

“Event of Termination” means (i) MTC ceases for any reason to be “metropolitan planning organization” (as defined in 49 U.S.C. §5303(b)) for any of the Participating UZAs; (ii) MTC ceases for any reason to be the “designated recipient” as defined in 49 U.S.C. §5302 for the Participating UZAs; or (iii) the MTC LONP is withdrawn by FTA or ceases for any reason to be valid and binding on FTA as a result of any legislative or administrative action by a governmental authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by FTA.

“Excess Interest” has the meaning set forth in Section 2.9 hereof.

“Excess Interest Fee” has the meaning set forth in Section 2.9 hereof.

“Excluded Taxes” means, with respect to the Bank or any Participant, taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located.

“Federal Fiscal Year” means the annual period commencing on October 1 of a calendar year and ending on September 30 of the next calendar year.

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective date; *provided, that*, if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“FTA” means the U.S. Federal Transit Administration.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States, as they relate to state and local governmental units, including Governmental Accounting Standards Board (GASB) pronouncements.

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

“Governmental Authority” means the government of the United States or any applicable political subdivision thereof, state or local or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, authority, administration, central bank, service, district or other instrumentality of any governmental entity or quasi-governmental entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government.

“Guarantees” means, for any Person, all guarantees and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“Indebtedness” of the Borrower means, at any date, without duplication, (a) all obligations of the Borrower for borrowed money, (b) all obligations of the Borrower evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of the Borrower to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of the Borrower as lessee under capital leases, (e) all debt of others secured by a Lien on any Property of the Borrower, whether or not such debt is assumed by the Borrower, (f) all Guarantees by the Borrower of debt of other Persons, (g) all obligations of the Borrower under any Swap Contract and (h) all obligations of the Borrower to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument; *provided* that, for the avoidance of doubt, the MTC Grant Funding Agreement is not an Indebtedness of MTC.

“Interest Payment Date” means, with respect to any Daily SOFR Rate Loan or Base Rate Loan, the first Business Day of each January, April, July and October and the Maturity Date.

“Joint Powers Agreement” shall have the meaning specified in Section 4.1(a)(iv) hereof.

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

“Loan” means, upon a Request for Loan and subject to the satisfaction of the conditions precedent set forth in Section 4.2 hereof, an advance of funds by the Bank to the Borrower under the Available Commitment and the terms hereof.

“Material Adverse Effect” means (a) a materially adverse change in, or material adverse effect upon, the operations, business, property or condition (financial or otherwise) of the Borrower that could reasonably be expected to have a material adverse effect on the Borrower’s ability or obligation to pay any Obligation when due hereunder, (b) a impairment of the ability of the Borrower to perform its material obligations hereunder or under any Related Document or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of this Agreement or any Related Document or the rights, security, or remedies of the Bank hereunder or thereunder, as applicable.

“Maturity Date” means the sixth anniversary of the Effective Date.

“Maximum Lawful Rate” means the lesser of (i) 15% and (ii) the maximum rate of interest on the relevant obligation permitted by Applicable Law.

“MTC” has the meaning given thereto in the MTC Grant Funding Agreement.

“MTC Funding Obligation” has the meaning given thereto in the MTC Grant Funding Agreement.

“MTC Grant Funding Agreement” means Regional Transit Funding Agreement, dated as of [_____], 2023 by and between MTC and the Borrower, as it may be amended,

supplemented, restated and/or modified from time to time with the prior written consent of the Bank.

“MTC LONP” has the meaning given thereto in the MTC Grant Funding Agreement.

“MTC Written Designation” has the meaning given thereto in the MTC Grant Funding Agreement.

“Note” has the meaning set forth in Section 2.3 hereof.

“Obligations” means the Repayment Obligations (which includes outstanding Loans as evidenced by the Note), the Commitment Fees and all other obligations of the Borrower to the Bank arising under or in relation to this Agreement or the Note.

“OFAC” has the meaning set forth in Section 8.16 hereof.

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

“Participant” has the meaning set forth in Section 8.8(c) hereof.

“Participating UZAs” has the meaning given thereto in the MTC Grant Funding Agreement.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001), as amended.

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

“Prime Rate” means on any day, the rate of interest per annum then most recently established by the Bank as its “prime rate” for United States dollar loans made in the United States. The “prime rate” is a rate set by the Bank based upon various factors including the Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such established. Any change in such rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

“Programmed Grant Receipts” has the meaning given thereto in the MTC Grant Funding Agreement.

“Project Loan” means any Loan other than a Repayment Loan.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning specified in Section 8.19 hereof.

“Railcar Agreement” means the Contract for Procurement of Transit Vehicles, Contract No. 40FA-110 entered into as of June 14, 2012, between BART and Bombardier Transit Corporation, together with all procurement terms, specifications and change orders.

“Refinancing” has the meaning set forth in Section 6.11 hereof.

“Reimbursed Taxes” means Taxes other than Excluded Taxes.

“Related Documents” means this Agreement, the Authorizing Resolution, the BART T&R Agreement, the MTC Grant Funding Agreement, the MTC LONP, the MTC Written Designation and the Note.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, administrators and managers of such Person and of such Person’s Affiliates.

“Repayment Loan” means any Loan automatically made to the Borrower by the Bank during the Availability Period in order to pay when due (i) interest on the principal amount of each outstanding Loan, (ii) Commitment Fees and (iii) other Obligations (other than the principal amount of any Loan).

“Repayment Obligations” means the obligations of the Borrower to repay the Bank for Loans and the Note evidencing the Loans, together with interest thereon, pursuant to and in accordance with this Agreement.

“Request for Loan” has the meaning set forth in Section 2.2(a) hereof.

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

“Section 5307 Formula Funds” means, for any Federal Fiscal Year, the FTA Section 5307 (49 U.S.C. §5307) Urbanized Area Formula Funds.

“Section 5337 Formula Funds” means, for any Federal Fiscal Year, the FTA Section 5337 (49 U.S.C. §5337) Urbanized Area Formula Funds.

“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Administrator” means the Federal Reserve Bank of New York, as the administrator of SOFR, or any successor administrator of SOFR designated by the Federal Reserve Bank of New York or other Person acting as the SOFR Administrator at such time.

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Scheduled Unavailability Date” has the meaning set forth in Section 3.3(b)(ii) hereof.

“SOFR Successor Rate” has the meaning set forth in Section 3.3(b) hereof.

“Supported QFC” has the meaning specified in Section 8.19 hereof.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Tax Event” shall be deemed to have occurred on the first to occur of the following: (a) the date of entry of any decree or judgment by a court of competent jurisdiction (whether or not such decree or judgment is appealable or deemed to be final under applicable procedural law, or by operation of law) that interest on a Loan is includable in the gross income of the recipient thereof for federal income tax purposes, or (b) the date of the issuance by the Internal Revenue Service of a Letter 4413 Notice of Proposed Adverse Determination to the Borrower to the effect that all or any portion of the interest on a Loan is not excluded from gross income for federal income tax purposes, or (c) delivery to the Borrower and the Bank of a written legal opinion (which opinion shall not be a reasoned opinion and shall be subject to only customary assumptions and exclusions) of nationally recognized bond counsel reasonably acceptable to the Borrower and the Bank to the effect that an Event of Taxability has occurred with respect to a Loan, or (d) on that date when the Borrower shall receive notice from the Bank (or any assignee or Participant thereof) that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Person the interest on a Loan due to the occurrence of an Event of Taxability, or (e) on that date when the Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability with respect to a Loan shall have in fact occurred, or (f) on the date when the Borrower shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the Borrower, or upon any review or audit of the Borrower or upon any other ground whatsoever, an Event of Taxability shall have occurred with respect to a Loan; *provided, however*, no Tax Event shall occur under subparagraph (b), (d) or (f) hereunder unless the

Borrower has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Tax Event shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Bank (or any assignee or Participant thereof), the Borrower shall promptly reimburse, but solely from payments made by the Borrower, the Bank (or any assignee or Participant thereof) for any payments, including any taxes, interest, penalties or other charges, the Bank (or any assignee or Participant thereof) shall be obligated to make as a result of the Tax Event.

“Taxable Date” means, with respect to a Loan, the date as of which interest on such Loan is first includible in gross income of the recipient thereof (or any assignee or Participant thereof) as a result of an Event of Taxability as such a date is established pursuant to a Tax Event.

“Taxable Period” has the meaning set forth in Section 3.5(a) hereof.

“Taxes” means all present and future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, liabilities or other charges imposed by any applicable Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“United States” or “U.S.” means the United States of America.

“Unutilized Commitment” means on any day the Available Commitment at 2:00 p.m. on such day.

“U.S. Government Securities Business Day” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“U.S. Special Resolution Regimes” has the meaning specified in Section 8.19 hereof.

“UZA” has the meaning given thereto in the MTC Grant Funding Agreement.

Section 1.2. Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise specified herein, the word “from” means “from and including” and the words “till” and “until” each mean “to but excluding.” Unless specified otherwise, all references to time shall mean San Francisco, California time.

Section 1.3. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistently applied.

Section 1.4. Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “but not limited to.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other

document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions set forth herein), (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement.

Section 1.5. Interest Rates. The Bank does not warrant, nor accept responsibility, nor shall the Bank have any liability with respect to the administration, submission or any other matter related any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rates (including, without limitation, any SOFR Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Bank and its Affiliates may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any SOFR Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Bank may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any SOFR Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

ARTICLE II

COMMITMENT; LOANS; PAYMENTS

Section 2.1. Commitment. The Borrower hereby applies to the Bank for and authorizes and instructs the Bank to issue for its account, the Commitment in an amount equal to the Commitment Amount. Subject to the terms and conditions hereof, the Bank, by its acceptance hereof, agrees to make a Loan or Loans, in each case, in U.S. Dollars to the Borrower from time to time prior to the Commitment Termination Date up to the amount of the then Available Commitment.

Section 2.2. Borrowings.

(a) Borrowing of Project Loans.

(i) Each borrowing of a Loan (other than a Repayment Loan) shall be made upon the Borrower's irrevocable notice to the Bank by electronic submission in the form of Exhibit A hereto with blanks appropriately completed (each, a "Request for Loan"). Each Request for Loan shall be signed by an Authorized Officer and shall specify: (i) the Advance Date for the requested Loan which shall be a Business Day; (ii) the principal amount of the Loan to be borrowed, which amount shall not be less than the minimum amount set forth in Section 2.2(a)(iii) and shall not exceed the Available Commitment as of the proposed Advance Date; and (iii) that the proceeds of

the requested Loan shall be used solely for any purpose permitted pursuant to Section 6.15 hereof. Each Loan shall be made as Daily SOFR Rate Loan unless it is illegal for the Bank to make Daily SOFR Rate Loans or the Daily SOFR Rate is unavailable, in either of which case, such Loan shall be made as a Base Rate Loan.

(ii) Each Request for Loan must be received by the Bank not later than 12:00 noon on the Business Day which is one Business Day immediately prior to the requested Advance Date. Any Request for Loan received by the Bank after 12:00 noon on a Business Day shall be deemed received prior to 12:00 noon on the next succeeding Business Day.

(iii) Each borrowing of a Project Loan shall be in a principal amount of not less than \$1,000,000. No more than two (2) Project Loans may be made in a calendar month.

(iv) Each Loan (other than a Repayment Loan) shall be made by the Bank by wire transfer of immediately available funds to or for the account of the Borrower by 11:00 a.m. on the applicable Advance Date in accordance with written instructions provided by the Borrower in its Request for Loan. The Borrower hereby irrevocably instructs the Bank to credit the proceeds of Repayment Loans to the Bank Account.

(b) *Defective Notices.* If, after examination, the Bank shall have determined that a Request for Loan does not conform to the terms and conditions hereof, then the Bank shall use commercially reasonable efforts to give prompt notice to the Borrower to the effect that documentation was not in accordance with the terms and conditions hereof and stating the reasons therefor. The Borrower may attempt to correct any such nonconforming Request for Loan, if, and to the extent that, the Borrower is entitled (without regard to the provisions of this sentence) and able to do so.

Section 2.3. Note; Evidence of Debt. The Loans shall be evidenced by a promissory note in the form attached hereto as Exhibit B, dated the Effective Date, maturing on the Maturity Date and signed by an Authorized Officer (the “Note”). Each Loan made or deemed made by the Bank and all payments and prepayments made on account of the principal thereof shall be recorded by the Bank on the schedule (or a continuation thereof) attached to the Note, it being understood, however, that failure by the Bank to make any such endorsement shall not affect the obligations of the Borrower hereunder or under the Note in respect of unpaid principal and interest on the Loans. The Bank shall maintain in accordance with its usual practice an account evidencing the indebtedness of the Borrower to the Bank resulting from the Loans, including the amounts of principal and interest payable and paid to the Bank from time to time hereunder. The entries made in the account maintained pursuant to the preceding sentence shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Bank to maintain such account or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

Section 2.4. Reduction and Termination of Commitment.

(a) The Borrower may irrevocably elect to terminate the Commitment at any time prior to the Commitment Termination Date upon not less than three (3) Business Days’ prior written notice to the Bank whereupon the Available Commitment shall permanently be reduced to \$0. In connection with any such termination, the Borrower shall pay the Bank all accrued and unpaid Commitment Fees.

(b) The Borrower may irrevocably elect to reduce the Available Commitment by a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof at any time prior to the Commitment Termination Date upon not less than three (3) Business Days' prior written notice to the Bank whereupon the Available Commitment shall be permanently reduced by the amount requested.

Section 2.5. Prepayment of Loans. The Borrower may prepay any Loan, in whole or in part, at any time provided at least one (1) Business Days' prior written notice is given by the Borrower to the Bank. Each such notice shall specify the date and amount of such prepayment. Each such notice of optional prepayment may be conditional upon receipt of funds from refunding obligations to be issued by the Borrower or another party and, if such funds are not received, the Borrower shall have no obligation to make such prepayment. Any partial prepayment of Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. All prepayments of principal shall include accrued interest on such principal to the date of prepayment and all other amounts relating to such principal prepayment due pursuant to this Agreement. Upon written request by the Borrower in connection with a proposed prepayment, the Bank shall promptly provide the Borrower with an accounting of the outstanding principal amount of all Loans and the interest accrued thereon to the proposed prepayment date(s). Notwithstanding anything to the contrary contained herein, the Borrower shall prepay all outstanding Loans together with accrued interest to the date of prepayment and all other amounts due pursuant to this Agreement immediately upon the receipt by the Borrower of the proceeds of any Indebtedness secured by the Collateral (other than the Loans) that is issued or incurred by the Borrower.

Section 2.6. Repayment of Loans. Subject to Section 7.2(b), one fifth of the aggregate principal amount of all Loans outstanding on the first Amortization Date, together with interest accrued thereon through such date, shall be repaid on the first Amortization Date to occur following the Effective Date. Subject to Section 7.2(b), one half of the aggregate principal amount of all Loans outstanding on the second Amortization Date, together with interest accrued thereon through such date, shall be repaid on the second Amortization Date to occur following the Effective Date. Subject to Section 7.2(b), the remaining aggregate principal amount of all Loans outstanding on the Maturity Date, together with interest accrued thereon through such date, shall be repaid in full on the Maturity Date.

Section 2.7. Interest on Loans. Subject to Section 2.9, prior to the occurrence of an Event of Taxability, each Loan made or maintained by the Bank shall bear interest on the unpaid principal amount thereof at a rate per annum equal to: (a) prior to Amortization Period, eighty percent (80%) of the Daily SOFR Rate or the Base Rate, as applicable, plus the Applicable Margin and (b) during the Amortization Period, the Base Rate. Subject to Section 2.9, following the occurrence of an Event of Taxability, each Loan made or maintained by the Bank shall bear interest during each period it is outstanding on the unpaid principal amount thereof at a rate per annum equal to: (i) prior to Amortization Period, one hundred percent (100%) of the Daily SOFR Rate or the Base Rate, as applicable, plus the Applicable Margin and (ii) during the Amortization Period, the Base Rate. Interest on each Loan shall be payable by the Borrower on each Interest Payment Date; *provided, however*, that on or prior to the Commitment Maturity Date, accrued and unpaid interest on each Loan shall be capitalized and added to the principal of such Loan on each Interest Payment Date and on the Commitment Maturity Date by means of a Repayment Loan which shall automatically be deemed made on each such date in the amount of interest due. Notwithstanding anything to the contrary contained herein, upon and during the continuance of an Event of Default

or an Event of Termination, the Borrower shall pay interest on the principal amount of all outstanding Loans, as evidenced by the Note, and all other Obligations under this Agreement at the Default Rate to the fullest extent permitted by Applicable Law, payable on demand. The Bank agrees to give notice to the Borrower if the Default Rate becomes payable as promptly as reasonably practicable thereafter; *provided, however*, that the failure by the Bank to provide prompt notice shall not affect the Bank's right to charge interest at such rate.

Section 2.8. Commitment Fees. The Borrower agrees to pay to the Bank, in immediately available funds, for the period from and including the Effective Date to and excluding the Commitment Maturity Date, in arrears on the first Business Day of each January, April, July and October and on the Commitment Maturity Date, a non-refundable fee (the "Commitment Fee") in an amount equal for each day during such calculation period to the product of the Unutilized Commitment and the Commitment Fee Rate by means of a Repayment Loan which shall automatically be deemed made on each such date in the amount of Commitment Fee due.

Section 2.9. Maximum Interest Rate; Payment of Fee. If the rate of interest payable hereunder with respect to any Loan, the Note or any other Obligations hereunder shall exceed the Maximum Lawful Rate for any period for which interest is payable, then (a) interest at such Maximum Lawful Rate shall be due and payable with respect to such period and (b) interest at the rate equal to the difference between (i) the rate of interest calculated in accordance with the terms hereof and thereof and (ii) such Maximum Lawful Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such Maximum Lawful Rate, at which time the Borrower shall pay or cause to be paid to the Bank, with respect to any Loan, the Note or any other Obligations hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal such Maximum Lawful Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid Loan, the Note or any other Obligations hereunder until all deferred Excess Interest is fully paid to the Bank. On the date on which no principal amount with respect to the Obligations or the Note remains unpaid, in consideration for any limitation of the rate of interest which may otherwise be payable hereunder, the Borrower shall pay or cause to be paid to the Bank a fee equal to the amount of all unpaid deferred Excess Interest (the "Excess Interest Fee").

Section 2.10. Payments and Computations. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. The Borrower shall make or cause to be made each payment hereunder not later than 11:00 a.m. on the day when due, in lawful money of the United States of America to the Bank Account in immediately available funds; *provided, however*, that whenever any payment hereunder shall be due on a day that is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day, and any interest payable thereon shall be payable for such extended time. Payment received by the Bank after the applicable time set forth in this Section 2.10 shall be considered to have been made on the next succeeding Business Day. All computations of interest payable by the Borrower on Daily SOFR Rate Loans shall be computed on the basis of a year of 360 days and the actual days elapsed and all computations of interest payable by the Borrower on Base Rate Loans shall be computed on the basis of a year of 365 days and the actual days elapsed. Interest shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof. All computations of fees payable by the Borrower hereunder shall be made on the basis of a 360-day year but calculated on the actual number of days elapsed. Unless otherwise provided herein, any