Issuance</u>	<u>Maturity Date</u>
\$34,800,000	December 18, 2014	December 1, 2037

Registered Owner: **U.S. BANK NATIONAL ASSOCIATION**

The **DISTRICT OF COLUMBIA** (the “District”), a public body municipal and corporate, for value received, hereby promises to pay to the Registered Owner, solely from the source identified herein, the principal sum of Thirty-Four Million Eight Hundred Thousand and No/100 Dollars (\$34,800,000) together with interest at the rate of the Bank Interest Rate (as defined in the Continuing Covenants Agreement) per annum on the unpaid principal sum until said principal sum shall be paid. Interest on this Note (the “Note”) shall be computed on the basis of the actual number of days elapsed over a year of 360 days, which shall include the first day on which such amount is due, but shall exclude the day on which payment is made. **The principal sum of this Note issued and outstanding pursuant to the Continuing Covenants Agreement (as defined below) shall be equal to the sum of the amounts advanced by Note Purchaser (as defined below) as requested by the District, reduced by any amounts prepaid by the District. The District may request advances under the Note as needed from time to time, provided that the total principal amount advanced under this Note shall not exceed Thirty-Four Million Eight Hundred Thousand Dollars (\$34,800,000), and the total amount outstanding at any one time shall not exceed Twenty-Nine Million Four Hundred Thousand Dollars (\$29,400,000).**

Principal of and interest on this Note shall be payable at the times and subject to the conditions as set forth herein and in that certain Continuing Covenants Agreement, dated December 18, 2014 (the “Continuing Covenants Agreement”), between the District and U.S. Bank National Association (the “Note Purchaser”). All capitalized terms used herein and not defined herein shall have the same meaning as in the Continuing Covenants Agreement.

This Note is issued pursuant to the provisions of, and in full compliance with, the laws of the District, in particular the District of Columbia Home Rule Act. (P.L. 93-198; 87 Stat. 774; D.C. Official Code §§ 1-201.01 *et seq.*) (the “Home Rule Act”), the Payments In Lieu of Taxes Act of 2004, effective April 5, 2005 (D.C. Law 15-293; D.C. Official Code § 1-308.01 *et seq.*) (as the same has or may in the future be amended, collectively, the “PILOT Act”), and the “Payment in Lieu of Taxes Revenue Bonds Southeast Federal Center Project Approval Resolution of 2006”, adopted on June 6, 2006, as modified by the

“Southeast Federal Center Payment in Lieu of Taxes Revision Emergency Approval Resolution of 2007” (collectively, the “Resolution”), to PILOT Payments to reimburse Forest City SEFC, LLC for certain development costs of public infrastructure associated with a portion of the SEFC Development to be constructed on the PILOT Parcels in accordance with the terms of the PILOT Act and the Resolution.

THIS NOTE SHALL BE A SPECIAL OBLIGATION OF THE DISTRICT, SHALL BE NON-RECOURSE TO THE DISTRICT, SHALL NOT BE A PLEDGE OF, AND SHALL NOT INVOLVE THE FAITH AND CREDIT OR THE TAXING POWER OF THE DISTRICT (OTHER THAN THE PILOT OR ANY OTHER SECURITY AUTHORIZED BY THE PILOT ACT), SHALL NOT CONSTITUTE A DEBT OF THE DISTRICT, AND SHALL NOT CONSTITUTE LENDING OF THE PUBLIC CREDIT FOR PRIVATE UNDERTAKINGS AS PROHIBITED BY SECTION 602(a) OF THE HOME RULE ACT.

The sole source of repayment of this Note shall be the PILOT Payments, payable to the District with respect to the PILOT Parcels. The District shall have no obligation to make any payments on this Note, other than through the remittance to the Note Purchaser of the PILOT Payments.

If any payment of the principal of, or interest on, this Note is due on a day that is not a business day, such payment will be made on the next succeeding business day, and no interest will accrue on the amount of such payment during the intervening period.

All obligations of the District hereunder shall terminate on the earlier of (i) the date when all amounts due pursuant to this Note have been paid in full or (ii) the Maturity Date; provided, that, if payments of all amounts due and owing on the Maturity Date have not been paid the District's obligations with respect to this Note shall be forgiven, so long as the District has remitted to the Registered Owner all PILOT Payments received by the District prior to the Maturity Date.

This Note constitutes a “Bond” for purposes of the PILOT Act.

[balance of page is intentionally blank]

IN WITNESS WHEREOF, the District has caused this Note to be executed in its name by the manual or facsimile signature of the Mayor of the District of Columbia and its corporate seal to be impressed or printed and attested by the manual or facsimile signature of the Interim Secretary of the District of Columbia all as of the date first above written.

DISTRICT OF COLUMBIA

By: _____
Vincent C. Gray
Mayor

(SEAL)

Attest:

Sharon D. Anderson
Interim Secretary of the District of Columbia

EXHIBIT B

FORM OF PURCHASER LETTER

District of Columbia
John A. Wilson Building
Office of the Chief Financial Officer
1350 Pennsylvania Avenue, N.W. Suite 203
Washington, D.C. 20004

Re: District of Columbia

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of the District of Columbia PILOT Revenue Note, Series 2014 (The Yards Project) (the "*Series 2014 Note*"). U.S. Bank National Association (the "*Bank*," the "*undersigned*," "*us*" or "*we*," as applicable) is purchasing the Series 2014 Note pursuant to a Continuing Covenants Agreement, dated December 18, 2014 (the "*Agreement*") , between the District of Columbia (the "*Borrower*") and the Bank. We hereby represent to you as follows:

1. We understand that the Series 2014 Note have not been registered pursuant to any federal securities laws or the securities laws of any state

2. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits represented by the purchase of the Series 2014 Note.

3. We have authority to purchase the Series 2014 Note and to execute this letter and any other instruments and documents required to be executed by the Bank in connection with the purchase of the Series 2014 Note.

4. The undersigned is a duly appointed, qualified and acting representative of the Bank and is authorized to cause the Bank to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Bank.

5. The Bank is a national bank organized under the laws of the United States of America and is able to bear the economic risks of purchasing the Series 2014 Note.

6. The Bank understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Series 2014 Note. The Bank has made its own inquiry and analysis with respect to the Borrower, the Series 2014 Note and the security therefor, and other material factors affecting the security for and payment of the Series 2014 Note.

7. The Bank acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the Borrower, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Series 2014 Note and the security therefor, so that it has been able to make an informed decision to purchase the Series 2014 Note; provided, however, that this letter shall not constitute a waiver of any rights or remedies the Bank may have with respect to any untrue information it may have received or any material information which was withheld from its review.

8. The Series 2014 Note is being acquired by the Bank for its own account and not with a present view toward resale, transfer or distribution and we have not offered, offered to sell, offered for sale or sold any of the Series 2014 Note by means of any form of general solicitation or general advertising. The Bank will not sell, transfer or distribute the Series 2014 Note prior to the Mandatory Repurchase Date (as defined in the Agreement).

Very truly yours,

U.S. Bank National Association

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF PILOT CERTIFICATION

The following PILOT Certification is hereby given on behalf of the District of Columbia (the "District") in accordance with Section 9(a)(viii) of the Continuing Covenants Agreement (the "Agreement") dated December 18, 2014 between the District and U.S. Bank National Association, with capitalized terms used below having the meanings given to them in the Agreement.

1. Based on the amounts certified to District for properties subject to PILOT Payments in the SEFC PILOT Area, the amount of PILOT Payments expected to be collected in the next succeeding twelve-month period is not less than \$_____.

2. The District has received PILOT Payments in the preceding twelve months the amount of \$_____.

3. The District's expected Payment Obligations under the Agreement in the next twelve months are \$_____, resulting in coverage of _____ (expected PILOT Payments shown in paragraph 1 above/expected Payment Obligations shown in this paragraph 3).

4. The real property tax rates and assessed values for each building presently occupied and those currently under construction in the SEFC PILOT area are as follows

<u>Property Address</u>	<u>Assessed Value</u>	<u>Applicable Property Tax Rate</u>
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Dated as of November 1, 20__

DISTRICT OF COLUMBIA

By: _____
Name:
Title

EXHIBIT D

FORM OF BORROWING COVERAGE CAPACITY TEST CERTIFICATION

The following Borrowing Coverage Capacity Test Certification is hereby given on behalf of the District of Columbia (the “District”) in accordance with the Continuing Covenants Agreement (the “Agreement”) dated December 18, 2014 between the District and U.S. Bank National Association, with capitalized terms used below having the meanings given to them in the Agreement.

In order to borrow funds under the Continuing Covenants Agreement the District shall meet both requirements of the Borrowing Coverage Capacity Test as of each testing date:

(i) The expected PILOT Payments to be received for the succeeding 12 months by the District based on the most recent property and assessment rolls, as adjusted for any new construction and activity in the PILOT area, as set forth in each Borrowing Coverage Capacity Test Certification will be at least 1.30x annual debt service on (A) the aggregate outstanding principal amount of the Series 2014 Note plus any requested advance of the Series 2014 Note as of the testing date calculated based on a 20-year level debt service structure assuming an interest rate equal to the 20-year “BBB” Municipal Market Data General Obligation Yield (“MMD”) published on the calculation date, or a comparable index, selected by the Bank and consented to by the District, which consent shall not be unreasonably withheld, in the event MMD is no longer published and (B) any outstanding or requested Parity Debt (using the annual debt service for Parity Debt or the same assumptions used for the Series 2014 Note if the Parity Debt is not amortizing) (the “*Prospective Test*”); and

(ii) The actual PILOT Payments for the preceding 12 months are at least 1.10x annual debt service on (A) the aggregate outstanding principal amount of the Series 2014 Note plus any requested advance of the Series 2014 Note as of the testing date calculated based on a 20-year level debt service structure assuming an interest rate equal to the 20-year “BBB” Municipal Market Data General Obligation Yield published on the calculation date, or a comparable index, selected by the Bank and consented to by the District, which consent shall not be unreasonably withheld, in the event MMD is no longer published and (B) any outstanding or requested Parity Debt (using the annual debt service for Parity Debt or the same assumptions used for the Series 2014 Note if the Parity Debt is not amortizing) (the “*Historical Test*”).

A. Revenues

- a. PILOT Payments to be received for the succeeding 12 months \$ _____
- b. PILOT Payments for the preceding 12 months \$ _____

B. Annual Debt Service

- a. Current Aggregate Outstanding Principal Balance of Series 2014 Note \$ _____
- b. Current Draw Request on Series 2014 Note \$ _____
- c. Sum of B1 + B2 \$ _____
- d. Annual Debt Service on Series 2014 Note Based on 20-Year Level Debt Service Structure Based on the principal amount set forth in Line B3 and assuming an Interest Rate Equal to 20-year “BBB” Municipal Market Data General Obligation Yield \$ _____
- e. Current Outstanding Parity Debt \$ _____
- f. Current Parity Debt Request \$ _____
- g. Sum of B5 + B6 \$ _____
- h. Annual Debt Service on any outstanding or requested Parity Debt as set forth in B7 (using annual debt service for the Parity Debt or the same

assumptions used for the Series 2014 Note if the Parity Debt is not amortizing)

\$ _____

C. Borrowing Coverage Capacity Test Results

- a. Prospective Test: Quotient of A1 divided by sum of B4 + B8
- b. Historical Test: Quotient of A2 divided by sum of B4 + B8

Is (C1) greater than or equal to 1.30x **and** is (C2) greater than or equal to 1.10x

Y/N

YES – The test is met the District can make the draw.

NO – The test is not met, the District must either reduce or delay the draw request.

Dated as of _____

DISTRICT OF COLUMBIA

By: _____

Name:

Title:

EXHIBIT E

FORM OF DEBT SERVICE COVERAGE CERTIFICATION

The following Debt Service Coverage Ratio Certification is hereby given on behalf of the District of Columbia (the "District") in accordance with Section 2(f) of the Continuing Covenants Agreement (the "Agreement") dated December 18, 2014 between the District and U.S. Bank National Association, with capitalized terms used below having the meanings given to them in the Agreement.

As defined in the Agreement:

Debt Service Coverage Ratio for purposes of calculation of the Applicable Spread is equal to (a) actual PILOT Payments received for the preceding six month period ending March 31 or September 30, as applicable, plus the Minimum Revenue Fund Balance, divided by the sum of (b) actual interest and Facility Fees paid on the Series 2014 Note and any outstanding Parity Debt for the preceding six month period ending March 31 or September 30, as applicable, plus (c) one-half of the sum of the outstanding principal amount of the Series 2014 Note divided by 20, plus (d) the scheduled principal paid on outstanding Parity Debt during the preceding six month period ending March 31 or September 30, or if the outstanding Parity Debt is not subject to amortization, one-half of the sum of the outstanding principal amount of the Parity Debt as of the last day of the preceding six month period ending March 31 or September 30, as applicable, divided by 20.

- A. PILOT Payments received for the six month period ____ to ____: \$ _____
- B. Minimum Balance to be Retained in the Revenue Fund: \$ _____
- C. Sum of A + B: \$ _____
- D. Aggregate outstanding Principal Balance of the Series 2014 Note as of _____: \$ _____
- E. Outstanding Parity Debt as of _____:
- F. One-half of the aggregate outstanding Principal Balance of the Series 2014 Note and Parity Debt divided by 20: \$ _____
- G. Scheduled principal paid on outstanding Parity Debt during the preceding six month period or one-half of the sum of the outstanding principal amount of the Parity Debt outstanding as of the last day of the preceding six month period divided by 20
- H. Actual Interest Paid and Facility Fees for the six month period ____ to ____: \$ _____
- I. Sum of F + G + H \$ _____
- J. C divided by I \$ _____

Dated as of May/November 15, _____

DISTRICT OF COLUMBIA

By: _____
Name:
Title

EXHIBIT F

FORM OF DRAW REQUEST FOR SUBSEQUENT ADVANCES

DRAW REQUEST

US Bank National Association
461 Fifth Avenue, 15th Floor
New York, New York 10117-6234
Attention: Jeff Heckman
Gerri Kerr
E-Mail: jeffrey.heckman@usbank.com
geraldine.kerr@usbank.com

US Bank National Association
777 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202-5300
Attention: Alex Hinze
E-Mail: alex.hinze@usbank.com

Ladies and Gentlemen:

The undersigned, an Authorized Delegate, hereby requests an advance of Loan proceeds pursuant to and in accordance with the terms of Section 7(b) the Agreement and in connection with such request sets forth below the following information relating to such advance of Loan proceeds (the "Proposed Advance"):

1. The amount of the Proposed Advance is \$_____.
2. The sum of the Proposed Advance and the outstanding balance of the Loan as of the date hereof is \$_____, which is less than the Authorized Loan Amount.
3. The Proposed Advance should be sent pursuant to the following Federal Funds wire instructions:

4. Attached hereto are the following:
 - a. A summary of the reimbursement of the costs of certain public infrastructure associated with a portion of the SEFC Development to be funded from the Proposed Advance;
 - b. A Borrowing Coverage Capacity Test Certification, confirming that the Borrowing Coverage Capacity Test has been met, when taking into account the amount to be drawn; and
 - c. A certificate setting forth the Debt Service Coverage Ratio is no less than 1.10x, calculated as set forth in the definition of Applicable Spread, as of the immediately preceding six month period ending March 31 or September 30, as applicable, prior to the date of such additional advance of Loan proceeds.

5. As of the date hereof:

- a. The representations and warranties contained herein and in the Financing Documents remain true and correct on and as of that date as though made on such date;
- b. No CCA Covenant Breach has occurred and is continuing, or would result from the delivery of the advance amount by the Bank; and
- c. There have not been any unreimbursed draws on the Debt Service Reserve Fund

The terms capitalized herein but not otherwise defined herein shall have the meanings assigned to them in the Continuing Covenant Agreement between the District of Columbia and U.S. Bank National Association dated December 18, 2014.

By: _____

Name: _____

Title: _____