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CONTINUING COVENANTS AGREEMENT
(SERIES 2018)

CONTINUING COVENANTS AGREEMENT

BETWEEN

DISTRICT OF COLUMBIA

AND

CAPITAL ONE PUBLIC FUNDING, LLC

DATED AS OF MAY 1, 2018,

DISTRICT OF COLUMBIA
TAX INCREMENT FINANCING REVENUE NOTE
(SKYLAND TOWN CENTER PROJECT)
SERIES 2018

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CONTINUING COVENANTS AGREEMENT

This CONTINUING COVENANTS AGREEMENT (this “*Agreement*”) is dated as of May 1, 2018, by and between THE DISTRICT OF COLUMBIA (the “*District*”) and CAPITAL ONE PUBLIC FUNDING, LLC, as the Lender (as such term is hereinafter defined).

BACKGROUND

A. Pursuant to the terms 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*”), the District is authorized and empowered to, among other things, issue revenue bonds, notes and other obligations and to pledge tax increment revenues, payments in lieu of taxes and special assessments to secure such bonds, notes and other obligations.

B. Pursuant to the Skyland Town Center Omnibus Act of 2014, effective June, 21, 2014, D.C. Law 20-110, as amended by the Skyland Town Center Amendment Act of 2016, effective April 1, 2017, D.C. Law 21-233, D.C. Code § 2-1217.35a *et. seq.* (collectively, the “*Skyland TIF Act*”), the Council of the District of Columbia (the “*Council*”) authorized the issuance of bonds, notes or other obligations payable from certain tax increment revenues to support certain improvements to be constructed by Skyland Holdings, LLC (the “*Project Developer*”). The District and the Project Developer have entered into the Development Financing Agreement dated as of September 22, 2016 (as the same may be amended, supplemented, restated or otherwise modified in accordance with the terms thereof and hereof, the “*Funding Agreement*”).

C. In order to provide additional funds for the Project (as defined herein), the Lender has agreed to advance funds (the “*Loan*”) to or for the account of the District, pursuant to and in accordance with the provisions of this Agreement and the Skyland TIF Act.

D. The Project to be financed with the Loan constitutes a “master development plan” as that term is defined in the Master Development Plan Recognition Emergency Act of 2017, D.C. Act 22-206 (December 20, 2017) as continued in effect by the Master Development Plan Recognition Congressional Review Emergency Act of 2018, D.C. Act 22-296 (April 2, 2018) and the Master Development Plan Recognition Temporary Act of 2018, D.C. Law 22-74 (March 28, 2018).

E. The District has agreed to execute and deliver to the Lender its Tax Increment Financing Revenue Note (Skyland Town Center Project) Series 2018 (as the same may be amended, supplemented, restated or otherwise modified in accordance with the terms thereof and hereof, the “*Series 2018 Note*”) to evidence its obligation to make the payments due to the Lender under the Loan as provided in this Agreement, all things necessary to make this Agreement and the Series 2018 Note, 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 2018 Note, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, to induce the Lender to extend such credit, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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.

“Acceleration Rights” shall have the meaning set forth in Section 9(l) hereof.

“Additional Parity Available Increment Bonds” shall have the meaning set forth in Section 10(c) hereof.

“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 Lender, Controls or is Controlled by, or is under common Control with, the Lender.

“Agreement” means this Continuing Covenants Agreement dated as of May 1, 2018, as amended, supplemented or otherwise modified in accordance with the terms hereof.

“Amendment Fee” shall have the meaning set forth in Section 32 hereof.

“Annual Amount Certification” means a certificate to be delivered by the District to the Lender, substantially in the form attached hereto as Exhibit D, on or before each November 1, commencing November 1, 2018, showing (i) the amount of the Available Tax Increment, and (ii) the amount of revenue collections from the Downtown TIF Area, in each case, generated in the twelve-month period ending on the immediately preceding September 30.

“Anti-Deficiency Acts” has the meaning set forth in Section 14 hereof.

“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.

“Authorized Actions” means, collectively, the Skyland TIF Act and the Home Rule Act.

“Authorized Delegate” means the Deputy Mayor for Planning and Economic Development, 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.

"Authorized Loan Amount" means \$ 17,400,000.

"Available Increment" shall have the meaning set forth in the Reserve Agreement.

"Available Tax Increment" shall have the meaning set forth in the Skyland TIF Act.

"Bond Counsel" means Orrick, Herrington & Sutcliffe LLP, or such other counsel of recognized national standing in the field of law relating to municipal bonds and the exemption from federal income taxation of interest thereon, appointed and paid by the District.

"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 in any city in which the principal corporate trust office of the Paying Agent is located 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 Lender for receipt of payments on the Series 2018 Note are required or authorized to remain closed.

"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 Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, 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 Lender and the Series 2018 Note is delivered by the District to the Lender, which shall be May 31, 2018, subject to the satisfaction or waiver by the Lender of all the conditions precedent set forth in Section 7 hereof.

"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.

“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 Fund” means the Debt Service Fund established in accordance with Section 4.1 of the Paying Agent Agreement.

“Default” means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time and/or giving of notice, would constitute an Event of Default.

“Default Rate” means, for any day, a rate of interest per annum equal to five percent (5.00%).

“Determination of Taxability” means (a) any determination, decision, decree or advisement by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction to the effect that Note Interest is Taxable, or (b) the delivery to the Lender of a written opinion of Bond Counsel to the effect that Note Interest is Taxable. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

- (i) the date when the District files any statement, supplemental statement, or other tax schedule, return or document, which discloses that Note Interest is Taxable;
- (ii) the effective date of any federal legislation enacted or federal rule or regulation promulgated after the Closing Date which has the effect that Note Interest is Taxable; or
- (iii) if upon sale, lease or other deliberate action within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an unqualified opinion of a Bond Counsel to the effect that such action will not cause interest on the Series 2018 Note to become includable in the gross income of the recipient.

“Development Costs” shall have the meaning set forth in the Skyland TIF Act.

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

“Downtown TIF Area” shall have the meaning set forth in the Reserve Agreement.

“DTC” means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns.

“Earlier Repayment Rights” shall have the meaning set forth in Section 9(l) hereof.

“EMMA” means Electronic Municipal Market Access as provided by the Municipal Securities Rulemaking Board.

“*ERISA*” shall mean the Employee Retirement Income Security Act of 1974, as now in effect or as hereinafter amended, and the regulations and rulings issued thereunder.

“*Event of Default*” shall have the meaning set forth in Section 11 of this Agreement.

“*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 Lender, (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 Lender 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.

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

“*Financing Documents*” means, collectively, this Agreement and the Series 2018 Note.

“*Fitch*” shall mean Fitch Ratings, Inc., and its successor and assigns.

“*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).

“*Home Rule Act*” shall have the meaning set forth in the recitals hereto.

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

“*Interest Payment Date*” means semi-annually on each June 1 and December 1, commencing December 1, 2018.

“Interest Rate” means a per annum rate of interest equal to three and ninety-four percent (3.94%); *provided that* if an Event of Default has occurred and is continuing, the Interest Rate shall equal the Default Rate and if an if an Event of Taxability has occurred, the Interest Rate shall equal the Taxable Rate.

“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.

“Lender” means, initially, Capital One Public Funding, LLC, and its successors and assigns.

“Loan” means, collectively, the advance of funds by the Lender on the Closing Date to or for the account of the District, the repayment obligation for which is evidenced by the Series 2018 Note.

“Maturity Date” means December 1, 2038.

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

“Note Interest is Taxable” means that interest paid or to be paid on the Series 2018 Note is or will be includable for federal income tax purposes in the gross income of the Lender, but excluding the inclusion of interest on such Series 2017 Note as an item of tax preference for purposes of the calculation of an alternative minimum tax imposed on the Lender.

“Obligations” means all amounts payable by the District, and all other obligations to be performed by the District, pursuant to this Agreement and the other Financing Documents (including, without limitation, all Payment Obligations and obligations of the District to pay any amounts to reimburse the Lender for any advances or expenditures by it under any of such documents).

“OFAC” shall have the meaning set forth in Section 27(b)(iv) hereof.

“Optional Redemption Premium” means, if the Series 2018 Note is optionally redeemed, in whole, in the 9th or 10th year after the Closing Date, the redemption premium shall equal a dollar amount equal to the difference between (a) the product of (i) 102%, and (ii) the outstanding principal amount of the Series 2018 Note and (b) the outstanding principal amount of the Series 2018 Note.

“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 bonds, notes and similar obligations of the District secured by or payable from all or any portion of the Available Tax Increment or the Available Increment on a parity basis with the Series 2018 Note.

“Participant” shall have the meaning set forth in Section 18(b) of this Agreement.

“Paying Agent” shall mean U.S. Bank National Association serving as payment agent for the Series 2018 Note, pursuant to the Paying Agent Agreement.

“Paying Agent Agreement” shall mean the Paying Agent Agreement dated as of May 1, 2018, between the District and the Paying Agent.

“Payment Obligations” shall have the meaning set forth in Section 2(i) 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 2018 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.

“Principal Payment Date” means each December 1, commencing December 1, 2021.

“Project” means the financing, refinancing, or reimbursing of Development Costs incurred for the acquisition, construction, installing, and equipping of a mixed-use project consisting of retail and residential space and parking in the Skyland TIF Area.

“Rating Agency” means any of Fitch, Moody’s or S&P.

“Reserve Agreement” means that certain Reserve Agreement, dated as of April 1, 2002, by and among the District, Wells Fargo Bank Minnesota, N.A., and Financial Security Assurance.

“Series 2018 Note” shall have the meaning set forth in the recitals hereto.

“Skyland TIF Act” means the Skyland Town Center Omnibus Act of 2014, effective June, 21, 2014, D.C. Law 20-110, as amended by the Skyland Town Center Amendment Act of 2016, effective April 1, 2017, D.C. Law 21-233, D.C. Code § 2-1217.35c(c) *et. seq.*

“Skyland TIF Area” shall have the meaning set forth in the Skyland TIF Act.

“Skyland TIF Fund” shall have the meaning set forth in the Skyland TIF Act.

“S&P” means S&P Global Ratings.

“Taxable Date” means the date on which interest on the Series 2018 Note is first includable in gross income of the Lender as a result of a Determination of Taxability.

“Taxable Rate” means a per annum rate of interest equal to five and one-half percent (5.50%).

“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 2018 NOTE; PAYMENT OBLIGATIONS.

(a) *Principal Amount.* The outstanding principal amount of the Series 2018 Note and of the Loan as of any given date shall be \$17,400,000, less any payments of principal of the Series 2018 Note previously received from the District, including regularly scheduled principal payments and voluntary and mandatory prepayments. On each Principal Payment Date, the District shall make principal payments on the Series 2018 Note in the amounts provided in the amortization schedule attached as Exhibit B, which may be amended from time to time.

(b) *Funding.* Upon making the advance of the Loan and receiving the Series 2018 Note substantially in the form attached as Exhibit A hereto, the Lender shall be entitled to all rights and privileges accorded to the holder of the Series 2018 Note (including the right to receive payments of principal and accrued interest with respect to the Series 2018 Note). The Lender shall be recognized by the District as the true and lawful absolute owner of the Series 2018 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 2018 Note with respect to all owners. The Lender shall hold the sole legal and beneficial interest in and to the Series 2018 Note, subject to no lien, security interest, or claim of the District, or any Person claiming through the District, other than the Lender, except for consensual liens or other security interests as may be created by the Lender. The proceeds of the Loan shall be advanced by the Lender directly to the Paying Agent and the Paying Agent shall disburse the proceeds of the Loan to the District as and when needed to pay costs of the Project in accordance with the disbursement provisions of the Paying Agent Agreement.

(c) *Series 2018 Note.* The District’s obligations to repay the Loan and to pay interest thereon as provided herein shall be evidenced and secured by the Series 2018 Note, and the District shall, without duplication (A) make a principal payment on the Series 2018 Note on each date on which the District is required to make a principal payment on the Loan in an amount equal to the principal payment due on such date, and (B) make an interest payment on the Series 2018 Note on each date on which the District is required to make an interest payment with respect to the Loan in an amount equal to the interest payment due on such date. Without duplication, the payment of the principal of and interest on the Series 2018 Note shall constitute payment of the principal of and interest on the Loan, and the payment of the principal of and interest on the Loan shall constitute the payment of and principal and interest on the Series 2018 Note and the failure to make any payment on the Loan when due shall be a failure to make a payment on the Series 2018 Note and the failure to make any payment on the Series 2018 Note when due shall be a failure to make a payment on the Loan.

(d) *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 thereon, shall be due and payable.

(e) *Monthly Statements.* The Paying Agent shall keep a record of all principal repayments made under the Series 2018 Note and shall provide the District with monthly statements of the outstanding principal balance of the Series 2018 Note and the Loan, and the Paying Agent shall provide monthly statements of the Debt Service Fund setting forth the amounts on deposit therein, investment earnings thereon, and deposits to and withdrawals therefrom. The Lender's statement of account, ledger or other relevant record shall, in the absence of manifest error, be conclusive as the statement of the amount of principal of and interest on the Loan and the Series 2018 Note and other amounts owing under this Agreement and shall be deemed an "account stated."

(f) *Interest Rate.* The Series 2018 Note will bear interest at the Interest Rate. Interest shall be payable by the District in arrears on each Interest Payment Date, commencing on the first such date following the date of the relevant advance of the Loan. Interest paid on each Interest Payment Date shall equal interest accrued from the preceding Interest Payment Date for which interest was paid (or with respect to the first Interest Payment Date from the Closing Date).

(g) *Default Rate.* From and after the occurrence of an Event of Default hereunder, but only for so long as such Event of Default shall be continuing, the Loan and the Series 2018 Note and any other amounts due hereunder shall accrue interest at the Default Rate.

(h) *Taxable Rate.* From and after the Taxable Date, the Loan and the Series 2018 Note and any other amounts due hereunder shall accrue interest at the Taxable Rate.

(i) *Payment Obligations.* The obligations of the District to pay the Lender the principal of and interest on the Series 2018 Note as set forth in this Section 2, are collectively referred to as the "Payment Obligations".

SECTION 3. RESERVED.

SECTION 4. 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 Available Tax Increment 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 Lender 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 payment of debt service on the Parity Debt, without further Lender approval.

SECTION 5. REDEMPTION.

On or after June 1, 2026, the District may optionally redeem the Series 2018 Note, in whole, on any Interest Payment Date upon three (3) Business Days prior written notice to the Lender; *provided, however*, that if any such optional redemption occurs in the 9th or 10th year after the Closing Date, the District shall also pay to the Lender the Optional Redemption Premium. Notwithstanding the foregoing, the District may optionally redeem the Series 2018 Note, in part, on any Interest Payment Date upon three (3) Business Days prior written notice to the Lender, provided that: (i) such prepayment of the Series 2018 Note results from the application of Available Tax Increment proceeds on deposit in the Debt Service Fund, (ii) occurs no more than once per calendar year, (iii) occurs in an amount not less than \$1,000,000 or greater than \$3,000,000; (iv) occurs no more five (5) times during the life of the Loan, and (v) any prepayment is applied to the outstanding principal amount of the Series 2018 Note in inverse order of maturity as set forth in the amortization schedule attached as Exhibit B hereto.

SECTION 6. CERTAIN SECURITY GRANTED BY THE DISTRICT.

The Payment Obligations are secured by, and the District hereby grants to the Lender a first priority security interest in, the Available Tax Increment, and any amounts on deposit in the Debt Service Fund (subject to the provisions regarding any Parity Debt). To the extent such funds are insufficient to satisfy the Payment Obligations, the District shall allocate the Available Increment to pay the Payment Obligations in accordance with the Paying Agent Agreement. In addition, the District hereby grants to the Lender a right of set off against, funds accounted for in the Debt Service Fund and the Redemption Fund.

SECTION 7. CONDITIONS PRECEDENT.

Funding of the Loan. As conditions precedent to the obligation of the Lender to purchase the Series 2018 Note and make the advance of Loan proceeds, the District shall have provided to the Lender, on or before the Closing Date:

- (a) 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;
- (b) the written opinion of the Office of the District's Attorney General addressed to the Lender, dated the Closing Date and in form and substance satisfactory to the Lender;
- (c) the written opinion of Bond Counsel and a reliance letter addressed to the Lender, dated the Closing Date and in form and substance satisfactory to the Lender;
- (d) 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;

(e) a certificate of the District, signed by an Authorized Delegate of the District, dated the Closing Date, stating that on the Closing Date: (1) 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, (2) no Event of Default has occurred and is continuing, or would result from the purchase of the Series 2018 Note by the Lender, 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 an Event of Default but for the requirement that notice be given or time elapse or both, and (3) there have been no material adverse changes in the affairs of the District, financial or otherwise, since the audited financial statements for the twelve month period ending on September 30, 2017;

(f) receipt of all fees, costs and expenses payable to the Lender and its counsel as of the Closing Date by or on behalf of the District;

(g) (A) the Series 2018 Note in physical, certificated form, executed by the District, in the principal amount equal to the Authorized Loan Amount, issued to and registered in the name of the Lender, or as otherwise directed by the Lender; and (B) executed or certified, as applicable, counterparts of the other Financing Documents;

(h) audited financial statements of the District for the twelve-month period ending on September 30, 2017, in form and substance acceptable to the Lender and prepared in accordance with GAAP;

(i) a certificate of the District, signed by an Authorized Delegate of the District, dated the Closing Date, stating that on the Closing Date, 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 the issuance of the Series 2018 Note, any security for the Series 2018 Note or the District's ability to repay when due its obligations under this Agreement, the Series 2018 Note and the other Financing Documents;

(j) 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 2018 Note) to which the District is or will be a party and that the same are in full force and effect;

(k) to the extent known to the District, notice of any adverse material litigation or adverse changes in the Project;

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

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 Obligations are 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 2018 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 Lender 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 properties, business, condition (financial or other), results of operations or prospects of the District or 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 all or any portion of the Available Tax Increment or the Available Increment are pledged for the payment thereof or by which any of its property or assets is bound for the repayment of debt.

(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.* Except as previously disclosed to the Lender, the statements of financial position of the District as of September 30, 2017, 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, 2017, there has been no material adverse change in the properties, business, condition (financial or other), results of operations or prospects of the District or the District's ability to perform its obligations hereunder and the District has not entered into any direct or contingent bond debt, lease, installment purchase or loan obligation which is secured by the Available Tax Increment or the Available Increment.

(i) *Accurate Information.* All information, reports and other papers and data with respect to the District furnished to the Lender were, at the time the same were so furnished, accurate in all material respects. Any projections in any of the information, reports and other papers and data furnished to the Lender 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 information, 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 the Series 2018 Note or the District's ability to repay when due its obligations under this Agreement, the Series 2018 Note and the other Financing Documents. Taken as a whole, the documents furnished and statements made to the Lender 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 Lender 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, the Skyland TIF Act or any other 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 the issuance of the Series 2018 Note, any security for the Series 2018 Note or the District's ability to repay when due its obligations under this Agreement the Series 2018 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) *ERISA Compliance.* To the best knowledge of the District, it is in full compliance with the requirements of ERISA and the Code, and the District has not received any notice to the effect that it is not in full compliance with any of the requirements of ERISA or the Code.

(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 2018 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 2018 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) *Liens.* The Series 2018 Note will be transferred to the Lender free and clear of all security interests, liens, charges, claims or encumbrances of any Person other than the Lender, except for consensual liens or other security interests as may be created by the Lender.

(q) *Validity of Lien.* The lien granted hereunder on the Available Tax Increment is a valid and enforceable lien securing the payment of the Series 2018 Note and the Payment Obligations.

(r) *Available Increment.* The allocation of the Available Increment (after satisfying the requirements related to the District's Mandarin Oriental Hotel Project Tax Increment Revenue Bonds, Series 2002 (the "Senior Bonds")) available to make payment on the Payment Obligations with respect to the Series 2018 Note is on parity with the allocation of the Available Increment previously made in connection with the other projects (including the District's Southwest Waterfront Project Revenue Bonds (The Wharf Project), Series 2015 (Federally Taxable) (the "Series 2015 Bonds")) and will be on parity with any such allocation to any future project.

(s) *Loan Proceeds.* The proceeds of the Loan shall only be used for the purposes set forth in the Financing Documents.

(t) *Paying Agent.* U.S. Bank National Association is the duly appointed and acting Paying Agent for the Series 2018 Note.

SECTION 9. AFFIRMATIVE COVENANTS OF THE DISTRICT.

The District covenants and agrees with the Lender that, so long as the Lender owns all or any portion of the Series 2018 Note or until the full and final payment and satisfaction of all of the Obligations to the Lender, unless the Lender 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 Lender (or with respect to the items referenced in clause (i) below, the requirement to furnish such financial statements will be deemed to have been satisfied if the District shall have posted such financial statements on EMMA or another similar electronic platform) 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) no Default or Event of Default has occurred or, if such Default or Event of Default has occurred, specifying the nature of such Default or Event of Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Default or Event of Default;

(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 Default or Event of Default, 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 properties, business, condition (financial or other), results of operations or prospects of the District or 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 Lender under the terms of such Financing Documents), or from any taxing authority with respect to the transactions contemplated hereby;

(vi) on or before February 28 of each year, commencing February 28, 2019, the Annual Amount Certification in the form attached hereto as Exhibit D, accompanied by any reports or other materials demonstrating the amount of the Available Tax Increment and the Available Increment collected in the preceding year;

(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 Skyland TIF Area or the Downtown TIF Area, that would have a material adverse

effect on the ability of the District to perform its obligations under the Financing Documents;

(viii) promptly after the adoption thereof, copies of any amendments to the Financing Documents; and

(ix) such other information respecting the affairs, condition and/or operations, financial or otherwise, of the District as the Lender 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 conduct of its business or 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 financial condition or operations of the District or 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, the District shall at all reasonable times during regular business hours, upon the written request of the Lender, permit the Lender 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 Skyland TIF Area and the Downtown TIF Area, 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 Lender any and all information as the Lender may reasonably request related to the Skyland TIF Area and the Downtown TIF Area, 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 Event of Default, the costs of any inspection by the Lender or the furnishing of any information to the Lender shall be, subject to the provisions of Section 14 hereof, for the account of the District.

(d) *Keeping of Records and Books of Account.* The District shall 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 in accordance with GAAP, reflecting all of its financial transactions related to the Skyland TIF Area and the Downtown TIF Area.

(e) *Maintenance of Approvals, Filings and Registrations.* The District shall 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.* The District shall execute and deliver to the Lender all such documents and instruments and do all such other acts and things as may be reasonably necessary or required by the Lender to enable the Lender 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 Lender to validate, preserve and protect the position of the Lender under the Financing Documents.

(g) *Notices.* The District will promptly furnish, or cause to be furnished, to the Lender (i) notice of the occurrence of any Event of Default or Default, and (ii) such further financial and other information with respect to the Skyland TIF Area and the Downtown TIF Area and its affairs as the Lender may reasonably request from time to time.

(h) *Loan Proceeds.* The District shall use the proceeds of the Loan under the Series 2018 Note for the purposes set forth in the Financing Documents.

(i) *Payments.* The District shall punctually pay or cause to be paid all amounts payable under this Agreement, the Series 2018 Note and the other Financing Documents in accordance with the terms hereof and thereof.

(j) *ERISA.* To the extent applicable to the District, the District shall comply with the provisions of ERISA and the Code with respect to each employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained for employees of the District, (ii) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which the District is a part of or has within the preceding five plan years made contributions, or (iii) under which the District is a part of or has any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years or by reason of being deemed a contributing sponsor under Section 4069 of ERISA.

(k) *Available Increment.* The District shall take reasonable measures to collect the real property and sales taxes that constitute the source of the Available Increment.

(l) *No Acceleration of Other Obligations.* The District will not, without the prior written consent of the Lender, enter into, or otherwise consent to, any credit agreement, standby bond purchase agreement, liquidity agreement, direct bond purchase agreement or other similar agreement or instrument (or any amendment, supplement or

modification thereto) (each a “*Bank Agreement*”), which agreement or instrument includes, or otherwise grants to any Person as a remedy upon the occurrence of an event of default, the right to accelerate the payment of the principal of or interest on any Parity Debt or to otherwise declare the principal of or interest on any such Parity Debt to be immediately due and payable prior to its maturity or cause such Parity Debt to be paid pursuant to a mandatory tender, mandatory redemption or otherwise on any date other than a regularly scheduled payment date (collectively, “*Acceleration Rights*”) or sooner than 180 days after the occurrence of an “event of default” as defined in such Bank Agreement (“*Earlier Repayment Rights*”). Notwithstanding the foregoing sentence, in the event that the District shall (either before or after the date of this Agreement), directly or indirectly, enter into or otherwise consent to any Bank Agreement which includes the right to accelerate the payment of the principal of or interest on any Parity Debt or to otherwise declare the principal of or interest on any such Parity Debt to be immediately due and payable prior to its maturity or cause such Parity Debt to be paid pursuant to a mandatory tender, mandatory redemption or otherwise on any date other than a regularly scheduled payment date or sooner than 180 days after the occurrence of an “event of default” as defined in such Bank Agreement, then the Lender shall have the right, upon the occurrence of an Event of Default, to, (A) if Acceleration Rights are granted, declare all amounts outstanding with respect to the Series 2018 Notes to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the District and (B) if Earlier Repayment Rights are granted, cause all amounts outstanding with respect to the Series 2018 Notes to be paid in full by the date required by such Earlier Repayment Rights.

SECTION 10. NEGATIVE COVENANTS OF THE DISTRICT.

The District covenants and agrees with the Lender that, so long as the Lender owns all or any portion of the Series 2018 Note or until the full and final payment and satisfaction of all of the Obligations to the Lender, unless the Lender 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 2018 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 Lender or any other Person, to make, any use of the proceeds of the Series 2018 Note or of any moneys which may be deemed to be gross proceeds of the Series 2018 Note pursuant to Section 148 of the Code which, if such use will cause any the Series 2018 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 2018 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 2018 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 Lender, without the prior written consent of the Lender as required under Section 22 hereof (which such consent shall not be unreasonably withheld).

(c) *Waiver of Immunity.* To the extent permitted by applicable Law, the District shall not assert any right of immunity it may have as a sovereign or governmental entity from any action, lawsuit or other legal proceeding to enforce or collect upon any of the contractual obligations of the District under this Agreement, the Series 2018 Note or any of the Financing Documents, *provided, however*, that nothing in this subsection (c) shall be deemed to constitute a waiver by the District of governmental or sovereign immunity of the District with respect to any administrative, jurisdictional, or procedural requirement under applicable Law or which is binding upon the District relating to the notice of claims against the District.

(d) *Additional Debt.* The District shall not issue any Parity Debt unless such issuance is in compliance with the terms and conditions of the Funding Agreement and the other Financing Documents and no Default or Event of Default has occurred and is continuing hereunder. Notwithstanding anything in the Financing Documents to the contrary, the District shall not issue (i) any bonds, notes or similar obligations secured by or payable from all or any portion of the Available Tax Increment or the Available Increment on a basis that is senior to the Series 2018 Note or (ii) any bonds, notes or similar obligations secured by or payable from all or any portion of the Available Increment (“*Additional Parity Available Increment Bonds*”) on a parity with the Series 2018 Note unless the Available Increment for the fiscal year immediately preceding the issuance of such Additional Parity Available Increment Bonds is not less than three times the maximum annual debt service on the Series 2018 Note and any other obligations of the District, including such Additional Parity Available Increment Bonds, that are also secured by or payable from the Available Increment on a parity with the Series 2018 Note.

(e) *No Bond Rating; DTC; Offering Document; CUSIP.* The Series 2018 Note shall not be (i) assigned a specific rating by any Rating Agency, (ii) registered with DTC any other securities depository, (iii) issued pursuant to any type of official statement, private placement memorandum or other offering document (iv) assigned a CUSIP number by Standard & Poor’s CUSIP Service, or (v) placed or offered by a broker-dealer in the capacity of an underwriter or a placement agent.

(f) *Defeasance.* Voluntarily defease or direct the defeasance of the Series 2018 Note without (A) thirty (30) days prior written notice to the Lender, and (B) payment in full on or prior to the contemplated date of defeasance of all unpaid amounts owing under this Agreement as of such date, subject to the limitations set forth in Section 5 hereof.

SECTION 11. EVENTS OF DEFAULT AND REMEDIES.

(a) If any of the following events shall occur and be continuing (each such event shall be an “*Event of Default*”):

(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 Loan, the Series 2018 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 Lender;

(iv) Failure of the District to observe or perform the covenants set forth in Sections 9(a)(iii), 10(b), 10(c), 10(d) or 10(f) of this Agreement and such default shall continue for thirty (30) days after written notice of such default shall have been given to the District by the Lender;

(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 Event of Default it may, by written notice to the Lender (which shall include detailed information regarding the actions being taken to cure), request up to an additional sixty (60) days to cure such Event of Default, and the Lender 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 related 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 stated maturity or scheduled payment date, whether pursuant to acceleration, mandatory tender, mandatory redemption or otherwise, 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 Lender) 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) an "Event of Default" occurs as defined in any of the other Financing Documents or under any Lender Agreement;

(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; or

(xi) the District contests its Payment Obligations.

(b) Upon the occurrence of any Event of Default set forth above in Sections 11(a)(ii) and (iii), the Lender may (A) direct the Paying Agent to apply amounts on deposit in the Skyland TIF Fund, the Debt Service Fund and the Redemption Fund to immediately pay any amounts of principal of and interest currently due on the Series 2018 Note and (B) direct the Paying Agent to notify the District to allocate the Available Increment, in accordance with the provisions of the Paying Agent Agreement, to cure any shortfall in the payments due pursuant to Section 11(b)(A) above. Upon the occurrence of any other Event of Default, the Lender 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, 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 Event of Default, the Series 2018 Note and any amounts due hereunder shall bear interest at the Default 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 Lender;

(ii) subject the Lender to any Tax of any kind whatsoever with respect to this Agreement, the Payment Obligations or the Series 2018 Note, or change the basis of taxation of payments to the Lender in respect thereof (except for Included 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 Lender); or

(iii) impose on the Lender any other condition, cost or expense affecting this Agreement, the Payment Obligations or the Series 2018 Note;

and the result of any of the foregoing shall be to increase the cost to the Lender with respect to this Agreement, the Payment Obligations, the Series 2018 Note, or the making, maintenance or funding of the Loan or the Series 2018 Note, or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount) then, upon written request of the Lender pursuant to a Certificate for Reimbursement and subject to Section 14, the District shall promptly pay to the Lender, such additional amount or amounts as will compensate the Lender, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Lender determines that any Change in Law affecting the Lender or of the Lender's parent or holding company, if any, regarding capital or liquidity requirements has or would have the effect of (i) affecting the amount of capital or liquidity required or expected to be maintained by the Lender or the Lender's parent or holding company, as applicable, to a level above that which such Lender or the Lender's parent or holding company would have maintained but for such Change in Law, or (ii) reducing the rate of return on the Lender's capital or liquidity or on the capital or liquidity of the Lender's parent or holding company, if any, as a consequence of this Agreement, the Payment Obligations or ownership of the Series 2018 Note, to a level below that which the Lender or the Lender's parent or holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's parent or holding company with respect to capital adequacy), then upon written request of the Lender pursuant to a Certificate for Reimbursement and subject to Section 14, the District shall pay to the Lender or the Lender's parent or holding company, as applicable, such additional amount or amounts as will compensate the Lender or the Lender's parent or holding company 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 Lender 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 Lender or the Lender’s parent or holding company, as the case may be, (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 Lender the amount shown as due in such Certificate for Reimbursement as promptly as possible, consistent with Section 14 hereof.

(d) *Delay in Requests.* Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender’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), (b) or (c) of this Section shall be subject to Section 14 hereof and subordinated to the payment of principal and interest on the Series 2018 Note and replenishment of any debt service fund. The District shall have no obligation to make any payment under the provisions of (b) or (c) of this Section with respect to any Participant unless the event giving rise to such payment would apply to the Lender if the Lender had not granted a participation interest to such Participant. The Lender shall return any payment made to it by the District by virtue of the provisions of (a), (b) or (c) 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 Lender by or on account of any obligation of the District hereunder or under the Series 2018 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 Lender 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 Lender, 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 Lender 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 Lender 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 Lender'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 Lender, 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 Lender.

(e) *Treatment of Certain Refunds.* If the Lender 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 Lender 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 Lender, 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 Lender, in the event the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the District pursuant to this paragraph (e) if the payment of which would place the Lender in a less favorable net after Tax-position than the Lender 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 Lender 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.* 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 Lender if the Lender 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 9(c), 12, 13, 21 or 32 (the "*Applicable Provisions*"), 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 (2001) (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, with the exception of Payment Obligations hereunder, 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 settlement 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 terms and provisions of the Applicable Provisions do not create or constitute a present financial obligation of the District to the Lender or anyone else.

(c) The terms and provisions of the Applicable Provisions do not create or constitute a future financial obligation of the District to the Lender or anyone else.

(d) The Mayor of the District agrees to exercise all lawful authority available to it to satisfy the requests for payment that may arise under the Applicable Provisions. 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 the Applicable Provisions 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 the Applicable Provisions 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 the Applicable Provisions in such period or until appropriated funds for such purposes are available, and the unavailability of such funds shall not constitute an Event of Default.

(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 or in the event of a Default by the District under 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 Lender (other than the defense of payment to the Lender 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.

Notwithstanding anything set forth in this Section 15, the Lender acknowledges and agrees that the District has the right to bring a legal cause of action with respect to one or more of the foregoing circumstances. The District's payment obligations shall remain in full force and effect pending the final disposition of any such action.

SECTION 16. LIABILITY OF THE LENDER .

Neither the Lender 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 Lender 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 Lender's obligations hereunder), or of any endorsement(s) thereon. In furtherance and not in limitation of the foregoing, the Lender 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 Lender from any act of the Lender which constitutes gross negligence or willful misconduct.

SECTION 17. LIABILITY OF DISTRICT OFFICIALS.

The elected and appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Series 2018 Note or be subject to any personal liability by reason of the issuance of the Series 2018 Note.

SECTION 18. SUCCESSORS, ASSIGNS AND PARTICIPANTS.

(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 Lender and its respective permitted successors, transferees and assigns as and to the extent set forth in this Section 18. The District may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender. The Lender may not assign, sell or transfer in whole or in part, this Agreement or its interest in the Series 2018 Note and the Financing Documents other than to (i) an Affiliate of the Lender or (ii) a qualified institutional buyer that is a commercial bank having a combined capital and surplus, determined as of the date of any transfer pursuant to this Section, of \$5,000,000,000 or more that has executed and delivered to the District an investor letter in substantially in the same form as investor letter delivered by the Lender and attached as Exhibit C hereto; provided that such entity is not a broker,

dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, or a consortium of such entities. The Lender may at any time and from time to time, enter into participation agreements in accordance with the provisions of paragraph (b) of this Section. The Lender may at any time pledge or assign a security interest subject to the restrictions of paragraph (c) of this Section.

(b) *Participations.* The Lender shall have the right to grant participation (to be evidenced by one or more participation agreements or certificates of participation) in the Series 2018 Note, this Agreement and the other Financing Documents at any time and from time to time to one or more other institutions (each a “Participant”); *provided, however*, that any such participation shall not relieve the Lender from any of its obligations under this Agreement nor cause any additional expense or obligation to the District. The District agrees that each Participant shall be entitled to the benefits of Sections 12 and 13 hereof to the same extent as if it were the Lender hereunder; *provided, however*, that a participant shall not be entitled to receive any greater payment under Sections 12 and 13 than the Lender would have been entitled to receive with respect to the participation sold to such participant.

(c) *Certain Pledges.* Notwithstanding the foregoing, the Lender may at any time pledge or grant a security interest in all or any portion of its rights under the Series 2018 Note, this Agreement and the Financing Documents to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits without notice to or consent by the District; *provided that* no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto or cause any additional expense or obligation to the District.

SECTION 19. CALCULATIONS.

Unless otherwise stated, all fees and interest on amounts owing the Lender under this Agreement 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 20. PAYMENTS DUE ON A DAY OTHER THAN A BUSINESS DAY.

If any payment to the Lender 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 21. 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, 15, 16 and 32 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 Lender is referred to, such reference shall be deemed to include the successors and assigns of the Lender 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 Lender. 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 Lender, 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 22. 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 Lender 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 Lender. Any such amendment, modification or waiver shall be effective only in the specific instance and for the purpose for which given and shall not be inconsistent with the provisions of the Funding Agreement. 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 23. NO WAIVER OF RIGHTS BY THE LENDER.

No course of dealing or failure or delay on the part of the Lender 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 Lender under the Financing Documents are cumulative and not exclusive of any rights or remedies which the Lender would otherwise have.

SECTION 24. 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 25. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL .

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 POWER AND AUTHORITY 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 2018 NOTE

INVOLVING THE LENDER SHALL BE BROUGHT IN THE APPROPRIATE DISTRICT OF COLUMBIA COURT HAVING JURISDICTION OVER SUCH MATTER.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 26. WAIVER OF SPECIAL DAMAGES; WAIVER OF JURY TRIAL.

The District and the Lender each agree that it shall not assert, and hereby waives, any claim against the Lender in the case of the District and against the District in the case of the Lender, 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 any other Financing Document or any agreement or instrument contemplated hereby, the transactions, or the use of the proceeds thereof.

SECTION 27. 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 Lender 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 27 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 Lender is required to obtain, verify and record information that identifies the District.

SECTION 28. 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.

If to the Lender for additional advances on the Loan:

[REDACTED]

The District:

[REDACTED]

With a copy to:

[REDACTED]

With a copy to:

[REDACTED]

The Lender may in its sole discretion rely on any notice (including telephone communication or e-mail communication) purportedly made by or on behalf of the District, but it shall have no duty to accept any notice not given as prescribed in this Section and shall have no

duty to verify the identity or authority of the Person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

SECTION 29. 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 30. 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. This Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

SECTION 31. ENTIRE AGREEMENT.

This Agreement sets forth the entire agreement between the District and the Lender 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 Lender.

SECTION 32. OTHER COSTS AND EXPENSES.

Subject to Section 14, the District agrees to pay, from the Debt Service Fund, on demand (a) all reasonable costs and expenses of the Lender in connection with the preparation, execution, delivery and administration 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, fees and expenses of appraisers, accountants, and other professionals, and costs of property and lien searched related thereto; (b) all reasonable costs and expenses of the Lender 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, an amendment fee in an amount equal to [REDACTED] in connection with each amendment (the "Amendment Fee")) and also including the reasonable fees and expenses of counsel ([REDACTED]), fees and expenses of appraisers, accountants, and other professionals, and costs of property and lien searches related thereto; and (c) all reasonable costs and expenses of the Lender ([REDACTED] 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

Lender) incurred in connection with: (A) the protection, exercise or enforcement of the Lender's rights with respect to the Available Tax Increment; and (B) the assertion, protection, exercise or enforcement of the Lender's rights 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 Lender or relating in any way to any of the Available Tax Increment for the Series 2018 Note. Such costs and expenses also shall include the fees and expenses of counsel for the Lender in advising the Lender as to its rights and responsibilities under this Agreement or any of the other Financing Documents and in representing the Lender in any legal proceeding relating thereto.

SECTION 33. EVIDENCE OF DEBT.

The Lender 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 34. NO FIDUCIARY RELATIONSHIP.

The District acknowledges and agrees that its dealings with the Lender are solely in the nature of a debtor/creditor relationship and that in no event shall the Lender 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 Lender (including agents of the Lender), if any, in deciding to pursue such undertaking. As the District is experienced in business, in no event shall the Lender owe any fiduciary or similar obligations to it in connection with the subject transaction.

In connection with all aspects of the transactions contemplated hereunder, including in connection with any amendment, waiver or other modification hereof or of any other Financing Document (the "*Transactions*"), the District acknowledges and agrees that: (a)(i) the Lender or any of its respective Affiliates may have an ownership interest in secondary market securities of which the Series 2018 Note form the underlying asset; (ii) the arranging, structuring and other services regarding this Agreement provided by the Lender are arm's-length commercial transactions between the District and its Affiliates, on the one hand, and the Lender and its Affiliates, on the other hand; (iii) the District has consulted its own legal, financial or other advisors with respect to the Transactions to the extent it has deemed appropriate; and (iv) the District is capable of evaluating, and understands and accepts, the terms, risks and conditions of the Transactions; (b)(i) the Lender is and has been acting solely as a principal and have not been, are not, and will not be acting as a municipal advisor (as defined in Section 15B(e)(4) of the Securities Exchange Act of 1934, as amended), or agent, advisor or fiduciary for the District with respect to the Transactions (whether or not the Lender and its Affiliates have advised or is currently advising the District on other matters); and (ii) neither the Lender nor any of its Affiliates have

any obligation to the District with respect to the Transactions, except those obligations expressly set forth herein and the other Financing Documents; and (c) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the District and neither the Lender nor any of its Affiliates has any obligation to disclose any of such interests to the District.

SECTION 35. RIGHTS CUMULATIVE.

All rights, powers and remedies herein given to the Lender are cumulative and not alternative, and are in addition to all statutes or rules of law; any forbearance or delay by the Lender 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 Lender.

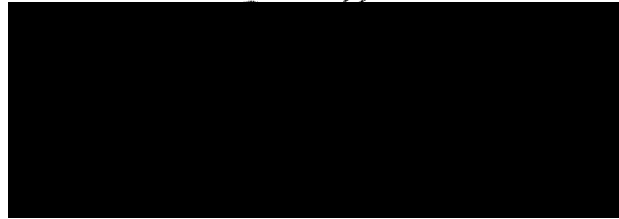
SECTION 36. DISCLOSURE.

The Lender shall not make a public offering of the Series 2018 Note, and the District will not be responsible for the provision of any public disclosure with respect to the Series 2018 Note, or to any party other than the Lender. 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, which redaction shall be subject to review by the Lender 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.

CAPITAL ONE PUBLIC FUNDING, LLC



DISTRICT OF COLUMBIA

[SEAL]

ATTEST:

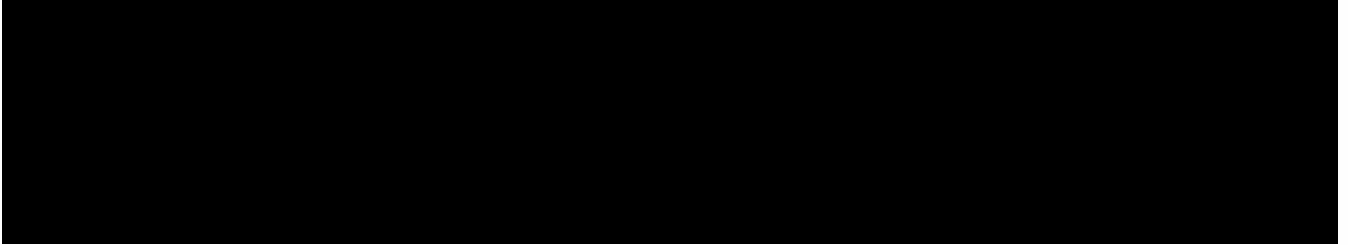


EXHIBIT A

FORM OF SERIES 2018 NOTE

THIS NOTE MAY NOT BE TRANSFERRED, PLEDGED, ASSIGNED OR SOLD EXCEPT AS PERMITTED BY SECTION 18 OF THE CONTINUING COVENANT AGREEMENT AND ANY OTHER TRANSFER, PLEDGE, ASSIGNMENT OR SALE SHALL BE INVALID AND OF NO EFFECT.

No: R-1

**DISTRICT OF COLUMBIA
TAX INCREMENT FINANCING REVENUE NOTE
(SKYLAND TOWN CENTER PROJECT)
SERIES 2018**

<u>PRINCIPAL AMOUNT</u>	<u>INTEREST RATE</u>	<u>DATE OF ISSUANCE</u>	<u>MATURITY DATE</u>
\$17,400,000	3.94%	May 31, 2018	December 1, 2038

Registered Owner: CAPITAL ONE PUBLIC FUNDING, LLC

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 Seventeen Million Four Hundred Thousand and No/100 Dollars (\$17,400,000) together with interest at the rate of three and ninety-four percent (3.94%) 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 Principal Amount reduced by any amounts prepaid by the District.

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 as of May 1, 2018 (as the same may be amended, supplemented, restated or otherwise modified, the “*Continuing Covenants Agreement*”), between the District and Capital One Public Funding, LLC (the “*Lender*”). 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 §§ 1-201.1 *et seq.*) (the “*Home Rule Act*”), the Skyland Town Center Omnibus Act of 2014, effective October 22, 2008, D.C. Code § 2-1217.131 *et. seq.* (the “*Skyland TIF Act*”), to provide funds for the Project.

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 SECURITY AUTHORIZED BY THE SKYLAND TIF 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 primary source of repayment of this Note shall be the Available Tax Increment, payable to the District pursuant to the Skyland TIF Act and to the extent such funds are insufficient the District shall allocate the Available Increment to pay the principal and interest of this Note. The District shall have no obligation to make any payments on this Note, other than through the remittance to the Lender of the revenues constituting the Available TIF Increment and the Available Increment.

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 date when all amounts due pursuant to this Note have been paid in full.

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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: _____

Name: _____

Title: _____

(SEAL)

Attest:

Name: _____

Title: _____

EXHIBIT B

AMORTIZATION SCHEDULE

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
12/01/2018			344,684.33	344,684.33	344,684.33
06/01/2019			342,780.00	342,780.00	
12/01/2019			342,780.00	342,780.00	685,560.00
06/01/2020			342,780.00	342,780.00	
12/01/2020			342,780.00	342,780.00	685,560.00
06/01/2021			342,780.00	342,780.00	
12/01/2021	682,229	3.940%	342,780.00	1,025,009.00	1,367,789.00
06/01/2022			329,340.09	329,340.09	
12/01/2022	709,109	3.940%	329,340.09	1,038,449.09	1,367,789.18
06/01/2023			315,370.64	315,370.64	
12/01/2023	737,048	3.940%	315,370.64	1,052,418.64	1,367,789.28
06/01/2024			300,850.80	300,850.80	
12/01/2024	766,088	3.940%	300,850.80	1,066,938.80	1,367,789.60
06/01/2025			285,758.86	285,758.86	
12/01/2025	796,272	3.940%	285,758.86	1,082,030.86	1,367,789.72
06/01/2026			270,072.30	270,072.30	
12/01/2026	827,645	3.940%	270,072.30	1,097,717.30	1,367,789.60
06/01/2027			253,767.70	253,767.70	
12/01/2027	860,254	3.940%	253,767.70	1,114,021.70	1,367,789.40
06/01/2028			236,820.69	236,820.69	
12/01/2028	894,148	3.940%	236,820.69	1,130,968.69	1,367,789.38
06/01/2029			219,205.98	219,205.98	
12/01/2029	929,377	3.940%	219,205.98	1,148,582.98	1,367,788.96
06/01/2030			200,897.25	200,897.25	
12/01/2030	965,995	3.940%	200,897.25	1,166,892.25	1,367,789.50
06/01/2031			181,867.15	181,867.15	
12/01/2031	1,004,055	3.940%	181,867.15	1,185,922.15	1,367,789.30
06/01/2032			162,087.27	162,087.27	
12/01/2032	1,043,615	3.940%	162,087.27	1,205,702.27	1,367,789.54
06/01/2033			141,528.05	141,528.05	
12/01/2033	1,084,733	3.940%	141,528.05	1,226,261.05	1,367,789.10
06/01/2034			120,158.81	120,158.81	
12/01/2034	1,127,472	3.940%	120,158.81	1,247,630.81	1,367,789.62
06/01/2035			97,947.61	97,947.61	
12/01/2035	1,171,894	3.940%	97,947.61	1,269,841.61	1,367,789.22
06/01/2036			74,861.30	74,861.30	
12/01/2036	1,218,067	3.940%	74,861.30	1,292,928.30	1,367,789.60
06/01/2037			50,865.38	50,865.38	
12/01/2037	1,266,058	3.940%	50,865.38	1,316,923.38	1,367,788.76
06/01/2038			25,924.04	25,924.04	
12/01/2038	1,315,941	3.940%	25,924.04	1,341,865.04	1,367,789.08
	17,400,000		8,936,012.17	26,336,012.17	26,336,012.17

EXHIBIT C

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 Tax Increment Financing Revenue Note (Skyland Town Center Project) Series 2018

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to the District of Columbia Tax Increment Financing Revenue Note (Skyland Town Center Project) Series 2018 (the “*Loan Obligation*”). Capital One Public Funding, LLC (the “*Lender*,” the “*undersigned*,” “*us*” or “*we*,” as applicable) is purchasing the Series 2018 Note pursuant to a Continuing Covenants Agreement, dated as of [_____] 1, 2018 (as the same may be amended, supplemented, restated or otherwise modified, the “*Agreement*”), between the District of Columbia (the “*Borrower*”) and the Lender. We hereby represent to you as follows:

1. The Lender has full power and authority to carry on its business as now conducted, deliver this letter and make the representations and certifications contained herein.
2. The Lender is a lender that regularly extends credit to state and local governments by making loans which are evidenced by obligations such as the Loan Obligation; has knowledge and experience in financial and business matters that make it capable of evaluating the Borrower, the Loan Obligation and the risks associated with the extension of credit evidenced by the Loan Obligation; has the ability to bear the economic risk of extending the credit evidenced by the Loan Obligation; and is a limited liability company engaged in the primary business of extending credit and making loans to state and local governments and non-profit entities and has total assets in excess of \$1 billion. The Lender is not acting as a broker, dealer, municipal securities underwriter, municipal advisor or fiduciary in connection with its extension of credit evidenced by of the Loan Obligation.
3. The Lender has conducted its own investigation of the financial condition of the Borrower, the purpose for which the Loan Obligation is being executed and delivered and of the security for the payment of the principal of and interest on the Loan Obligation, and has obtained such information regarding the Loan Obligation and the Borrower and its operations, financial condition and financial prospects as The Lender deems necessary to make an informed lending decision with respect to its extension of credit evidenced by the Loan Obligation.

4. The Lender is extending credit to the Borrower evidenced by the Loan Obligation as a vehicle for making a commercial loan for its own loan account and without any present intention of distributing or selling any interest therein or portion thereof, provided that the Lender retains the right at any time to dispose of the Loan Obligation or any interest therein or portion thereof, but agrees that any such sale, transfer or distribution by the Lender shall be made in accordance with applicable law and the provisions of the Section 15 of the Agreement.
5. The Lender acknowledges that the Loan Obligation (a) has not been registered under the Securities Act of 1933, as amended, and has not been registered or otherwise qualified for sale under the securities laws of any state, (b) will not be listed on any securities exchange and (c) there is no established market for the Loan Obligation and that none is likely to develop. The Lender understands and acknowledges that (i) its extension of credit evidenced by the Loan Obligation is not intended to be subject to the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended and (ii) in connection with its extension of credit evidenced by the Loan Obligation, the Borrower has not prepared or caused to be prepared, any official statement, private placement memorandum or other offering document.
6. The Lender is acting solely for its own loan account and not as a fiduciary for the Borrower or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor or fiduciary. It has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the Borrower (including to any financial advisor or any placement agent engaged by the Borrower) with respect to the structuring, or delivery of the Loan Obligation. The Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to the transactions relating to the structuring or delivery of the Loan Obligation and the discussions, undertakings and procedures leading thereto. Each of the Borrower, its financial advisor and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters and compliance with legal requirements applicable to such parties) with respect to the Loan Obligation from its own financial, legal, tax and other advisors (and not from the undersigned or its affiliates) to the extent that the Borrower, its financial advisor or its placement agent desires, should or needs to obtain such advice. The undersigned expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the Borrower's financial advisor or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the Borrower's financial advisor or placement agent, with respect to any such matters. The transactions between the Borrower and The Lender are arm's length, commercial transactions in which The Lender is acting and has acted solely as a principal and for its own interest and The Lender has not made

recommendations to the Borrower with respect to the transactions relating to the Loan Obligation.

Very truly yours,

CAPITAL ONE PUBLIC FUNDING, LLC

By: _____

Name: _____

Title: _____

EXHIBIT D

FORM OF ANNUAL AMOUNT CERTIFICATION

The following Annual Amount Certification is hereby given on behalf of the District of Columbia (the “*District*”) in accordance with Section 9(a)(vi) of the Continuing Covenants Agreement (as the same may be amended, supplemented, restated or otherwise modified, the “*Agreement*”) dated as of [_____] 1, 2018 between the District and Capital One Public Funding, LLC, with capitalized terms used below having the meanings given to them in the Agreement.

1. The District has received (a) Available TIF Increment in the preceding twelve months as of [**September 30**, ____] in the amount of \$_____ and (b) Available Increment in the preceding twelve months as of [**September 30**, ____] in the amount of \$_____.

Dated as of February 28, 20____

DISTRICT OF COLUMBIA

By: _____

Name: _____

Title: _____