



Date: May 19, 2021
To: High-Performance Transportation Enterprise Board
From: Nick Farber, Director, HPTE; Andrew Gomez, HPTE General Counsel
Subject: Burnham Yard Property Loan Agreement

Purpose

The purpose of this memorandum is to summarize the terms of the new loan agreements between the High-Performance Transportation Enterprise (HPTE) and each of Bank of America and JP Morgan for the purchase of the Burnham Yard Property (Property) from the Union Pacific Railroad (UPRR).

Action

Staff is seeking HPTE Board approval of resolution #357 authorizing the execution of the Loan Agreements with Bank of America, N.A. and JPMorgan Chase Bank, N.A.

Background

In February 2021, HPTE asked the banks on its shortlist of approved lenders to discuss possible terms of loan for the purchase of the Property. HPTE received strong interest from the market and ultimately selected Bank of America and JP Morgan as the preferred lenders in April of this year after discussing how CDOT and HPTE were mitigating risk on the project with the Transportation Commission and Board. Each bank is providing approximately \$23.5 million for a total loan amount of up to \$47 million.

Key Details

The Bank of America and JP Morgan loans provide HPTE with a five year term plus a three year term out at an initial 2.5 percent interest rate, which increases during the term out period. The loan is secured by HPTE's 30 year lease with CDOT, and by revenues generated by the Burnham Yard property from resale or lease. If, as described in the CDOT / HPTE Intra-Agency Agreement, CDOT does not determine the quantity and location of the transportation related parcels by the end of the loan term, CDOT is required to provide a Back-up Loan to repay the Bank Loans. Further, once HPTE is ready to sell the property, CDOT is required to top-off HPTE if the Property's disposition does not generate enough revenue to satisfy HPTE's loan balance.¹

Options / Decision Matrix

1. Staff Recommendation: Approve the loan agreements. HPTE and Bank of American and JP Morgan will close on the Loans on May 26th.
2. Do not approve the loan agreements, and direct staff to negotiate different terms.

Attachments

Attachment A: Resolution #357

Attachment B: Form of Loan Agreement between Colorado High-Performance Transportation Enterprise and each of Bank of America, N.A. and JPMorgan Chase Bank, N.A.

¹ Please see the CDOT / HPTE Intra-Agency Agreement for a more detailed explanation of when CDOT is required to top-off HPTE.

LOAN AGREEMENT

between

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE,
as Borrower

and

[_____]
as Lender

Dated as of May [__], 2021

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LOAN AGREEMENT

This LOAN AGREEMENT (as amended, modified or restated from time to time, this “*Agreement*”) is entered into as of May [___], 2021, between the Colorado High Performance Transportation Enterprise, as borrower (the “*Borrower*”), and [Lender], as lender (together with its successors and assigns, the “*Lender*”).

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. In addition to the terms defined in the recitals and elsewhere in this Agreement the following terms shall have the following meanings:

“*Additional Property Expenditures*” has the meaning set forth in the Indenture.

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“*Agreement*” has the meaning set forth in introductory paragraph hereof.

“*Amortization Payment*” has the meaning set forth in Section 3.01(b) hereof.

“*Amortization Payment Date*” means (a) May 15, 2027 and May 15, 2028 and (b) the Final Maturity Date.

“*Amortization Period*” has the meaning set forth in Section 3.01(b) hereof.

“*Audited Financial Statements*” means the audited consolidated balance sheet of the Borrower for the fiscal year ended June 30, 2020, and the related statements of income or operations and cash flows for such fiscal year of the Borrower, including the notes thereto.

“*Bank Rate*” means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one percent (1.00%), (ii) the Federal Funds Rate in effect at such time *plus* three percent (3.00%) and (iii) seven percent (7.00%).

“*Borrower*” has the meaning set forth in the introductory paragraph hereof.

“*Breakage Fee*” has the meaning set forth in Section 3.04 hereof.

“*Burnham Yard CDOT Backup Loan Account*” means the account created within the Indenture whereby any proceeds of CDOT Backup Loans shall be deposited.

“*Burnham Yard Project*” has the meaning set forth in the IAA.

“*Business Day*” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in New York, New York or the states where the principal corporate office of the Borrower or the principal corporate trust office of the Trustee is located are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal office of the Lender is closed.

“*Capitalized Interest Subaccount*” has the meaning set forth in the Indenture.

“*CDOT*” has the meaning set forth in Section 2.02(b) hereof.

“*CDOT Backup Loan*” means any loan or the portion of any loan made by CDOT to the Borrower pursuant to the terms of a CDOT Backup Loan Agreement and the IAA.

“*CDOT Backup Loan Agreement*” means any loan agreement and related promissory note entered into between CDOT and the Borrower pursuant to the terms of the IAA.

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

“*Closing*” has the meaning set forth in Section 2.02 hereof.

“*Closing Date*” has the meaning set forth in Section 2.02(b) hereof.

“*CML*” has the meaning set forth in the Indenture.

“*Code*” means the Internal Revenue Code of 1986.

“*C.R.S.*” has the meaning set forth in Section 2.01(b) hereof.

“*Debt*” of any Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures,

notes, loan agreements, or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and not past due for more than 60 days after the date on which such trade account was created), (d) all obligations of such Person as lessee under capital leases, (e) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (f) all Guarantees by such Person of Debt of other Persons, (g) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments and (h) all obligations of such Person under any Swap Contract.

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

"Default Rate" means a rate per annum equal to the Bank Rate plus 3.00%.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

"Director" means the director of the Borrower.

"Environmental Laws" means any and all Federal, state and local, statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"Event of Default" has the meaning set forth in Section 7.01 hereof.

"Event of Non-Allocation" means the failure of the Transportation Commission to allocate funds to make CDOT Backup Loans or any other backup loans requested by the Borrower.

"Event of Non-Allocation (OLA)" has the same meaning herein as the defined term *"Event of Non-Allocation"* contained in any Other Loan Agreement.

"Excess Interest Amount" has the meaning set forth in Section 3.03(b) hereof.

“*Federal Funds Rate*” means [_____].¹

“*Final Maturity Date*” means, with respect to the Loan after the Interest Rate Reset Date, the earlier to occur of (i) the third anniversary of the Interest Rate Reset Date, or (ii) the date that the principal of and interest on the Note is accelerated following the occurrence of an Event of Default.

“*Fiscal Year*” means the twelve month period from July 1 through the following June 30.

“*Front Range Passenger Rail*” has the meaning set forth in the Indenture.

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

“*Guarantee*” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the “*primary obligor*”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “*Guarantee*” as a verb has a corresponding meaning.

¹ See Lender specific insert.

“*Holder*” or “*Noteholder*,” whenever used herein with respect to the Note, means the Person in whose name the Note is registered, including, if applicable, the Lender.

“*IAA*” has the meaning set forth in Section 2.02(b) hereof.

“*Indenture*” means the State of Colorado, Colorado High Performance Transportation Enterprise Burnham Yard Indenture of Trust dated as of May [__], 2021, by and between the Borrower and the Trustee, relating to the State of Colorado, Colorado High Performance Transportation Enterprise Burnham Yard Revenue Notes (Burnham Yard Project), Series 2021[A][B], as may be amended, restated, or otherwise modified from time to time in accordance with the terms thereof and hereof.

“*Initial Rate*” has the meaning set forth in Section 3.02(a) hereof.

“*Interest Payment Date*” has the meaning set forth in Section 3.02(a) hereof.

“*Interest Rate Reset Date*” has the meaning set forth in Section 3.01(a) hereof.

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

“*Lease*” means that certain Lease dated as of May [__], 2021 entered into pursuant to the IAA between HPTE, as lessee, and CDOT, as tenant, as supplemented or amended from time to time pursuant to the terms hereof and thereof.

“*Lender*” has the meaning set forth in the introductory paragraph hereof.

“*Lender Transferee*” has the meaning set forth in Section 8.19(b) hereof.

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“*Loan*” has the meaning set forth in Section 2.01 hereof.

“*Loan Obligations*” has the meaning set forth in Section 5.16 hereof.

“*Margin Stock*” has the meaning ascribed to such term in Regulation U promulgated by the FRB, as now and hereafter from time to time in effect.

“*Material Adverse Effect*” means: (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower; (b) a material impairment of (i) the ability of the Borrower to perform its obligations under any Related Document to which it is a party or (ii) the ability of CDOT to perform its obligations under the IAA or the Lease; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower or CDOT of any Related Document to which it is a party or the rights, security, interests or remedies of the Lender hereunder or under any other Related Document.

“*Maximum Interest Rate*” means the maximum interest rate permitted by applicable law.

“*Non-Lender Transferee*” has the meaning set forth in Section 8.19(c) hereof.

“*Note*” has the meaning set forth in Section 2.01(b) hereof.

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

“*Other Loan Agreement*” means the Loan Agreement dated as of May [___], 2021, between the Borrower and the [_____], as amended, supplemented, modified or restated from time to time.

“*Participant*” has the meaning set forth in Section 8.19(d) hereof.

“*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).

“*Pension Plan*” means any “employee pension benefit plan” which is (a) maintained by HPTE or (b) maintained by any other Person and to which HPTE contributes (or permits any other Person to contribute) or has an obligation to contribute, or has made contributions at any time during the immediately preceding six (6) plan years.

“*Permitted Encumbrance*” means the Lease.

“*Person*” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“*Plan*” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“*Prime Rate*” means [_____].²

“*Principal Amount*” has the meaning set forth in Section 2.01 hereof.

“*Property*” has the meaning set forth in the Indenture.

“*PSA*” means the Purchase and Sale Agreement dated as of May [___], 2021, between Union Pacific Railroad Company and Colorado High Performance Transportation Enterprise, as the same may be amended from time to time in accordance with the terms thereof and hereof.

“*Related Documents*” means this Agreement, the IAA, any CDOT Backup Loan Agreement, the Note, the Indenture, the Lease, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder.

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

“*Retainage Election Date*” means the date upon which CDOT, upon notice to the Borrower and the Bank, elects the percentage of the property to be retained by CDOT.

“*Revenues*” has the meaning set forth in the Indenture.

“*RTD*” has the meaning set forth in the Indenture.

“*Sanction(s)*” means any international economic 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 or other relevant sanctions authority.

“*State*” has the meaning set forth in Section 2.02(f) hereof.

“*Supplemental Public Securities Act*” means Title 11, Article 57, Part 2, C.R.S.

“*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

² See Lender specific insert.

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.

“*Trustee*” means Zions Bancorporation, National Association, or a successor Trustee appointed in accordance with the provisions hereof.

“*Trust Estate*” has the meaning set forth in the Indenture.

ARTICLE II

LOAN

Section 2.01. Agreement to Make Loan. Subject to the terms and conditions set forth in Section 2.02 hereof, the Lender agrees to make a loan to the Borrower (the “*Loan*”), in the aggregate principal amount of \$[**22,500,000**] (the “*Principal Amount*”) on the Closing Date.

(a) *Deposit of Loan Proceeds.* The proceeds of the Loan shall be applied as follows:

(i) [\$_____] shall be deposited in the Capitalized Interest Subaccount of the Burnham Yard Loan Repayment Account; and

(ii) the remainder of the proceeds of the Loan shall be deposited into the Burnham Yard Project Account.

(b) *Note.* (i) The Borrower’s obligation to pay the Lender the Principal Amount of and interest on the Note and all other Loan Obligations (a) is evidenced by a note (the “*Note*”) in the form attached as Exhibit A hereto and (b) is a “bond” within the meaning of Colorado Revised Statutes, as amended (“*C.R.S.*”) § 43-4-803(2).

(ii) The Note shall be designated “Colorado High Performance Transportation Burnham Yard Note (Burnham Yard Project, Series 2021[A][B]”. The Note shall be in fully registered form, shall be in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof and shall be numbered in such reasonable fashion as may be selected by the Trustee.

Section 2.02. Closing. The Lender shall deliver the Principal Amount to the Borrower in immediately available funds (referred to as the “*Closing*”) on [May __, 2021], or such other date mutually agreed to by the Borrower and the Lender (such date is referred to as the “*Closing Date*”) at 10:00 a.m. Denver time or such other time mutually agreed to by the Borrower and the Lender on the Closing Date, upon delivery to the Lender of the documents, and satisfaction of the other conditions, described below:

(a) Executed copies of this Agreement, the Other Loan Agreement, the Note and the Indenture.

(b) An executed copy of the (i) Intra-Agency Agreement dated as of [May __, 2021] (the “IAA”), between the Borrower and the State of Colorado, for the use and benefit of the Colorado Department of Transportation (“CDOT”), and (ii) an executed original or certified copy, as applicable, of each of the other Related Documents.

(c) A certified copy of the resolution of the Board of Directors of the Borrower authorizing the execution and delivery of this Agreement, the Other Loan Agreement, the IAA, the Lease, the Indenture and the Note.

(d) A certified copy of the resolution of the Colorado Transportation Commission authorizing the execution and delivery of the IAA and the Lease.

(e) A legal opinion in form and substance satisfactory to the Lender addressed to the Lender from the Colorado Attorney General.

(f) A legal opinion in form and substance satisfactory to the Lender addressed to the Lender from Kaplan Kirsch & Rockwell LLP, the Borrower’s special counsel, to the effect that, assuming the enforceability of this Agreement against the Lender: (i) the Borrower is an enterprise for purposes of Article X, Section 20 of the State Constitution; and (ii) this Agreement, the Note and the IAA are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado (the “State”) and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(g) A legal opinion in form and substance satisfactory to the Lender addressed to the Lender from the Colorado Attorney General, CDOT’s legal counsel, to the effect that, assuming the enforceability of the Lease and the IAA against the Borrower the Lease and the IAA are valid and binding obligations of CDOT, enforceable against CDOT in accordance with each of their terms, limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(h) A certificate dated the Closing Date and executed by the Borrower and CDOT certifying (A) that there has been no event or circumstance since June 30, 2020, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (B) that the representations and warranties contained in Article

V hereof and the other Related Documents are true and correct in all material respects on the Closing Date, (C) no event has occurred and is continuing, or would result from entry into this Agreement, which would constitute a Default or Event of Default and (D) the Principal Amount, together with available CDOT moneys, is sufficient to complete the Burnham Yard Project on or before the Interest Rate Reset Date;

(i) A certificate dated the Closing Date and executed by the Borrower certifying the names, titles, offices and signatures of the persons authorized to sign, on behalf of the Borrower, the Related Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder;

(j) A certificate dated the Closing Date and executed by CDOT certifying the names, titles, offices and signatures of the persons authorized to sign, on behalf of CDOT, the Related Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder;

(k) A title report and survey satisfactory to the Lender;

(k) On the Effective Date, the Borrower shall pay to Lender in immediately available funds an upfront fee equal to \$100,000; and

(l) On or prior to the Effective Date, the Lender shall have received reimbursement (or direct payment) of the Lender's fees and expenses (including the legal fees of Chapman and Cutler LLP and Butler Snow LLP) and any other fees incurred in connection with the transactions contemplated by the Related Documents.

ARTICLE III

LOAN OBLIGATIONS

Section 3.01. Payment of Principal Amount. (a) The Borrower shall pay to the Lender the Principal Amount of the Note in full on May 15, 2026 (the "*Interest Rate Reset Date*"); *provided however*, if on the Interest Rate Reset Date the following statements shall be true and correct and the Lender shall have received a certificate incorporating by reference the definitions of the capitalized terms defined in this Agreement, signed by the Director and dated the Interest Rate Reset Date, stating that (i) the representations and warranties of the Borrower contained herein and in each of the other Related Documents are true and correct on and as of the Interest Rate Reset Date as though made on and as of such date, (ii) no Default or Event of Default has occurred and is continuing as of Interest Rate Reset Date, and (iii) no Event of Non-Allocation or Event of Non-Allocation (OLA) has occurred, commencing on the Interest Rate Reset Date the Note shall bear interest at the Bank Rate and be subject to amortization as set forth in Section 3.01(b) below; *provided* that for the period from and including May 15, 2027 to but excluding May 15, 2028, the Note shall bear interest of the Bank Rate plus 1.0% and for the period from and including May 15, 2028 to and including the Final Maturity Date, the Note shall bear interest of the Bank Rate plus 2.0%.

(b) If the conditions set forth in Section 3.01(a) are satisfied on the Interest Rate Reset Date, the outstanding principal amount of the Note shall be paid in installments payable on each Amortization Payment Date (each such payment, an “*Amortization Payment*”), with the final installment in an amount equal to the entire then-outstanding principal amount of the Note to be paid in full on the Final Maturity Date (the period commencing on the Interest Rate Reset Date and ending on the Final Maturity Date is herein referred to as the “*Amortization Period*”). Each Amortization Payment shall be in an amount rounded up to the nearest \$5,000 denomination determined as set forth below:

AMORTIZATION PAYMENT DATE	
May 15, 2027	33.4% of the outstanding principal amount of the Loan on such date
May 15, 2028	33.3% of the outstanding principal amount of the Loan on such date
May 15, 2029 (Final Maturity Date)	Remaining amount of the outstanding principal amount of the Loan plus all accrued and unpaid interest on such date

Notwithstanding the foregoing and pursuant to the terms of Section 7.02 hereof, upon an Event of Default, the Lender may cause an acceleration of the Note by delivering a written notice to the Borrower that an Event of Default has occurred and is continuing and instructing the Borrower that the Note is subject to acceleration.

Section 3.02. Payment of Interest. (a) From and including the Closing Date to but excluding the Interest Rate Reset Date, interest shall accrue at the rate of [____]% (the “*Initial Rate*”), computed on the basis of a 360-day year of twelve 30-day months, and shall be paid on each December 15 (commencing on December 15, 2021) (each an “*Interest Payment Date*”), subject to the other provisions of this Article III.

(b) If the conditions set forth in Section 3.01(a) are satisfied on the Interest Rate Reset Date, interest shall be computed on the basis of a 365-day year and the actual number of days elapsed, and shall be paid on the first Business Day of each calendar month.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default, the Note and all other Loan Obligations shall bear interest at the Default Rate, which shall be payable by the Borrower to each Noteholder upon demand therefor and be calculated on the basis of a 360-day year and the actual number of days elapsed.

Section 3.03. Maximum Interest Rate. (a) If the amount of interest payable for any period in accordance with the terms hereof or the Note exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate.

(b) Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph (a) shall accrue and be payable as provided in this paragraph (b) and shall, less interest actually paid to the Lender for such period, constitute the “*Excess Interest Amount.*” If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which interest is payable shall bear interest at the Maximum Interest Rate until payment to the Lender of the entire Excess Interest Amount (the difference between the amount of interest generated at the Maximum Interest Rate and that generated at the then-current rate being applied against the Excess Interest Amount due).

(c) Notwithstanding the foregoing, on the date on which no principal amount with respect to the Note remains unpaid, to the extent permitted by law, the Borrower shall pay to the Lender a fee equal to any accrued and unpaid Excess Interest Amount.

Section 3.04. Optional Prepayment. The Borrower shall have the ability to optionally prepay all or any portion of the Loan only on or after May 15, 2025 (“*Optional Prepayment Date*”) upon providing the Lender with three (3) days’ prior written notice before any such prepayment of the Note. No optional prepayments are permitted prior to the Optional Prepayment Date. If for any reason, including as a result of acceleration or otherwise, any principal amount of the Loan is paid prior to the Optional Prepayment Date then, within fifteen (15) days of the Lender’s written request, the Borrower shall pay to the Lender a Breakage Fee (the “*Breakage Fee*”) in accordance with the calculation set forth on Exhibit B hereto.

ARTICLE IV

RESERVED.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Borrower makes the following representations and warranties to the Lender:

Section 5.01. Existence and Power. The Borrower is government-owned business within CDOT in accordance C.R.S. § 43-4-806(2)(a) and is an enterprise within the meaning of article X, Section 20(2)(d) of the Colorado Constitution receiving less than 10% of its annual revenue in grants from all State and local governments combined, duly organized, validly existing and in good standing under the laws of the State and has the power and authority to own its properties and to carry on its businesses as now being conducted and as currently contemplated to be conducted hereafter and is duly qualified to do business in each jurisdiction in which the character of the properties owned or leased by it or in which the transactions of any material portion of its business (as now conducted and as currently contemplated to be conducted) makes such qualification necessary.

Section 5.02. Due Authorization. (a) The Borrower has the corporate power, and has taken all necessary corporate action to authorize the Related Documents to which it is a party, and to execute, deliver and perform its obligations under this Agreement and each of the other Related Documents to which it is a party in accordance with their respective terms. The Borrower has approved the form of the Related Documents to which it is not a party, if any.

(b) The Borrower is duly authorized to own the Property needed to operate the Burnham Yard Project and to operate its business under the laws, rulings, regulations and ordinances of all Governmental Authorities having the jurisdiction to license or regulate such Property or business activity and the departments, agencies and political subdivisions thereof, and the Borrower has obtained all requisite approvals of all such governing bodies required to be obtained for such purposes. All Governmental Approvals necessary for the Borrower to enter into this Agreement and the other Related Documents and to perform the transactions contemplated hereby and thereby and to conduct its business activities and own the Property used in connection with the Burnham Yard Project have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other Governmental Approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Borrower of this Agreement or the due execution, delivery or performance by the Borrower of the other Related Documents.

Section 5.03. Valid and Binding Obligations. This Agreement and the Note have been duly executed and delivered by one or more duly authorized officers of the Borrower, and each of the Related Documents to which the Borrower is a party, when executed and delivered by the Borrower will be, a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 5.04. Noncontravention; Compliance with Law. (a) The execution, delivery and performance of this Agreement, the Note and each of the other Related Documents in accordance with their respective terms do not and will not (i) contravene the Borrower's authorizing legislation, (ii) require any consent or approval of any creditor of the Borrower, (iii) violate any Laws, (iv) conflict with, result in a breach of or constitute a default under any contract to which the Borrower is a party or by which it or any of its Property may be bound or (v) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by the Borrower or any Affiliate thereof except such Liens, if any, expressly created by any Related Document or as expressly permitted by Section 6.13 hereof.

(b) The Borrower is in compliance with all applicable Laws, except for such noncompliance that, singly or in the aggregate, has not caused or is not reasonably expected to cause a Material Adverse Effect.

Section 5.05. Pending Litigation and Other Proceedings. There is no action, suit or proceeding pending in any court, any other Governmental Authority with jurisdiction over the Borrower or any arbitration in which service of process has been completed against the Borrower

or, to the knowledge of the Borrower, any other action, suit or proceeding pending or threatened in any court, any other Governmental Authority with jurisdiction over the Borrower or any arbitrator, in either case against the Borrower or any of its properties or revenues, or any of the Related Documents to which it is a party, which is reasonably likely to result in a Material Adverse Effect.

Section 5.06. Financial Statements. The Audited Financial Statements, heretofore furnished to the Lender, fairly present the financial condition of the Borrower in all material respects as of such date and the results of its operations for the period then ended in conformity with GAAP. Since the date of the Audited Financial Statements, there has been no material adverse change in the financial condition or operations of the Borrower that could reasonably be expected to result in a Material Adverse Effect.

Section 5.07. Employee Benefit Plan Compliance. The Borrower is not subject to ERISA and maintains no Plans.

Section 5.08. No Defaults. No default by the Borrower has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Debt including, without limitation, regularly scheduled payments on Swap Contracts. No bankruptcy, insolvency or other similar proceedings pertaining to the Borrower or any agency or instrumentality of the Borrower are pending or presently contemplated. No Default or Event of Default has occurred and is continuing hereunder. No “default” or “event of default” under, and as defined in, any of the other Related Documents has occurred and is continuing. The Borrower is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect. The Borrower is not in violation of any material term of the authorizing legislation applicable to the Borrower or any material term of any bond indenture or agreement to which it is a party or by which any of its Property is bound which could reasonably be expected to result in a Material Adverse Effect.

Section 5.09. Insurance. The Borrower currently maintains a program of self insurance as described in Exhibit D attached hereto.

Section 5.10. Title to Assets. The Borrower has good and marketable title to its assets and the Property. The Trust Estate is not subject to any Lien other than Liens permitted by Section 6.13 hereof.

Section 5.11. Incorporation by Reference. The representations and warranties of the Borrower contained in the other Related Documents to which the Borrower is a party, together with the related definitions of terms contained therein, are hereby incorporated by reference in this Agreement as if each and every such representation and warranty and definition were set forth herein in its entirety, and the representations and warranties made by the Borrower in such Sections are hereby made for the benefit of the Lender. No amendment to or waiver of such representations and warranties or definitions made pursuant to the relevant Related Document or incorporated by reference shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Lender.

Section 5.12. Correct Information. All information, reports and other papers and data with respect to the Borrower or CDOT furnished by the Borrower to the Lender were, at the time the same were so furnished, correct in all material respects. Any financial, budget and other projections furnished by the Borrower to the Lender were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent (subject to the updating or supplementation of any such financial, budget or other projections by any additional information provided to the Lender in writing, the representations contained in this Agreement being limited to financial, budget or other projections as so updated or supplemented), in the judgment of the Borrower, a reasonable, good faith estimate of the information purported to be set forth, it being understood that uncertainty is inherent in any projections and that no assurance can be given that the results set forth in the projections will actually be obtained. No fact is known to the Borrower that materially and adversely affects or in the future may (as far as it can reasonably foresee) materially and adversely affect the security for the Note, or the ability of the Borrower to repay when due the Obligations, that has not been set forth in the financial statements and other documents referred to in this Section 5.12 or in such information, reports, papers and data or otherwise disclosed in writing to the Lender. As of the Closing Date, the documents furnished and statements made by the Borrower in connection with the negotiation, preparation or execution of this Agreement and the other Related Documents do not contain untrue statements of material facts or omit to state material facts necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

Section 5.13. Margin Stock. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds from the Note will be used to purchase or carry any such Margin Stock or extend credit to others for the purpose of purchasing or carrying any such Margin Stock.

Section 5.14. Usury. None of the Related Documents provide for any payments that would violate any applicable law regarding permissible maximum rates of interest.

Section 5.15. Security. As granted under the Indenture, the Borrower's obligation to pay the principal of and interest on the Note and any other amounts payable by the Borrower hereunder (the "Loan Obligations") are secured by a pledge of and lien on the Trust Estate.

Section 5.16. Pending Legislation and Decisions. There is no amendment to the Constitution of the State, or to the knowledge of the Borrower, proposed amendment to the Constitution of the State that has passed either house of the legislature of the State or for which a petition with the requisite number of signatures has been filed with the Secretary of State of the State, or proposed amendment to any State law that has passed either house of the legislature of the State or for which a petition with the requisite number of signatures has been filed with the Secretary of State of the State, or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to result in a Material Adverse Effect.

Section 5.17. Solvency. The Borrower and CDOT are solvent and able to pay its debts as they become due.

Section 5.18. Environmental Matters. The operations of the Borrower with respect to the Burnham Yard Project are in material compliance with all of the requirements of applicable Environmental Laws and are not the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, where a failure to comply with any such requirement or the need for any such remedial action could reasonably be expected to result in a Material Adverse Effect.

Section 5.19. No Immunity. The Borrower represents that, under C.R.S. § 24-10-106, its governmental immunity is limited to claims for injury which lie in tort or could lie in tort. Under existing law, the Borrower is not entitled to raise the defense of sovereign immunity in connection with any legal proceeding to enforce or collect upon this Agreement, the other Related Documents or the transactions contemplated hereby or thereby, including the payment of the principal of and interest on the Note or the payment of the other Loan Obligations; *provided however* no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

Section 5.20. No Public Vote or Referendum. There is no public vote or referendum pending, proposed and that has passed either house of the legislature of the State or for which a petition with the requisite number of signatures has been filed with the Secretary of State of the State or concluded, the results of which could reasonably be expected to result in a Material Adverse Effect.

Section 5.21. Swap Contracts. The Borrower has not entered into any Swap Contract relating to Debt (a) wherein any termination payment thereunder is senior to or on a parity with the payment of the Loan or the other Loan Obligations or (b) which requires the Borrower to post cash collateral to secure its obligations thereunder.

Section 5.22. OFAC. Neither the Borrower, nor, to the knowledge of the Borrower, any Related Party, (a) is currently the subject of any Sanctions, (b) is located, organized or residing in any Designated Jurisdiction, or (c) is or has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. The proceeds from the Loan or the transaction contemplated by this Agreement have not been used, directly or indirectly, to lend, contribute, provide or otherwise be made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including any Noteholder) of Sanctions.

Section 5.23. Taxes. The Borrower has filed or caused to be filed, if any, all material tax returns required by Law to be filed and has paid or caused to be paid all material taxes, assessments and other governmental charges levied upon or in respect of any of its properties, assets or

franchises, other than taxes the validity or amount of which are being contested in good faith by the Borrower by appropriate proceedings and for which the Borrower shall have set aside on its books adequate reserves in accordance with GAAP.

Section 5.24. Other Debt and Liens. Except as otherwise provided in this Agreement, the Other Loan Agreement, the Indenture and the IAA, the Borrower has not issued or incurred any debt or financial obligation payable from, and has not pledged or granted a lien upon, the Revenues or the accounts established pursuant to the Indenture.

ARTICLE VI

COVENANTS

The Borrower covenants and agrees, until the full and final payment and satisfaction of all of the Loan Obligations, unless the Lender shall otherwise consent in writing, that:

Section 6.01. Existence, Etc. The Borrower (a) shall maintain its existence as a government-owned business within CDOT pursuant to its authorizing legislation and the laws of the State and as an enterprise within the meaning of Article X, Section 20(2)(d) of the Colorado Constitution and (b) except for disposition of Burnham Yard as provided in the IAA, shall not liquidate or dissolve, or sell or lease or otherwise transfer or dispose of all or any substantial part of its property, assets or business, or combine, merge or consolidate with or into any other.

Section 6.02. Maintenance of Properties. The Borrower shall, in all material respects, maintain, preserve and keep the Burnham Yard Project in good repair, working order and condition (ordinary wear and tear excepted), except to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The Borrower shall operate and maintain the Burnham Yard Project in an efficient and economical manner and in accordance with applicable law and the Related Documents.

Section 6.03. Compliance with Laws; Taxes and Assessments. The Borrower shall comply with all Laws applicable to it and the Burnham Yard Project, except where non-compliance could not reasonably be expected to result in a Material Adverse Effect, such compliance to include, without limitation, paying all taxes, assessments and governmental charges imposed upon it or the Burnham Yard Project before the same become delinquent, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and reserves are provided therefor that in the opinion of the Borrower are adequate.

Section 6.04. Insurance. The Borrower shall maintain a self-insurance insurance program sufficient to cover such risks as are usually carried by organizations engaged in the same or a similar business and similarly situated. The Borrower shall upon request of the Lender furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section 6.04.

Section 6.05. Reports. The Borrower shall furnish to the Lender in form and detail satisfactory to the Lender:

(a) *Annual Report.* As soon as available, and in any event not later than the 270 days following each Fiscal Year, the annual audited financial statements of the Borrower, together with the opinion of the Borrower's independent accountants.

(b) *Comprehensive Annual Financial Report.* As soon as available, and in any event not later than the 270 days following each Fiscal Year, the Comprehensive Annual Financial Report of the State, which shall include CDOT and the Borrower as a component unit of CDOT.

(c) *Compliance Certificate.* In connection with the financial statements required to be delivered by the Borrower pursuant to Sections 6.05(a) and (b) hereof, a Compliance Certificate signed by Director (x) stating that no Event of Default or Default has occurred, or if such Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default, (y) demonstrating compliance with the financial covenant set forth in Section 6.08 hereof, if applicable as of such date, (z) stating whether or not an Event of Non-Allocation has occurred, and (aa) based on the projections of Revenues included in the report delivered to the Lender pursuant to Section 6.05(c) hereof, the details of any anticipated request for a CDOT Backup Loan pursuant to the IAA.

(d) *Budget.* As soon as available, and in any event within thirty (30) days following the commencement of each Fiscal Year, the operating budget of the Borrower including information regarding the anticipated financial activities of the Burnham Yard Project.

(e) *Notice of Default or Event of Default.* (i) Promptly upon obtaining knowledge of any Default or Event of Default hereunder or under the PSA (as such "event of default" may be defined therein), or notice thereof, and in any event within five (5) days thereafter, a certificate signed by the Director specifying in reasonable detail the nature and period of existence thereof and what action the Borrower has taken or proposes to take with respect thereto; and (ii) promptly following a written request of the Lender, a certificate of the Director as to the existence or absence, as the case may be, of a Default or an Event of Default under this Agreement or the PSA.

(f) *Litigation.* As promptly as practicable, written notice to the Lender of all actions, suits or proceedings pending or threatened against the Borrower before any arbitrator of any kind or before any court or other Governmental Authority which could reasonably be expected to result in a Material Adverse Effect.

(g) *Amendments.* Promptly after the adoption thereof and to the extent the Borrower is not required to receive and make notice of the same, copies of any amendments to the Related Documents or to any provisions of the same.

(h) *Material Adverse Effect.* Promptly upon obtaining knowledge of the occurrence of any event or any other facts that could be reasonably expected to result in a Material Adverse Effect, and in any event within five (5) days thereafter, a certificate signed by the Director

specifying in reasonable detail the nature and period of existence thereof and what action the Borrower has taken or proposes to take with respect thereto.

(i) *Event of Non-Allocation.* Promptly upon obtaining knowledge of any Event of Non-Allocation or any other facts that could be reasonably expected to result in an Event of Non-Allocation, and in any event within five (5) days thereafter, a certificate signed by the Director specifying in reasonable detail such Event of Non-Allocation and what action the Borrower has taken or proposes to take with respect thereto.

(j) *CDOT Backup Loans.* Promptly upon requesting the same, notice of any request for a CDOT Backup Loan pursuant to Section III.2 and Section III.3 of the IAA; *provided* that the Borrower shall promptly notify the Lender of any anticipated request for a CDOT Backup Loan prior the actual making of the request. The Borrower shall provide a copy to the Lender of any correspondence from CDOT regarding the approval or denial of a CDOT Backup Loan.

(k) *Project Documents.* As soon as available, and in any event not later than the 60 days following each quarterly fiscal period, the Borrower will deliver to the Lender a written status report relating to the Burnham Yard Project, including but not limited to (i) updates on environmental studies related to the Transportation Projects to determine the exact quantity and location of the right-of-way that is to be retained by CDOT on the Burnham Yard Project for the Transportation Projects (the “*Retained Property*”); (ii) the Small Area Planning process, in partnership with the City and County of Denver, to determine specific mobility needs, as well as to advance land use planning, visioning for the future of the Burnham Yard, entitlements, environmental, and other property-related diligence, in contemplation of disposition to one or more developers or partnering state agencies of the portions of the Burnham Yard finally determined by CDOT not to be needed for the Transportation Projects (the “*Remnant Property*”); (iii) schedule for the disposition of the Remnant Property and (iv) accounting of Additional Property Expenditures referred to in the IAA and the then current balance of the \$5,000,000 set aside for such purposes related expenditures.

(l) *Fees for Services; Payment in Exchange for Goods.* Promptly upon requesting the same, notice of any request by the Borrower for any fees for services or payment in exchange for goods pursuant to Section I.1 of the IAA. Additionally, if applicable, any failure by CDOT to reimburse such fees or make any such payment pursuant to Section I.1 of the IAA.

(m) *Notices of Withdrawal of Support.* Promptly upon obtaining knowledge of the same, the Borrower shall provide notice to the Bank of any withdrawal of support of the Burnham Yard Project from any party involved in the Burnham Yard Project, including but not limited to any party involved in the Environmental Impact Study, the Front Range Passenger Rail, the CML, the RTD or any other transportation project in connection with the Burnham Yard Project.

(n) *Additional Property Expenditures.* Promptly upon obtaining knowledge of the same, either through the Borrower’s own diligence or an estimate provided by a third-party contractor, the Borrower shall provide notice to the Bank that the Additional Property Expenditures will be higher. Additionally, as soon as available, the Borrower shall provide to the Bank such new

projected cost for remediation as well as a proof of allocation from CDOT or another governmental source covering such increased cost for remediation.

(o) *Deed Restrictions.* As soon as available, and in any event not later than the 60 days following each quarterly fiscal period, the Borrower shall deliver to the Bank, in a format acceptable to the Bank, a progress report on the environmental remediation of the Property and release of the deed restrictions set forth in the PSA. Notwithstanding the foregoing, promptly upon obtaining knowledge of the same, the Borrower shall provide notice to the Bank as soon as any deed restriction provided for under the PSA has been cleared.

(p) *Other Information.* Such other information regarding the business affairs, financial condition and/or operations of the Borrower and/or the Burnham Yard Project as the Lender may from time to time reasonably request.

Section 6.06. Maintenance of Books and Records. The Borrower will keep proper books of record and account in which full, true and correct entries shall be made in accordance with GAAP. All financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements, except as otherwise specifically prescribed herein. Except as provided in the immediately preceding sentence, in preparing any financial data or statements contemplated or referred to in this Agreement, the Borrower shall not vary or modify the accounting methods or principles from the accounting standards employed in the preparation of its audited financial statements described in Section 5.06 hereof.

Section 6.07. Access to Books and Records. The Borrower will permit any Person designated by the Lender to visit any of the offices of the Borrower to examine the books and financial records (except books and financial records the examination of which by the Lender is prohibited by Law or by attorney or client privilege), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Borrower with its principal officers, employees and independent public accountants, all at such reasonable times and as often as the Lender may reasonably request.

Section 6.08. Compliance With Documents. The Borrower agrees that it will perform and comply with each and every material covenant and agreement required to be performed or observed by it in the Related Documents to which it is a party, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Lender and shall be enforceable against the Borrower. To the extent that any such incorporated provision permits the Borrower or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the Borrower or any other party, for purposes of this Agreement, any such material provision shall be complied with unless it is specifically waived by the Lender in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Lender

which shall only be evidenced by the written approval by the Lender of the same. Except as permitted by Section 6.13 hereof, no termination or amendment to such covenants and agreements or defined terms or release of the Borrower with respect thereto made pursuant to any of the Related Documents to which the Borrower is a party, shall be effective to terminate or amend such covenants and agreements and defined terms or release the Borrower with respect thereto in each case as incorporated by reference herein without the prior written consent of the Lender. Notwithstanding any termination or expiration of any such Related Document to which the Borrower is a party, the Borrower shall continue to observe the covenants therein contained for the benefit of the Lender until the termination of this Agreement and the payment in full of the Loan and all other Loan Obligations. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

Section 6.09. No Impairment. The Borrower will not take any action which would materially adversely affect the rights, interests, remedies or security of the Lender under this Agreement or any other Related Document or which could reasonably be expected to result in a Material Adverse Effect.

Section 6.10. Application of Loan Proceeds. The Borrower will not take or omit to take any action, which action or omission will in any way result in the proceeds from the Loan being applied in a manner other than to finance the Burnham Yard Project or, under certain circumstances, to pay the Loan Obligations as set forth herein. Any proceeds of long-term indebtedness secured by or payable from a lien on Revenues must first be used to repay any outstanding Loan Obligations.

Section 6.11. Limitation on Additional Debt. The Borrower will not issue and/or incur any additional Debt payable from or secured by the Trust Estate without the prior written consent of the Lender, except to issue additional indebtedness that is used to pay all Outstanding Loan Obligations.

Section 6.12. Related Documents. The Borrower shall not modify, amend or consent to any modification, amendment or waiver in any material respect of any Related Document without the prior written consent of the Lender.

Section 6.13. Liens. Until the Loan Obligations are paid in full or except as approved by the Lender in writing, the Borrower will not issue or incur any other debt or financial obligation payable from, and will not pledge or grant a lien upon or permit there to exist a Lien or encumbrance upon the Revenues, the Property, except for Permitted Encumbrances, or the accounts established pursuant to the Indenture or the Trust Estate (other than the Lien pledged pursuant to the Indenture); *provided* that the foregoing shall not operate to prevent (i) contracts for the design and construction of the Burnham Yard Project; (ii) financial obligations to make payments that qualify as Project Costs; and (iii) this Agreement, the Note, the Outstanding Loan Agreement, the Indenture, the Lease, and the IAA.

Section 6.14. Disclosure to Participants, Lender Transferees and Non-Lender Transferees. The Borrower shall permit the Lender to disclose the financial information received by it pursuant to this Agreement to each Participant of the Lender, Lender Transferee and Non-Lender Transferee pursuant to Section 8.19 of this Agreement, subject to confidentiality restrictions and use restrictions customary for financial institutions.

Section 6.15. Immunity from Jurisdiction. To the fullest extent permitted by law, the Borrower will not assert any immunity it may have as a public entity under the laws of the State from lawsuits with respect to the Loan, the other Loan Obligations, this Agreement or any other Related Document.

Section 6.16. Swap Contracts. Without the prior written consent of the Lender, the Borrower will not enter into any Swap Contract relating to Debt (a) wherein any termination payments thereunder are senior to or on parity with the payment of the Loan or the other Loan Obligations with respect to the Trust Estate or (b) which requires the Borrower to post cash collateral that is part of the Trust Estate to secure its obligations thereunder.

Section 6.17. Budget and Allocation. To the fullest extent permitted and/or required by State law, the Borrower shall cause the appropriate Borrower official(s) to take any and all ministerial actions that may be necessary to facilitate the payment of the principal of and interest on the Note and the payment of all other Loan Obligations and to include the principal of and interest on the Note and the payment of all other Loan Obligations in the annual budget of the Borrower and in any allocation measures adopted by its Board of Directors. The Borrower shall determine, in consultation with the Lender, the estimated maximum amount of Loan Obligations that is expected to be payable in the succeeding fiscal year and to notify the Director in writing of such amount in order for CDOT to timely budget for such amounts, on or before September 15 of the immediately preceding Fiscal Year. At any time during a fiscal year that Loan Obligations not contemplated by the preceding sentence are due and payable, the Borrower shall promptly notify CDOT of such amount and shall request CDOT to submit a supplemental budget request to the Transportation Commission at its next regularly scheduled monthly meeting for an allocation or supplemental allocation of monies in the State Highway Fund for the purpose of paying such additional amounts in such Fiscal Year.

Section 6.18. Environmental Laws. The Borrower shall comply with all applicable Environmental Laws and cure any defect (or cause other Persons to cure any such defect) to the extent necessary to bring the Burnham Yard Project back into compliance with Environmental Laws (except to the extent the failure to comply could not reasonably be expected to result in a Material Adverse Effect) and to comply with any cleanup orders issued by a Governmental Authority having jurisdiction thereover. The Borrower shall at all times use commercially reasonable efforts to render or maintain the Burnham Yard Project safe and fit for its intended uses. The Borrower shall also promptly notify the Lender of any actual or alleged material failure to so comply with or perform, or any material breach, violation or default under any Environmental Law with respect to the Burnham Yard Project.

Section 6.19. Federal Reserve Board Regulations. The Borrower shall not use any portion of the proceeds of the Loan for the purpose of carrying or purchasing any Margin Stock and shall

not incur any Debt which is to be reduced, retired or purchased by the Borrower out of such proceeds.

Section 6.20. Enforcement of IAA. The Borrower agrees to comply with its obligations under the IAA and shall use its best efforts and all available legal means to enforce the IAA against CDOT; *provided* that Borrower and Lender acknowledge that the decision of whether the Transportation Commission will allocate funds is solely within the discretion of the Transportation Commission. The Borrower agrees to use its best efforts and all available legal means to cause CDOT to extend to the Borrower CDOT Backup Loans pursuant to the IAA and execute a CDOT Backup Loan Agreement, when needed to repay any Loan Obligations hereunder and to have the same approved by the State Controller. In accordance with Section 43-4-806(4), upon receipt of any money from CDOT from a CDOT Backup Loan, the Borrower shall deposit such money into the Burnham Yard CDOT Backup Loan Account. To the extent that there are not sufficient moneys available in the Burnham Yard Loan Repayment Account to repay the Loan Obligations when due, the Borrower shall apply any moneys on deposit in the Burnham Yard CDOT Backup Loan Account to make up any such deficiency. The Borrower shall not cause the termination of the IAA without the Lender's prior written consent while any Loan Obligations remain outstanding.

Section 6.21. Sale or Encumbrance of Burnham Yard Project. The Borrower, as long as there are any outstanding Loan Obligations, will not be a party to any merger or consolidation. The Borrower may sell, transfer, lease (including, without limitation, any long-term lease with respect to the Burnham Yard Project or any portion thereof) or otherwise dispose of (whether in a single transaction or a series of transactions) all or any part of the Burnham Yard Project, including any disposition of the Burnham Yard Project as a part of a sale and leaseback transaction while there are outstanding Loan Obligations as long as the proceeds of any such transaction are Revenues and applied to payment of the Loan Obligations in accordance with the Indenture.

Section 6.22. CDOT Backup Loans. The Borrower shall not make any reimbursement payment under a CDOT Backup Loan while any Loan Obligations remain outstanding.

Section 6.23. Limitation on Withdrawals. The Borrower shall not withdraw moneys from any of the accounts established pursuant to the Indenture without the express written consent of the Lender.

Section 6.24. Additional Property Expenditures. Upon an Event of Default, any amount of funds remaining for Additional Property Expenditures shall be paid immediately to the Trustee for the benefit of the Lenders.

Section 6.25. Retained Percentage Election. In the event CDOT has elected to retain in excess of 19 acres of the Burnham Yard Property pursuant to Section III.3.c. of the IAA, on or before CDOT makes a determination of the required Top-Off Payment contemplated therein, the Lender may request an appraisal, broker opinion, or any other reasonably acceptable measure with respect to assessing the value of the Remnant Property taking into account the proposed CDOT election.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default. The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of Law) shall be an “*Event of Default*” hereunder, unless waived in writing by the Lender:

(a) the Borrower shall fail to pay the principal of or interest on the Note or any other Loan Obligation when due (whether by scheduled maturity, required prepayment or otherwise);

(b) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) the Borrower shall default in the due performance or observance of any of the covenants set forth in Sections 6.01, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13, 6.14, 6.16, 6.17, 6.18, 6.20, 6.21, 6.22, 6.23, 6.24 or 6.25 hereof;

(d) the Borrower shall default in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Related Document and such default shall remain unremedied for a period of thirty (30) days after the occurrence thereof;

(e) the Borrower or CDOT shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended and such proceeding is not terminated within thirty (30) days after the institution of such proceeding or such court enters an order granting the relief sought in such proceeding, (ii) become insolvent or shall not pay, or be unable to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 7.01(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or CDOT or any substantial part of their respective Property,

or a proceeding described in Section 7.01(e)(v) shall be instituted against the Borrower or CDOT and such proceeding continues undischarged or any such proceeding continues undismitted or unstayed for a period of thirty (30) or more days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction, including but not limited to, public statements relating to CDOT's intent to no longer support or its inability to support the Burnham Yard Project, is imposed on the repayment when due and payable of the principal of or interest on any Debt of the Borrower or CDOT, as applicable, by the Borrower or CDOT, as applicable, or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement or any other Related Document, shall at any time for any reason cease to be valid and binding on the Borrower or CDOT, as applicable, as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or shall be 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 shall be publicly contested by the Borrower or CDOT, as applicable; *provided* that any decision of the Transportation Commission not to allocate funds for any CDOT Backup Loan shall not be considered to be an event described by this subsection;

(i) dissolution or termination of the existence of the Borrower or CDOT;

(j) the Borrower shall (i) default on the payment of the principal of or interest on any Debt including, without limitation, any regularly scheduled payments on Swap Contracts which constitute Debt, beyond the period of grace, if any, provided in the instrument or agreement under which such Debt was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to cause (determined without regard to whether any notice is required) any such Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Debt;

(k) (i) an "event of default" under the Other Loan Agreement under subsection (a) or (n) of Section 7.01 contained therein shall have occurred or (ii) an "event of default" under the Other Loan Agreement under subsection (c) of Section 7.01 contained therein shall have occurred and such default shall remain unremedied for a period of sixty (60) days after the occurrence thereof;

(l) any final, unappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, which are not covered in full by insurance, with written acknowledgement of such coverage having been provided by the provider of such insurance coverage to the Borrower, in an aggregate amount in excess

of \$10,000,000 shall be entered or filed against the Borrower or against any of its Property and remain unpaid, unvacated, unbonded or unstayed for a period of thirty (30) days; or

(m) any “event of default” under any Related Document (as defined respectively therein) or the PSA (as defined respectively therein) shall have occurred; *provided, however,* that an Event of Non-Allocation shall not be considered an Event of Default.

Section 7.02. Consequences of an Event of Default. If an Event of Default specified in Section 7.01 hereof shall occur and be continuing, the Lender may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(a) by written notice to the Borrower, declare the outstanding amount of the Loan Obligations under this Agreement and the Note to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue; *provided, further* that upon the Lender declaring all outstanding amounts to be immediately due and payable, the Borrower shall cause the State Treasurer to immediately transfer all amounts in the Burnham Yard Project Account, the Burnham Yard Revenue Account and the Burnham Yard CDOT Backup Loan Account to the Burnham Yard Loan Repayment Account;

(b) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the Borrower under the Related Documents, whether for specific performance of any agreement or covenant of the Borrower or in aid of the execution of any power granted to the Lender in the Related Documents;

(c) at the expense of the Borrower, cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however,* that the Lender shall have no obligation to effect such a cure; and

(d) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents (other than as provided for in clause (b) of this Section 7.02) and as otherwise available at law and at equity.

Section 7.03. Solely for the Benefit of Lender. The rights and remedies of the Lender specified herein are for the sole and exclusive benefit, use and protection of the Lender, and the Lender is entitled, but shall have no duty or obligation to the Borrower, the Trustee, or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Lender hereunder or under any of the other Related Documents.

Section 7.04. Discontinuance of Proceedings. In case the Lender shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Related Documents and shall

thereafter elect to discontinue or abandon the same for any reason, the Lender shall have the unqualified right so to do and, in such event, the Borrower and the Lender shall be restored to their former positions with respect to the Loan Obligations, the Related Documents and otherwise, and the rights, remedies, recourse and powers of the Lender hereunder shall continue as if the same had never been invoked.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Further Assurances and Corrective Instruments. From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Agreement, and the other Related Documents, to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder or thereunder. At any time, and from time to time, upon request by the Lender, the Borrower will, at the Borrower's expense, (a) correct any defect, error or omission which may be discovered in the form or content of any of the Related Documents, and (b) make, execute, deliver and record, or cause to be made, executed, delivered and recorded, any and all further instruments, certificates, and other documents as may, in the opinion of the Lender, be necessary or desirable in order to complete, perfect or continue and preserve the Lien of Section 5.15 hereof. Upon any failure by the Borrower to do so, the Lender may make, execute and record any and all such instruments, certificates and other documents for and in the name of the Borrower, all at the sole expense of the Borrower, and the Borrower hereby appoints the Lender the agent and attorney-in-fact of the Borrower to do so, this appointment being coupled with an interest and being irrevocable. Without limitation of the foregoing, the Borrower irrevocably authorizes the Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements deemed necessary or desirable by the Lender to establish or maintain the validity, perfection and priority of the security interests granted in Section 5.15 hereof, and the Borrower ratifies any such filings made by the Lender prior to the date hereof. In addition, at any time, and from time to time, upon request by the Lender, the Borrower will, at the Borrower's expense, provide any and all further instruments, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to verify the Borrower's identity and background in a manner satisfactory to the Lender.

Section 8.02. Interpretation and Construction. This Agreement and all terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Agreement. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) All references in this Agreement to designated "Articles," "Sections," "subsections," "paragraphs," "clauses" and other subdivisions are to the designated Articles, Sections, subsections, paragraphs, clauses and other subdivisions of this Agreement. The words "herein," "hereof," "hereto," "hereby," "hereunder" and other

words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(b) The terms defined herein have the meanings assigned to them herein and include the plural as well as the singular.

(c) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles applicable to governmental entities, subject to statutory exceptions and modifications, as in effect from time to time.

(d) The term “money” includes any cash, check, deposit, investment security or other form in which any of the foregoing are held hereunder.

(e) In the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and each of the words “to” and “until” means “to but excluding.”

Section 8.03. Borrower and Lender Representatives. Whenever under the provisions hereof any action may be taken by the Borrower or the Lender, unless otherwise specifically provided, such action may be taken for the Borrower by the Director and for the Lender by any Authorized Officer; *provided* that each party hereunder may authorize one or more additional persons to take action hereunder by written notice to the other party signed by the person designated above in this Section 8.03.

Section 8.04. Manner of Giving Notices. All notices, certificates or other communications hereunder shall be in writing and shall be deemed given when mailed by first class United States mail, postage prepaid, or when sent by facsimile transmission or electronic mail, addressed as follows: if to the Borrower, to Colorado High Performance Transportation Enterprise, c/o Colorado Department of Transportation, 2829 West Howard Place, Denver, CO 80204, Attention: HPTE Director, electronic mail address: nicholas.farber@state.co.us; and if to the Lender, to [**Bank Info**], Telephone: _____, Facsimile: _____, electronic mail address: [**email**]. Any notice party may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 8.05. No Individual Liability. All covenants, stipulations, promises, agreements and obligations of the Borrower or the Lender, as the case may be, contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Borrower or the Lender, as the case may be, and not of any member, director, officer, employee, servant or other agent of the Borrower or the Lender in his or her individual capacity, and no recourse shall be had on account of any such covenant, stipulation, promise, agreement or obligation, or for any claim based thereon or hereunder, against any member, director, officer, employee, servant or other agent of the Borrower or the Lender or any natural person executing this Agreement or any related document or instrument; provided that such person is acting within the scope of his or her employment, membership, directorship or agency, as applicable, and not in a manner that constitutes gross negligence or willful misconduct.

Section 8.06. Amendments. No amendment or waiver of any provision of this Agreement or any other Related Document, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing signed by the Lender and the Borrower, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. In the case of any such waiver or consent relating to any provision hereof, any Default or Event of Default so waived or consented to shall be deemed to be cured and not continuing, but no such waiver or consent shall extend to any other or subsequent Default or Event of Default or impair any right consequent thereto.

Section 8.07. No Waiver; Cumulative Remedies. No failure by the Lender to exercise, and no delay by the Lender in exercising, any right, remedy, power or privilege hereunder or under any other Related Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Related Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 8.08. Events Occurring on Days that are not Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right under this Agreement is a day that is not a Business Day, such payment may be made, such act may be performed or such right may be exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Agreement.

Section 8.09. Severability. If any provision of this Agreement or the other Related Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Related Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.10. Electronic Execution of Certain Documents. The words “execute,” “execution,” “signed,” “signature,” and words of like import in any Related Document (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Lender, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 8.11. Time of the Essence. Time is of the essence of the Related Documents.

Section 8.12. No Third-Party Rights. Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto and the Noteholders any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto and the Noteholders.

Section 8.13. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

Section 8.14. Governing Law; Jurisdiction; Etc. (a) This Agreement and the other Related Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Related Document (except, as to any other Related Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the Law of the State of Colorado.

(b) *Submission to Jurisdiction.* The Borrower and the Lender irrevocably and unconditionally agree that they will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Lender or any Related Party of the Lender or the Borrower respectively in any way relating to this Agreement or any other Related Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of Colorado sitting in Denver County and of the United States District Court of the District of Colorado, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such Colorado State Court or, to the fullest extent permitted by applicable law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) *Waiver of Venue.* The parties hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable Law, any objection that they may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Related Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) *Service of Process.* Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 8.02. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

Section 8.15. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO

(A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 8.16. Employee Financial Interest. The signatories to this Agreement aver that, to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described herein.

Section 8.17. Execution in Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Related Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 2.02, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by fax transmission or e-mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Related Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

Section 8.18. Costs and Expenses; Damage Waiver. (a) The Borrower shall pay, but only from proceeds of the Loan or from the Trust Estate (i) all reasonable out-of-pocket expenses incurred by the Lender and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Lender), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Related Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Lender in connection with the making of the Loan and the transactions contemplated hereby and (iii) all out-of-pocket expenses incurred by the Lender (including the fees, charges and disbursements of any counsel for the Lender), and all fees and time charges for attorneys who may be employees of the Lender, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Related Documents, including its rights under this Section, or (B) in connection with the making of the Loan, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the transactions contemplated hereby.

(b) *Reserved.*

(c) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall

have, any claim against the Lender, each Noteholder, or each Related Party (each such Person being called a “*Reimbursement Party*”), 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 other Related Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the making of the Loan or the use of the proceeds thereof. No Reimbursement Party referred to in this subsection (c) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Reimbursement Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Reimbursement Party as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(d) *Reimbursements.* All reimbursements required under this Section shall be payable not later than ten Business Days after demand therefor.

(e) *Survival.* The agreements in this Section shall survive the payment in full of the Loans, the repayment, satisfaction or discharge of all other Loan Obligations and the termination of this Agreement; *provided* that all payment obligations under this Section 8.18 shall be payable on a basis subordinate to the payment of any Debt or other obligation incurred by Borrower, the proceeds of which are used to prepay the Note or any other Loan Obligation.

Section 8.19. Successors and Assigns.

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the Borrower, its successors, transferees and assigns and shall inure to the benefit of the Holders of the Notes and their respective permitted successors, transferees and assigns. Each Noteholder may, in its sole discretion and in accordance with applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Note(s) and the other Related Documents in accordance with the provisions of paragraph (b) or (c) of this Section. Each Noteholder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. Each Noteholder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section.

(b) *Sales and Transfers by Noteholder to a Lender Transferee.* Notwithstanding subsection(a) above, the Lender may at any time sell or otherwise transfer to one or more transferees all or a portion of the Note(s) to a Person that is (i) an Affiliate of the Lender (a “*Lender Affiliate*”) or (ii) a trust or other custodial arrangement established by the Lender or a Lender Affiliate, the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “*1933 Act*”) (each, a “*Lender Transferee*”). From and after the date of such sale or transfer, [LENDER] (and its successors) shall continue to have all of the rights of the Lender hereunder and under the other Related Documents as if no such transfer or sale had occurred; *provided, however,* that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any

way affect the obligations of the Lender hereunder, (B) any such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall be in a minimum amount of \$5,000,000, (C) the Borrower shall be required to deal only with the Lender with respect to any matters under this Agreement and (D) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Lender shall be entitled to enforce the provisions of this Agreement against the Borrower. Upon the request of the Borrower, the Lender shall provide the addresses and related information with respect to the Lender Transferee to the Borrower.

(c) *Sales and Transfers by Noteholder to a Non-Lender Transferee.* Notwithstanding subsection(a) above, a Noteholder may at any time sell or otherwise transfer all or a portion of the Note(s) to one or more transferees (including Beneficial Owners to the extent the Note is held in the Book-Entry System as permitted under Section 2.01(b)(iii)) which are not Lender Transferees but each of which constitutes (i) a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act or (ii) an institutional “accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act (each a “Non-Lender Transferee”), if written notice of such sale or transfer, including that such sale or transfer is to a Non-Lender Transferee, together with addresses and related information with respect to the Non-Lender Transferee, shall have been given to the Borrower and the Lender (if different than the Noteholder) by such selling Noteholder and Non-Lender Transferee.

From and after the date the Borrower has received written notice, (A) the Non-Lender Transferee thereunder shall be a party hereto and shall have the rights and obligations of a Noteholder (other than its obligation to fund Loans, as more fully set forth in paragraph (a) of this Section 8.19) hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Lender Transferee, and any reference to the assigning Noteholder hereunder and under the other Related Documents shall thereafter refer to such transferring Noteholder and to the Non-Lender Transferee to the extent of their respective interests, and (B) if the transferring Noteholder no longer owns any Notes, then it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents (other than its obligation to fund Loans, as more fully set forth in paragraph (a) of this Section 8.19).

(d) *Participations.* Each Noteholder shall have the right to grant participations in all or a portion of the Noteholder’s interest in the Note, this Agreement and the other Related Documents to one or more other banking institutions (each a “Participant”); *provided, however,* that (i) no such participation by any such Participant shall in any way affect the obligations of such Noteholder hereunder and (ii) the Borrower shall be required to deal only with such Noteholder, with respect to any matters under this Agreement, the Notes and the other Related Documents and no such Participant shall be entitled to enforce any provision hereunder against the Borrower. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 8.18, 8.22 and 8.23 hereof to the same extent as if it were a Noteholder hereunder; *provided, however,* that a Participant shall not be entitled to receive any greater payment under Sections 8.22 and 8.23 than such Noteholder would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent.

(e) *Certain Pledges.* In addition to the rights of the Lender set forth above, the Lender may at any time pledge or grant a security interest in all or any portion of its rights or interests under the Note, this Agreement and/or the other Related Documents to secure obligations of the Lender or an Affiliate of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided* that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

Section 8.20. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the services regarding this Agreement provided by the Lender and any Affiliate thereof are arm's-length commercial transactions between the Borrower, on the one hand, and the Lender and its Affiliates, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Lender and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower, or any other Person and (ii) neither the Lender nor any of its Affiliates has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and neither the Lender nor any of its Affiliates has any obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Lender or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

Section 8.21. USA Patriot Act. The Lender is subject to the Patriot Act and hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Lender, provide all documentation and other information that the Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

Section 8.22. Taxes. If any payments to the Lender or any Noteholder under this Agreement are made from outside the United States, the Borrower will not deduct any foreign taxes from any payments it makes to the Lender or such Noteholder. If any such taxes are imposed on any payments made by the Borrower (including payments under this paragraph), the Borrower will pay the taxes and will also pay to the Lender or any Noteholder, at the time interest is paid, any additional amount which the Lender specifies as necessary to preserve the after-tax yield the Lender or any Noteholder would have received if such taxes had not been imposed. The Borrower

will confirm that it has paid the taxes by giving the Lender or Noteholder official tax receipts (or notarized copies) within thirty (30) days after the due date.

Section 8.23. Increased Costs.

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

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

(ii) subject the Lender or any Noteholder to any taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Lender or any Noteholder any other condition, cost or expense affecting this Agreement;

and the result of any of the foregoing shall be to increase the cost to the Lender or any Noteholder with respect to this Agreement, the Loan, the Note or the making, maintenance or funding of the Loan, or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount) then, upon request of the Lender, the Borrower will pay to the Lender, such additional amount or amounts as will compensate the Lender, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Lender or such Noteholder determines that any Change in Law affecting the Lender or such Noteholder or the Lender's or such Noteholder's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's or such Noteholder's capital or liquidity or on the capital or liquidity of the Lender's or such Noteholder's holding company, if any, as a consequence of this Agreement, the Loan or the Note to a level below that which the Lender or such Noteholder or the Lender's or such Noteholder's holding company could have achieved but for such Change in Law (taking into consideration the Lender or such Noteholder's policies and the policies of the Lender's or such Noteholder's holding company with respect to capital adequacy), then from time to time the Borrower will pay to the Lender or such Noteholder, such additional amount or amounts as will compensate the Lender or such Noteholder or the Lender or such Noteholder's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Lender or Noteholder setting forth the amount or amounts necessary to compensate the Lender or such Noteholder or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay the Lender or the Noteholder the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section 8.23 shall not constitute a waiver of the Lender's or such Noteholder's right to demand such compensation; *provided* that the Borrower shall not be required to compensate the Lender or such Noteholder pursuant to the foregoing provisions of this Section 8.23 for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's or such Noteholder's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 8.24. Conclusive Recital. Pursuant to Section 11- 57- 210 of the Supplemental Public Securities Act, this Agreement, the Loan and the Note are entered into pursuant to certain provisions of the Supplemental Public Securities Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Agreement, the Loan and the Note after delivery for value. Pursuant to Section 11- 57- 212 of the Supplemental Public Securities Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Note shall be commenced more than 30 days after the authorization of the Note.

Section 8.25 US QFC Stay Rules.

(a) *Recognition of U.S. Resolution Regimes.* In the event that any party that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this paragraph (a) apply notwithstanding the provisions of paragraph (b).

(b) *Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings.* Notwithstanding anything to the contrary in this Agreement or any related agreement, but subject to the requirements of paragraph (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following:

(a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“*Insolvency Proceeding*” means a receivership, insolvency, liquidation, resolution, or similar proceeding.

“*U.S. Special Resolution Regime*” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

[Remainder of Page Intentionally Left Blank]

The parties hereto have executed this Loan Agreement as of the date first set forth above

* Person(s) signing hereby swear and affirm that they are authorized to act and acknowledge that the State is relying on their representations to that effect.

[BANK]

By: _____

Name: _____

Title: _____

STATE OF COLORADO

JARED POLIS, GOVERNOR

COLORADO HIGH PERFORMANCE

TRANSPORTATION ENTERPRISE

By: _____

Name: Nicholas Farber

Title: Director of the Colorado High
Performance Transportation Enterprise

LEGAL REVIEW ON BEHALF OF COLORADO HIGH
PERFORMANCE TRANSPORTATION

ENTERPRISE,

PHILIP J. WEISER, ATTORNEY GENERAL

By: _____

Name: _____

Title: **[Assistant Attorney General]**

EXHIBIT A

FORM OF NOTE
COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE
REVENUE NOTE (BURNHAM YARD PROJECT),
SERIES 2021[A][B]

NO. R-1

PRINCIPAL
AMOUNT
[\$20,000,000]

<u>Issue Date</u>	<u>Final Maturity Date</u>	<u>CUSIP</u>	<u>Initial Rate</u>
[May __, 2021]	[May __, 2029]	N/A	[__%]

Interest Rate Reset Date: [May __, 2026]

NOTEHOLDER: [Bank]
PRINCIPAL AMOUNT: [\$20,000,000]

ON THE FINAL MATURITY DATE specified above the Colorado High Performance Transportation Enterprise (the “*Borrower*”), hereby promises to pay to the Noteholder specified above or to the registered assignee hereof (either being hereinafter called the “*Noteholder*”) the Principal Amount specified above, and to pay to the Noteholder, interest thereon at the rate determined as herein provided from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, or if no interest has been paid or duly provided for, from the Issue Date. Additional provisions relating to the payment of interest on this Note are set forth below under the heading “*Interest on the Note.*” It is specifically provided, however, that notwithstanding anything to the contrary herein, this Note is a special, limited obligation of the Borrower, and the principal hereof and interest hereon is payable solely from the sources and in the manner provided in the Loan Agreement (hereinafter defined).

THIS NOTE is issued under and pursuant to a Loan Agreement dated as of [May __, 2021] (as amended, modified or supplemented from time to time, the “*Loan Agreement*”), between the Borrower and [Bank] (the “*Lender*”).

The term “Authorized Denominations” shall mean \$100,000 or any integral multiple of \$5,000 in excess thereof.

The term “Business Day” shall mean a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in New York, New York or the states where the principal corporate office of the Borrower or the principal corporate trust office of the Trustee is located are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal office of the Lender is closed.

The term “Maximum Rate” shall mean the maximum interest rate permitted by applicable law.

Any terms need otherwise defined herein shall have the same meanings as set forth in the Loan Agreement.

THE PRINCIPAL OF AND INTEREST ON this Note are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Note (or of a portion of this Note, in the case of a partial prepayment) shall be paid to the Noteholder hereof upon presentation and surrender of this Note on the Final Maturity Date or upon any date of prepayment prior to the Final Maturity Date, at an office of the Trustee. All payments of interest on the Note shall be paid to the Noteholder hereof whose name appears in the Note Register kept by the Trustee as of the close of business on the Business Day next preceding an Interest Payment Date (as defined in the Loan Agreement) by check mailed on the Interest Payment Date, provided that any Noteholder of \$1,000,000 or more in aggregate principal amount of the Note may, upon written request given to the Trustee at least five (5) Business Days prior to an Interest Payment Date designating an account in a domestic bank, be paid by wire transfer of immediately available funds. This Note is registered as to both principal and interest in the Note Register kept by the Trustee and may be transferred or exchanged, subject to the further conditions specified in the Loan Agreement, only upon surrender hereof at the office of the Trustee. Notwithstanding the foregoing, during any period in which ownership of the Note is determined by a book entry at a securities depository for the Note, payments made to the securities depository, or its nominee, shall be made in accordance with arrangements between the Borrower and the securities depository.

Interest on the Note

The Note shall initially bear interest at the Initial Rate.

If on the Interest Rate Reset Date the following statements shall be true and correct and the Lender shall have received a certificate incorporating by reference the definitions of the capitalized terms defined in the Loan Agreement, signed by the Director and dated the Interest Rate Reset Date, stating that (i) the representations and warranties of the Borrower contained in the Loan Agreement and in each of the other Related Documents are true and correct on and as of the Interest Rate Reset Date as though made on and as of such date, (ii) no Default or Event of Default has occurred and is continuing as of Interest Rate Reset Date, and (iii) no Event of Non-Allocation or Event of Non-Allocation (OLA) has occurred, commencing on the Interest Rate Reset Date the Note shall bear interest at the Bank Rate and be subject to amortization as set forth in the Loan Agreement. During the Amortization Period interest on the Note will be calculated as set forth in the Loan Agreement and will be payable as set forth in the Loan Agreement.

Each determination of interest rates shall be conclusive and binding on the Borrower, the Trustee, and the Noteholders. Any Noteholder may ascertain the rate of interest on the Note by contacting the Trustee.

Optional Prepayment

THIS NOTE is subject to prepayment at the option of the Borrower, in whole or in part (and if in part in an Authorized Denomination) on any Interest Payment Date or on any other date subject to the terms and provisions of the Loan Agreement.

ALL NOTES OF THIS SERIES are issuable solely as fully registered notes, without interest coupons, in Authorized Denominations. As provided in the Indenture, this Note, or any unpaid portion hereof, may, at the request of the Noteholder or the assignee or assignees hereof, be exchanged for a like aggregate principal amount of fully registered Notes, without interest coupons, payable to the appropriate Noteholder, assignee, or assignees, as the case may be, having the same maturity date, and bearing interest at the same rate, in any Authorized Denominations, as requested in writing by the appropriate Noteholder, assignee, or assignees, as the case may be, upon surrender of this Note to the Trustee for cancellation, all in accordance with the form and procedures set forth in the Indenture. The Borrower shall pay the Trustee's standard or customary fees and charges for exchanging any Note or any portion thereof, but the one requesting such exchange shall pay any taxes or governmental charges required to be paid with respect thereto as a condition precedent to the exercise of such privilege of exchange.

THE OWNER of this Note shall have no right to enforce the provisions of the Loan Agreement or to institute action or enforce the covenants therein, or to take any action with respect to any event of default under the Loan Agreement, or to institute, appear in, or defend any suit or other proceeding with respect thereto, except as provided in the Indenture and the Loan Agreement.

MODIFICATIONS or alterations of the Loan Agreement may be made by the Borrower only to the extent and in the circumstances permitted by the Loan Agreement.

It is hereby certified, recited, represented, and declared that the Borrower is a government-owned business within CDOT in accordance with C.R.S. § 43-4-806(2)(a) and is an enterprise within the meaning of Article X, Section 20(2)(d) of the Colorado Constitution receiving less than 10% of its annual revenue in grants from all State and local governments combined, duly organized, validly existing and in good standing under the laws of the State; that the issuance of this Note and the series of which it is a part are duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of this Note to render the same lawful and valid have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Colorado and the Indenture; that this series of notes does not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of this Note and the Series of which it is a part as aforesated. In case any provision in this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Note and the Loan Agreement shall be construed in accordance with and shall be governed by the laws of the State of Colorado. Pursuant to Section 11-57-210 of the Colorado Revised Statutes, as amended, this Note is entered into pursuant to and under the authority of the Supplemental Public Securities Act, being Title 11, Article 57, Part 2 of the Colorado Revised Statutes, as amended. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Note after delivery

for value and shall conclusively impart full compliance with all provisions and limitations of said statutes, and this Note shall be incontestable for any cause whatsoever after delivery for value.

BY BECOMING the Noteholder of this Note, the Noteholder thereby acknowledges all of the terms and provisions of the Loan Agreement and the Indenture, agrees to be bound by such terms and provisions, acknowledges that the Loan Agreement and the Indenture are duly recorded and available for inspection in the official minutes and records of the governing body of the Borrower, and on file with the Trustee, and agrees that the terms and provisions of this Note, the Indenture, and the Loan Agreement constitute a contract between the Noteholder hereof, the Borrower, and the Trustee.

IN TESTIMONY WHEREOF, the Borrower has caused its seal to be impressed or a facsimile thereof to be printed hereon and this Note to be executed in the name of and on behalf of the Borrower with the manual or facsimile signatures of its Director as of the Issue Date.

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
Director

FORM OF TRUSTEE'S AUTHENTICATION CERTIFICATE

TRUSTEE'S AUTHENTICATION CERTIFICATE

It is hereby certified that this Note has been issued under the provisions of the Indenture described in this Note.

**ZIONS BANCORPORATION, NATIONAL
ASSOCIATION**
Trustee

Dated: [May __, 2021]

By: _____

FORM OF ASSIGNMENT

ASSIGNMENT

The following abbreviations, when used in the inscription on the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UNIF GIFT MIN ACT--
TEN ENT --	as tenants by the entireties	_____ Custodian _____
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	(Cust) (Minor)
		under Uniform Gifts to Minors Act _____
		(State)

Additional abbreviations may also be used though not in the above list.

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

Please insert Social Security or Other Identification Number of Assignee

/ _____ /

(Name and Address of Assignee)

the within Note and does hereby irrevocably constitutes and appoints _____ to transfer said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Signature Guaranteed: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever; and

NOTICE: Signature(s) must be guaranteed by the Securities Transfer Association signature guarantee program.

[END OF FORM OF NOTE]

EXHIBIT B

**BREAKAGE
[TO BE UPDATED]**

EXHIBIT C

**FORM OF INVESTOR LETTER
[TO BE UPDATED]**

EXHIBIT D
[TO BE UPDATED]

The State is self-insured for liability, State property losses, and worker's compensation and is responsible for processing claims brought against State agencies, including CDOT, and State employees. Protection for liability for State departments and employees is provided under the terms of the Colorado Governmental Immunity Act (CGIA) (CRS §24-10-101 et seq.) and the Risk Management Act (RMA) (CRS §24-30-1501 et seq.).

The State's property self-insurance coverage does not include any losses for pavement, bridge structures, or damages caused by third parties. If a loss should be caused by a third party, CDOT and/or HPTE would collect the debt through its own Risk Management section or refer the matter to the State's Central Collections which is a unit with the State Department of Personnel and Administration and was established pursuant to CRS §24-30-202.4

For larger road and bridge construction projects, CDOT maintains and manages an Owner Controlled Insurance Policy (OCIP). The Burnham Yard Project has been enrolled into CDOT's OCIP.