Norton Rose Fulbright
Draft of November 11, 2022

UNITED STATES
DEPARTMENT OF TRANSPORTATION

RRIF LOAN AGREEMENT

For Up to [___] Dollars ($[___])
with

INDIANA FINANCE AUTHORITY

for the

DOUBLE TRACK PROJECT

(RRIF – 2022-[__])

Dated as of [___], 2022

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RRIF LOAN AGREEMENT

THIS RRIF LOAN AGREEMENT (this "**Agreement**"), dated as of [__], 2022, is by and between the **INDIANA FINANCE AUTHORITY**, a body politic and corporate of the State of Indiana, not an agency of the State of Indiana but an independent instrumentality exercising essential public functions, duly created and existing under and by virtue of IC 5-1.2, with an address of One North Capitol, Suite 900, Indianapolis, Indiana 46204 (the "**Borrower**"), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the "**Executive Director**"), with an address of 1200 New Jersey Avenue SE, Washington, D.C. 20590 (the "**RRIF Lender**").

RECITALS:

WHEREAS, the Congress of the United States of America (the "**Congress**") has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has created the Railroad Rehabilitation and Improvement Financing program ("**RRIF**") pursuant to Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, codified at 49 U.S.C. Ch. 224 (as amended from time to time, the "**RRIF Act**"); and

WHEREAS, Section 22402 of the RRIF Act authorizes the RRIF Lender to provide direct loans and loan guarantees to eligible project sponsors; and

WHEREAS, the Borrower has requested that the RRIF Lender make the RRIF Loan (as defined herein) in a principal amount not to exceed [__] Dollars ($[__]) (excluding interest that is capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for RRIF credit assistance dated [__], 2022 (the "**RRIF Application**"); and

WHEREAS, on [__], 2022, the Secretary (as defined herein) approved RRIF credit assistance for the Project in the form of a direct loan in an aggregate principal amount not to exceed [__]Dollars ($[__]) (excluding capitalized interest); and

WHEREAS, the RRIF Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the RRIF Bonds (as defined herein) in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the RRIF Lender has entered into this Agreement in reliance upon, among other things, IC §5-1.2-4-1 and §5-1.3 and the Base Case Projections (as defined herein) delivered by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the RRIF Lender as follows:

SECTION 1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (*Definitions*) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect and without regard to subsequent amendments.

"**Agreement**" has the meaning provided in the preamble hereto.

"**Annual Coverage Certificate**" has the meaning provided in Section 21(c) (*Annual Coverage Certificates*).

"**Anticipated RRIF Loan Disbursement Schedule**" means the schedule set forth in **Exhibit B**, reflecting the anticipated disbursement of proceeds of the RRIF Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (*Disbursement Conditions*).

"**Anti-Corruption Laws**" means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption.

"**Anti-Money Laundering Laws**" means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

"**Authorized Representative**" means for any Person, such person as is from time to time designated by such Person to act on its behalf pursuant to a written certificate furnished by such Person to the RRIF Lender and the Servicer, if any, designating such person to so act and containing the specimen signature of such designee and signed by such Person; provided that (i) the Borrower's Authorized Representative shall be any Person who shall be designated as such pursuant to Section 25 (*Borrower's Authorized Representative*) and (ii) the RRIF Lender's Authorized Representative shall be the Executive Director and any other Person who shall be designated as such pursuant to Section 26 (*RRIF Lender's Authorized Representative*).

"**Authorizing Legislation**" means the legislation authorizing the Borrower to enter into, and to perform its obligations under, this Agreement and the other Related Documents to which it is a party, consisting of IC 5-1.3, as amended.

"**Available Revenues**" means (i) with respect to the IFA RDA Available Revenue Bonds, the RDA Member Dues and Participant Unit Revenues, and (ii) with respect to the IFA RDA Member Dues Bonds, the RDA Member Dues.

"**Bank Secrecy Act**" means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, classified at 12 U.S.C. §§ 1829b and 1951-1959 and 31 U.S.C. §§ 312, 5311-5313, and 5316-5322), as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

"**Bankruptcy Related Event**" means, with respect to any Person:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (A) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (B) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (A) and (B), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(ii) such Person shall (A) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (B) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (C) solely with respect to the Borrower, fail to make two (2) consecutive payments of RRIF Debt Service in accordance with the provisions of Section 9 (*Payment of Principal and Interest*), (D) make a general assignment for the benefit of creditors, (E) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (i) of this definition, (F) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (G) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (A) through (F), inclusive, of this clause (ii), or (H) take any action for the purpose of effecting any of the foregoing; or

(iii) solely with respect to the Borrower, (A) the Bond Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon, or (B) the Bond Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of pursuant to a sale or disposition of the Trust Estate in lieu of foreclosure.

"**Base Case Financial Model**" means a financial model prepared by the Borrower that includes (a) for each six (6)-month period corresponding to a Payment Period through the Final Maturity Date, a forecast of Pledged Revenues, expenditures, and funding obligations reflected in Section 709(a)(i) of the IFA RDA Member Dues Bond Indenture, (b) for each six (6)-month period corresponding to a Payment Period through the Final Maturity Date, a forecast of Debt Service on all Obligations, and (c) the Project Budget, which model shall be (i) for each of clauses (a), (b) and (c) above, based upon assumptions and methodology provided by the Borrower and acceptable to the RRIF Lender as of the Effective Date, and (ii) provided to the RRIF Lender as a fully functional Microsoft Excel-based financial model or in such other format as is requested by the RRIF Lender.

"**Base Case Projections**" means the initial forecast for, among other things, NICTD's payments to each Construction Contractor in accordance with the applicable Construction Contract and the Borrower's receipt of Pledged Revenues relating to its payment obligations under this Agreement (including RRIF Debt Service and RRIF Expenses), prepared as of the Effective Date using the Base Case Financial Model.

"**Bond Trustee**" means The Bank of New York Mellon Trust Company, N.A., a national banking association, and its successor or assigns and any other corporation, bank or trust company that may at any time be substituted in its place pursuant to the IFA RDA Member Dues Bond Indenture and any co-trustee appointed pursuant to Section 915 thereof.

"**Bondholder**" means, when used with respect to the RRIF Bonds, the RRIF Lender and, when used with respect to any other Bond, the registered owner of such Bond.

"**Bonds**" means any of the Lease RDA Member Dues Bonds (Double Track Project) (including the RRIF Bonds), notes or other evidences of obligations, without regard to the term thereof, issued by the Borrower from time to time and authenticated and delivered pursuant to the IFA RDA Member Dues Bond Indenture.

"**Borrower**" has the meaning provided in the preamble hereto.

"**Borrower Fiscal Year**" means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) or such other fiscal year of the State as may be mandated by law.

"**Borrower Lease Party**" means any of the Borrower, RDA and NICTD.

"**Business Day**" means any day other than (a) a Saturday, Sunday or legal holiday or a day on which offices of the Government, the State, or banking institutions in any of the cities in which the principal office of the Bond Trustee or the Paying Agent is located are authorized by law to close or remain closed or (b) a day on which the New York Stock Exchange is closed.

"**Calculation Date**" means each [November 1] occurring after the Effective Date.

"**Calculation Period**" means a twelve (12)-month period ending on a Calculation Date.

"**Capitalized Interest Period**" means, for each of Tranche A and Tranche B, the period from the date of the first disbursement of such Tranche until (but excluding) May 1, 2025.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

"**Completion Certificate**" for the Project or any portion thereof means a certificate (a) executed by an Authorized Officer of the Borrower certifying that the Project or such portion thereof is available for use by RDA and (b) accepted by a representative of RDA acknowledging that such Project or such portion thereof is available for use by RDA.

"**Congress**" has the meaning provided in the recitals hereto.

"**Construction Contract Guaranties**" means (i) (x) the Performance Bond among Walsh/Herzog Joint Venture, Travelers Casualty and Surety Company of America, and Federal Insurance Company dated December 1, 2021, and (y) the Payment Bond among Walsh/Herzog Joint Venture, Travelers Casualty and Surety Company of America, and Federal Insurance Company dated December 1, 2021; (ii) (x) the Performance Bond between Larson Danielson

Construction Company, Inc. and Ohio Farmers Insurance Company dated August 31, 2021, and (y) the Payment Bond between Larson Danielson Construction Company, Inc. and Ohio Farmers Insurance Company dated August 31, 2021; and (iii) (x) the Performance Bond between Hasse Construction Company, Inc. and Liberty Mutual Insurance Company dated September 1, 2021, and (y) the Payment Bond between Hasse Construction Company, Inc. and Liberty Mutual Insurance Company dated September 1, 2021.

"**Construction Contract Substantial Completion Date**" means, for each Construction Contract, (a) all work under such Construction Contract has been completed substantially in accordance with such Construction Contract and the requirements of all Governmental Approvals related thereto and (b) (if applicable) the "acceptance tests" or "performance tests" (however defined) under such Construction Contract have been performed and successfully completed and the minimum levels specified in such Construction Contract for such "acceptance tests" or "performance tests" have been achieved.

"**Construction Contractor**" means each counterparty to a Construction Contract with NICTD.

"**Construction Contracts**" means that certain (i) Construction Contract, dated December 21, 2021, between NICTD and Walsh/Herzog Joint Venture; (ii) Construction Contract, dated August 31, 2021, between NICTD and Larson-Danielson Construction Company, Inc.; (iii) Construction Contract, dated August 10, 2021, between NICTD and Hasse Construction Company, Inc.; (iv) Construction Contract, dated December 28, 2021, between NICTD and Larson-Danielson Construction Company, Inc.; (v) Construction Contract, dated April 5, 2021, between NICTD and Rieth-Riley Construction Co., Inc.; (vi) Goods and Services Contract, dated January 26, 2022, between NICTD and Xorail, Inc.; and (vii) Construction Contract, dated August 11, 2021, between NICTD and Great Lakes Contractor Services, Inc., each as amended or supplemented from time to time.

"**Construction-Related Contracts**" means (i) the Construction Contracts and (ii) the Construction Contract Guaranties.

"**Construction-Related Contract Party**" means any Person (other than the Borrower) party to a Constructed-Related Contract.

"**Construction Schedule**" means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II**, and (b) any updates thereto included in the Financial Plan most recently submitted to the RRIF Lender pursuant to Section 21(a)(iii)(B) (*Financial Plan*).

"**Consulting Engineer**" has the meaning provided in Section 22(d)(i) (*Consulting Engineer*).

"**Contractual Obligation**" means, as to any Person, any contractual provision or any pledge issued or entered into by such Person under any indenture, resolution, contract, agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property or assets is bound.

"**Control**" means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms "**Controlling**" and "**Controlled by**" have meanings correlative to the foregoing.

"**Cost Budget**" means the Cost Budget attached as Exhibit 3A to the Governance Agreement, as amended or modified from time to time in writing by all the parties to the Governance Agreement.

"**CPI**" means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, [January 2022] as the base period.

"**Credit Risk Premium**" means a fee in the amount of the sum of (a) [Zero percent (0%)] of each disbursement of Tranche A, and (b) [Zero percent (0%)] of each disbursement of Tranche B.

"**Debt Service**" means, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of the RRIF Loan accruing and payable in respect of such period.

"**Debt Service Fund**" means the "Debt Service Fund" required to be created pursuant to Section 502(a) of the IFA RDA Member Dues Bond Indenture.

"**Debt Service Payment Commencement Date**" means, for each of Tranche A and Tranche B, November 1, 2025.

"**Default**" means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

"**Default Rate**" means, for each Tranche, an interest rate equal to the sum of (a) the RRIF Interest Rate for such Tranche plus (b) [200] basis points.

"**Delegation**" has the meaning provided in Section 26(b) (*RRIF Lender's Authorized Representative*).

"**Deposit Trustee**" means The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee to receive, hold and distribute deposits made to the Revenue Trust Fund, or its successor trustee under the provisions thereof.

"**Development Default**" means (a) the Borrower fails to diligently prosecute, or to cause the diligent prosecution of, the work related to the Project or (b) the Substantial Completion Date has not occurred by December 16, 2025.

"**Dollars**" and "**$**" means the lawful currency of the United States of America.

"**Draw Down Bonds**" means the loan provided by the State of Indiana pursuant to the provisions of IC 5-13-10.5-20 for each Rail Project.

"**Effective Date**" means the date of this Agreement.

"**Electronic Signature**" means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record.

"**Eligible Project Costs**" means amounts in the Project Budget, which (i) may be paid, reimbursed or refinanced with funds made available under this Agreement and (ii) are eligible to be financed under Section 22402(b) of the RRIF Act; provided, however, that Eligible Project Costs must be consistent with 49 U.S.C. §§ 22401 - 22403, and all other applicable federal law.

"**Environmental Laws**" has the meaning provided in Section 13(r) (*Environmental Matters*).

"**ERISA**" means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. §1001 *et seq*.), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"**Event of Default**" has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

"**Event of Loss**" means any event or series of events that causes any portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

"**Executive Director**" has the meaning provided in the preamble hereto.

"**Expense Fund**" means the Expense Fund required to be created pursuant to Section 502 of the IFA RDA Member Dues Bond Indenture.

"**FFY**" means the fiscal year of the Government, which is the twelve (12)-month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

"**Final Maturity Date**" means [November 1, 2054].

"**Financial Plan**" means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 21(a) (*Financial Plan*) and (b) any updates thereto required pursuant to Section 21(a) (*Financial Plan*).

"**Financial Statements**" has the meaning provided in Section 13(x) (*Financial Statements*).

"**FRA**" means the Federal Railroad Administration, a modal agency of the USDOT.

"**FTA**" means the Federal Transit Administration, a modal agency of the USDOT.

"**FTA Full Funding Grant Agreement**" means the Federal Transit Administration Full Funding Grant Agreement, no. IN-2021-002-00, dated January 7, 2021, between the FTA and NICTD, as the same may be supplemented or amended from time to time, providing for a grant of $50.6 million for the construction of the Project.

"**FTA Grant Reimbursements**" means funds received by NICTD from the FTA as reimbursement for expenditures by NICTD on the Project pursuant to the FTA Full Funding Grant Agreement.

"**FTA Master Agreement**" means the standard terms and conditions applicable to recipients of Federal financial assistance from the Government (FTA Form MA(27) (October 1, 2020)), as updated and published annually, which is incorporated by reference into the FTA Full Funding Grant Agreement.

"**FTA Project Management Oversight Requirements**" means the requirements and conditions for project management oversight procedures set forth in 49 U.S.C. §633.5 and in 49 CFR Part 633.

"**FTA Regional Office**" means Region 5 Office of the FTA, located at 200 West Adams Street, Suite 320, Chicago, IL 60606.

"**Funding Source**" has the meaning provided in the RDA Member Dues Master Lease Agreement.

"**GANS**" means one or more series of Grant Anticipation Notes issued by the Borrower, pursuant to the Authorizing Legislation, to be issued on or about [__], 20[__], in the not to exceed par amount of [__] Dollars ($[__]), the proceeds of which are anticipated to be applied to the payment of eligible project costs for the West Lake Project prior to the availability of FTA Grant Reimbursements, which are payable from Lease Rentals paid by RDA from FTA Grant Reimbursements and moneys on deposit in the "Next Generation Trust Fund" established under IC 8-14-15.2.

"**GASB**" means generally accepted accounting principles for state and local governments, which are the uniform minimum standards of and guidelines for financial accounting and reporting prescribed by the Governmental Accounting Standards Board.

"**Governance Agreement**" means the Fourth Amended and Restated Governance Agreement Concerning Development of the Rail Projects, effective as of [__], 2022, by and among RDA, NICTD and the Borrower, as amended or supplemented from time to time.

"**Government**" means the United States of America and its departments and agencies.

"**Government Obligations**" means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Government pursuant to authority granted by Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

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

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

"**Gross Revenues**" means (as provided in the IFA RDA Member Dues Bond Indenture) all rental payments, insurance proceeds or proceeds of contractors' payment and performance bonds received by or paid to the Borrower from the leasing of the Project or any portion thereof pursuant to the terms and provisions of the RDA Member Dues Master Lease Agreement or from the sale, transfer or conveyance (whether voluntary or involuntary) of the Project or any portion thereof.

"**Ground Lease Agreement**" means the Ground Lease Agreement (Double Track Project), dated as of March 1, 2020, as amended and supplemented by the Supplemental Ground Lease Agreement (Double Track Project), dated as of March 1, 2021, and as further amended and supplemented by the Second Supplemental Ground Lease Agreement (Double Track Project), dated as [__], 2022, each between NICTD, as lessor, and RDA, as lessee, and as such agreement may be amended or supplemented from time to time, pursuant to which NICTD (the owner of the existing facilities) has leased and will lease to RDA the interests of NICTD in such facilities, including any assets or properties acquired by NICTD hereafter for the Project (except as provided in the Governance Agreement).

"**IC**" means Indiana Code.

"**IFA Bonds**" means one or more of the series of the Bonds, including the RRIF Bonds, GANS and IFA RDA Available Revenue Bonds, among other bonds issued pursuant to the Authorizing Legislation, and any bonds issued to refund any of the foregoing Bonds.

"**IFA RDA Available Revenue Bond Indenture**" means the Trust Indenture, dated as of June 1, 2022, between the Borrower and the Bond Trustee, pursuant to which the IFA RDA Available Revenue Bonds are issued.

"**IFA RDA Available Revenue Bonds**" means "IFA RDA Available Revenue Bonds" as defined in the IFA RDA Available Revenue Bond Indenture as one or more series of bonds to be issued by the Borrower pursuant to the Authorizing Legislation to finance the West Lake Project, which are payable from Lease Rentals paid by RDA from Available Revenues.

"**IFA RDA Member Dues Bond Indenture**" means the Trust Indenture, dated as of [__], 2022, between the Borrower and the Bond Trustee, pursuant to which the RRIF Bonds are issued.

"**Indemnitee**" has the meaning provided in Section 17 (*Indemnification*).

"**Indenture Documents**" means the IFA RDA Member Dues Bond Indenture, the Trust Fund Agreement, each Supplemental Indenture, any amendment, modification or supplement thereto, and each other agreement, instrument and document executed and delivered by the Borrower pursuant to or in connection with the issuance of the Bonds.

"**INDOT Funding**" means funding from the Indiana Department of Transportation, or any successor thereto deposited with the Borrower for transfer to the INDOT Funding Project Account of the Project Fund as provided in IC 8-14-14.3-5 for expenditure on Project costs.

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

"**Interlocal Agreement**" means the agreement entered into by approximately sixteen (16) governmental entities in Lake County pursuant to which each governmental entity agrees to make payments to support the costs of the Project, some or all of which payments shall be directed to RDA as provided in IC 6-3.6-9-5, IC 6-3.6-11-5.5, IC 6-3.6-11-7, IC 36-7.5-4-2.5, and IC 36-7.5-4-20.

"**Investment Grade Rating**" means a rating no lower than "BBB-," "Baa3" or the equivalent rating from a Rating Agency.

"**Lease Premises**" means the improvements constructed in connection with the Rail Projects and the real property upon which they shall be constructed, together with the existing rail lines owned by NICTD upon which the Rail Projects will be constructed and any real and personal property acquired by a Borrower Lease Party after the execution of Leases for the purpose of developing the Rail Projects, all as more fully described in the Leases. The Lease Premises shall not include any existing stations, existing parking facilities, existing buildings, or NICTD rolling stock, except to the extent costs related thereto are included in the Cost Budget.

"**Lease Rentals**" means all payments due as lease rental payments payable by RDA under the applicable Master Lease Agreement, including without limitation, all payments due as Debt Service on the respective series of IFA Bonds plus expenses of the Borrower or RDA and the amounts necessary to fund or replenish the Debt Service Reserve Fund pursuant to each Trust Indenture, if applicable.

"**Leases**" means the RDA Member Dues Master Lease Agreement, the Operating Lease Agreement, the Ground Lease Agreement, and the Underlying Lease Agreement.

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

"**Loan Amortization Schedule**" means the Loan Amortization Schedule reflected in the applicable column of **Exhibit G**, as amended from time to time in accordance with Section 7 (*Outstanding RRIF Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

"**Master Lease Agreements**" means the RDA Member Dues Master Lease Agreement or one or more other financing lease agreements entered into by the Borrower as lessor and RDA as lessee in the manner provided in IC 5-1.3-5, as amended, in connection with the Project, including any supplements thereto, with respect to each respective series of RRIF Bonds, substantially in the form of the RDA Member Dues Master Lease Agreement and in which RDA agrees to cause NICTD under the Operating Lease Agreement to acquire, construct, complete and develop the Project in the manner provided in the Governance Agreement, including all Rail Projects Property with respect to the Project, as the same may be expanded and improved as the Project is developed or completed.

"**Material Adverse Effect**" means a material adverse effect on (a) the Project (until the Substantial Completion Date) or the Pledged Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower or any other Borrower Lease Party, (c) the legality, validity or enforceability of any material provision of any Indenture Document, RRIF Loan Document or Principal Project Contract, (d) the ability of the Borrower, any other Borrower Lease Party or any Principal Project Party to enter into, perform or comply with any of its material obligations under any Indenture Document, RRIF Loan Document or Principal Project Contract to which it is a party, (e) the validity, enforceability or priority of the Liens provided pursuant to the Authorizing Legislation or under the Indenture Documents on the Trust Estate in favor of the Secured Parties, or (f) the RRIF Lender's rights or remedies available under any RRIF Loan Document.

"**Member Dues Revenue Account**" means the IFA RDA Member Dues Revenue Account of the Revenue Fund created pursuant to the Trust Fund Agreement.

"**Members**" mean Lake County, Porter County and the Lake County cities of East Chicago, Hammond and Gary.

"**NEPA**" means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. §4321 *et seq*.), as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

"**NEPA Determination**" means the Finding of No Significant Impact for the Project issued by the Federal Transit Administration on November 1, 2018, in accordance with NEPA.

"**NICTD**" means the Northern Indiana Commuter Transportation District, a commuter transportation district and a municipal corporation formed pursuant to IC 8-5-15, or any successor thereto or assignee thereof.

"**NICTD Direct Agreement**" means the Direct Agreement, dated as of [__], 2022, among NICTD, the Borrower and the RRIF Lender, as such agreement may be amended or supplemented from time to time.

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

"**Operating Lease Agreement**" means the Operating Lease Agreement (Double Track Project), dated as of March 1, 2020, as amended and supplemented by the Supplemental Operating Lease Agreement (Double Track Project), dated as of March 1, 2021, and as further amended and supplemented by the Second Supplemental Operating Lease Agreement (Double Track Project), dated as of [__], 2022, each between RDA, as lessor, and NICTD, as lessee, and as such agreement may be further amended or supplemented from time to time, pursuant to which RDA has leased and will lease the Project to NICTD during and after construction so that NICTD can complete that construction and thereafter operate and maintain the Project, subject to the provisions of the Governance Agreement.

"**Organizational Documents**" means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

"**Other Loan Documents**" has the meaning provided in Section 19(a)(vi) (*Cross Default to Financing Documents*).

"**Outstanding RRIF Loan Balance**" means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the RRIF Loan, as determined in accordance with Section 7 (*Outstanding RRIF Loan Balance; Revisions to Exhibit G and the Loan Amortization Schedule*).

"**Participant Unit Revenues**" means: (a) amounts withheld by the auditor of the State from certain municipalities within Lake County, as determined by the Indiana Department of Local Government Finance, and paid to the Secretary-Treasurer of RDA pursuant to IC 6-3.6-11-5.5; and (b) revenues derived from the Interlocal Agreement or from other actions taken by certain municipalities within Lake County offering to provide revenue to support and finance the West Lake Project pursuant to IC 6-3.6-11-7.

"**Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and all regulations promulgated thereunder.

"**Paying Agent**" means The Bank of New York Mellon Trust Company, N.A., a national banking association, as paying agent for the Bonds and its successor or successors appointed pursuant to the IFA RDA Member Dues Bond Indenture.

"**Payment Default**" has the meaning provided in Section 19(a)(i) (*Payment Default*).

"**Payment Period**" means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month or shorter period commencing on the Effective Date and ending on the date immediately prior to the Debt Service Payment Commencement Date.

"**Permitted Debt**" means:

(i) the RRIF Loan;

(ii) the IFA RDA Available Revenue Bonds; and

(iii) the GANS (provided that such GANS are not repayable with Available Revenues).

"**Permitted Investments**" means (with respect to the investment of the proceeds of the RRIF Loan or any account established and maintained pursuant to the Trust Fund Agreement), to the extent permitted by State law:

(i) Government Obligations;

(ii) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by an agency of the Government;

(iii) repurchase agreements, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(iv) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Rating Agency; and

(v) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency.

"**Permitted Liens**" means:

(i) Liens imposed pursuant to the RRIF Loan Documents and the Leases;

(ii) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 15(n) (*Material Obligations; Liens*);

(iii) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 19(a)(vii) (*Judgments*);

(iv) Liens permitted to be imposed pursuant to the RRIF Loan Documents on Member Dues that the Borrower is not required under any RRIF Loan Document to deposit or hold in the Member Dues Revenue Account; and

(v) Liens imposed as a result of the issuance of any Permitted Debt secured as contemplated in the Revenue Trust Fund Agreement and not prohibited herein.

"**Person**" means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

"**Pledged Funds**" means, collectively, the Trust Fund Agreement Accounts, the Debt Service Fund and the Expense Fund.

"**Pledged Revenues**" means the RDA Member Dues, which are pledged by RDA to make rent payments due under the RDA Member Dues Master Lease Agreement, which rent payments are pledged by the Borrower to pay RRIF Debt Service.

"**Principal Project Contracts**" means collectively the Construction Contracts, the other Construction-Related Contracts, the Governance Agreement, the Leases and any other material contract related to the construction or operation of the Project.

"**Principal Project Party**" means any Person (other than the Borrower) party to a Principal Project Contract, for so long as such Principal Project Contract remains in effect.

"**Project**" means the "Double Track Project," which involves the construction of 17.99 miles of new second tract between Gary and Michigan City, Indiana, among NICTD's existing South Shore Line, including approximately two miles of completely new right-of-way in Michigan City, platform reconfigurations at five stations, construction of 1,475 additional parking spaces, a new overhead catenary power system, and reconstruction of 22 at-grade crossings and 20 culverts.

"**Project Budget**" means the budget for the Project, in the aggregate amount of [__] Dollars ($[__]) and attached to this Agreement as Schedule I, showing a summary of all Total Project Costs, all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time, subject to the reporting requirements in Section 22(b) (*Quarterly Construction Progress Report*).

"**Project Fund**" means the fund by that name created under Section 2(a) of the Trust Fund Agreement, including each of the accounts created under Section 2 of the Trust Fund Agreement and the related subaccounts.

"**Projected Substantial Completion Date**" means December 16, 2024, as such date may be adjusted in connection with an update to the Financial Plan pursuant to Section 21(a)(iv)(B) (Financial Plan).

"**Public Finance Director**" means the Public Finance Director of the State of Indiana.

"**Rail Projects**" mean the Project and the West Lake Project.

"**Rail Projects Improvements**" means the improvements to be constructed in connection with the Rail Projects, whether financed with the proceeds of the IFA Bonds or otherwise.

"**Rail Projects Property**" means all real and personal property interests, including but not limited to Lease Premises, Rail Projects Improvements, and such easements, licenses, leases, or property rights, in whatever form reasonably necessary to construct the Rail Projects and operate the South Shore Line, whether now owned or hereinafter acquired by any Borrower Lease Party; but not including existing stations, existing parking facilities, or existing buildings, or NICTD rolling stock except to the extent any costs are included in the Cost Budget.

"**Rating Agency**" means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. §78c(a)(62)).

"**RDA**" means the Northwest Indiana Regional Development Authority, duly created and existing under and by virtue of IC 36-7.5, or any successor or assignee thereof.

"**RDA Available Revenue Master Lease Agreement**" means the RDA Available Revenue Master Lease Agreement (West Lake Project), dated as of June 1, 2022, between the Borrower, as lessor, and RDA, as lessee, as amended or supplemented from time to time.

"**RDA Direct Agreement**" means the Direct Agreement, dated as of [__], 2022, among RDA, the Borrower and the RRIF Lender, as such agreement may be amended or supplemented from time to time.

"**RDA Member Dues**" means the dues paid to RDA by the Members as described in IC 36-7.5-4-2, as directed to be paid to RDA as provided in IC 36-7.5-3-1.7 and pledged by RDA, first, for Lease Rentals pursuant to the RDA Member Dues Master Lease Agreement and then, to the extent not required for such rental payments, to Lease Rentals pursuant to the RDA Available Revenue Master Lease Agreement.

"**RDA Member Dues Master Lease Agreement**" means the RDA Member Dues Master Lease Agreement (Double Track Project), dated as of [__], 2022, between the Borrower, as lessor, and RDA, as lessee, as amended or supplemented from time to time.

"**Related Documents**" means the RRIF Loan Documents and the Principal Project Contracts.

"**Requisition**" has the meaning provided in Section 4(a) (*Disbursement Conditions*).

"**Revenue Fund**" means the Revenue Fund created within the Revenue Trust Fund under Section 2(a) of the Trust Fund Agreement, including each of the accounts and subaccounts created thereunder.

"**Revenue Trust Fund**" means, as defined in the Trust Fund Agreement, collectively the funds, accounts and subaccounts established in Section 2 of the Trust Fund Agreement and maintained to receive, hold and disburse funds for the Rail Projects, including, without limitation, FTA grant proceeds, proceeds of IFA Bonds, proceeds of the Draw Down Bonds, RDA Member Dues, State appropriations, Pledged Revenues, Participant Unit Revenues, affiliate contributions, Borrower cash, RDA cash, INDOT Funding, and NICTD cash (where each such capitalized term not defined herein has the meaning provided in the Trust Fund Agreement), according to the terms of the Governance Agreement.

"**Revised Financial Model**" means an updated version of the Base Case Financial Model, in form and substance satisfactory to the RRIF Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

"**RRIF**" has the meaning provided in the recitals hereto.

"**RRIF Act**" has the meaning provided in the recitals hereto.

"**RRIF Application**" has the meaning provided in the recitals hereto.

"**RRIF Bonds**" means up to two (2) series of Bonds issued by the Borrower pursuant to the Authorizing Legislation and the IFA RDA Member Dues Bond Indenture to finance the Project, which are payable from Lease Rentals to be paid by RDA to the Borrower from Pledged

Revenues pursuant to the RDA Member Dues Master Lease Agreement, each substantially in the form of **Exhibit A**.

"**RRIF Debt Service**" means with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding RRIF Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the applicable RRIF Interest Rate (or, if applicable, the Default Rate), in each case, (a) as set forth on **Exhibit G** and (b) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(c) (*Payment of RRIF Debt Service*).

"**RRIF Debt Service Account**" means the IFA RDA Member Dues Debt Service Account in the Debt Service Fund, each as defined in, and created pursuant to, the Trust Fund Agreement.

"**RRIF Expenses**" means the actual fees and expenses of the RRIF Lender and the Bond Trustee or Deposit Trustee expenses, legal expenses, rating agency expenses, and other costs and expenses required to be incurred by the Borrower under the IFA RDA Member Dues Bond Indenture, the Trust Fund Agreement and this Agreement, including the indemnification obligations set forth in Section 17 (*Indemnification*).

"**RRIF Interest Rates**" means the interest rates provided for the Tranches provided in Section 6 (*Interest Rates*).

"**RRIF Lender**" has the meaning provided in the preamble hereto.

"**RRIF Loan**" means the secured loan made by the RRIF Lender to the Borrower on the terms and conditions set forth herein and in the IFA RDA Member Dues Bond Indenture, pursuant to the RRIF Act, comprising Tranche A and Tranche B, in an aggregate principal amount not to exceed [__] Dollars ($[__]) (excluding capitalized interest), to be used to pay Eligible Project Costs.

"**RRIF Loan Documents**" means this Agreement, the RDA Direct Agreement, the NICTD Direct Agreement, the RRIF Bonds, the Trust Fund Agreement, the IFA RDA Member Dues Bond Indenture, each Supplemental Indenture and any other Indenture Documents.

"**Sanctioned Country**" means, at any time, a country or territory that is itself the subject or target of any Sanctions.

"**Sanctioned Person**" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

"**Sanctions**" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

“**Secretary**” means the United States Secretary of Transportation.

“**Secured Parties**” means the Bond Trustee, the Deposit Trustee and the RRIF Lender.

“**Semi-Annual Payment Date**” means each May 1 and November 1 or, if such date is not a Business Day, the next Business Day following such May 1 or November 1.

“**Semi-Annual Period**” means each six-month Period preceding a Semi-Annual Payment Date.

“**Servicer**” means such entity or entities as the RRIF Lender shall designate from time to time to perform, or assist the RRIF Lender in performing, certain duties hereunder.

“**South Shore Line**” means the existing South Shore Line Passenger Railroad, a commuter train service between South Bend, Indiana and Millennium Station in Chicago, Illinois, including those portions of the Project when complete and those portions of the West Lake Project when complete, including those assets being funded under the FTA CIG Program and including all other assets, whether now owned or hereafter acquired or leased by NICTD for operation of the South Shore Line.

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

“**Substantial Completion**” means the opening of the full Project to regular passenger traffic.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Supplemental Governance Agreement**” means an agreement supplemental to or amendatory of the Governance Agreement.

“**Supplemental Indenture**” means any indenture supplemental to or amendatory of the IFA RDA Member Dues Bond Indenture, adopted by the Borrower in accordance with Article X of the IFA RDA Member Dues Bond Indenture.

“**Supplemental Trust Fund Agreement**” means an agreement supplemental to or amendatory of the Trust Fund Agreement.

“**Total Project Costs**” means (a) the costs paid or incurred or to be paid or incurred by a Borrower Lease Party in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance, and financing costs; (b) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) on any indebtedness of the Borrower (other than the RRIF Loan) incurred for the Project; (c) costs of equipment and supplies and initial working capital and reserves required by NICTD for the commencement of operation of the Project, including general administrative expenses and overhead of NICTD; and (d) the repayment of obligations incurred by the Borrower, the proceeds of which obligations were used to pay items (a) through (c) of this definition.

"**Tranche**" means any of Tranche A and Tranche B.

"**Tranche A**" means disbursements of the RRIF Loan in a maximum principal amount equal to [__] Dollars ($[__]).

"**Tranche A RRIF Bond**" means the RRIF Bond issued with respect to Tranche A.

"**Tranche B**" means disbursements of the RRIF Loan in a maximum principal amount equal to [__] Dollars ($[__]).

"**Tranche B RRIF Bond**" means the RRIF Bond issued with respect to Tranche B.

"**Tranche Maturity Date**" means, for each Tranche, the earlier of (a) the Semi-Annual Payment Date occurring on or immediately prior to the [__] ([__]) anniversary of the Substantial Completion Date and (b) with respect to (i) Tranche A, [__], and (ii) Tranche B, the Final Maturity Date.

"**Trust Estate**" means (a) the proceeds of the sale of the Bonds, (b) the Gross Revenues and (c) the Pledged Funds, including the investments, if any, thereof, and the same are hereby pledged and assigned, subject only to the provisions of the IFA RDA Member Dues Bond Indenture permitting the application thereof for the purpose and on the terms and conditions set forth in the IFA RDA Member Dues Bond Indenture.

"**Trust Fund Agreement**" means the Amended and Restated Revenue Trust Fund Agreement, dated as of June 1, 2022, as amended and supplemented by the Second Amended and Restated Revenue Trust Fund Agreement, dated as of [__], 2022, each among the Borrower, RDA, NICTD, the Bond Trustee and the Deposit Trustee, as it may be further amended or supplemented from time to time.

"**Trust Fund Agreement Accounts**" means the IFA RDA Member Dues Project Account, the IFA RDA Member Dues Project Clearing Subaccount, the IFA RDA Member Dues Debt Service Account (each as defined in the IFA RDA Member Dues Bond Indenture) and the Member Dues Revenue Account.

"**Trust Indenture**" means any of the Trust Indentures pursuant to which the the IFA Appropriation Bonds, the IFA RDA Available Revenue Bonds, the Bonds, or the GANS, as applicable, are issued.

"**Uncontrollable Force**" means any cause beyond the control of any Borrower Lease Party, including: (a) a tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (<u>provided</u> that no Borrower Lease Party shall be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the applicable Borrower Lease Party and such Borrower Lease Party does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of any Borrower Lease Party.

"**Underlying Lease**" means the Underlying Lease Agreement (Double Track Project), dated as of March 1, 2020, as amended and supplemented by the Supplemental Underlying Lease Agreement (Double Track Project), dated as of March 1, 2021, and as further amended and supplemented by the Second Supplemental Underlying Lease Agreement (Double Track Project), dated as of [__], 2022, each between RDA and the Borrower, including any further amendments or supplements thereto or renewals thereof, pursuant to which RDA has leased and will lease to the Borrower such lease interests obtained from NICTD to provide the Borrower the property interests sufficient to finance the Project.

"**Uniform Commercial Code**" or "**UCC**" means the Uniform Commercial Code, as in effect from time to time in the State.

"**USDOT**" means the United States Department of Transportation.

"**West Lake Project**" means an approximately 9-mile new north/south passenger rail line connected to the existing South Shore Line, with four stations, between Hammond (Gateway Station) and Munster/Dyer (Main Street Station), including all property owned or leased by NICTD for the operation of the South Shore Line over the Project facilities, all as more fully described in Exhibit 2 of the Governance Agreement, a portion of which is the "RDA Available Revenue West Lake Project" as defined in the IFA RDA Available Revenue Bond Indenture, which is to be financed by the IFA RDA Available Revenue Bonds.

SECTION 2. Interpretation. Unless the context shall otherwise require, the words "hereto," "herein," "hereof," and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." Whenever the Borrower's knowledge is implicated in this Agreement or the phrase "to the Borrower's knowledge" or a similar phrase is used in this Agreement, the Borrower's knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower's knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person's successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

SECTION 3. RRIF Loan Amount. The principal amount of the RRIF Loan shall not exceed [__] Dollars ($[__]) (excluding capitalized interest). RRIF Loan proceeds shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 12(b) (*Conditions Precedent to All Disbursements*).

SECTION 4. Disbursement Conditions.

(a) Proceeds of the RRIF Loan shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower's risk and expense and will not constitute Eligible Project Costs, and no RRIF Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. To utilize the RRIF Loan proceeds to make progress payments for the Project construction work performed under the Construction-Related Contracts, the Borrower must demonstrate to the satisfaction of the RRIF Lender that such progress payments are commensurate with the value of the work that has been completed. The Borrower may meet such requirement in reliance on reports from NICTD. Each disbursement of the RRIF Loan shall be made pursuant to a requisition and certification (a "**Requisition**") in the form set forth in Appendix One to **Exhibit D**, along with all documentation and other information required thereby, prepared by NICTD, approved by the Borrower, and submitted by the Borrower to, and approved by, the RRIF Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 and the conditions set forth in Section 12(b) (*Conditions Precedent to All Disbursements*).

(b) The Borrower shall deliver copies of each Requisition to the RRIF Lender, the Servicer (if any) and the FTA Regional Office on or before the first Business Day of each month for which a disbursement is requested. Subject to Section 4(d), if the RRIF Lender does not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express denial of a Requisition by the RRIF Lender shall be provided substantially in the form annexed hereto as **Appendix Two** to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month. At the time of any disbursement, the sum of all prior disbursements of RRIF Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current year set forth in the Anticipated RRIF Loan Disbursement Schedule, as the same may be amended from time to time.

(c) The Borrower may amend the Anticipated RRIF Loan Disbursement Schedule by submitting a revised version thereof to the RRIF Lender no later than thirty (30) days prior to the proposed effective date thereof, together with a detailed explanation of the reasons for such revisions.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 12 (*Conditions Precedent*) or **Exhibit D** (*Requisition Procedures*)), in no event shall the RRIF Lender have any obligation to make any disbursement of proceeds of the RRIF Loan if the RRIF Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

SECTION 5. Term. The term of the RRIF Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash. The term of each Tranche shall extend from the Effective Date to its Tranche Maturity Date or, in each case, to such earlier date as all amounts due or to become due to the RRIF Lender hereunder with respect to such Tranche have been irrevocably paid in full in cash.

SECTION 6. Interest Rates. The RRIF Interest Rates are as follows: (a) [__] percent ([__]%) per annum for Tranche A (and the Tranche A RRIF Bond), and (b) [__] percent ([__]%) per annum for Tranche B (and the Tranche B RRIF Bond). Interest will be computed on the Outstanding RRIF Loan Balance for each Tranche (as well as on any past due interest) from time-to-time on the basis of a three hundred sixty-five (365)-day or three hundred sixty-six (366)-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the Outstanding RRIF Loan Balance for each Tranche (including but not limited to the Tranche(s) as to which the Payment Default applies) and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate applicable to such Tranche from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the Outstanding RRIF Loan Balance for each Tranche (including but not limited to the Tranche(s) as to which such Event of Default applies) and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate applicable to such Tranche from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the RRIF Lender and (b) the date the Outstanding RRIF Loan Balance of the RRIF Loan and any interest accrued thereon (at the applicable Default Rate) but unpaid has been irrevocably paid in full in immediately available funds.

SECTION 7. Outstanding RRIF Loan Balance; Revisions to Exhibit G and the Loan Amortization Schedule.

(a) The Outstanding RRIF Loan Balance will be: (i) increased, on each occasion on which the RRIF Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the RRIF Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding RRIF

Loan Balance, by the amount of principal so paid. The RRIF Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding RRIF Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** from time to time, in accordance with the principles set forth in Section 10(b) (*General Prepayment Instructions*) and in **Exhibit M**, to reflect (i) any change to the Outstanding RRIF Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the RRIF Lender may determine is necessary for administering the RRIF Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the RRIF Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other RRIF Loan Document. The RRIF Lender shall provide the Borrower with a copy of **Exhibit G** (as revised), but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other RRIF Loan Documents.

SECTION 8. Security and Priority; Flow of Funds.

(a) As security for the RRIF Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Bond Trustee for the benefit of the RRIF Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture Documents. The RRIF Loan shall be secured by the Liens on the Trust Estate.

(b) Except for Permitted Liens, the Trust Estate will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken. No indebtedness or other obligations or liabilities of the Borrower shall have priority over the RRIF Loan with respect to the Trust Estate.

(c) The Borrower shall not use Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 and the IFA RDA Member Dues Bond Indenture, and neither the Borrower, the Deposit Trustee nor the Bond Trustee shall apply any portion of the Trust Estate in contravention of this Agreement or any Indenture Document.

(d) The Trust Fund Agreement provides in Section 5(b) thereof that the Deposit Trustee: (i) shall deposit into the IFA RDA Member Dues Debt Service Account the funding disbursed from the Member Dues Revenue Account for the purpose of paying Lease Rentals due on the RDA Member Dues Master Lease Agreement in respect of the Bonds only for payment of the Bonds; and (ii) shall disburse funds to the Bond Trustee in the IFA RDA Member Dues Debt Service Account on the day before any Debt Service is due on such IFA RDA Member Dues Bonds for the payment of the Debt Service due thereon.

SECTION 9. Payment of Principal and Interest.

(a) Semi-Annual Payment Dates. The Borrower agrees to pay the principal of and interest on the RRIF Loan by making payments in accordance with the provisions of this Agreement and the Indenture Documents on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date (including the Final Maturity Date and any date on which payment is due by reason of the acceleration of the maturity of the RRIF Loan or otherwise) on which payment thereof is required to be made hereunder; provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of a RRIF Bond shall be treated as a payment of the RRIF Loan and any prepayment of principal of the RRIF Loan shall be treated as a redemption of a RRIF Bond.

(b) Capitalized Interest Period. No interest on the RRIF Loan is required to be paid during the Capitalized Interest Period. On each Semi-Annual Payment Date occurring during the Capitalized Interest Period (and on the Semi-Annual Payment Date immediately following the end of the Capitalized Interest Period), interest accrued during the up to six (6)-month period ending immediately prior to such date shall be capitalized and added to the Outstanding RRIF Loan Balance. Within thirty (30) days after the end of each Capitalized Interest Period, the RRIF Lender shall give written notice to the Borrower stating the Outstanding RRIF Loan Balance as of the close of business on the last day of such Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other RRIF Loan Documents.

(c) Payment of RRIF Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay RRIF Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding RRIF Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(d) (*Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement and the RRIF Bonds shall be made by wire transfer on or before each Semi-Annual Payment Date in immediately available funds in accordance with payment instructions provided by the RRIF Lender pursuant to Section 36 (*Notices; Payment Instructions*), as modified in writing from time to time by the RRIF Lender. The Borrower may make, or cause to be made, any such payment (or portion thereof) with funds then on deposit in the Revenue Trust Fund.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding RRIF Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the RRIF Loan shall be accelerated pursuant to the provisions of Section 19 (*Events of Default and Remedies*)).

(f) RRIF Bonds. As evidence of the Borrower's obligation to repay the RRIF Loan, the Borrower shall issue and deliver to the RRIF Lender, on or prior to the Effective Date, the RRIF Bonds substantially in the form of **Exhibit A**, having a maximum principal amount (excluding capitalized interest) of [__] Dollars ($[__]) (subject to increase or decrease as herein provided) and bearing interest at the rates set forth in Section 6 (*Interest Rates*).

SECTION 10. Prepayment.

(a) Optional Prepayments. The Borrower may prepay the RRIF Loan at any time without penalty or premium, in whole or in part; provided that each partial prepayment shall be in a minimum principal amount of one million Dollars ($1,000,000). Each prepayment of the RRIF Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the RRIF Lender, which notice shall also specify the amount of unpaid interest accrued to the date of such prepayment on the amount of principal to be prepaid that the Borrower intends to pay concurrently with such prepayment, if any. In the case of any optional prepayment, such written notice shall be delivered to the RRIF Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the RRIF Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the RRIF Lender. Anything in this Section 10(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) Mandatory Prepayments. If, following damage to Project facilities, NICTD elects not to repair and restore the damaged facilities, the Borrower shall cause the amount of any insurance proceeds received by NICTD as compensation for such damage to be promptly applied to prepay the RRIF Loan.

(c) General Prepayment Instructions. Upon the RRIF Lender's receipt of confirmation that payment in full of the entire Outstanding RRIF Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the RRIF Lender shall surrender the RRIF Bonds to the Borrower or its representative at the principal office of the RRIF Lender. If the Borrower prepays only part of the unpaid balance of principal of the RRIF Loan, such partial prepayments shall be applied on a pro rata basis with respect to each payment due in either Tranche as set forth in **Exhibit G** so as to reduce each future payment due on the RRIF Bonds. The RRIF Lender may make a notation on **Exhibit G** indicating the amount of principal of and interest on each RRIF Bond then being prepaid. Absent manifest error, the RRIF Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other RRIF Loan Document. If said monies shall not have been so paid on the prepayment date, such principal amount of such RRIF Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rates*).

SECTION 11. Compliance with Laws.

(a) The Borrower shall (and shall cause each other Borrower Lease Party to), and shall require (and cause each other Borrower Lease Party to require) its respective contractors and subcontractors at all tiers of the Project to, comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including all applicable federal and state laws rules, regulations and executive orders. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. In the event that an environmental permit that has not been obtained is required after construction has begun, the Borrower shall take immediate steps to acquire that permit. If construction of the Project commences before all required permits have been obtained, the Borrower shall assume the risk of any loss associated therewith.

(b) The FTA Regional Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law and with the terms of the FTA Master Grant Agreement, to the extent applicable. The Borrower and RRIF Lender mutually acknowledge that not every provision of the FTA Master Grant Agreement will apply to the Project. The FTA Regional Office and the RRIF Lender (a) will enforce only those federal laws, regulations, and guidance that apply to the Project, and (b) will not enforce federal laws, regulations, and guidance that do not apply to the Project. Application of any reference within the FTA Master Grant Agreement to the common grant rule (2 CFR Part 200) is limited to Subparts A, B, D, and F of the rule and 2 CFR Parts 1200 and 1201, which modify the rule as applied by the USDOT. FTA Master Grant Agreement terms included in the "Generally Applicable Provisions" found at Section 1 through Section 48 of the FTA Master Grant Agreement may be applicable to the Project. "Special Provisions for the TIFIA and RRIF Programs" found at Section 47 of the FTA Master Grant Agreement are applicable to Project. The Borrower acknowledges and agrees that it has reviewed the FTA Master Grant Agreement and shall comply as required thereby.

SECTION 12. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the RRIF Lender:

(i) The Borrower shall have duly executed and delivered to the RRIF Lender each RRIF Loan Document to which the Borrower is a party (other than the Indenture Documents), each in form and substance satisfactory to the RRIF Lender.

(ii) The Borrower shall have delivered to the RRIF Lender certified, complete, and fully executed copies of each Indenture Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the RRIF Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that, for purposes of this Section 12(a)(ii), any such waiver shall be subject to the RRIF Lender's consent in its sole discretion).

(iii) The Borrower shall have delivered to the RRIF Lender the legal opinions set forth in **Exhibit H-1** (from counsel to each Borrower Lease Party) and **Exhibit H-2** (from bond counsel), each in form and substance satisfactory to the RRIF Lender in its sole discretion.

(iv) The Borrower shall have delivered to the RRIF Lender a duly executed certificate from the Bond Trustee in the form attached hereto as **Exhibit I**.

(v) The Borrower shall have provided a certificate from its Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to itself and its principals (as defined in 2 CFR §180.995).

(vi) The Borrower shall have provided evidence to the RRIF Lender's satisfaction, prior to the Effective Date, of the assignment by a Rating Agency of a public Investment Grade Rating on the RRIF Loan and such rating shall not have been reduced, withdrawn or suspended as of the Effective Date.

(vii) The Borrower shall have delivered to the RRIF Lender a certificate from its Authorized Representative in the form attached hereto as **Exhibit J** (A) as to the satisfaction of certain conditions precedent set forth in this Section 12(a) as required by the RRIF Lender, (B) designating its Authorized Representative, and (C) confirming such person's position and incumbency.

(viii) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that, as of the Effective Date, the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and that such funds shall be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(ix) The Borrower shall have provided to the RRIF Lender certified, complete, and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto that have been entered into on or prior to the Effective Date, and the Borrower shall certify that each such contract is in full force and effect, with all conditions precedent to effectiveness satisfied, which contracts shall be in form and substance satisfactory to the RRIF Lender.

(x) NICTD shall have certified to the RRIF Lender that all rights-of-way necessary to complete the Project have been acquired by NICTD or to NICTD's knowledge, the Borrower, RDA or the Construction Contractors (as applicable) or, if not so acquired, are expected to be acquired by any of such parties on or before the dates by which such acquisitions would not result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule.

(xi) The Borrower shall have demonstrated to the RRIF Lender's satisfaction that it, RDA, NICTD and the Construction Contractors have obtained all Governmental Approvals that are necessary to have been obtained by the Effective Date for the construction of the Project and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(xii) The Borrower shall have delivered to the RRIF Lender a certified Base Case Financial Model acceptable to the RRIF Lender on or prior to the Effective Date, demonstrating that (A) projected Pledged Revenues shall be sufficient to meet the Loan Amortization Schedule and (B) lease rental payments shall not exceed Three Million Dollars ($3,000,000) per annum.

(xiii) The Borrower shall have (A) provided evidence satisfactory to the RRIF Lender that the Borrower is authorized, pursuant to the Authorizing Legislation to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, except with respect to the recording of the Leases, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Bond Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents or the Authorizing Legislation, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xiv) The Borrower shall have paid in full all invoices delivered by the RRIF Lender (or by advisors to the RRIF Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the RRIF Lender's counsel and financial advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xv) The Borrower shall have (A) provided evidence satisfactory to the RRIF Lender of compliance with NEPA, and (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and, upon request by the RRIF Lender, shall have provided evidence satisfactory to the RRIF Lender of such compliance.

(xvi) The RRIF Lender shall have delivered its initial RRIF Lender's Authorized Representative certificate.

(xvii) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained an Unique Entity Identifier number, and (C) registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management (www.SAM.gov).

(xviii) The Borrower shall certify that the Borrower, NICTD, RDA or the Construction Contractors, or their subcontractors, have obtained all insurance policies required to be provided under the Construction Contracts, the Governance Agreement or any Lease and shall have delivered copies of such policies to the RRIF Lender.

(xix) The Borrower shall have provided the RRIF Lender with the most recent construction progress report for the Project.

(xx) The Borrower shall have delivered to the RRIF Lender a certificate evidencing the status of the Borrower as a body politic and corporate duly organized and validly existing under the laws of its jurisdiction of formation with full power, authority and legal right to own its properties and carry on its business as now conducted, including the following documents, each certified by its Authorized Representative: (A) a copy of its Organizational Documents and the Authorizing Legislation, each as in effect on the Effective Date (and, with respect to the Organizational Documents, certified by an Authorized Representative), which Organizational Documents and Authorizing Legislation shall each be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the Indenture Documents, which resolutions shall not have been subsequently modified, rescinded or amended and shall be in full force and effect in the form adopted and the only resolutions then in effect that have been adopted by the Borrower relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the Indenture Documents.

(xxi) The Borrower shall have provided the RRIF Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the RRIF Lender and in sufficient time prior to the Effective Date to permit the RRIF Lender and FTA Regional Office to review such costs. As of the Effective Date, the maximum principal amount of the RRIF Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the RRIF Act to the Borrower, shall not exceed one hundred percent (100%) of reasonably anticipated Eligible Project Costs.

(xxii) A Borrower Lease Party shall have provided to the RRIF Lender certified, complete and fully executed copies of each performance security instrument delivered to or by any Borrower Lease Party pursuant to any Principal Project Contract as of the Effective Date, each of which shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

(xxiii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other RRIF Loan Document shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxiv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit N** in accordance with 49 CFR §20.100(b).

(xxv) Each of the RDA Direct Agreement and the NICTD Direct Agreement shall have been duly executed with all conditions to its effectiveness met to the RRIF Lender's satisfaction.

(xxvi) No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred and is continuing since the date the Borrower submitted the RRIF Application to the RRIF Lender.

(xxvii) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the RRIF Lender, all in form and substance satisfactory to the RRIF Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the RRIF Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the RRIF Lender:

(i) With respect to any disbursement occurring sixty (60) or more days after the Effective Date, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 21(a) (*Financial Plan*).

(ii) To the extent not previously delivered to the RRIF Lender, the Borrower shall have delivered to the RRIF Lender certified, complete and fully executed copies of any Indenture Documents entered into after the Effective Date.

(iii) To the extent not previously delivered to the RRIF Lender, the Borrower shall have provided certified copies of all Construction-Related Contracts, including, in each case, any amendment, modification or supplement thereto and related performance security instrument, entered into after the Effective Date.

(iv) NICTD shall have demonstrated to the RRIF Lender's satisfaction that the Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.

(v) Each of the insurance policies obtained by the Borrower or the Construction-Related Contract Parties in satisfaction of the conditions in

Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vi) The Borrower shall provide or cause NICTD to provide certificates: (A) from NICTD to the effect that no event has occurred with respect to any Construction Contract that would necessitate the filing of a notice to the RRIF Lender pursuant to Section 5.1(h)(i) of the NICTD Direct Agreement, and there are no events or circumstances that could reasonably be expected to result in Substantial Completion being achieved after the Projected Substantial Completion Date; and (B) from the Consulting Engineer certifying that the currently projected cost to complete the Project is consistent with the Project Budget and that the construction is on schedule to achieve Substantial Completion by the Projected Substantial Completion Date.

(vii) At the time of, and immediately after giving effect to, any disbursement of RRIF Loan proceeds then currently requested, (A) no Default or Event of Default or event of default (howsoever described or designated) under any other Indenture Document shall have occurred and be continuing, and (B) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of the Borrower under any other Indenture Document, in each case, shall have occurred and be continuing.

(viii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) or in any other RRIF Loan Document shall be true and correct, and complete in all material respects (except to the extent any representation and warranty itself is qualified by "materiality," "Material Adverse Effect" or a similar qualifier, in which case, it shall be true and correct in all respects) as of each date on which any disbursement of the RRIF Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality," "Material Adverse Effect" or a similar qualifier, in which case, it shall be true and correct in all respects) as of such earlier date).

(ix) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the Effective Date.

(x) The Borrower shall have delivered to the RRIF Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the RRIF Lender.

(xi) The Borrower shall have delivered such other agreements, documents, certificates, instruments, opinions and other items required by the RRIF Lender, all in form and substance satisfactory to the RRIF Lender.

(xii) The Borrower shall have paid in full all invoices received from the RRIF Lender (or by advisors to the RRIF Lender that have direct billing arrangements with the

Borrower) as of the date of disbursement of the RRIF Loan, for the reasonable fees and expenses of the RRIF Lender's counsel and advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xiii) The Borrower shall have paid in full, at least three (3) Business Days prior to such Disbursement Date, the Credit Risk Premium in respect of the RRIF Loan proceeds to be disbursed therewith.

(xiv) The Borrower shall have provided the RRIF Lender with evidence satisfactory to the RRIF Lender that, as of such Disbursement Date, the aggregate amount of all disbursements of the RRIF Loan (including the requested disbursement), together with the amount of any other credit assistance provided under the RRIF Act to the Borrower, does not exceed one hundred percent (100%) of reasonably anticipated Eligible Project Costs.

SECTION 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in clauses (b) (*Officer's Authorization*) and (l) (*Credit Rating*) of this Section, as of each date on which any disbursement of the RRIF Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a body politic and corporate of the State, not a State agency, but an independent instrumentality exercising essential public functions, duly created and existing under the laws of the State, has full legal right, power and authority to enter into the Indenture Documents then in existence, to execute and deliver the RRIF Bonds, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Indenture Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower who executed the Indenture Documents, to the extent such documents were executed prior to the Effective Date, were, as of the date of execution, duly and properly in office and fully authorized to execute the same. As of the Effective Date, the officers of the Borrower executing the RRIF Loan Documents to which the Borrower is a party and that are being executed as of the Effective Date, are duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each Indenture Document has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Indenture Documents, the consummation of the transactions contemplated in the Indenture Documents and the fulfillment of or compliance with the terms and conditions of the Indenture Documents will not (i) conflict with the Borrower's Organizational Documents or the Authorizing Legislation, or (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound or (iii) result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority (other than the FTA and the RRIF Lender) is necessary in connection with (i) the execution and delivery by the Borrower of the RRIF Loan Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by the RRIF Loan Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of the RRIF Loan Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding, or, to the Borrower's knowledge, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending (or, to the Borrower's knowledge, threatened) against the Borrower (or, to the Borrower's knowledge, the Project) or affecting the ability of the Borrower to perform its obligations under the RRIF Loan Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the Borrower's knowledge, any inquiry or investigation before or by any court or other Governmental Authority pending (or to the Borrower's knowledge, threatened) against or affecting the Borrower or the assets, properties or operations of the Borrower as they relate to the Project or, to the Borrower's knowledge, the Project that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting, any of the Principal Project Parties, except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Pledged Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Revised Financial Model, to the extent any Revised Financial Model has been submitted to the RRIF Lender). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The IFA RDA Member Dues Bond Indenture establishes, in favor of the Bond Trustee for the benefit of the RRIF Lender, the valid and perfected Liens on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Trust Estate, and not *pari passu* with any other obligations of the Borrower. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 15(a) (*Securing Liens*) or in the RRIF Loan Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Trust Estate in favor of the Bond Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 CFR §180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR §180.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered in substantially the form of **Exhibit C** pursuant to Section 12(a)(v) (*Conditions Precedent to Effectiveness*). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR §1200.332. The Borrower is not aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 CFR Part 180.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Indenture Documents are true, correct and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and accurate complete as of such earlier date).

(j) Compliance with Federal Requirements. The Borrower and, to the Borrower's knowledge, NICTD have complied, with respect to the Project, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §4601 *et seq*.), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq*.).

(k) Credit Rating. The RRIF Loan has received a public Investment Grade Rating from a Rating Agency, and written evidence of such rating has been provided to the RRIF Lender prior to the Effective Date, and such rating has not been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of the Borrower under any Indenture Document has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Principal Project Contracts. Each Principal Project Contract to which the Borrower is a party and, to the Borrower's knowledge, each other Principal Project Contract is in full force and effect and, to the Borrower's knowledge, all conditions precedent to the obligations of the respective parties under each such document (other than the Borrower) have been satisfied. The Borrower has delivered, or caused to be delivered, to the RRIF Lender a fully executed, complete, and correct copy of each such Principal Project Contract, including, in each case, all exhibits, schedules, and other attachments, that is in effect, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract. The Borrower is not in breach of any material term in or in default under any such agreements or contracts, and to the knowledge of the Borrower no party to any of such agreements or contracts is in breach of any material term therein or in default thereunder.

(o) Information. The information furnished by the Borrower to the RRIF Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower, any other Borrower Lease Party, nor, to the knowledge of the Borrower, any Principal Project Party or Construction-Related Contract Party is a Sanctioned Person.

(ii) None of the Borrower, any other Borrower Lease Party, nor, to the knowledge of the Borrower, any Principal Project Party or Construction-Related Contract Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal.

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or internal investigations conducted by, the Borrower, RDA or NICTD or, to the Borrower's knowledge, any other Principal Project Party or any Construction-Related Contract Party with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the RRIF Loan, nor any other transaction contemplated by this Agreement or any other Indenture Document or Related Document to which the Borrower is a party and, to the knowledge of the Borrower, any other Related Document, to which it is not a party, will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(q) Compliance with Law. The Borrower Lease Parties and, to the Borrower's knowledge, each Principal Project Party are in compliance in all material respects with, and have conducted (or caused to be conducted) their businesses and operations and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(r) (*Environmental Matters*), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower's knowledge, each Construction Contractor is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable (other than Environmental Laws, which are addressed in Section 13(r) (*Environmental Matters*)). No notices of violation of any applicable law have been issued, entered or received by (i) the Borrower or (ii) to the Borrower's knowledge, any Principal Project Party or (solely in respect of the Project) any Construction-Related Contract Party other than, in each case, notices of violations that are immaterial.

(r) Environmental Matters.

(i) Each of the Borrower, each other Borrower Lease Party and, to the Borrower's knowledge, each Principal Project Party and each Construction-Related Contract Party is in compliance with all laws applicable to the Project relating to (A) air emissions, (B) discharges to surface water or ground water, (C) noise emissions, (D) solid or liquid waste disposal, E) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (F) biological resources (such as threatened and endangered species), and (G) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at http://www.transportation.gov/policy/transportation-policy/environment/laws ("**Environmental Laws**").

(ii) All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower or such other Borrower Lease Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project, and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower or any other Borrower Lease Party with any such Environmental Law or Governmental Approval. To the Borrower's knowledge, as of each disbursement of the RRIF Loan, NICTD has provided to the RRIF Lender all Governmental Approvals relating to Environmental Laws that are required to have been issued for the Project by the date of such disbursement.

(iii) The Borrower has provided, or has caused NICTD to have provided, to the RRIF Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to NICTD regarding the NICTD's or the Project's compliance with Environmental Laws.

(s) Insurance. To the Borrower's knowledge, NICTD is in compliance with all insurance obligations required under each Related Document as of the date on which this representation and warranty is made.

(t) Title. Each Borrower Lease Party has valid legal and beneficial title to the assets and revenues (including the Pledged Revenues, as and when received by RDA, and the Trust Estate) on which it purports to grant Liens pursuant to the Indenture Documents, in each case free and clear of any Lien of any kind, except for Permitted Liens.

(u) No Liens. Except for the Liens granted pursuant to the Indenture Documents, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Pledged Revenues or the Trust Estate.

(v) Intellectual Property. The Borrower owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(w) Investment Company Act. The Borrower is not, and after applying the proceeds of the RRIF Loan will not be, required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(x) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the RRIF Lender pursuant to Section 21(d) (*Financial Statements*) has been prepared in accordance with GASB and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GASB.

(y) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

(z) ERISA Compliance. Neither the Borrower nor any ERISA Affiliate maintains or otherwise has any liability in respect of any plan or other arrangement that is subject to ERISA or Section 412 of the Code.

(aa) Sufficient Funds. The aggregate of all funds that are undrawn but fully and completely committed under this Agreement, the Indenture Documents and the FTA Full Funding Grant Agreement and any other unused funding that is committed and available, or reasonably expected to be available will together be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(bb) Sufficient Rights and Utilities. NICTD has represented to the Borrower that NICTD possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Project. As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and to which it is a party and the Governmental Approvals that have been obtained and are then in full force and effect create rights in NICTD sufficient to enable NICTD to own, construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party. NICTD has represented to the Borrower that all utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

(cc) Sovereign Immunity. Pursuant to IC 34-13, IC 5-1.2-1-3 and IC 5-1.2-4-1, the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced. The defense of sovereign immunity is not available to the Borrower or, to the Borrower's knowledge, to any other Borrower Lease Party in any proceedings in any court of competent jurisdiction relating to the enforcement of (or collection on) the obligations of any such Borrower Lease Party under any Related Document to which it is a party or the transactions contemplated hereby or thereby.

(dd) Patriot Act. Neither the Borrower nor any Borrower Lease Party is required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(ee) Governance Agreement. All conditions precedent to effectiveness of the Governance Agreement provided in Article II thereof have been satisfied, and the Governance Agreement is in full force and effect without default.

SECTION 14. Representations and Warranties of RRIF Lender. The RRIF Lender represents and warrants that:

(a) Power and Authority. The RRIF Lender has all requisite power and authority to make the RRIF Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the RRIF Lender, and are legally valid and binding agreements of the RRIF Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the RRIF Lender executing each of the Related Documents to which the RRIF Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the RRIF Lender.

SECTION 15. Affirmative Covenants. The Borrower covenants and agrees as follows until the date all RRIF Bonds and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrower, unless the RRIF Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Trust Estate (whether now existing or hereafter arising) granted to the Bond Trustee for the benefit of the RRIF Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or that the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Bond Trustee and the Deposit Trustee for the benefit of the RRIF Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to the Liens granted pursuant to the Indenture Documents.

(b) Copies of Documents.

(i) The Borrower shall provide to the RRIF Lender a copy of any draft Indenture Documents in connection with the incurrence of any Permitted Debt or indebtedness subject to approval by the RRIF Lender pursuant to Section 16(a) (*Indebtedness*), in each case at least twenty (20) days prior to the incurrence of such indebtedness. The Borrower shall provide to the RRIF Lender a fully executed or final version of each such Indenture Document (or other comparable transaction documentation) within ten (10) days following execution or completion thereof.

(ii) Except as otherwise agreed by the RRIF Lender in writing, the Borrower will provide to the RRIF Lender (A) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document to which the Borrower is a party (other than proposed amendments, modifications, replacements or supplements that are ministerial in nature and do not change any substantive provision of such Related Document) at least thirty (30) days prior to the effective date thereof, and (B) complete, correct and fully executed copies of any amendment, modification or supplement to, or replacement of, any Related Document to which the Borrower is a party within five (5) Business Days after execution thereof.

(c) Use of Proceeds. The Borrower shall use the proceeds of the RRIF Loan for any lawful purpose and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall cause NICTD diligently to prosecute the work relating to the Project and to complete the Project in accordance with the Construction Schedule, all Contract Documents (as defined in each of the Construction Contracts) and the ordinary and reasonable standard of care applicable to services and work performed on projects of a similar nature, quality, and technical complexity.

(ii) The Borrower shall ensure that, in connection with the Project, RDA, NICTD and, to the extent within its control, each other Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to the Borrower.

(iii) The Borrower will exercise the remedies available to it under State law and the RDA Member Dues Master Lease Agreement to enforce the obligations of RDA to IFA under the RDA Member Dues Master Lease Agreement.

(iv) The Borrower shall comply with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR §1200.332.

(v) Without limiting the foregoing, the Borrower shall in addition to, and not in limitation of, the foregoing provisions of this Section 15(d) (*Prosecution of Work; Verification Requirements*), maintain, or cause to be maintained, its other assets and property (and NICTD's assets and property) in good condition, normal wear and tear excepted, and make all necessary repairs and renewals and replacements thereof, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(vi) The Borrower shall ensure that, in connection with the Project, RDA, NICTD and, to the extent within its control, each other Principal Project Party agrees that steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. § 313, as implemented by FTA. The Borrower acknowledges that this Agreement is neither a waiver of 23 U.S.C. § 313(a) nor a finding under 23 U.S.C. § 313(b).

(vii) The Borrower shall ensure that, in connection with the Project, RDA, NICTD and, to the extent within its control, each other Principal Project Party agrees that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, and FTA. The Borrower acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(e) Operations and Maintenance. The Borrower shall, in accordance with the requirements of applicable laws and regulations and each applicable Indenture Document: (i) cause NICTD to operate and maintain the Project in a reasonable and prudent manner, (ii) cause NICTD to maintain the Project in good repair, working order and condition, and (iii) for so long as the RRIF Loan or any portion thereof shall remain outstanding, comply with the requirements of 49 U.S.C. §22402(h)(1)(A)-(C). The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance.

(i) The Borrower shall at all times maintain, or shall cause the applicable Borrower Lease Party or, as applicable, the Construction Contractors to maintain, insurance with responsible insurers, in amounts and with coverages as are customarily maintained in the United States of America by entities similar to the Borrower or the applicable Borrower Lease Party or as is required under any Principal Project Contract or applicable law.

(ii) The Borrower shall cause all liability insurance policies that it or any other Borrower Lease Party or any Construction Contractor maintains in connection with the Project, other than workers' compensation insurance, to specify the RRIF Lender as an additional insured.

(iii) If an Event of Loss shall occur with respect to the Project or any part thereof, the Borrower shall cause NICTD (A) subject to the Operating Lease Agreement, diligently to rebuild, repair or replace the damaged Project facilities, (B) diligently to pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event and (C) subject to the Operating Lease Agreement, to pay or apply (or cause to be paid or applied) all loss proceeds stemming from such event to the costs of rebuilding, repairing or replacing the affected Project facilities in accordance with all applicable laws and within a reasonable time period; provided, however, that loss proceeds must in any event be applied in accordance with all applicable federal disposition rules, including those set forth in the FTA Full Funding Grant Agreement and 2 CFR Part 200.

(g) Notices.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the RRIF Lender notice, or shall cause NICTD to give notice, of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: (1) the occurrence of the Substantial Completion Date, such notice to be provided in the form set forth in **Exhibit K-1** and (2) the occurrence of each Construction Contract Substantial Completion Date, such notice to be provided in the form set forth in **Exhibit K-2**;

(B) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(C) Contract Defaults: any material breach or default or event of default on the part of the Borrower, another Borrower Lease Party or any other party under any Principal Project Contract to which the Borrower is a party;

(D) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower or Borrower Lease Party before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower or Borrower Lease Party with award amounts in excess of five million Dollars ($5,000,000) (inflated annually by CPI) that are payable from the Trust Estate or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage), either individually or in the aggregate;

(E) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the plans of the Borrower or NICTD to remedy or mitigate the effects of such failure or delay;

(F) Environmental Notices: any notice of material violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(G) Insurance Claim: any insurance claims made by the Borrower or a Principal Project Party in respect of the Project in excess of two and one half million

Dollars ($2,500,000), either individually or in the aggregate, to the extent related to the Project;

(H) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(I) Project Changes: any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of forecasted Total Project Costs (as provided in Section 21(b) (*Modifications to Total Project Costs*)), (2) proposed change to the Projected Substantial Completion Date, together with an explanation of the reasons for such proposed adjustment, and (3) material change to the Construction Schedule;

(J) 2 CFR Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 12(a)(v) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 CFR §180.335; (2) any other notification required pursuant to 2 CFR §180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the RRIF Loan as described in 2 CFR §200.113, and the Borrower shall require its subcontractors, if any, to provide it notice of any such violation;

(K) Member Dues Shortfalls: if the County of Lake or Porter or the City of East Chicago, Gary or Hammond does not transfer or cause to be transferred to RDA on or before September 1 of each year all the Member Dues with respect to the preceding State fiscal year required pursuant to IC 36-7.5-4-2(a), which notice shall state (1) whether RDA has sent a notice to the Treasurer of State to intercept such shortfall pursuant to IC 36-7.5-4-16(b), (2) the amount of such shortfall with respect to each such unit of government and (3) the amount of any such intercept as of the date of such notice, together with a copy of such notice to the Treasurer of State; and

(L) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a party to any Related Document, that could reasonably be expected to result in a Material Adverse Effect; and

(ii) The Borrower shall provide the RRIF Lender with any further information reasonably requested in writing by the RRIF Lender from time to time concerning the matters described in Section 15(g)(i) (*Notices*).

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(g)(i) (*Notices*) (other than in Section 15(g)(i)(A) (*Substantial Completion*)), the Borrower's Authorized Representative shall provide a statement to the RRIF Lender setting forth the actions the Borrower or any other Borrower Lease Party proposes to take with respect thereto.

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a body politic and corporate of the State (not a State agency, but an independent instrumentality exercising essential public functions under the laws of the State). The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business and the implementation of the Project.

(j) Annual Rating. The Borrower shall, commencing in [2023], no later than the last Business Day of June of each year during the term of the RRIF Bonds, at no cost to the RRIF Lender, provide to the RRIF Lender a public rating on each of the Bonds issued pursuant to the IFA RDA Member Dues Bond Indenture (including the RRIF Bonds) by a Rating Agency, together with the rating report or letter delivered by such Rating Agency in connection with each such rating, in each case prepared no earlier than June 1 of such year.

(k) Permitted Investments. Amounts on deposit in the Revenue Trust Fund shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as set forth in the IFA RDA Member Dues Bond Indenture. The Borrower shall, promptly, but in any event within five (5) days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(l) Collection of Lease Rentals. The Borrower shall at all times collect the Lease Rentals (which are the Pledged Revenues) in accordance with the RDA Member Dues Master Lease Agreement. The Borrower shall maintain, or cause to be maintained, the RDA Member Dues Master Lease Agreement, in full force and effect for so long as any obligations remain outstanding under this Agreement. The Borrower shall cause all Pledged Revenues to be deposited by the Deposit Trustee into the Series 2022 C IFA RDA Member Dues Debt Service Subaccount of the IFA RDA Member Dues Debt Service Account. The Borrower shall receive and hold in trust for (and remit immediately to) the Deposit Trustee any Pledged Revenues that are paid to the Borrower rather than directly to the Revenue Trust Fund.

(m) Compliance with Law. The Borrower shall comply in all material respects with all applicable material federal and State laws, including all items set forth in **Exhibit E**, to the extent applicable, and shall cause NICTD to comply with the terms and conditions of the FTA Full Funding Grant Agreement.

(n) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon the Trust Estate or any portion thereof, including the Pledged Revenues, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims that, if unpaid, might give rise to a Lien on the Trust Estate or any portion thereof, including the Pledged Revenues; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GASB, applied on a consistent basis.

(o) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the RRIF Lender evidence of such active registration status with no active exclusions reflected in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash.

(p) Immunity. Consistent with IC 34-13, IC 5-1.2-1-3 and IC 5-1.2-4-1, the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other RRIF Loan Document.

(q) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the RRIF Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(r) Cargo Preference Act. Pursuant to 46 CFR Part 381, the Borrower hereby agrees, with respect to any existing contracts pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project, that such contracts contain a clause that is in compliance with 46 CFR 381.7 and includes the substance of the provisions of the following clause, and with respect to any such future contacts, that it shall cause NICTD to cause the following clause to be inserted therein:

> (i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with RRIF Loan proceeds, and that may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.
>
> (ii) Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the RRIF Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(s) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

(t) Employee Protection and Prevailing Wages.

(i) The Borrower shall make fair and equitable arrangements, in accordance with 49 U.S.C. §22402(h)(3)(B) and 49 U.S.C. §22404, to protect the interests of any employees who may be adversely affected by actions pursuant to, or as a consequence of, this Agreement, including the arrangements prescribed by the United States Secretary of

Labor on July 6, 1976, including the appendix thereto, attached as Annex 1 to **Exhibit E** hereto.

(ii) The Borrower shall (A) comply with the requirements of 49 U.S.C. §24312 in the same manner that the National Railroad Passenger Corporation is required to comply with such requirements, and (B) comply with any additional wage and safety standards required by 49 U.S.C. chapter 53.

(u) Deposits of Lease Rental Payments. The Borrower shall cause RDA: (i) on or before the last day of each month, to transfer to the Member Dues Revenue Account all Member Dues, but only to the extent provided in Section 4.01(a) of the RDA Member Dues Master Lease Agreement, and (ii) on the day before each Semi-Annual Payment Date, to deposit into the RRIF Debt Service Account the amount of Lease Rentals then due on such Semi-Annual Payment Date under the RDA Member Dues Master Lease Agreement.

SECTION 16. Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit O** hereto.Negative Covenants. The Borrower covenants and agrees as follows until the date all RRIF Bonds and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the RRIF Lender waives compliance in writing:

(a) Indebtedness.

(i) Except for Permitted Debt, the Borrower shall not, without the prior written consent of the RRIF Lender, issue or incur indebtedness of any kind that is payable from or secured (in whole or in part) by the Trust Estate or that is otherwise payable (in whole or in part) from Pledged Revenues; provided that the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by any portion of the Trust Estate or payable from Pledged Revenues, including Permitted Debt, without the prior written consent of the RRIF Lender, following the occurrence, and during the continuation, of an Event of Default.

(ii) At least twenty (20) days prior to the incurrence of Permitted Debt described in clause (b) of the definition thereof, the Borrower shall deliver to the RRIF Lender (A) a Revised Financial Model that takes into account the proposed indebtedness, which Revised Financial Model shall reflect and be based on the actual amortization schedules for such proposed indebtedness and all Obligations then outstanding in accordance with their respective terms and shall otherwise be in form and substance satisfactory to the RRIF Lender, and (B) a certificate signed by the Borrower's Authorized Representative, demonstrating to the RRIF Lender's satisfaction that such proposed indebtedness is authorized pursuant to this Section 16(a) (*Indebtedness*) and satisfies the applicable requirements under the IFA RDA Member Dues Bond Indenture.

(iii) The Borrower shall not incur any other indebtedness that ranks senior, *pari passu* or subordinate in right of payment or priority with RRIF Bonds without the prior written consent of the RRIF Lender.

(b) No Lien Extinguishment; Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the RRIF Lender, either (i) extinguish, impair, or transfer the Liens on the Trust Estate granted pursuant to the Indenture, (ii) terminate, assign, amend, modify, replace, or supplement any Indenture Document in a manner that could adversely affect the RRIF Lender (in the RRIF Lender's determination) in connection with the RRIF Loan, or (iii) waive or permit a waiver of any provision of any Indenture Document in a manner that could adversely affect the RRIF Lender (in the RRIF Lender's determination) in connection with the RRIF Loan.

(c) No Prohibited Liens. Except for the Liens granted pursuant to the Indenture Documents or the Leases, the Borrower shall not create, incur, assume or permit to exist any Lien on the Trust Estate or the Borrower's rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any such Principal Project Contract, except pursuant to the Indenture Documents or the Leases in favor of the Deposit Trustee or the Bond Trustee on behalf of the Secured Parties.

(d) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the IFA RDA Member Dues Bond Indenture or in the Trust Estate) without the prior written consent of the RRIF Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the RRIF Lender.

(e) No Payment with Federal Funds. The Borrower shall not pay any portion of RRIF Debt Service nor any other amount to the RRIF Lender or to the Government pursuant to the RRIF Loan Documents with funds received directly or indirectly from the Government; provided, however, that the Borrower may prepay the RRIF Loan in whole or in part with the proceeds of a validly issued federal credit instrument pursuant to, and in accordance with, Section 10 (*Prepayment*).

(f) Change in Legal Structure; Mergers and Acquisitions. The Borrower shall not, and shall not agree to reorganize, consolidate with, or merge into another Person unless (i)(A) such Person is a successor public authority created by State law that succeeds to the assets of the Borrower and assumes the obligations of the Borrower hereunder and under the Related Documents to which the Borrower is a party, including payment of each of the RRIF Bonds and (B) such merger, consolidation or reorganization does not adversely affect or impair to any extent or in any manner (1) the Pledged Revenues or other elements of the Trust Estate, or (2) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement; and (ii) the Borrower provides to the RRIF Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the RRIF Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the RRIF Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the RRIF Lender.

(g) No Defeasance of RRIF Bonds. The Borrower shall not defease any RRIF Bond pursuant to the Indenture without the prior written consent of the RRIF Lender.

(h) OFAC Compliance.

(i) The Borrower shall not:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the RRIF Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents; or

(C) make a payment, directly or indirectly, to any Principal Project Party that, to the Borrower's knowledge, has violated any of the laws referenced in Section 16(g)(i) (*OFAC Compliance*) or that is a Sanctioned Person.

(ii) The Borrower shall (and shall cause each other Borrower Lease Party to) ensure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the RRIF Loan or lend to, make any payment to, contribute or otherwise make available any funds to any affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the RRIF Lender, or a Principal Project Party).

(i) Environmental Permits. The Borrower shall cause NICTD to assure that there will be no irreversible or irretrievable commitment of resources, including physical construction, before all state and/or federal environmental permits required for commencement of construction of the relevant portion of the Project are finalized and approved by the appropriate resource agencies. If an environmental permit that has not been obtained is required after construction has begun, the Borrower shall take immediate steps to acquire that permit (or to cause it to be acquired by the appropriate party). If the Borrower begins construction before all required permits have been obtained, the Borrower shall assume the risk of any loss associated therewith.

(j) Restricted Payments and Transfers. The Borrower shall not declare or make, or agree to pay or make, directly or indirectly, any discretionary distribution or dividend payment that would conflict with 45 U.S.C. §822(h)(1)(C).

(k) Changes to Project Scope. No reductions or other changes to the scope of the Project pursuant to Section 11.2.8 of the Governance Agreement or otherwise shall be approved by the Borrower without the prior consent of the RRIF Lender.

(l) NICTD Funding of Excess Construction Costs. The Borrower shall not, without the RRIF Lender's prior consent, agree to any reduction in the amount of Excess Construction Costs that NICTD is currently responsible to fund pursuant to Section 7.8.2 of the Governance Agreement.

SECTION 17. Indemnification. The Borrower shall indemnify the RRIF Lender and any official, employee, agent, advisor, or representative of the RRIF Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution, delivery and performance of this Agreement or any of the other RRIF Loan Documents, (ii) the RRIF Loan or the use of the proceeds thereof, or (iii) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim with the consent of the Borrower. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the RRIF Lender shall assert, and each of the Borrower and the RRIF Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Indenture Documents, the other transactions contemplated hereby and thereby, the RRIF Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 shall survive the payment or prepayment in full or transfer of the RRIF Bonds, the enforcement of any provision of this Agreement or the other Indenture Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder; provided that the obligations of the Borrower under this Section 17 shall be enforceable against the Borrower only to the extent permitted by State law.

SECTION 18. Sale of RRIF Loan. The RRIF Lender shall not sell the RRIF Loan at any time prior to the Substantial Completion Date. At any time after the Substantial Completion Date, the RRIF Lender may sell the RRIF Loan to another entity or reoffer the RRIF Loan into the capital markets only in accordance with the provisions of this Section 18. Any such sale or reoffering shall be on such terms as the RRIF Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the RRIF Lender shall not change the terms and conditions of the RRIF Loan without the prior written consent of the Borrower in accordance with Section 29 (*Amendments and Waivers*). The RRIF Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the RRIF Loan, written notice to the Borrower of the RRIF Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 shall not (x) obligate the RRIF Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the RRIF Lender, for any reason, does not sell the RRIF Loan.

SECTION 19. Events of Default and Remedies.

(a) An "**Event of Default**" shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any amount of principal of or interest on the RRIF Loan (including RRIF Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*) or Section 10(b) (*Mandatory Prepayments*) when due and payable (such failure, a "**Payment Default**").

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder), any RRIF Bond or any other RRIF Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the RRIF Lender of written notice thereof, (B) the Borrower's knowledge of such failure, or (C) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that, if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the RRIF Loan Documents (or in any certificates delivered by the Borrower in connection with the RRIF Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 19(a)(iv), if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (*No Debarment*), Section 13(j) (*Compliance with Federal Requirements*), Section 13(p) (*OFAC; Anti-Corruption Laws*) or Section 13(dd) (*Patriot Act*);

(C) in the reasonable determination of the RRIF Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the RRIF Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Other Obligation Payment Defaults. Except for a Payment Default, any Borrower Lease Party shall fail to pay when due any payment obligation arising in connection with the Project and such default shall have continued for a period of thirty (30) days after the Borrower or the relevant Borrower Lease Party is notified or otherwise becomes aware of such default.

(vi) Events of Default under Indenture Documents and Other Loan Documents. Any default under any Indenture Document (including any "Event of Default" as defined therein) or other agreement(s) pursuant to which the Borrower has incurred indebtedness (including Permitted Debt) in an aggregate amount equal to or greater than one million Dollars ($1,000,000) and that is secured by or payable from all or any part of the Trust Estate ("**Other Loan Documents**") shall occur and shall not have been cured by the Borrower or waived in writing in accordance with the requirements of the applicable Indenture Document or Other Loan Document within the applicable cure period (if any) provided under such Indenture Document or Other Loan Document.

(vii) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of five million Dollars ($5,000,000) million (inflated annually by the CPI) that are payable from the Trust Estate or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(viii) Failure to Maintain Existence. Any Borrower Lease Party shall fail to maintain its existence, as in the case of the Borrower, a body politic and corporate of the State (and not an agency of the State but an independent instrumentality exercising essential public functions), in the case of RDA, a separate body corporate and politic, and in the case of NICTD, a municipal corporation of the State, unless, at or prior to the time a Borrower Lease Party ceases to exist in such form, a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law and has succeeded to the assets of such Borrower Lease Party and has assumed all of the obligations of such Borrower Lease Party under the RRIF Loan Documents and Indenture Documents to which it is a party, including, with respect to the Borrower, repayment of the RRIF Loan.

(ix) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to any Borrower Lease Party or any Principal Project Party. Notwithstanding the foregoing, no Event of Default shall occur:

(A) with respect to the Borrower solely as a result of the nonpayment of any conduit debt issued by the Borrower on behalf of any Person other than RDA, unless such nonpayment would have an effect under applicable law analogous to any of the events referred to in the definition of "Bankruptcy Related Event" in Section 1 (*Definitions*) or otherwise would have, or could reasonably be expected to result in, a Material Adverse Effect; or

(B) with respect to a Principal Project Party that is the provider of the Performance Bond or the Payment Bond described in the definition of Construction-Related Contracts in Section 1 (*Definitions*), on or after the date such Bonds are no longer in effect; or

(C) with respect to a Principal Project Party that is the subject of a Bankruptcy Related Event if (1) a Borrower Lease Party provides notice to the RRIF Lender within thirty (30) days of the date of occurrence of the Bankruptcy Related Event to the effect that it intends to replace such Principal Project Party with another Person acceptable to the RRIF Lender, which Person will assume all the obligations under the related Principal Project Contract or provide a replacement Principal Project Contract with substantially similar terms as the related Principal Project Contract with a substitute contractor acceptable to the RRIF Lender; and (2) such Borrower Lease Party fulfills such replacement within sixty (60) days of the date of occurrence of such Bankruptcy Related Event.

(x) Project Abandonment. Any Borrower Lease Party shall abandon the Project.

(xi) Principal Project Contract Breach. Any Borrower Lease Party shall breach a Principal Project Contract or any RRIF Loan Document in any material respect.

(xii) Invalidity of RRIF Loan Documents. (A) Any RRIF Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or any Borrower Lease Party contests in any manner the validity or enforceability of any RRIF Loan Document to which it is a party or denies it has any further liability under any RRIF Loan Document to which it is a party, or purports to revoke, terminate or rescind any RRIF Loan Document to which it is a party; or (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Trust Estate, including the Pledged Revenues, other than as a result of actions or a failure to act by, and within the control of, the Bond Trustee, the Deposit Trustee or any Secured Party, and with the priority purported to be created thereby.

(xiii) Lease Rental Payments. (A) RDA fails to pay any Lease Rentals when due or (B) fails in any month to cause RDA Member Dues to be deposited into the Member Dues Revenue Account any amount so required to be deposited by Section 5(b) (*Revenue Fund*) of the Trust Fund Agreement.

(xiv) Cessation of Operations. Following the Substantial Completion Date, operation of the Project shall cease for a continuous period of not less than one hundred eighty (180) days, during which business income insurance, together with any other moneys available to the Borrower as part of the Trust Estate, does not provide moneys sufficient to enable the Borrower to pay all its obligation to the RRIF Lender pursuant to this Agreement, unless such cessation of operations has occurred by reason of an Uncontrollable Force that is not due to the fault of a Borrower Lease Party (and that no Borrower Lease Party could reasonably have avoided or mitigated).

(xv) Intercept Notice. RDA fails to send to the Treasurer of State the notice to intercept a payment shortfall described in Section 15(g)(i)(K) (*Member Dues Shortfalls*) as required by Section 5.1(g)(i)(G) (*Member Dues Shortfalls*) of the RDA Direct Agreement.

(xvi) Authorizing Legislation. The Authorizing Legislation shall be repealed or shall be amended or modified in such a manner that could reasonably be expected to result in a Material Adverse Effect.

(b) Upon the occurrence of an Event of Default described in Section 19(a)(iii) (*Development Default*), the RRIF Lender may, in its sole discretion, (i) suspend the disbursement of RRIF Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan, and (iii) demand that the Borrower immediately repay any unexpended RRIF Loan proceeds previously disbursed to the Borrower, in which event the Borrower shall immediately repay any such unexpended RRIF Loan proceeds to the RRIF Lender.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the RRIF Lender hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan shall automatically be deemed terminated, and the Outstanding RRIF Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities, and other amounts payable under this Agreement, the RRIF Bonds, or the other RRIF Loan Documents with respect to the RRIF Loan, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest, or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any other Event of Default, the RRIF Lender, by written notice to the Borrower, may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan, (ii) demand that the Borrower repay any unexpended RRIF Loan proceeds disbursed to the Borrower, and (iii) declare the unpaid principal amount of the RRIF Bonds to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the RRIF Bonds, or the other RRIF Loan Documents with respect to the RRIF Loan, all without presentment, demand, notice, protest, or other requirements of any kind, all of which are hereby expressly waived.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder, under the RRIF Bonds or under the other RRIF Loan Documents with respect to the RRIF Loan, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the RRIF Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder, under the RRIF Bonds, or under the other RRIF Loan Documents with respect to the RRIF Loan, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement, the RRIF Bonds, or the other RRIF Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender may suspend or debar the Borrower from further participation in any Government program administered by the RRIF Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section 19 (*Events of Default and Remedies*) shall relieve Borrower from its obligations pursuant to this Agreement, the RRIF Bonds or the other RRIF Loan Documents, all of which shall survive any such action.

SECTION 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Lease Rentals, and any other revenues attributable to the Project, and RRIF Loan requisitions received and disbursements made with regard to the Project), so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the RRIF Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the RRIF Loan or any portion thereof shall remain outstanding and until five (5) years after the date the RRIF Loan shall have been paid in full, the RRIF Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the RRIF Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 20(b) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the RRIF Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the RRIF Lender in connection with the RRIF Lender's exercise of its rights under this Section 20(b) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrower shall maintain and retain all files relating to the Project, the Pledged Revenues and the RRIF Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the RRIF Bonds (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Pledged Revenues, the RRIF Loan or this Agreement is finally resolved or, if the RRIF Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the RRIF Lender and the Borrower. The Borrower shall provide to the RRIF Lender in a timely manner all records and documentation relating to the Project or the Pledged Revenues that the RRIF Lender may reasonably request from time to time.

(d) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. §7502 in 2022 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 CFR §200.504 and 31 U.S.C. §7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the RRIF Lender, the USDOT, or designees thereof, pursuant to 49 CFR §80.19, 31 U.S.C. §7503(b), or 31 U.S.C. §6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the RRIF Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

SECTION 21. Financial Plan; Annual Coverage Certificates; Financial Statements.

(a) Financial Plan.

(i) The Borrower shall provide a Financial Plan to the RRIF Lender and the FTA Regional Office within sixty (60) days after the Effective Date and annually thereafter until the RRIF Loan has been repaid in full, in each case not later than ninety (90) days after the beginning of each Borrower Fiscal Year. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(ii) Each Financial Plan shall be prepared in accordance with recognized financial reporting standards, such as those in the "Guide for Prospective Financial Information" of the American Institute of Certified Public Accountants and shall meet the FTA Project Management Oversight Requirements, as amended from time to time, to the extent applicable.

(iii) The Financial Plan shall include: (A) a certificate signed by the Borrower's Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower's knowledge and belief; (B) a certificate signed by the Borrower's Authorized Representative demonstrating that annual projected Pledged Revenues shall be sufficient to meet the Loan Amortization Schedule; and (C) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, in substantially the form of the Base Case Financial Model, based upon assumptions and projections with respect to the Pledged Revenues and the expectations of the Borrower with respect to the Pledged Revenues, as of the most recent practicable date prior to the delivery of such Revised Financial Model.

(iv) For the period prior to the Substantial Completion Date, the Financial Plan shall:

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan;

(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including an updated Projected Substantial

Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule and in the most recent Financial Plan, and discuss the reasons for any changes to the expected completion of these Project milestones;

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the preceding Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of each individual change valued in excess of one percent (1.0%) of total forecasted Total Project Costs reflected in the Project Budget, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain, in form and substance satisfactory to the RRIF Lender, a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower's obligations under this Agreement.

(v) For the period following the Substantial Completion Date until repayment of the RRIF Loan in full, the Financial Plan shall:

(A) provide current and estimated amounts of Pledged Revenues received and the amounts deposited into each of the accounts and subaccounts established under the Indenture Documents and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts;

(B) provide an updated schedule of actual and projected Pledged Revenues and report on variances during the prior Borrower Fiscal Year between the Pledged Revenues actually received and the budgeted Pledged Revenues as shown in the Financial Plan for such prior Borrower Fiscal Year, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more;

(C) provide a schedule of then current moneys constituting Pledged Revenues and planned increases thereto; and

(D) contain, in form and substance satisfactory to the RRIF Lender, a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the preceding Financial Plan, including in reasonable detail (i) an explanation of any variances in costs or revenues in comparison to the Base Case Financial Model and the preceding Financial Plan, and (ii) a description of any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof.

(b) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the RRIF Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the Total Project Costs, in an amount equal to or greater than five percent (5%) of the then-current aggregate amount thereof, which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Plan. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the RRIF Lender's security or the Borrower's ability to comply with its obligations under the Indenture Documents (including any financial tests or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(c) Annual Coverage Certificates. Within fifteen (15) days after each Calculation Date, the Borrower shall deliver to the RRIF Lender, a certificate in the form of **Exhibit L** and signed by the Borrower's Authorized Representative (each, an "**Annual Coverage Certificate**") that certifies (i) the total RDA Member Dues received by RDA during the preceding Calculation Period from each Member, (ii) the total Pledged Revenues received by the Borrower during the preceding Calculation Period, and (iii) that the then projected annual RDA Member Dues shall be sufficient to meet the Loan Amortization Schedule and to meet the Borrower's Debt Service obligations with respect to any other Obligations that are currently outstanding, in each case as of each applicable payment date through the fifth (5th) anniversary of the most recent Semi-Annual Payment Date.

(d) Financial Statements.

(i) As soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, the Borrower shall furnish to the RRIF Lender a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and that is reasonably acceptable to the RRIF Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(iii) The Borrower shall furnish to the RRIF Lender, together with each delivery of annual audited financial statements of the Borrower pursuant to this Section 21(d), a certificate signed by the Chief Financial Officer of the Borrower or any Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event that, with the giving of notice or the passage of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

SECTION 22. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The RRIF Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Borrower shall be, or shall cause NICTD to be, responsible for administering construction oversight of the Project in accordance with the FTA Master Agreement. The Borrower's and NICTD's oversight of Project development, environmental compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to the FTA Master Agreement; provided, however, that FRA shall conduct oversight of the Project with respect to the applicable provisions of 49 U.S.C. and the applicable regulations in 49 CFR Part 236. The Borrower agrees to cooperate in good faith with the RRIF Lender, FRA and the FTA Regional Office in the conduct of such monitoring by promptly providing the RRIF Lender, FRA and the FTA Regional Office with such reports, documentation or other information as shall be requested by the RRIF Lender, FRA and the FTA Regional Office, or its agents, documentation or information.

(b) Quarterly Construction Progress Report. The Borrower shall cause NICTD to deliver to the RRIF Lender, on or before the thirtieth (30th) day following the end of each calendar quarter occurring prior to the Substantial Completion Date, a report (which may consist in whole or in part of reports received by NICTD from one or more of its contractors) that:

(i) specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar quarter and the amount of Total Project Costs estimated to be required to complete the Project;

(ii) provides a revised Project Budget updated through the end of the preceding calendar quarter;

(iii) demonstrates that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project, taking into account any changes to the amount of Total Project Costs that are reflected in such quarterly construction progress report (or prior quarterly construction progress reports);

(iv) to the extent there has been any change (increase or decrease) to the Total Project Costs needed to achieve Substantial Completion since the most recent quarterly construction progress report, provides a narrative description of such changes (specifying the amounts of such changes) and, in the case of any increase to the Total Project Costs, a narrative description of (A) which line items of the Project Budget have been affected by such cost increases (and the extent of any overruns with respect to such line items), (B) any material change orders granted or pending under the Construction-Related Contracts with respect to such cost increases, and (C) how the Borrower, RDA and NICTD will pay for such increased Total Project Costs;

(v) provides (A) an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule; and (B) to the extent there have been any events or occurrences (e.g., delayed equipment deliveries, permit delays, material change orders, etc.), that have had, or are anticipated to have, an adverse impact on the Construction Schedule and the meeting of critical dates thereunder, a detailed narrative description of steps being taken (or proposed to be taken) to address such adverse impacts on the Construction Schedule;

(vi) specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date as specified in the Financial Plan most recently submitted to the RRIF Lender; and

(vii) provides a discussion or analysis of such other matters related to the Project as the RRIF Lender may reasonably request in writing.

(c) Requested Information. The Borrower shall, at any time while the RRIF Loan remains outstanding, promptly deliver to the RRIF Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project or the Pledged Revenues as the RRIF Lender may from time to time reasonably request in writing, including copies of agreements, documentation and other information related thereto requested by the RRIF Lender in writing. The Borrower shall respond, and use commercially reasonable efforts to cause the Principal Project Parties to respond, to the RRIF Lender's inquiries regarding the construction of the Project. The RRIF Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the RRIF Lender and at the Borrower's cost (as provided in Section 28 (*Fees and Expenses*)), to carry out the provisions of this Section 22(c).

(d) Consulting Engineer.

(i) The Borrower and RDA shall hire and retain for so long as required by the RRIF Lender a consulting engineer (with a duty of care to the RRIF Lender) to advise the RRIF Lender with regard to all technical matters related to the performance by NICTD of its obligations under the Related Documents (a "**Consulting Engineer**"). The Borrower and RDA shall be jointly and severally obligated to pay the fees and expenses of any Consulting Engineer.

(ii) The Borrower and RDA may designate or replace the Consulting Engineer; provided that the RRIF Lender shall have the right to object to any such Consulting Engineer (and the Borrower and RDA shall not retain any proposed Consulting Engineer if the RRIF Lender has objected in writing to such proposed Consulting Engineer). The Borrower and RDA shall provide the RRIF Lender with thirty (30) Business Days' advance written notice of any proposed initial or replacement Consulting Engineer, together with supporting information concerning the qualifications of the proposed Consulting Engineer.

The Borrower and RDA may designate the proposed Consulting Engineer unless the RRIF Lender objects in writing within fifteen (15) Business Days following receipt of such notice. Any such objection by the RRIF Lender shall include a reasonable description of its reasons for objecting to the proposed Consulting Engineer. The Borrower and RDA shall pay for all services performed by the Consulting Engineer, which services shall include providing any certificate required pursuant to Section 12(b)(vi) (*Conditions Precedent to All Disbursements*) and any other report relating to the construction of the Project that the RRIF Lender requests.

SECTION 23. No Personal Recourse. No official, employee or agent of the RRIF Lender or the Borrower or any Person executing this Agreement or any of the other RRIF Loan Documents shall be personally liable on this Agreement or such other RRIF Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

SECTION 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the RRIF Lender, solely by virtue of the RRIF Loan, and the Borrower agrees to indemnify and hold the RRIF Lender, the Servicer (if any), the Executive Director, and the Government harmless, to the extent permitted by law and in accordance with Section 17 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the RRIF Loan, and that no third party creditor or creditors of the Borrower shall have any right against the RRIF Lender with respect to the RRIF Loan made pursuant to this Agreement.

SECTION 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the RRIF Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

SECTION 26. RRIF Lender's Authorized Representative.

(a) The RRIF Lender shall at all times have appointed the RRIF Lender's Authorized Representative by designating such Person or Persons from time to time to act on the RRIF Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the RRIF Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, and the further delegation of authority, dated August 31, 2016, by the Executive Director of the Build America Bureau to the Director of the Credit Office of the Build America Bureau (the "**Delegation**"), the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and to sign all contractual and funding documents (with the exception of term sheets and credit agreements) necessary to implement the RRIF Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the RRIF Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the RRIF Lender's Authorized Representative under this Agreement, in addition to the Executive Director for the purposes set forth herein.

SECTION 27. Servicer. The RRIF Lender may from time to time designate another entity or entities to perform, or assist the RRIF Lender in performing, the duties of the Servicer or specified duties of the RRIF Lender under this Agreement and the RRIF Bonds. The RRIF Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the RRIF Lender shall be deemed to be a reference to the Servicer with respect to any duties that the RRIF Lender shall have delegated to such Servicer. The RRIF Lender may at any time assume the duties of any Servicer under this Agreement and the RRIF Bonds. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

SECTION 28. Fees and Expenses.

(a) Commencing in FFY 2024 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the RRIF Lender a loan servicing fee for each Tranche on or before the fifteenth (15th) of each November. The RRIF Lender shall establish the amount of this annual per-Tranche fee, and the RRIF Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the loan servicing fee, the RRIF Lender will adjust the previous year's base amount in proportion to the percentage change in CPI. For the FFY 2024 calculation, the RRIF Lender will use the FFY 2023 base amount of [__] ($[__]) for each Tranche, which applies to other RRIF borrowers, as the previous year's base amount. The RRIF Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the RRIF Lender shall round the current year's base amount using increments of $500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the RRIF Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the RRIF Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration, and performance of this Agreement and the other RRIF Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other RRIF Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, or the Trust Estate, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the RRIF Lender thereunder;

(iii) any ongoing oversight and monitoring of the RRIF Loan, the Borrower or the Project by the RRIF Lender as provided for herein; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other RRIF Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 28 shall survive the payment or prepayment in full or transfer of the RRIF Bonds, the enforcement of any provision of this Agreement or the other RRIF Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement, provided that such obligations shall be enforceable against the Borrower only to the extent permitted by State law.

SECTION 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

SECTION 30. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

SECTION 31. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 32. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights nor obligations hereunder nor any interest therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the RRIF Lender.

SECTION 33. Remedies Not Exclusive. No remedy conferred herein or reserved to the RRIF Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 34. Delay or Omission Not Waiver. No delay or omission of the RRIF Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the RRIF Lender may be exercised from time to time, and as often as may be deemed expedient by the RRIF Lender.

SECTION 35. Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 36 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

SECTION 36. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

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

with copies to: Federal Transit Administration
Regional Office
200 West Adams Street, Suite 320
Chicago, IL 60606
Email: Kelley.brookins@dot.gov

If to Borrower: Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

Attention: Public Finance Director of the State of Indiana
Email: dhuge@ifa.IN.gov

with a copy to: General Counsel
Email: ASeiwert@ifa.IN.gov

<u>If to Bond Trustee</u>
<u>or Deposit Trustee</u>: The Bank of New York Mellon Trust Company, N.A.
300 N. Meridian Street, Suite 910
Indianapolis, IN 46204
Attention: Corporate Trust Department
Email: derick.rush@bnymellon.com

Unless otherwise instructed by the RRIF Lender's Authorized Representative, all notices to the RRIF Lender should be made by email to the email address above for the RRIF Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the RRIF Lender's Authorized Representative, with respect to notices to the RRIF Lender or the Servicer. The Borrower shall make any payments hereunder or under the RRIF Bonds in accordance with Section 9(d) (*Manner of Payment*) and the payment instructions hereafter provided by the RRIF Lender's Authorized Representative, as modified from time to time by the RRIF Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party); <u>provided</u> that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

SECTION 37. <u>Effectiveness</u>. This Agreement shall be effective on the Effective Date.

SECTION 38. <u>Termination</u>. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding RRIF Loan Balance, together with all accrued interest and fees with respect thereto; <u>provided</u>, <u>however</u>, that the indemnification requirements of Section 17 (*Indemnification*), the inspection, reporting and record keeping requirements of Section 20(b) (*Inspections*) and Section 20(c) (*Reports and Records*), and the payment requirements of Section 28 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

SECTION 39. <u>Integration</u>. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[*Signature Pages Follow*]

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

INDIANA FINANCE AUTHORITY

By: ___________________________________
Name: Cristopher R. Johnston
Title: Chair

Attest:

____
Name: Dan Huge
Title: Public Finance Director of the State of Indiana

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

By: ____________________________________
Name: Morteza Farajian
Title: Executive Director

SCHEDULE I:

PROJECT BUDGET

[To be provided by Borrower]

SCHEDULE II:

CONSTRUCTION SCHEDULE

[To be provided by Borrower]

EXHIBIT A:

FORM OF RRIF BOND

INDIANA FINANCE AUTHORITY

DOUBLE TRACK PROJECT

([*Insert RRIF Project Number*])

LEASE RDA MEMBER DUES TRANCHE [_] RRIF BOND
(DOUBLE TRACK PROJECT), SERIES 2022 C

Maximum Principal Amount: $ [_______]
(excluding capitalized interest)

Effective Date: [_____________] Due: [__________]

INDIANA FINANCE AUTHORITY, a body politic and corporate of the State of Indiana (the "**State**"), not an agency of the State but an independent instrumentality exercising essential public functions, duly created and existing under and by virtue of IC 5-1.2, as amended (the "**Borrower**"), for value received, hereby promises to pay, from the source herein provided, to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the "**RRIF Lender**"), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the "**Disbursements**") made by the RRIF Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the RRIF Loan Agreement (as defined below), being hereinafter referred to as the "**Outstanding Principal Sum**"), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection with the RRIF Loan Agreement, all as more fully described in the RRIF Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the RRIF Loan Agreement in accordance with **Exhibit G** to the RRIF Loan Agreement, as revised from time to time in accordance with the RRIF Loan Agreement, until paid in full. The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the RRIF Loan Agreement from time to time in accordance with the terms of the RRIF Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the RRIF Lender's determination of such matters as set forth on **Exhibit G** to the RRIF Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other RRIF Loan Document.

Payments hereon are to be made in accordance with Section 9(d) (*Manner of Payment*) and Section 36 (*Notices; Payment Instructions*) of the RRIF Loan Agreement as the same become due. Principal of and interest on this Lease RDA Member Dues Tranche [_] RRIF Bond (Double Track Project), Series 2022 C (this "**Tranche [_] RRIF Bond**") shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts.

This Tranche [_] RRIF Bond has been executed under and pursuant to that certain RRIF Loan Agreement, dated as of the date hereof, between the RRIF Lender and the Borrower (the "**RRIF Loan Agreement**") and is issued to evidence the obligation of the Borrower under the RRIF Loan Agreement to repay the loan made by the RRIF Lender and any other payments of any kind required to be paid by the Borrower under the RRIF Loan Agreement or the other RRIF Loan Documents referred to therein. Reference is made to the RRIF Loan Agreement for all details relating to the Borrower's obligations hereunder. All capitalized terms used in this Tranche [_] RRIF Bond and not defined herein shall have the meanings set forth in the RRIF Loan Agreement. This Tranche [_] Bond shall be subject to mandatory prepayment in accordance with the RRIF Loan Agreement.

This Tranche [_] RRIF Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the RRIF Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least $1,000,000), at any time or from time to time, without penalty or premium, by paying to the RRIF Lender all or part of the principal amount of the Lease RDA Member Dues RRIF Bonds (Double Track Project), Series 2022 C (the "**RRIF Bonds**") in accordance with the RRIF Loan Agreement.

This Tranche [_] RRIF Bond and the issue of which it is a part are issued pursuant to and in full compliance with the constitution and laws of the State, particularly IC 5-1.2, as amended, and IC 5-1.3, as amended, and pursuant to proceedings adopted by the Borrower, which proceedings authorize the execution and delivery of the RRIF Loan Agreement and the IFA RDA Member Dues Bond Indenture. This Tranche [_] RRIF Bond and the issue of which it is a part do not constitute an indebtedness of the State within the meaning or application of any constitutional provision or limitation nor is the full faith and credit of the State or any political subdivision thereof pledged to the payment of principal of or interest on this Tranche [_] RRIF Bond. This Tranche [_] RRIF Bond is a corporate obligation only of the Borrower and is payable solely as to both principal and interest from the Trust Estate, all as provided in the RRIF Loan Agreement and the IFA RDA Member Dues Bond Indenture.

Any delay on the part of the RRIF Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this Tranche [_] RRIF Bond have happened, exist and have been performed as so required. The issuance, authentication and delivery of this Tranche [_] RRIF Bond have been duly authorized by a resolution duly adopted by the Borrower. This Tranche [_] RRIF Bond shall not be a valid obligation until authenticated by the Bond Registrar (as defined in the IFA RDA Member Dues Bond Indenture) or its successor in trust by execution of the Bond Registrar's certificate endorsed hereon. This Tranche [_] RRIF Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, the Indiana Finance Authority has caused this Tranche [_] RRIF Bond to be executed in its name and on its behalf by the manual or facsimile signature of its duly qualified and acting Chair, its corporate seal to be hereunto imprinted or impressed by any means and such signature and seal to be attested by the manual or facsimile signature of the duly qualified and acting Public Finance Director of the State of Indiana, as of the Effective Date set forth above.

INDIANA FINANCE AUTHORITY

[Seal]

By: ________________________________
Chair

Attest:

____
Public Finance Director of the
State of Indiana

CERTIFICATE OF AUTHENTICATION

This Tranche [_] RRIF Bond is one of the RRIF Bonds issued and delivered pursuant to the provisions of the IFA RDA Member Dues Bond Indenture.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Bond Registrar

By: __________________________________
Authorized Representative

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

____

____

____
(Please print or type name, address and social security or other identifying number of assignee. Insert number for first assignee if held by joint account.)

this Tranche [_] RRIF Bond and all rights hereunder, and hereby irrevocably constitutes and appoints ________________________, as attorney, to transfer this Tranche [_] RRIF Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: __________________________

Signature guaranteed by:

____

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined in SEC Rule 17Ad-15 (17 CFR 240.17Ad-15) participating in a Securities Transfer Association recognized signature guarantee program.

Registered Owner:

____

NOTICE: The signature(s) to this assignment must correspond with the name as it appears upon the face of this Tranche [_] RRIF Bond in every particular, without alteration or enlargement or any change whatever. When assignment is made by a guardian, trustee, executor or administrator, an officer of a corporation or anyone in a representative capacity, proof of authority to act must accompany this assignment.

EXHIBIT B:

ANTICIPATED RRIF LOAN DISBURSEMENT SCHEDULE

	Borrower Fiscal Year	Amount
Tranche A:		
		$
		$
		$
		$
		$
		$
		$
Tranche B:		
		$
		$
		$
		$
		$
		$
		$

EXHIBIT C:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS— PRIMARY COVERED TRANSACTIONS

The undersigned, on behalf of the **INDIANA FINANCE AUTHORITY**, hereby certifies that the Indiana Finance Authority has fully complied with its verification obligations under 2 CFR §180.320 and hereby further confirms in accordance with 2 CFR §180.335, that, to its knowledge, the Borrower and its principals (as defined in 2 CFR §180.995):

(a) are not presently excluded (as defined in 2 CFR §180.940) or disqualified (as defined in 2 CFR §180.935);

(b) have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR §180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;

(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR §180.800(a); and

(d) have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain RRIF Loan Agreement, dated as of [__], 2022, between the RRIF Lender and the Borrower, as the same may be amended from time to time.

Dated: ________________

INDIANA FINANCE AUTHORITY

By:_________________________________

Name: ______________________________

Title: _______________________________

EXHIBIT D:

<u>REQUISITION PROCEDURES</u>

This **Exhibit D** sets out the procedures that the Borrower agrees to follow in submitting Requisitions for the disbursement of RRIF Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through Section 4 set out the circumstances in which the RRIF Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the RRIF Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the RRIF Lender under the RRIF Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the RRIF Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the RRIF Loan Agreement during the term thereof.

Section 1. <u>General Requirements</u>. All requests by the Borrower for the disbursement of RRIF Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the RRIF Lender, in accordance with Section 36 (*Notices; Payment Instructions*) of the RRIF Loan Agreement, of a Requisition, in form and substance satisfactory to the RRIF Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as Appendix One to this **Exhibit D**. Supporting documentation should be submitted with the requisition.

All disbursement requests must be received by the RRIF Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if such day is not a Business Day, the next succeeding Business Day.

Section 2. <u>Rejection</u>. A Requisition may be rejected in whole or in part by the RRIF Lender if it is:

(a) submitted without signature;

(b) submitted under signature of a Person other than a Borrower's Authorized Representative;

(c) submitted after prior disbursement of all proceeds of the RRIF Loan; or

(d) submitted without adequate documentation of Eligible Project Costs incurred or paid, which documentation shall include the most recent certificate of or report prepared by the Consulting Engineer pursuant to Section 12(b)(vi) (*Conditions Precedent to All Disbursements*) of the RRIF Loan Agreement or otherwise requested by the RRIF Lender relating to the construction of the Project (to the extent not previously delivered to the RRIF Lender).

The RRIF Lender shall promptly send to the Borrower, in accordance with Section 36 (*Notices; Payment Instructions*) of the RRIF Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as **Appendix Two** to this Exhibit D. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the RRIF Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the RRIF Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the RRIF Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The RRIF Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of RRIF Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the RRIF Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fails to cause NICTD to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the Construction Schedule, all Contract Documents (as defined in each of the Construction Contracts) and the ordinary and reasonable standard of care applicable to services and work performed on projects of a similar nature, quality, and technical complexity, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the RRIF Lender to monitor compliance by the Borrower or NICTD with applicable federal or local law pertaining to the Project or with the terms and conditions of the RRIF Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the RRIF Loan Agreement; or

(iv) fails to satisfy any condition set forth in Section 4 (*Disbursement Conditions*) or Section 12(b) (*Conditions Precedent to All Disbursements*) of the RRIF Loan Agreement; or

(v) fails to deliver documentation satisfactory to the RRIF Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the RRIF Loan Agreement; provided that in such case the RRIF Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible

Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the RRIF Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of RRIF Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the RRIF Loan to the Borrower (even if such disbursement has been approved by the RRIF Lender), in each case if the RRIF Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

APPENDIX ONE TO EXHIBIT D:

FORM OF REQUISITION

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

Federal Transit Administration
Indiana Division Office
575 N. Pennsylvania Street
Room 254
Indianapolis, IN 46204]
Attention: Division Administrator

The Bank of New York Mellon Trust Company, N.A.
300 N. Meridian Street, Suite 910
Indianapolis, IN 46204
Attention: Corporate Trust Department

[*Loan Servicer]*
[*Address*]
[*Attention*]

Re: **DOUBLE TRACK PROJECT** (RRIF # [__])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the RRIF Loan Agreement, dated as of [__], 2022 (the "**RRIF Loan Agreement**"), by and between the INDIANA FINANCE AUTHORITY (the "**Borrower**") and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the "**RRIF Lender**"), we hereby request disbursement in the amount of $[___________] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the RRIF Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [_______].

2. The requested date of disbursement is [____________] 15, 20[__] (the "**Disbursement Date**") [, which is the first Business Day following [___________] 15, 20[____]].

3. (a) $[_______________] of the amount of the disbursement shall be wired to the Deposit Trustee and shall be deposited in the Series 2022 C IFA RDA Member Dues

Project Subaccount of the IFA RDA Member Dues Project Account established pursuant to the Trust Fund Agreement.

(b) $[________________] of the amount of the disbursement shall be wired to the Bond Trustee and deposited in the Series 2022 C Expense Account of the Expense Fund established pursuant to the IFA RDA Member Dues Bond Indenture.

4. The amounts previously disbursed under the RRIF Loan Agreement equal, in the aggregate, $[_____________].

5. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower, RDA or NICTD for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from RRIF Loan proceeds.

6. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the RRIF Loan.

7. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the RRIF Loan Agreement.

8. The Borrower, NICTD or the Construction Contractors have all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).

9. Each of the insurance policies obtained by the Borrower, NICTD or the Construction Contractors in satisfaction of the condition in Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

10. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the RRIF Lender [and [the FTA Division Office][*insert other USDOT modal agency office, if applicable*]] and in accordance with the Construction Schedule, all Contract Documents (as defined in each of the Construction Contracts) and the ordinary and reasonable standard of care applicable to services and work performed on projects of a similar nature, quality, and technical complexity.

11. The representations and warranties of the Borrower set forth in the RRIF Loan Agreement and in each other Indenture Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

12. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), (i) no Event of Default or event of default under any other Indenture Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Indenture Document, in each case, has occurred and is continuing.

13. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [__], 2022, and is continuing.

14. A copy of the most recent certificate or report of the Consulting Engineer delivered pursuant to Section 12(b)(vi) (*Conditions Precedent to All Disbursements*) or Section 22(d) (*Consulting Engineer*) of the RRIF Loan Agreement has been delivered to each of the above named addressees.

15. A copy of the quarterly construction progress report pursuant to Section 22(b) (*Quarterly Construction Progress Report*) of the RRIF Loan Agreement for the quarter that ended most recently prior to the date of the applicable Requisition has been delivered to each of the above named addresses.

16. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5323(l)(1), to the extent the Government deems appropriate.

17. A copy of this requisition has been delivered to each of the above named addressees.

18. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Bond Trustee and Deposit Trustee.]

Date: ________________________

INDIANA FINANCE AUTHORITY

By: ____________________________________

Name: _________________________________

Title: __________________________________

APPENDIX TWO TO EXHIBIT D:

<u>DISAPPROVAL OF THE RRIF LENDER</u>

(To be delivered to the Borrower)

Requisition Number [_____] is [approved in part in the amount of $____________] [not approved][1] by the RRIF Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the RRIF Loan Agreement, dated as of [_______], 2022, by and between the Indiana Finance Authority (the "**Borrower**") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "**RRIF Lender**").

Any determination, action or failure to act by the RRIF Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the RRIF Lender's sole discretion, and in no event shall the RRIF Lender be responsible for or liable to the Borrower for any and/or all consequence(s) that are the result thereof.

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

By: ____________________________________
RRIF Lender's Authorized Representative
Name:
Title:
Dated:

[1] Attached hereto as Exhibit A are reasons for any partial or full denial of approval

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

[Insert reasons for any partial or full denial of approval.]

EXHIBIT E:

COMPLIANCE WITH LAWS

The Borrower shall, and shall cause the other Borrower Lease Parties to, and shall require (and shall cause each other Borrower Lease Party to require) its contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

(i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. §12101 *et seq*.; 28 CFR Part 35; 29 CFR Part 1630); 36 C.F.R. part 1192; and Appendix A of 49 C.F.R. part 37);

(ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d *et seq*.), and USDOT implementing regulations (49 CFR Part 21);

(iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §4601 *et seq*.), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;

(iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);

(v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. §1352; 49 CFR Part 20);

(vi) The Clean Air Act, as amended (42 U.S.C. §7401 *et seq*.);

(vii) The National Environmental Policy Act of 1969 (42 U.S.C. §4321 *et seq*.), including the environmental mitigation requirements and commitments made by NICTD that result in the FTA's approval of the NEPA Determination;

(viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.);

(ix) The Endangered Species Act, 16 U.S.C. §1531, *et seq*.;

(x) 23 U.S.C. §138 and 49 U.S.C. §303, as applicable;

(xi) The prevailing wage requirements set forth in 40 U.S.C. §3141 *et seq*., and implementing regulations (29 CFR Part 5);

(xii) The Buy America requirements set forth in 49 U.S.C. §5323(j) and implementing regulations (49 CFR Part 661);

(xiii) The requirements of 49 U.S.C. Chapter 53 and 49 CFR Part 600;

(xiv) The Cargo Preference Act of 1954, as amended (46 U.S.C. §55305), and implementing regulations (46 CFR Part 381);

(xv) The applicable requirements of 49 CFR Part 26 relating to the Disadvantaged Business Enterprise program;

(xvi) The requirements of 49 U.S.C. §§ 20101-28505;

(xvii) Pursuant to 49 U.S.C. §22404, the provisions of the letter from the Secretary of Labor dated July 6, 1976, including the appendix thereto, attached as Annex 1 hereto;

(xviii) The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) and implementing regulations (2 CFR §200.216); and

(xix) The Buy America Build America Act (Pub. L. No. 117-58, §§ 70901-52).

ANNEX 1 TO EXHIBIT E:

SECRETARY OF LABOR LETTER

[Bureau to provide.]

EXHIBIT F:

PERFORMANCE SECURITY INSTRUMENTS

EXHIBIT G:

LOAN AMORTIZATION SCHEDULE

EXHIBIT H-1:

OPINIONS REQUIRED OF COUNSEL TO EACH BORROWER LEASE PARTY

An opinion of the counsel to each Borrower Lease Party, dated as of the Effective Date, to the effect that: (a) it is a [body politic and corporate] duly organized and validly existing under the laws of its jurisdiction of formation with full power, authority and legal right to own its properties and carry on its business as now conducted; (b) its Organizational Documents and the Authorizing Legislation are each in full force and effect as of the date of this opinion; (c) it is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization; (d) it has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (e) its execution and delivery of, and its performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action; (f) it has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes its legal, valid and binding obligation; enforceable against it in accordance with their respective terms; (g) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on its part for its execution and delivery of, and the performance of its obligations under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by it; (h) the execution and delivery by it of, and its compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate its Organizational Documents, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which it is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which it is subject; (i) it is not an investment company required to register under the Investment Company Act of 1940, as amended; and (j) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against it by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.

EXHIBIT H-2:

OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that: [(a) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State, or any other Person, is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower; (b) each of the RRIF Bonds and the Indenture has been duly authorized, executed, and delivered by the Borrower in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (c) each of the RRIF Bonds and the Indenture is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions; (d) the RRIF Bonds are secured by the Trust Estate and are entitled to the benefits of a Bond under the Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person; (e) the Indenture creates the valid and binding assignment and pledge of the Trust Estate to secure the payment of the principal of, interest on, and other amounts payable in respect of, the RRIF Bonds, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act; (f) all actions by the Borrower that are required for the use of Pledged Revenues as required under the Indenture and under the RRIF Loan Agreement have been duly and lawfully made; (g) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Pledged Revenues as required by the terms of the Indenture and the RRIF Loan Agreement; (h) [the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code];[2] (i) [the Borrower is not entitled to claim governmental immunity in any breach of contract action under the RRIF Loan Agreement or the RRIF Bonds or by the Bond Trustee or Deposit Trustee under the Indenture Documents]; and (j) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended.

[2] **NTD**: Subject to modification based on State bankruptcy law and the legal status of the Borrower as an entity.

EXHIBIT I:

<u>FORM OF CERTIFICATE OF BOND TRUSTEE</u>

INDIANA FINANCE AUTHORITY
LEASE RDA MEMBER DUES RRIF BOND (DOUBLE TRACK PROJECT),
SERIES 2022 C

DOUBLE TRACK PROJECT

(RRIF Project Number [__])

The undersigned, The Bank of New York Mellon Trust Company, N.A. (the "**Trustee**"), by its duly appointed, qualified and acting [_________], certifies with respect to the above referenced bond dated as of [_________], 2022 (the "**RRIF Bond**"), as follows (capitalized terms used in this Certificate that are not otherwise defined shall have the meanings given to such terms in the Indenture (as defined below)):

1. That the Trustee is a national banking association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of the State of Indiana.

2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter that would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the RRIF Bonds have been obtained and are in full force and effect.

3. That the documents pertaining to the issuance of the RRIF Bonds to which the Trustee is a party were executed and the RRIF Bonds was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on <u>Annex One</u> attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the RRIF Bonds and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the RRIF Bonds, and that the signature appearing after the name of each such person is a true and correct specimen of that person's genuine signature.

4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture ("**Trusts**"), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.

5. That attached to this Certificate as <u>Annex Two</u> is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee's trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today,

and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section 202 of the IFA Trust Indenture (the "**Indenture**"), dated as of [________] 1, 2022, between the Indiana Finance Authority (the "**Borrower**") and the Trustee.

7. That receipt is also acknowledged of that certain RRIF Loan Agreement, dated as of [__________], 2022 (the "**RRIF Loan Agreement**"), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "**RRIF Bondholder**").

8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee and of Bond Registrar and Paying Agent for and in respect of the RRIF Bonds as set forth in the Indenture and the RRIF Loan Agreement, including from time to time redeeming all or a portion of the RRIF Bonds as provided in Article IV of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Article IX of the Indenture.

9. That all funds and accounts for the payment of the RRIF Bonds pursuant to the Indenture (including, but not limited to, the Series 2022 C Debt Service Account, within the Debt Service Fund, and the Series 2022 C IFA RDA Member Dues Debt Service Subaccount, within the IFA RDA Member Dues Debt Service Account) have been established as provided in the Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: ___________, 2022

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.

By: ______________________________________

Its: ______________________________________

ANNEX ONE TO EXHIBIT I:

OFFICERS OF BOND TRUSTEE

ANNEX TWO TO EXHIBIT I:

RESOLUTIONS OF BOARD OF DIRECTORS OF BOND TRUSTEE

EXHIBIT J:

FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain RRIF Loan Agreement, dated as of [________], 2022 (the "**RRIF Loan Agreement**"), by and among the Indiana Finance Authority (the "**Borrower**") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "**RRIF Lender**"). Capitalized terms used in this Certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement.

The undersigned, Dan Huge, as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 12(a)(ii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Annex A are complete and fully executed copies of each Indenture Document and each such agreement is in full force and effect, and without amendment except as disclosed to the RRIF Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the RRIF Lender in its sole discretion;

(b) pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Annex B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Indenture Documents, to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 25 (*Borrower's Authorized Representative*) of the RRIF Loan Agreement;

(c) pursuant to Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Annex C are true, correct and complete copies of each Principal Project Contract that has been executed on or prior to the Effective Date (as listed below), and each such Principal Project Contract is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of Annex C:

1: each Construction Contract;

2: each Construction-Related Contract;

3: the Governance Agreement; and

4: each Lease;

(d) pursuant to Section 12(a)(xi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, the Borrower has obtained or caused NICTD to obtain all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(e) pursuant to Section 12(a)(xii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Annex D is the Base Case Financial Model, which Base Case Financial Model demonstrates that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule;

(f) pursuant to Section 12(a)(xv)(A) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Annex E is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;

(g) pursuant to Section 12(a)(xv)(B) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, the Borrower hereby certifies that it has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §4601 *et seq*.) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq*.) seq.) and USDOT regulation 49 CFR §213, and (ii) has complied with the requirements of 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR §1200.332 and, if previously requested by the RRIF Lender, has provided sufficient evidence of such compliance;

(h) pursuant to Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 35-1602316 and attached hereto as Annex F-1 is evidence thereof, (ii) the Borrower's Data Universal Numbering System or Unique Entity Identifier number is [_____], and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as Annex F-2 is evidence of each of (ii) and (iii);

(i) pursuant to Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, (i) the Borrower, NICTD, RDA or each Construction Contractor, or its subcontractors, have obtained all insurance policies required to be provided under the applicable Construction Contract, the Governance Agreement or any Lease and (ii) attached hereto as Annex G are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of Section 15(f) (*Insurance*) of the RRIF Loan Agreement;

(j) pursuant to Section 12(a)(xx) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as (i) Annex H-1 are copies of the Borrower's Organizational Documents and the Authorizing Legislation, each as in effect on the Effective Date, which Organizational Documents and Authorizing Legislation are each in full force and effect, except as otherwise indicated therein and satisfactory to the RRIF Lender, (ii) Annex H-2 is a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the Indenture Documents, which resolutions have not been subsequently modified, rescinded or amended, except as otherwise indicated therein and satisfactory to the RRIF Lender, are in full force and effect in the form adopted, except as otherwise indicated therein and satisfactory to the RRIF Lender, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (iii) Annex H-3 are copies of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the Indenture Documents;

(k) pursuant to Section 12(a)(xxi) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, (i) the maximum principal amount of the RRIF Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the RRIF Act to the Borrower, does not exceed one hundred percent (100%) of reasonably anticipated Eligible Project Costs;

(l) pursuant to Section 12(a)(xxii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, attached hereto as Annex I are complete and fully executed copies of each performance security instrument delivered to or by the Borrower or NICTD pursuant to any Principal Project Contract as of the Effective Date, each of which performance security instruments is in compliance with the requirements for such performance security instrument pursuant to the applicable Principal Project Contract and is in full force and effect;

(m) pursuant to Section 12(a)(xxiii) (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement, the representations and warranties of the Borrower set forth in the RRIF Loan Agreement and in each other Indenture Document are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

(n) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred and is continuing since the date the Borrower submitted the RRIF Application to the RRIF Lender.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first mentioned above.

INDIANA FINANCE AUTHORITY

By: ___________________________________
Name: Dan Huge
Title: Public Finance Director of the State of Indiana

EXHIBIT A TO EXHIBIT J:[3]

INCUMBENCY CERTIFICATE

The undersigned certifies that he is the General Counsel of the Indiana Finance Authority (the "**Borrower**") and as such, he is authorized to execute this Certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the RRIF Loan Documents and/or the Indenture Documents as the Borrower's Authorized Representative (each as defined in that certain RRIF Loan Agreement, dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

Name	Title	Signature
Cristopher R. Johnston	Chair	______________________
Kelly Mitchell	Vice Chair	______________________
Dan Huge	Public Finance Director of the State of Indiana	______________________

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of this _____ day of __________, 2022.

INDIANA FINANCE AUTHORITY

By: ____________________________
Name: Andrew P. Seiwert
Title: General Counsel

[3] For each of Part 1, Part 2 and Part 3 of Exhibit J, with appropriate edits to apply for NICTD and RDA.

EXHIBIT K-1:

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[*Letterhead of the Northern Indiana Commuter Transportation District*]

[*Date*]

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

Project: Double Track Project [RRIF Project Reference Number]

Dear Director:

This Notice is provided pursuant to Section 15(g)(i)(A)(1) (*Substantial Completion*) of that certain RRIF Loan Agreement (the "**RRIF Loan Agreement**"), dated as of [_______], 2022, by and between the Indiana Finance Authority (the "**Borrower**") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "**RRIF Lender**").

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the RRIF Loan Agreement.

I, the undersigned, in my capacity as the President of the Northern Indiana Commuter Transportation District and not in my individual capacity, do hereby certify to the RRIF Lender that, on [*insert date on which the Project commenced providing regular passenger service*], the requirements for Substantial Completion, as defined in the RRIF Loan Agreement, were satisfied.

____
President, Northern Indiana Commuter
Transportation District

Name: ______________________________

EXHIBIT K-2:

FORM OF CERTIFICATE OF CONSTRUCTION CONTRACT SUBSTANTIAL COMPLETION

[*Letterhead of the Northern Indiana Commuter Transportation District*]

[*Date*]

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

Project: Double Track Project [RRIF Project Reference Number]

Dear Director:

This Notice is provided pursuant to Section 15(g)(i)(A)(2) (*Substantial Completion*) of that certain RRIF Loan Agreement (the "**RRIF Loan Agreement**"), dated as of [_______], 2022, by and between the Indiana Finance Authority (the "**Borrower**") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "**RRIF Lender**").

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the RRIF Loan Agreement.

I, the undersigned, in my capacity as the President of the Northern Indiana Commuter Transportation District and not in my individual capacity, do hereby certify to the RRIF Lender that, on [*insert date on which the applicable Construction Contract Substantial Completion Date occurred*], the Construction Contract Substantial Completion Date has occurred in accordance with that certain [Construction Contract] / [Goods and Services Agreement], dated as of [__], by and between NICTD and [__].

____
President, Northern Indiana Commuter Transportation District

Name: _________________________________

EXHIBIT L:

FORM OF ANNUAL COVERAGE CERTIFICATE

Reference is made to that certain RRIF Loan Agreement, dated as of [_____], 2022 (the "**RRIF Loan Agreement**"), by and among the Indiana Finance Authority (the "**Borrower**") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "**RRIF Lender**"). Capitalized terms used in this Certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement.

The undersigned, [___], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

1. The undersigned has reviewed the terms of the RRIF Loan Agreement, including Section 21(c) (*Annual Coverage Certificates*) thereof and the related defined terms.

2. The undersigned hereby certifies that:

(i) RDA Member Dues received by RDA during the year ended on November 1, 20[__] (the "**Calculation Date**"), totaled $[*insert amount*] from the sources identified in the attached Annex A (Sources of RDA Member Dues);

(ii) Pledged Revenues received by the Borrower during the year ended on the Calculation Date totaled $[*insert amount*];

(iii) annual projected RDA Member Dues shall be sufficient to meet the Loan Amortization Schedule and to meet the Borrower's debt service obligations with respect to any other obligations that are currently outstanding, including all debt service obligations pursuant to the IFA RDA Member Dues Bond Indenture, in each case as of each applicable payment date through the fifth (5th) anniversary of the most recent Semi-Annual Payment Date.

3. The foregoing certifications, together with the computations set forth in the Annex B hereto, are made and delivered [*mm/dd/yy*] pursuant to Section 21(c) (*Annual Coverage Certificates*) of the RRIF Loan Agreement.

INDIANA FINANCE AUTHORITY

By: ________________________________

Name: ______________________________

Title: _______________________________

ANNEX A

(TO ANNUAL COVERAGE CERTIFICATE):

SOURCES OF RDA MEMBER DUES

(For [*insert applicable [calendar] year*])

Members	East Chicago	Hammond	Gary	Lake County	Porter County
Q1					
Q2					
Q3					
Q4					
Supplemental (Q) (total)					
Supplemental (A)					
Total					
EOY Short Fall					
Paid by member					
Paid through Intercept					
RDA Member Dues					

ANNEX B

(TO ANNUAL COVERAGE CERTIFICATE):

<u>COMPUTATIONS</u>

EXHIBIT M:

<u>RRIF LOAN REAMORTIZATION METHODOLOGY</u>

Semi-Annual Payment Date	Principal Amount %[4] (maximum 2 decimal places)

[4] Percentage is to be calculated on the current Outstanding RRIF Loan Balance for each Tranche.

EXHIBIT N:

CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF APPROPRIATED FUNDS FOR LOBBYING

Reference is made to that certain RRIF Loan Agreement, dated as of [______], 2022 (the "**RRIF Loan Agreement**"), by and among the Indiana Finance Authority (the "**Borrower**") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "**RRIF Lender**"). Capitalized terms used in this Certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement. The undersigned, on behalf of the Borrower, hereby certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of the RRIF Loan.

If any funds other than proceeds of the RRIF Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the RRIF Loan, the Borrower shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Borrower shall require that the language of this certification be included in the award documents, to which it is a party, for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the RRIF Lender entered into the RRIF Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the RRIF Loan Agreement imposed by Section 1352 of Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Dated: ____________, 2022

INDIANA FINANCE AUTHORITY

By: ________________________________

Name: ______________________________

Title: ______________________________

EXHIBIT O:

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

2 CFR Part 170

a. ***Reporting of first-tier subawards*.**

1. *Applicability*. Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds $30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

2. ***Where and when to report****.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to *http://www.fsrs.gov.*

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. ***What to report****.* You must report the information about each obligating action that the submission instructions posted at *http://www.fsrs.gov specify*.

b. ***Reporting total compensation of recipient executives for non-Federal entities***.

1. ***Applicability and what to report****.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if:

i. The total Federal funding authorized to date under this RRIF Loan equals or exceeds $30,000 as defined in 2 CFR §170.320;

ii. In the preceding fiscal year, you received:

(A) eighty percent (80%) or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR §170.320 (and subawards), and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR §170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*).

2. ***Where and when to report****.* You must report executive total compensation described in paragraph (b)(1) above:

i. As part of your registration profile at *https://www.sam.gov.*

ii. By the end of the month following the month of the Effective Date, and annually thereafter.

c. ***Reporting of Total Compensation of Subrecipient Executives***.

1. ***Applicability and what to report***. Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this RRIF Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

i. In the subrecipient's preceding fiscal year, the subrecipient received:

(A) eighty percent (80%) or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR §170.320 (and subawards) and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*).

2. ***Where and when to report***. You must report subrecipient executive total compensation described in paragraph (c)(1) above:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.,* between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. ***Exemptions***. If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

e. ***Definitions***. For purposes of this **Exhibit O**:

1. "***Federal Agency***" means a Federal agency as defined at 5 U.S.C. §551(1) and further clarified by 5 U.S.C. §552(f).

2. "***Non-Federal entity***" means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and

iv. A domestic or foreign for-profit organization

3. "***Executive***" means officers, managing partners, or any other employees in management positions.

4. "***Subaward***"*:*

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR §200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. "***Subrecipient***" means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this RRIF Loan; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. "***Total compensation***" means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR §229.402(c)(2)).