



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

Purpose

The purpose of this memorandum is to summarize the terms of the Burnham Yard Indenture of Trust between the High-Performance Transportation Enterprise (HPTE) and Zions Bank, relating to 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 Trust Indenture by HPTE.

Key Details

As a result of negotiations with Bank of America and JP Morgan (the Banks) on the Burnham Yard Loan Agreement, it was agreed upon to bring Zions Bank into the deal as Trustee. Having a trustee on this project will provide the Banks with greater security and relieve an administrative burden for HPTE staff since we only have to pay one party (who then pays the Banks) instead of two.

All amounts payable under the IAA (except Additional Project Expenditures), the CDOT Lease, and all other project related revenues have to flow through the Trustee. The Indenture creates the following accounts under the Statewide Transportation Enterprise Special Revenue Fund pursuant to 43-4-806(a) C.R.S.:

- Burnham Yard Project Account: proceeds of the Notes, and CDOT's prepaid rent will be deposited into this account.
 - Burnham Yard Cost of Issuance Subaccount: CDOT's reimbursement for costs of issuance will go into this account.
- Burnham Yard Revenue Account: all revenue, except CDOT's prepaid rent, CDOT backup loans, and top-off payments, will go into this account.
- Burnham Yard Loan Repayment Account: this account will serve as a collection point for funds from the Revenue Account, the Backup Loan account, the Capitalized Interest Subaccount, and other funds directed into this account by the HPTE.
 - Burnham Yard Capitalized Interest Subaccount: loan proceeds to cover capitalized interest will be deposited into this account.
- Burnham Yard CDOT Backup Loan Account: any CDOT backup loan funds and top-off payments will be deposited into this account.

Options / Decision Matrix

1. Staff Recommendation: Approve the Trust Indenture. HPTE and Bank of America and JP Morgan will close on the Loan on May 26th.
2. Do not approve the Trust Indenture, and direct staff to negotiate different terms.

Attachments

Attachment A: Resolution #357

Attachment B: Indenture of Trust between the Colorado High-Performance Transportation Enterprise and Zions Bancorporation, National Association

**STATE OF COLORADO
COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE
BURNHAM YARD
INDENTURE OF TRUST**

By and between

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

And

ZIONS BANCORPORATION, NATIONAL ASSOCIATION,
as Trustee

Relating to

State of Colorado
Colorado High Performance Transportation Enterprise
Burnham Yard Revenue Notes (Burnham Yard Project), Series 2021

Dated as of May [__], 2021

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**STATE OF COLORADO
COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE
BURNHAM YARD
INDENTURE OF TRUST**

THIS COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE BURNHAM YARD INDENTURE OF TRUST, dated as of May [___], 2021 (this “*Indenture*”), is entered into between the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (“*HPTE*”) and ZIONS BANCORPORATION, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the “*Trustee*”), for the benefit of the Owners of the Notes as set forth in this Indenture.

PREFACE

All capitalized terms used herein will have the meanings ascribed to them in **Exhibit A** to this Indenture.

RECITALS

- A. HPTE was created pursuant to C.R.S. § 43-4-806(1) as a government-owned business within CDOT and a division of CDOT to aggressively pursue innovative means of completing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in a reasonable amount of time, and will allow more efficient movement of people, goods, and information throughout Colorado.
- B. C.R.S. § 43-4-806(1) further provides that the general assembly’s intent in creating HPTE was that HPTE’s powers be broadly construed to allow HPTE sufficient flexibility, consistent with the requirements of the Colorado constitution, to pursue any available means of financing such surface transportation infrastructure projects that will allow the efficient completion of such projects.
- C. As a means of pursuing its statutory charge, HPTE is specifically authorized pursuant to C.R.S. § 43-4-806(6) to acquire any and all rights-of-way, lands, and buildings necessary or convenient for its authorized purposes; to enter into agreements with CDOT pursuant to which HPTE provides, on behalf of CDOT, services or property in connection with a surface transportation project; and to sell, lease, lease with an option to purchase, or dispose of real or personal property without restriction or limitation.
- D. In July 2019, the Union Pacific Railroad (“*UPRR*”) released a Request for Qualifications (“*RFQ*”) for the Burnham Yard Redevelopment, the purpose of which was to identify qualified teams and solicit interest in the Burnham Yard.

- E. CDOT now plans to initiate an Environmental Impact Study for the I-25 Central corridor, which will study the right-of-way needed for potential improvements to U.S. Interstate Highway Route 25 (“**I-25**”), enhanced mobility options through expanded transit, and potential Front Range Passenger Rail, including identification of the right-of-way needed for transportation purposes within the Burnham Yard.
- F. The Southwest Chief & Front Range Passenger Rail Commission, which is charged with facilitating the development of passenger rail that serves Front Range communities from Pueblo to Fort Collins (“**Front Range Passenger Rail**”), in partnership with CDOT, is also conducting an alternative analysis, which includes alternatives that would utilize an alignment for Front Range Passenger Rail through the Burnham Yard.
- G. Each of the proposed potential projects, including improvements to I-25, relocation of the Consolidated Mainline (“**CML**”) freight rail tracks to a new alignment through the Burnham Yard, implementation of Front Range Passenger Rail, future expansion of the Regional Transportation District (“**RTD**”) light rail lines that also traverse the Burnham Yard, and other related mobility and transit improvements (together, the “**Transportation Projects**”) are expected to benefit CDOT and the State, among other things, improving the safety, capacity, and accessibility of the surface transportation system and allowing more efficient movement of people and goods throughout Colorado.
- H. Pursuant to C.R.S. § 43-4-806(2)(c)(III), HPTE may contract with any governmental or nongovernmental source of funding for loans to be used to support HPTE’s functions.
- I. HPTE intends to enter into two Loan Agreements with the Lenders pursuant to which the Lenders will loan to HPTE a total of [\$ •], the proceeds of which HPTE will use to fund a portion of the cost of the acquisition of Burnham Yard and pay capitalized interest on the Notes during the Hold Period defined below.
- J. HPTE intends to concurrently enter into a lease with CDOT, under which CDOT will have access to the Burnham Yard for a period of 30 years, in exchange for lease payments to be made by CDOT to HPTE, the first five years of which will be pre-paid by CDOT, on a non-refundable basis, to HPTE (such five period, the “**Hold Period**”).
- K. CDOT’s pre-paid lease payments, totaling \$15 million, will be used by HPTE to fund (i) a portion of the cost of the acquisition of Burnham Yard totaling \$10 million, and (ii) up to \$5 million in Eligible Additional Property Expenditures to be made by HPTE to undertake its responsibilities under the IAA.
- L. Under the Loan Agreements, HPTE has agreed to pledge to the Trustee for the benefit of the Owners, for payment of the principal of and interest on and any other Bank Loan Obligations due and owing from time to time under the Notes and the Loan Agreements, all amounts received by HPTE under the Lease and the other

elements of the Trust Estate, as defined below, except to the extent otherwise provided for in the Loan Agreements, and certain funds and accounts established pursuant to this Indenture.

- M. This Indenture provides for the execution, delivery and payment of and security for the Notes, which evidence the right to receive the principal of and interest on the Notes and payment of other Loan Obligations.
- N. Pursuant to the Loan Agreements, and subject to the rights of CDOT not to allocate the Pre-Paid Rent, CDOT Back-Up Loan proceeds, Top-Off Payments, and Additional Rent, if any, under the IAA, HPTE is to pay the Revenues to the Trustee for the benefit of the Owners of the Notes, in consideration of HPTE's obligations to repay the Notes.
- O. The Trustee has entered into this Indenture for and on behalf of the Owners of the Notes, and the Trustee will hold the Revenues and will exercise its rights under the Loan Agreement for the equal and proportionate benefit of the Owners of the Notes as described herein, and will disburse money received in accordance with this Indenture.
- P. The proceeds from the sale of the Notes will be disbursed by the Trustee as described herein to finance the acquisition and improvement of the Property and to pay the Costs of Execution and Delivery as described in this Indenture (as further defined in **Exhibit A** hereto, the "**Project**").

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that HPTE, in accordance with and pursuant to C.R.S. §§ 43-4-806(6)(c), (h), and (q); 43-4-807 and 29-1-203, the Supplemental Securities Act, C.R.S. §§ 11-57-201, *et seq.*, and in consideration of the premises of this Indenture, the purchase of the Notes by the Owners and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Notes, the Loan Obligations and all other amounts payable to the Owners with respect to the Notes, to secure the performance and observance of all the covenants and conditions set forth in the Notes and this Indenture and to declare the terms and conditions upon and subject to which the Notes are executed, delivered and secured, has executed and delivered this Indenture and has granted, assigned, pledged, bargained, sold, alienated, remised, released, conveyed, set over and confirmed, and by these presents does grant, assign, pledge, bargain, sell, alienate, remise, release, convey, set over and confirm, in trust to the Trustee upon the terms set forth herein, all and singular the following described property, franchises and income, including any title or interest therein acquired after these presents (collectively, the "**Trust Estate**"):

(a) all Revenues and any other receipts receivable by or on behalf of HPTE and pledged to the Trustee pursuant to this Indenture, including, without limitation, all Prepaid Rent and Additional Rent paid by CDOT, and all Top-Off Payments, if any, received from CDOT, and/or CDOT Back-Up Loan proceeds, if any, received from CDOT pursuant to the IAA;

(b) all Ground Rents and/or Disposition Proceeds that are payable to the Trustee on behalf of HPTE for the benefit of the Owners;

(c) all Refunding Proceeds received by HPTE or by the Trustee on behalf of HPTE;

(d) all money and securities from time to time held by the Trustee in the Burnham Yard Project Account, the Burnham Yard Revenue Account, the Burnham Yard Loan Repayment Account and the Burnham Yard CDOT Backup Loan Account, any and all other property, revenues or funds from time to time hereafter by delivery or by writing of any kind specially granted, assigned or pledged as and for additional security hereunder, by any person in favor of the Trustee, which shall accept any and all such property and hold and apply the same subject to the terms hereof;

THE TRUSTEE SHALL HOLD IN TRUST, NEVERTHELESS, the Trust Estate for the equal and ratable benefit and security of all Owners of the Notes, without preference, priority or distinction as to lien or otherwise of any one Note over any other Note upon the terms and subject to the conditions hereinafter set forth;

PROVIDED, HOWEVER, that if the principal of the Notes, the premium, if any, and the interest and all other Loan Obligations due or to become due thereon shall be paid at the times and in the manner provided in the Notes according to the true intent and meaning thereof, and if there are paid to the Trustee all sums of money due or to become due to the Trustee in accordance with the terms and provisions hereof, then, upon such final payments, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH and it is expressly declared, that all Notes are to be executed and delivered and all said property, rights, interests, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and HPTE and the Trustee have agreed and covenanted, and does hereby agree and covenant, for the benefit of the Owners, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Certain Funds. All references herein to any Funds shall mean the Funds so designated which are established pursuant to Article III hereof.

Section 1.02. Definitions. All capitalized terms used in this Indenture shall have the meanings ascribed to them in **Exhibit A** hereto unless the context otherwise requires.

ARTICLE II

THE NOTES

Section 2.01. Amount of the Notes; Nature of the Notes. Except as provided in Section 2.10 hereof, the aggregate principal amount of Series 2021 Notes that may be executed and delivered pursuant to this Indenture shall be **[\$45,000,000]**.¹

The Notes shall constitute “bonds” for purposes of C.R.S. 43-4-803(2), issued by HPTE, and are payable solely from Revenues and the other funds constituting the Trust Estate as defined in this Indenture. The Notes shall be issued pursuant to C.R.S. 43-4-807 and the Supplemental Public Securities Act, C.R.S. Sections 11-57-201, et seq. The Notes shall constitute a contract between HPTE and the Owners. In no event shall any decision by the Transportation Commission not to allocate any amounts payable under the IAA be construed to constitute an action impairing such contract.

The Notes shall not constitute a mandatory charge or requirement of CDOT or the State in any Fiscal Year, and shall not constitute or give rise to a general obligation or other indebtedness of CDOT or the State or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of CDOT or the State, within the meaning of any constitutional or statutory debt provision or limitation. No provision of the Notes, this Indenture, the IAA, the Lease or any other document or instrument shall be construed or interpreted (i) to directly or indirectly obligate CDOT or the State to make any payment in any Fiscal Year in excess of amounts allocated by the Transportation Commission for Prepaid Rents and Additional Rent, Top-Off Payments or CDOT Backup Loans for such Fiscal Year; (ii) as creating a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of CDOT or the State within the meaning of Section 3 of Article XI of the Colorado Constitution, Section 20 of Article X of the Colorado Constitution, or any other limitation or provision of the Colorado Constitution, State statutes or other State law; (iii) as a delegation of governmental powers by CDOT or the State; (iv) as a loan or pledge of the credit or faith of CDOT or the State or as creating any responsibility by CDOT or the State for any debt or liability of any person, company or corporation within the meaning of Section 1 of Article XI of the Colorado Constitution; or (v) as a donation or grant by CDOT or the State to, or in aid of, any person, company or corporation within the meaning of Section 2 of Article XI of the Colorado Constitution. The execution and delivery of the Notes shall not directly or indirectly obligate CDOT or the State to make payments under the IAA from Fiscal Year to Fiscal Year or to make any payments beyond those allocated for CDOT’s then current Fiscal Year.

Section 2.02. Provisions of the Series 2021 Notes. The Trustee shall execute and deliver the Series 2021 Notes in substantially the form attached hereto as **Exhibit B**, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by HPTE. All provisions and terms of the Series 2021 Notes set forth therein are incorporated in this Indenture.

The Series 2021 Notes shall be executed and delivered in fully registered form in the aggregate principal amount of \$45,000,000 and in Authorized Denominations not exceeding the aggregate principal amount stated to mature on any given date; provided, however, if and to the

¹ N.T.D.: includes approximate amount of Capitalized Interest

extent that the Series 2021 Notes are held by a Depository, one Series 2021 Note shall be executed and delivered for each maturity of the Series 2021 Notes held by an Owner and registered in the name of the Depository or its nominee as provided in Section 2.06 hereof. No single Series 2021 Note may evidence more than one maturity and interest rate. The Series 2021 Notes shall be numbered consecutively in such manner as the Trustee shall determine.

The Series 2021 Notes shall be dated the Series 2021 Notes Closing Date and shall mature on May 15, 2029 (the “**Maturity Date**”). The Series 2021 Notes shall be subject to redemption prior to maturity as provided in Article IV hereof. If and to the extent that the Series 2021 Notes are not repaid in full on May __, 2026 (the “**Interest Rate Reset Date**”), the remaining principal amount, plus interest accruing thereon at the rate set forth in Section 3.01 (a) of the Loan Agreements shall be due in three (3) equal (or nearly equal) annual installments on each May 15 commencing May 15, 2027 and payable through May 15, 2029, as provided in the Loan Agreements.

The Series 2021 Notes shall bear interest until the Interest Rate Reset Date at the rate per annum (calculated on the basis of a 360-day year of twelve 30-day months) of [INITIAL RATE] percent (___%), subject to increase to the Default Rate as provided in the Loan Agreements. Such interest shall accrue from the Series 2021 Notes Closing Date to the Interest Rate Reset Date or prior redemption dates and shall be payable on each Interest Payment Date; provided, however, that Series 2021 Notes which are reissued upon transfer, exchange or other replacement shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, or if no interest has been paid, from the Series 2021 Notes Closing Date.

At the elections of the Owners, DTC may act as Depository for the Series 2021 Notes as provided in Section 2.06 hereof.

Section 2.03. Delivery of the Series 2021 Notes. On the Series 2021 Notes Closing Date, the Trustee shall execute and deliver the Series 2021 Notes to the Owners (or, if elected by the Owners, to DTC) as provided in this Section.

Before or upon the delivery by the Trustee of any of the Series 2021 Notes, there shall be furnished to the Trustee (i) originally executed counterparts of this Indenture, the IAA, the Lease and the Loan Agreements, and (ii) a written opinion of Special Counsel as to the validity of the Series 2021 Notes.

The Trustee shall execute and deliver the Series 2021 Notes to the Owners (or to DTC or its agent, for the account of the Owners), upon payment to the Trustee of a sum equal to the aggregate principal amount of the Series 2021 Notes plus any applicable premium or less any applicable discount, which the Trustee shall apply in accordance with Section 3.05 hereof.

Section 2.04. Payment of Notes. Payments of principal, premium, if any, and interest in respect of the Notes shall be made in lawful money of the United States of America.

The principal of and premium, if any, and interest on each Note shall be payable to the Owner thereof at the address of such Owner last appearing on the registration books for the Notes maintained by the Trustee, and shall be payable by wire transfer of funds to a bank account located in the United States designated by the Owner in written instructions to the Trustee; provided,

however, that the final installment of the principal, or the redemption price, of the Notes shall be payable by the Trustee at the principal corporate trust office of the Trustee, or at such other location as it shall designate, upon presentation and surrender of the Notes.

Interest shall be paid to the Owner of each Note, as shown on the registration books kept by the Trustee, as of the close of business on the Regular Record Date, irrespective of any transfer of ownership of Notes subsequent to the Regular Record Date and prior to such Interest Payment Date, or in the case of the payment of defaulted interest, to the Owner of each Note on a special record date, which shall be fixed by the Trustee for such purpose, irrespective of any transfer of ownership of Notes subsequent to such special record date and prior to the date fixed by the Trustee for the payment of such defaulted interest. Notice of the special record date and of the date fixed for the payment of such defaulted interest shall be given by Electronic Means or by providing a copy thereof by first-class mail, postage prepaid at least 10 days prior to the special record date, to the Owner of each Note upon which interest will be paid, determined as of the close of business on the day preceding the giving of such notice.

Notwithstanding the foregoing, so long as any Notes are held by DTC as Depository, payments of principal, premium, if any, and interest in respect of the Notes shall be made in accordance with the rules and operating procedures applicable to the DTC book-entry system and in accordance with the Letter of Representations pursuant to which DTC agrees to serve as Depository for the Notes.

Section 2.05. Execution of Notes. Each Note shall be executed by HPTE with the manual or facsimile signature of an HPTE Representative and authenticated with the manual signature of a duly authorized representative of the Trustee. It shall not be necessary that the same HPTE Representative or the Trustee sign all of the Notes executed and delivered hereunder. In case any HPTE Representative or the Trustee whose signature appears on the Notes ceases to be such representative before delivery of the Notes, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such authorized representative had remained as such authorized representative until delivery.

No Note shall be valid or obligatory for any purpose or entitled to any security or benefit hereunder unless and until executed and authenticated in the manner prescribed by this Section, and such execution and authentication of any Note shall be conclusive evidence that such Note has been properly executed, authenticated and delivered hereunder. No person other than an Owner (or DTC), as shown on the registration books kept by the Trustee, shall receive a Note.

Section 2.06. Global Book-Entry System. DTC may act as Depository for any series of Notes. If, after the Closing Date, any Owner makes a written request to the Trustee to convert the Notes from physical form to book-entry form (the “*Book-Entry Request*”), within ten (10) Business Days of the Book-Entry Request, one fully registered Note, in the aggregate principal amount equal to the principal amount of the requesting Owner’s Note(s), shall be issued to and registered in the name of Cede & Co., nominee of DTC, as Depository, and the beneficial interests in the Notes so registered will be credited to such accounts with DTC as the requesting Owner shall designate.

As to any Notes for which DTC acts as Depository, one fully registered Note shall be executed and delivered for each maturity and interest rate of such Notes. The ownership of such

Notes shall be registered in the registration books for the Notes in the name of Cede & Co., as nominee of DTC, or in the name of such other nominee as DTC shall appoint in writing. Notes for which DTC acts as Depository shall be immobilized and held in the custody of DTC or its agent.

The Trustee shall to take any and all actions as may be necessary and not inconsistent with this Indenture in order to qualify any Notes for the Depository's book entry system, including the execution of the Depository's form of Letter of Representations.

With respect to any Notes for which DTC serves as Depository, the Trustee shall have no responsibility or obligation to any DTC Participants or to any Beneficial Owners. Without limiting the immediately preceding sentence, the Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Notes, (b) the delivery to any DTC Participant, any Beneficial Owner (except as provided hereafter) or any other person, other than DTC or its nominee, of any notice with respect to the Notes, including any notice of redemption, or (c) the payment to any DTC Participant, any Beneficial Owner or any other person, other than DTC or its nominee, of any amount with respect to the principal of, premium, if any, or interest in respect of the Notes.

Except as otherwise provided above, the Trustee may treat as and deem DTC or its nominee to be the absolute Owner of each Note for which DTC acts as Depository for all purposes, including payment of the principal, premium, if any, and interest in respect of such Notes, giving notices of redemption and registering transfers with respect to such Notes.

Upon delivery by DTC to the Beneficial Owners and the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.08 hereof, references to "Cede & Co." in this Section shall refer to such new nominee of DTC.

DTC may determine to discontinue providing its services with respect to any Notes at any time after giving written notice to the Trustee and discharging its responsibilities with respect thereto under applicable law. The services of DTC with respect to any Notes also may be terminated by the Trustee, upon the written direction of HPTE, if HPTE determines that DTC is no longer able to act, or is no longer satisfactorily performing its duties, as Depository with respect to such Notes, or that continuation of the system of book-entry transfers through DTC is not in the best interests of the Beneficial Owners, and the Trustee shall provide notice of such termination to the Trustee.

Upon the termination of the services of DTC as provided in the previous paragraph, HPTE may designate a substitute Depository for DTC, whereupon, subject to the provisions of Section 2.08 hereof, the Trustee shall re-register and deliver new Notes as directed by such substitute Depository. If no substitute Depository willing to undertake the functions of DTC in respect of the Notes can be found which, in the opinion of HPTE, is willing and able to undertake such functions upon reasonable or customary terms, or if HPTE determines that it is in the best interests of the Beneficial Owners that they receive physical Notes, subject to the provisions of Section 2.08 hereof, the Trustee shall re-register the Notes in the names of the Beneficial Owners of the Notes provided to it by DTC and deliver new Notes to the Beneficial Owners. The Trustee

shall have no liability to DTC, Cede & Co., any substitute Depository, any Person in whose name the Notes are re-registered at the direction of any substitute Depository, any Beneficial Owner of the Notes or any other Person for (a) any determination made by HPTE or the Trustee pursuant to this paragraph or (b) any action taken to implement such determination and the procedures related thereto that is taken pursuant to any direction of or in reliance on any information provided by DTC, Cede & Co., any substitute Depository or any Person in whose name the Notes are re registered.

Section 2.07. Mutilated, Lost, Stolen or Destroyed Notes. In the event the Notes are in the hands of Owners and one or more of the Notes is mutilated, lost, stolen or destroyed, a new Note shall be executed by the Trustee, of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that the Trustee shall have received indemnity from the Owner of the Note satisfactory to it; and provided further, in case of any mutilated Note, that such mutilated Note shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Note, that there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee. In the event that any such Note shall have matured, instead of executing and delivering a duplicate Note, the Trustee may pay the same without surrender thereof. The Trustee may charge the Owner of the Note with its reasonable fees and expenses in this connection.

Section 2.08. Registration of Notes; Persons Treated as Owners; Transfer and Exchange of Notes. Books for the registration and for the transfer of Notes shall be kept by the Trustee as registrar for the Notes. The person in whose name any Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of principal, premium, if any, and interest in respect of any Note shall be made only to or upon the written order of the Owner thereof or such Owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge such Note to the extent of the sum or sums paid.

Notes may be transferred at the principal corporate trust office of the Trustee or at such other location as it shall designate. Upon surrender for transfer of any Note, the Trustee shall execute and deliver in the name of the transferee or transferees one or more new Notes of a like aggregate principal amount, maturity and interest rate as the Note being transferred.

Notes also may be exchanged at the principal corporate trust office of the Trustee or at such other location as it shall designate for an equal aggregate principal amount of Notes of the same series, maturity and interest rate of other Authorized Denominations. Upon surrender for exchange of any Note, the Trustee shall execute and deliver to the Owner new Notes having a like aggregate principal amount, maturity and interest rate as the Note being exchanged and bearing numbers not contemporaneously outstanding.

All Notes presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the Owner or by his or her attorney duly authorized in writing.

The Trustee shall not be required to transfer or exchange any Note during the period between the Regular Record Date next preceding any Interest Payment Date and such Interest Payment Date, nor to transfer or exchange any Note after the mailing of notice calling such Note

for redemption has been made as herein provided, nor during the period of 15 days next preceding the mailing of such notice of redemption.

New Notes delivered upon any transfer or exchange shall evidence the same obligations as the Notes surrendered, shall be secured by this Indenture and entitled to all of the security and benefits hereof to the same extent as the Notes surrendered.

The Trustee shall require the payment, by any Owner requesting transfer or exchange of Notes, of any reasonable transfer fees, tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

The foregoing provisions of this Section 2.08 are subject to the provisions of the last paragraph of Section 2.06 hereof.

Section 2.09. Cancellation of Notes. Whenever any Outstanding Notes shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment thereof or for or after replacement pursuant to Section 2.07 or 2.08 hereof, such Notes shall be promptly canceled and destroyed by the Trustee, and counterparts of a certificate of destruction evidencing such destruction shall be held by the Trustee in its files relating to this Indenture.

Section 2.10. Additional Notes.

(a) One or more series of Additional Notes may be executed and delivered without the consent of the Owners of the Outstanding Notes upon the terms and conditions set forth herein. Except as hereinafter provided, Additional Notes may be executed and delivered, without the consent of but with prior written notice to the Owners of Outstanding Notes, solely to provide moneys to refund or refinance of all (but not less than all) of the Outstanding Notes and proceeds such Additional Notes shall be deposited to the Burnham Yard Note Repayment Account and applied as soon as practicable to refund in full the Series 2021 Notes and repay all Bank Loan Obligations.

(b) Additional Notes may be executed and delivered only upon there being furnished to the Trustee:

(i) originally executed counterparts of a supplemental indenture and related amendments to the IAA, which amendments shall, in the case of Additional Notes issued for one the purpose set forth in clause (b)(i) of this Section, provide for the addition of the additions or improvements to the Project;

(ii) a written opinion of Special Counsel to the effect that:

(A) the execution and delivery of Additional Notes has been duly authorized and that all conditions precedent to the delivery thereof have been fulfilled; and

(B) the sale, execution and delivery of the Additional Notes, in and of themselves, will not constitute an Indenture Event of Default or a

IAA Event of Default nor cause any violation of the covenants or representations herein or in the IAA or the Loan Agreements; and

(iii) written directions from the underwriter, placement agent, purchaser or purchasers in respect of the Additional Notes, together with written acknowledgment of HPTE, to the Trustee to deliver the Additional Notes to the purchaser or purchasers therein identified upon payment to the Trustee of a specified purchase price.

(c) Each Additional Note executed and delivered pursuant to this Section shall evidence a proportionate interest in the rights to receive the Revenues under this Indenture and shall be ratably secured with all other Outstanding Notes and in respect of all Revenues, and shall be ranked *pari passu* with such Outstanding Notes and with any subsequent series of Additional Notes.

Section 2.11. Uniform Commercial Code. Subject to the registration provisions hereof, the Notes shall be fully negotiable and shall have all the qualities of negotiable paper, and the Owner or Owners thereof shall possess all rights enjoyed by the holders or owners of investment securities under the provisions of the Uniform Commercial Code-Investment Securities. The principal of and interest on the Notes shall be paid, and the Notes shall be transferable, free from and without regard to any equities, setoffs or cross-claims between or among HPTE, the Trustee and the original or any intermediate Owner of any Notes.

ARTICLE III

REVENUES AND FUNDS

Section 3.01. Burnham Yard Project Account.

(a) **Creation of Burnham Yard Project Account.** The Burnham Yard Project Account (the “*Burnham Yard Project Account*”) is hereby created as a separate surface transportation infrastructure project account (as such term is used in C.R.S. § 43-4-806(3)(b)) within the Statewide Transportation Enterprise Special Revenue Fund established by the board of directors of HPTE pursuant to C.R.S. § 43-4-806(3)(a) (the “*Transportation Special Fund*”). Within the Burnham Yard Project Account there are hereby created a separate subaccount, the Burnham Yard Costs of Issuance Subaccount (the “*Burnham Yard Costs of Issuance Subaccount*”). The Burnham Yard Project Account and Burnham Yard Costs of Issuance Subaccount shall be held and administered by the Trustee on behalf of HPTE and the State Treasurer in accordance with C.R.S. § 43-4-806(3) and in accordance with the provisions of this Indenture.

(b) **Deposits to Burnham Yard Project Account.** There shall be deposited into the Burnham Yard Project Account: (i) the amount set forth in Section 3.05(iv) hereof transferred to HPTE as proceeds of the Notes; (ii) the amount of Prepaid Rent set forth in Section 3.05(iv) hereof shall be deposited in the Burnham Yard Project Account; (iii) reimbursement of Costs of Issuance paid by CDOT to HPTE shall be deposited in the Burnham Yard Costs of Issuance Subaccount, (iv) earnings from the investment of moneys in the Burnham Yard Project Account; and (v) other moneys delivered to the Transportation Special Fund that HPTE directs the State Treasurer to

transfer to the Trustee for deposit into the Burnham Yard Project Account, the Burnham Yard Development Subaccount or the Burnham Yard Costs of Issuance Subaccount. Any amounts deposited to the Burnham Yard Project Account shall be invested by the Trustee in accordance with Article V hereof.

Section 3.02. Burnham Yard Revenue Account.

(a) ***Creation of Burnham Yard Revenue Account.*** The Burnham Yard Revenue Account (the “***Burnham Yard Revenue Account***”) is hereby created as a separate special account within the Transportation Special Fund. The Burnham Yard Revenue Account shall be held and administered by the Trustee on behalf of HPTE and the State Treasurer in accordance with C.R.S. § 43-4-806(3) and in accordance with the provisions of this Indenture.

(b) ***Deposits to Burnham Yard Revenue Account.*** There shall be deposited into the Burnham Yard Revenue Account: (i) all Revenues (excepting Prepaid Rent, CDOT Back-Up Loan proceeds and Top-Off Payments) upon their receipt; (ii) earnings from the investment of moneys in the Burnham Yard Revenue Account; and (iii) other moneys delivered to the Transportation Special Fund that HPTE directs the State Treasurer to transfer to the Trustee for deposit into the Burnham Yard Revenue Account. HPTE covenants to irrevocably direct the State Treasurer to deposit into the Burnham Yard Revenue Account as soon as practicable upon receipt all (i) Revenues upon their receipt; and (ii) earnings from the investment of moneys in the Burnham Yard Revenue Account. Any amounts deposited in the Burnham Yard Revenue Account shall be invested by the Trustee in accordance with Article V hereof.

(c) ***Application of Moneys in Burnham Yard Revenue Account.*** As necessary to comply with the payment requirements under the Notes and the Loan Agreements, HPTE shall direct the Trustee to apply moneys in the Burnham Yard Revenue Account hereof, as follows:

(i) ***First***, to the credit of the Burnham Yard Loan Repayment Account, the amount which, when added to amounts then on deposit therein, will provide for the accumulation of the amounts required to pay the sum of:

(A) any interest on the Notes to become due and payable pursuant to the terms hereof within the next five (5) Business Days and not already on deposit in the Capitalized Interest Subaccount; and

(B) any installments of Principal Amount of the Notes to become due and payable pursuant to the terms hereof within the next five (5) Business Days; and

(ii) ***Second***, to the payment of any lawful expenses incurred by HPTE; *provided, further* that lawful expenses shall not include the repayment of any CDOT Backup Loan until the principal of and interest on the Notes and all other Bank Loan Obligations have been paid in full.

Section 3.03. Burnham Yard Loan Repayment Account.

(a) ***Creation of Burnham Yard Loan Repayment Account and Capitalized Interest Subaccount.*** The Burnham Yard Loan Repayment Account (the “***Burnham Yard Loan Repayment Account***”) and the Burnham Yard Capitalized Interest Subaccount (the “***Capitalized Interest Subaccount***”) are hereby created as separate special accounts within the Transportation Special Fund. The Burnham Yard Loan Repayment Account and the Capitalized Interest Subaccount shall be held and administered by the Trustee on behalf of HPTE and the State Treasurer in accordance with C.R.S. § 43-4-806(3), and such Account and Subaccount shall be held and applied in accordance with the provisions of this Indenture. Any amounts deposited in the Burnham Yard Loan Repayment Account and the Capitalized Interest Subaccount shall be invested by the Trustee in accordance with Article V hereof.

(b) ***Deposits to Burnham Yard Loan Repayment Account.*** There shall be deposited into the Burnham Yard Loan Repayment Account: (i) amounts transferred to such account from the Burnham Yard Revenue Account pursuant to Section 3.02(c)(i) hereof; (ii) earnings from the investment of moneys in the Burnham Yard Loan Repayment Account; (iii) amounts transferred from the Capitalized Interest Subaccount pursuant to Section 3.03(d); (iv) amounts transferred from the Burnham Yard Backup Loan Account pursuant to Section 3.03(d) hereof; and (v) other moneys delivered to the Transportation Special Fund that HPTE directs the State Treasurer to transfer to the Trustee for deposit into the Burnham Yard Loan Repayment Account.

(c) ***Deposits to Capitalized Interest Subaccount.*** There shall be deposited into the Capitalized Interest Subaccount the amount as set forth in Section 3.05(i) of this Indenture.

(d) ***Application of Moneys in Burnham Yard Loan Repayment Account.*** At the direction of an HPTE Representative, the Trustee shall transfer, to the extent available, from the Capitalized Interest Subaccount for deposit in the Burnham Yard Loan Repayment Account not more than five (5) Business Days and not less than three (3) Business Days prior to an Interest Payment Date moneys sufficient to pay interest on the Notes next coming due. Moneys in the Burnham Yard Loan Repayment Account shall be used by HPTE solely to pay the principal of and interest on the Notes and any other Bank Loan Obligations, and moneys in the Capitalized Interest Subaccount shall only be used by HPTE to pay interest on the Notes. In the event that there are not sufficient moneys on deposit in the Burnham Yard Loan Repayment Account to pay the principal of and interest on the Notes and any other Bank Loan Obligations three (3) Business Days before any such payment is due, to the extent that available moneys are on deposit in the Burnham Yard CDOT Backup Loan Account, an HPTE Representative shall direct the Trustee to use such moneys to pay any such deficiency.

Section 3.04. Burnham Yard CDOT Backup Loan Account.

(a) ***Creation of Burnham Yard CDOT Backup Loan Account.*** The Burnham Yard CDOT Backup Loan Account (the “***Burnham Yard CDOT Backup Loan Account***”) is hereby created as a separate special account within the Transportation Special Fund. The Burnham Yard CDOT Backup Loan Account shall be held and administered by the Trustee on behalf of HPTE and the State Treasurer in accordance with C.R.S. § 43-4-806(3) and in accordance with the provisions of this Indenture. Any amounts deposited in the Burnham Yard CDOT Backup Loan Account shall be invested in accordance with Article V hereof.

(b) ***Deposits to Burnham Yard CDOT Backup Loan Account.*** There shall be deposited into the Burnham Yard CDOT Backup Loan Account the receipts from all CDOT Backup Loans and Top-Off Payments, as provided in the IAA.

(c) ***Application of Moneys in Burnham Yard CDOT Backup Loan Account.*** Moneys deposited into the Burnham Yard CDOT Backup Loan Account shall be immediately transferred to the Burnham Yard Loan Repayment Account as provided in Section 3.03(d) of this Indenture.

Section 3.05. Disposition of Proceeds of Notes and Prepaid Rent.

The net proceeds of the sale of the Series 2021 Notes and the Prepaid Rent shall be applied on the Series 2021 Notes Closing Date as follows:

(i) \$_____, representing capitalized interest on the Notes shall be deposited in the Capitalized Interest Subaccount and applied as provided in Section 3.03(d) of this Indenture;

(ii) \$5,000,000 of proceeds of the Prepaid Rent shall be deposited in the Transportation Special Fund held by the State Treasurer and applied to the payment of Eligible Additional Property Expenditures as and to the extent directed in writing by an HPTE Representative; provided, however, that upon the occurrence of an Event of Default under this Indenture, HPTE shall direct that any remaining portion of such funds shall be transferred to the Trustee for deposit in the Burnham Yard Loan Repayment Account;

(iii) The amount requested by HPTE and paid by CDOT as payment for services rendered to CDOT for Costs of Issuance shall be deposited in the Burnham Yard Costs of Issuance Subaccount and applied to the payment of Costs of Issuance as and to the extent directed in writing by an HPTE Representative; and

(iv) the remainder of the net proceeds of the sale of Notes and of Prepaid Rent shall be deposited in the Burnham Yard Project Account and applied to Project Costs related to acquisition of the Property as and to the extent directed in writing by an HPTE Representative.

Section 3.06. Application of Revenues and Other Moneys.

All amounts payable under the IAA, the Lease and all other Revenues shall be paid directly to the Trustee for deposit to the Burnham Yard Revenue Account, excepting only CDOT Backup Loan proceeds and Top-Off Payments, which shall be deposited to the Burnham Yard CDOT Backup Loan Account, and Prepaid Rent, which shall be applied as provided in Section 3.05 hereof.

Section 3.07. Moneys to be Held in Trust. The ownership of the Burnham Yard Project Account, the Burnham Yard Revenue Account, the Burnham Yard Loan Repayment Account, and the Burnham Yard CDOT Backup Loan Account, and all subaccounts within such accounts (collectively, the “*Accounts*”), and any other fund or account created hereunder, shall be held in trust by the Trustee for the benefit of the Owners of the Notes.

Section 3.08. Nonpresentment of Notes. Any moneys deposited with the Trustee pursuant to the terms of this Indenture to be used for the payment of principal of, premium, if any, or interest on any of the Notes and remaining unclaimed by the Owners of such Notes for a period of three years after the final due date of any Note, whether the final date of maturity or the final redemption date, shall, upon the written request of HPTE, and if HPTE shall not at the time, to the knowledge of the Trustee, be in default with respect to any of the terms and conditions contained in this Indenture, in the Notes or under the IAA, be paid to HPTE and such Owners shall thereafter look only to HPTE for payment and then only (a) to the extent of the amounts so received by HPTE from the Trustee without interest thereon, and (b) subject to the defense of any applicable statute of limitations. After payment by the Trustee of all of the foregoing, if any moneys are then remaining under this Indenture, the Trustee shall pay such moneys to HPTE.

Section 3.09. Repayment to HPTE. After payment in full of the Notes, the interest thereon, any premium thereon, all other Bank Loan Obligations, the fees, charges and expenses of the Trustee, and all other amounts required to be paid hereunder, any amounts remaining in the Accounts or otherwise held by the Trustee pursuant hereto shall be paid to HPTE and applied in accordance with the IAA or, if no CDOT Backup Loans remain unpaid, for any lawful purpose of HPTE.

ARTICLE IV

REDEMPTION OF NOTES

Section 4.01. Optional Redemption. In the event HPTE exercises its right under the Loan Agreement to repayment of the Notes prior to maturity, the Notes shall be subject to redemption prior to maturity as follows:

(a) ***Series 2021 Notes.***

(i) The Series 2021 Notes shall be subject to redemption prior to maturity on May 15, 2025, and on any date thereafter, in whole or in part in Authorized Denominations, and if in part by lot within such maturity, at a redemption price equal to the principal amount of the Series 2021 Notes redeemed plus accrued interest to the redemption date, without premium.

(ii) If less than all of the Series 2021 Notes are to be optionally redeemed at any one time, HPTE may select the maturities and principal amounts to be redeemed.

(b) ***Additional Notes.*** The optional redemption of Additional Notes shall be as provided in the supplemental Indenture authorizing the execution and delivery of such Additional Notes.

Section 4.02. Mandatory Sinking Fund Redemption.

The Series 2021 Notes that are not fully repaid on the Interest Rate Reset Date are subject to mandatory sinking fund redemption as provided in the Loan Agreements; provided, however, that the payments to the Owners shall be in amounts such that each Owner receives a pro rata share

of the principal of and interest payable on the Notes on each sinking fund payment date. The Series 2021 Notes maturing on such date shall be selected for redemption on each mandatory sinking fund redemption date by lot from all remaining Series 2021 Notes maturing on such date, rounded to the nearest Authorized Denomination.

Section 4.03. Extraordinary Mandatory Redemption. Except as hereinafter provided, the Notes shall be called for extraordinary mandatory redemption in whole upon termination of the IAA following an IAA Event of Default.

If called for redemption, as described in this Section, the Notes shall be redeemed in whole, on such date or dates as the Trustee may determine, for a redemption price equal to the principal amount thereof plus accrued interest to the redemption date (subject to the availability of funds as described below).

If the Net Proceeds, including the Net Proceeds from the exercise of any Remedy under the IAA, otherwise received and other moneys then available under this Indenture are insufficient to pay in full the principal of and accrued interest on all Outstanding Notes, the Trustee may, or at the request of the Owners of a majority in aggregate principal amount of the Notes Outstanding and upon indemnification as provided in Section 8.01(d) of this Indenture, without any further demand or notice, shall, exercise all or any combination of Remedies as provided in the IAA and the Notes shall be redeemed by the Trustee from the Net Proceeds resulting from the exercise of such Remedies and all other moneys, if any, then on hand and being held by the Trustee for the Owners of the Notes.

If the Net Proceeds resulting from the exercise of such Remedies and other moneys are insufficient to redeem the Notes at 100% of the principal amount thereof plus interest accrued to the redemption date, then such Net Proceeds resulting from the exercise of such Remedies and other moneys shall be allocated proportionately among the Notes, according to the principal amount thereof Outstanding.

In the event that such Net Proceeds resulting from the exercise of such Remedies and other moneys are in excess of the amount required to redeem the Notes at 100% of the principal amount thereof plus interest accrued to the redemption date, then such excess moneys shall be paid to HPTE. Prior to any distribution of the Net Proceeds resulting from the exercise of any of such remedies, the Trustee shall be entitled to payment of its reasonable and customary fees for all services rendered in connection with such disposition, as well as reimbursement for all reasonable costs and expenses, including attorneys' fees, incurred thereby, from proceeds resulting from the exercise of such Remedies and other moneys.

If the Notes are redeemed pursuant to this Section for an amount less than the aggregate principal amount thereof plus interest accrued to the redemption date, the Trustee shall treat any Note of a denomination greater than \$5,000 as representing that number of separate Notes each of the denomination of \$5,000 as can be obtained by dividing the actual principal amount of such Note by \$5,000.

Section 4.04. Notice of Redemption. Whenever Notes are to be redeemed under any provision of this Indenture, the Trustee shall, not less than 30 and not more than 60 days prior to the redemption date (except for Extraordinary Mandatory Redemption under Section 4.03 hereof, which notice shall be immediate), send notice of redemption by Electronic Means or first-class mail, postage prepaid to all Owners of all Notes to be redeemed at their registered addresses. In addition, the Trustee shall at all reasonable times make available to HPTE and any Note Owner information as to Notes which have been redeemed or called for redemption. Any notice of redemption shall: (a) identify the Notes to be redeemed; (b) specify the redemption date and the redemption price; (c) if applicable, state that such redemption is subject to the deposit of the funds related to such redemption by HPTE on or before the stated redemption date; and (d) state that on the redemption date the Notes called for redemption will be payable by the Trustee (i) if redeemed in part, by wire transfer of funds to a bank account located in the United States designated by the Note Owner in written instructions to the Trustee; and (ii) if redeemed in whole, upon presentation and surrender of the Notes at the principal corporate trust office of the Trustee, or at such other location as it shall designate, and that from that redemption date interest will cease to accrue.

Any notice of redemption may contain a statement that the redemption is conditioned upon the receipt by the Trustee of funds on or before the date fixed for redemption sufficient to pay the redemption price of the Notes so called for redemption, and that if such funds are not available, such redemption shall be canceled by written notice to the Owners of the Notes called for redemption in the same manner as the original redemption notice was given.

Section 4.05. Redemption Payments. On or prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay the Notes called for redemption, together with accrued interest thereon to the redemption date, and any required premium. Upon the giving of notice and the deposit of such funds as may be available for redemption pursuant to this Indenture (which, in certain cases as set forth above may be less than the full principal amount of the Outstanding Notes and accrued interest thereon to the redemption date), interest on the Notes or portions thereof thus called shall no longer accrue on and after the date fixed for redemption. Redemption payments shall be accompanied by a written designation prepared by the Trustee stating the portions of the payment representing principal, interest, and premium, if any.

ARTICLE V

INVESTMENTS

Section 5.01. Investment of Moneys. The Trustee shall be entitled to assume that any investment, which at the time of purchase is a Permitted Investment, remains a Permitted Investment absent a receipt of written notice or information to the contrary. All moneys held as part of the Accounts or any other fund or account created hereunder shall be deposited or invested and reinvested by the Trustee, at the written direction of HPTE, in Permitted Investments; provided, however, that the Trustee shall not make any deposits or investments of any fund or account created hereunder which shall interfere with or prevent withdrawals for the purpose for which the moneys so deposited or invested were placed in trust hereunder or for payment of the Notes at or before maturity or interest thereon as required hereunder. In the absence of such written direction, the Trustee is hereby directed to invest moneys in a money market fund that is a Permitted Investment. The Trustee may make any and all such deposits or investments through its own investment

department or the investment department of any bank or trust company under common control with the Trustee and may charge its ordinary and customary fees for such trades, including cash sweep account fees. Except as otherwise provided herein and the following sentence, deposits or investments shall at all times be a part of the fund or account from which the moneys used to acquire such deposits or investments shall have come, and all income and profits on such deposits or investments shall be credited to, and losses thereon shall be charged against, such fund or account. The Trustee shall sell and reduce to cash a sufficient amount of such deposits or investments whenever the cash balance in the Loan Repayment Subaccount is insufficient to pay the principal of and interest on the Notes when due.

Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Trustee to HPTE shall confirm that the investment transactions identified therein accurately reflect the investment directions of HPTE, unless HPTE notifies the Trustee in writing to the contrary within thirty (30) days of the date of such statement. If and only to the extent that the following qualifies at the time as a Permitted Investment, the Trustee is specifically authorized to purchase or invest in shares of any investment company that: (i) is registered under the Investment Company Act of 1940, as amended (including both corporations and Massachusetts business trusts, and including companies for which the Trustee may provide advisory, administrative, custodial or other services for compensation); (ii) invests substantially all of its assets in short-term high-quality money-market instruments, limited to obligations issued or guaranteed by the United States; and (iii) maintains a constant asset value per share. The Trustee is specifically authorized to implement its automated cash investments system to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments.

The Trustee shall have no liability or responsibility for any loss or for failure to maximize earnings resulting from any investment made in accordance with the provisions of this Article V.

The Trustee may transfer investments from any Account to any other Account in lieu of cash when a transfer is required or permitted by the provisions of this Indenture.

Section 5.02. Method of Valuation and Frequency of Valuation. In computing the amount in any fund or account (except defeasance escrows), Permitted Investments shall be valued at the market price, exclusive of accrued interest. With respect to all funds and accounts (except defeasance escrows, and except as otherwise provided in the Tax Certificate with respect to the Rebate Fund), valuation shall occur as of June 30 of each year. The Trustee shall calculate the value of investments on deposit in the funds and accounts held pursuant to this Indenture.

ARTICLE VI

DEFEASANCE AND DISCHARGE

Section 6.01. Defeasance and Discharge.

(a) When the principal or redemption price (as the case may be) of, and interest on, all the Notes executed and delivered hereunder have been paid or provision has been made for payment of the same (or, in the case of redemption of the Notes pursuant to

Section 4.03 of this Indenture, if full or partial payment of the Notes and interest thereon is made as provided in Section 4.03 of this Indenture), together with all other sums payable hereunder relating to the Notes, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of HPTE to the Trustee and to the Owners shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall (i) release this Indenture; (ii) execute such documents to evidence such releases as may be reasonably required by HPTE; and (iii) turn over and release to HPTE all right, title and interest in and to all balances then held by the Trustee in the Accounts hereunder except for amounts held in any defeasance escrow accounts. If payment or provision therefor is made with respect to less than all of the Notes, the particular Notes (or portion thereof) for which provision for payment shall have been considered made shall be selected by HPTE; provided, that such Notes shall be paid to the Owners thereof *pari passu*.

(b) Provision for the payment of all or a portion of the Notes shall be deemed to have been made when the Trustee holds in the Burnham Yard Loan Repayment Account, or there is on deposit in a separate escrow account or trust account held by a trust bank or escrow agent, either moneys in an amount which shall be sufficient, and/or Federal Securities, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, concurrently deposited in trust, shall be sufficient to pay when due the principal of, premium, if any, and interest due and to become due on said Notes on and prior to the redemption date or maturity date thereof, as the case may be. Prior to any discharge of this Indenture pursuant to this Section or the defeasance of any Notes pursuant to this Section becoming effective, there shall have been delivered to the Trustee a report of an independent firm of nationally recognized certified public accountants verifying the sufficiency of the escrow established to pay the applicable Notes in full on the maturity or redemption date thereof unless fully funded with cash.

(c) Neither the Federal Securities nor the moneys deposited in the Burnham Yard Loan Repayment Account or separate escrow account or trust account pursuant to this Section shall be withdrawn or used for any purpose other than, and shall be segregated and held in trust for, the payment of the principal of, premium, if any, and interest on the Notes or portions thereof; provided, however, that other Federal Securities and moneys may be substituted for the Federal Securities and moneys so deposited prior to their use for such purpose. Whenever moneys or Federal Securities shall be deposited with the Trustee or a separate escrow agent for the payment or redemption of any Notes more than sixty (60) days prior to the date that such Notes are to mature or be redeemed, the Trustee shall mail a notice stating that such moneys or Federal Securities have been deposited and identifying the Notes for the payment of which such moneys or Federal Securities are being held, to all Owners of Notes for the payment of which such moneys or Federal Securities are being held.

(e) At such time as any Note shall be deemed paid as provided in paragraph (b) above, such Note shall no longer be secured by or entitled to the benefits of this Indenture, except for the purpose of exchange and transfer and any payment from such cash or Federal Securities deposited with the Trustee, trust bank or escrow agent, as applicable.

ARTICLE VII

INDENTURE EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Indenture Events of Default Defined. Each of the following shall be an “*Indenture Event of Default*”:

(a) failure to pay the principal of or premium, if any, on any Note when the same shall become due and payable, whether at the stated maturity thereof or upon proceedings for redemption; provided, however, that it shall not be an Indenture Event of Default if the Notes are not paid in full on the Interest Rate Reset Date but are subsequently repaid in installments as provided in Section 4.02 hereof;

(b) failure to pay any installment of interest on any Note when the same shall become due and payable;

(c) the occurrence of an event of default under the Lease (a “*Lease Event of Default*”);

(d) the occurrence of an event of default under the IAA (An “*IAA Event of Default*”);
or

(e) the occurrence of an event of default under a Loan Agreement (a “*Loan Agreement Event of Default*”).

Upon the occurrence of any Indenture Event of Default, the Trustee shall give notice thereof to the Owners of the Notes.

Section 7.02. Remedies. If any Indenture Event of Default occurs and is continuing, the Trustee may, or shall at the request of the Owners of a majority in aggregate principal amount of the Notes then Outstanding and upon indemnification as provided in Section 8.01(d) hereof, without any further demand or notice, enforce for the benefit of the Owners of the Notes each and every right of the Trustee under this Indenture. In exercising such rights of the Trustee and the rights given the Trustee under this Article and Article VIII hereof, the Trustee may, or shall at the request of the Owners of a majority in aggregate principal amount of the Notes then Outstanding and upon indemnification as provided in Section 8.01(d) hereof, take such action as the Trustee, being advised by counsel, determines would best serve the interests of the Owners of the Notes, including calling the Notes for redemption prior to their maturity in the manner and subject to the provisions of Article IV hereof and exercising the Remedies provided in the IAA.

Section 7.03. Legal Proceedings by Trustee. If any Indenture Event of Default has occurred and is continuing, the Trustee in its discretion may, and upon the written request of the Owners of a majority in aggregate principal amount of all Outstanding Notes and upon indemnification as provided in Section 8.01(d) hereof, shall, in its capacity as Trustee hereunder:

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners of the Notes, including its rights under this Indenture and to enforce the provisions of this Indenture and any collateral rights hereunder for the benefit of the Owners of the Notes;

(b) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Notes; or

(c) take any other action at law or in equity that may appear necessary or desirable to enforce the rights of the Owners of the Notes.

Section 7.04. Discontinuance of Proceedings by the Trustee. If any proceeding commenced by the Trustee on account of any Indenture Event of Default is discontinued or is determined adversely to the Trustee, then the Owners of the Notes and HPTE shall be restored to their former positions and rights hereunder as though no such proceeding had been commenced.

Section 7.05. Owners of Notes May Direct Proceedings. The Owners of a majority in aggregate principal amount of Outstanding Notes shall have the right, after furnishing indemnity satisfactory to the Trustee, to direct the method and place of conducting all remedial proceedings by the Trustee hereunder, provided that such direction shall not be in conflict with any rule of law or with this Indenture or unduly prejudice the rights of minority Owners of the Notes.

Section 7.06. Limitations on Actions by Owners of Notes. No Owner of the Notes shall have any right to pursue any remedy hereunder unless:

(a) the Trustee shall have been given written notice of an Indenture Event of Default;

(b) the Owners of at least a majority in aggregate principal amount of all Outstanding Notes shall have requested the Trustee, in writing, to exercise the powers hereinabove granted to or pursue such remedy in its or their name or names;

(c) the Trustee shall have been offered indemnity satisfactory to it as provided in Section 8.01(d) hereof; and

(d) the Trustee shall have failed to comply with such request within a reasonable time.

Notwithstanding the foregoing provisions of this Section or any other provision of this Indenture, the obligation of the Trustee shall be absolute and unconditional to pay hereunder, but solely from the Revenues pledged under this Indenture, the principal of, premium, if any, and interest on the Notes to the respective Owners thereof on the respective due dates thereof, and nothing herein shall affect or impair the right of action, which is absolute and unconditional, of such Owners to enforce such payment.

Section 7.07. Trustee May Enforce Rights Without Possession of Notes. All rights under this Indenture and the Notes may be enforced by the Trustee without the possession of any Notes or the production thereof at the trial or other proceedings relative thereto, and any proceeding instituted by the Trustee shall be brought in its name for the ratable benefit of the Owners of the Notes.

Section 7.08. Remedies Not Exclusive. Subject to any express limitations contained herein, no remedy herein conferred is intended to be exclusive of any other remedy or remedies, and each remedy is in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 7.09. Delays and Omissions Not to Impair Rights. No delays or omissions in respect of exercising any right or power accruing upon any default shall impair such right or power or be a waiver of such default, and every remedy given by this Article VII may be exercised from time to time and as often as may be deemed expedient.

Section 7.10. Application of Moneys Upon Indenture Event of Default. Any moneys received, collected pursuant to any right given or action taken under the provisions of this Article and any other money held by the Trustee as part of the Trust Estate following an Indenture Event of Default shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys, be applied in the following order:

(a) to the payment of the reasonable costs and fees of the Trustee, including, but not limited to, its attorneys' fees, costs and expenses and disbursements and advances of the Trustee, and the payment of its reasonable compensation, including any amounts remaining unpaid;

(b) to the payment of interest then owing on the Notes, and in case such moneys shall be insufficient to pay the same in full, then to the payment of interest ratably, without preference or priority of one Note over another or of any installment of interest over any other installment of interest; and

(c) to the payment of principal or redemption price (as the case may be) then owing on the Outstanding Notes, and in case such moneys shall be insufficient to pay the same in full, then to the payment of principal or redemption price ratably, without preference or priority of one Note over another.

The surplus, if any, shall be paid to HPTE.

ARTICLE VIII

CONCERNING THE TRUSTEE

Section 8.01. Duties of the Trustee.

(a) The Trustee hereby accepts the provisions of this Indenture and accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts, but only upon and subject to the express terms and conditions set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(b) The Trustee hereby covenants for the benefit of the Owners of the Notes that the Trustee will observe and comply with its obligations under this Indenture.

(c) The Trustee shall at all times, to the extent permitted by law, defend, preserve and protect its interest in the Trust Estate and all the rights of the Owners under this Indenture against all claims and demands of all persons whomsoever.

(d) Before taking any action hereunder the Trustee may require that satisfactory indemnity be furnished to it by the Note Owners for the reimbursement of all costs and expenses which it may incur and to protect it against all liability, including, but not limited to, any liability

arising directly or indirectly under any federal, State or local statute, rule, law or resolution related to the protection of the environment or hazardous substances, except liability which may result from its negligence or willful misconduct, by reason of any action so taken.

Section 8.02. Liability of the Trustee; Trustee's Use of Agents.

(a) The Trustee shall be liable only for its own negligence or willful misconduct. However, the Trustee shall not be liable for any error of judgment made in good faith, provided the Trustee was not negligent in ascertaining the pertinent facts.

(b) The Trustee may exercise any powers under this Indenture and perform any duties required of it through attorneys, agents, officers or employees, and shall be entitled to the advice of Counsel concerning all matters involving the Trustee's duties hereunder. The Trustee may act upon the opinion or advice of Counsel engaged by the Trustee in the exercise of reasonable care without liability for any loss or damage resulting from any action or omission taken in good faith reliance upon that opinion or advice.

(c) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(d) The Trustee shall not be liable for actions taken at the direction of Owners pursuant to the provisions of Article VII hereof.

(e) Any person hired by the Trustee to enforce Remedies shall be considered the Trustee's agent for the purposes of this Section.

(f) The Trustee shall not be responsible for any recital herein or in the Notes (except in respect to the execution of the Notes on behalf of the Trustee), or for the recording or rerecording, filing or refiling of this Indenture or of any supplements thereto or hereto or instruments of further assurance, or for the sufficiency of the security for the Notes issued hereunder or intended to be secured hereby, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of HPTE, except as provided herein; but the Trustee may require of HPTE full information and advice as to the performance of the covenants, conditions and agreements aforesaid. The Trustee shall have no obligation to perform any of the duties of HPTE under the IAA; and the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Indenture.

(g) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to conclusively rely upon a certificate signed on behalf of HPTE by the HPTE Representative or such other person as may be designated for such purpose by HPTE, as sufficient evidence of the facts therein contained, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(h) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need

not be segregated from other funds except to the extent required by this Indenture or law. The Trustee shall not be under any liability for interest on any moneys received hereunder except that the Trustee is responsible for and complying with the written investment direction of HPTE.

(i) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(j) Notwithstanding anything in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand in respect of the execution and delivery of any Notes, the withdrawal of any cash, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of HPTE to the execution and delivery of any Notes, the withdrawal of any cash, or the taking of any other action by the Trustee.

(k) Notwithstanding any other provision hereof, the Trustee shall not be required to advance any of its own funds in the performance of its obligations hereunder unless it has received assurances from the Owners of the Notes or indemnity from the Owners of the Notes satisfactory to it that it will be repaid.

(l) The Trustee shall have no responsibility with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the Notes except to the extent that such statement was provided by the Trustee.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, registrar, or paying agent.

Section 8.03. Representations, Warranties and Covenants of the Trustee. The Trustee represents, warrants and covenants as follows:

(a) The Trustee is (i) a commercial bank and a national banking association that is duly organized, validly existing and in good standing under the laws of the United States; (ii) authorized to provide corporate trust services to HPTE; (iii) authorized, under its articles of association and bylaws and applicable law to act as trustee under this Indenture, to execute, deliver and perform its obligations under this Indenture.

(b) The execution, delivery and performance of this Indenture by the Trustee have been duly authorized by the Trustee.

(c) This Indenture has been duly executed and delivered by the Trustee and is a valid and binding obligation enforceable against the Trustee in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, 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.

(d) The execution, delivery and performance of this Indenture does not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Trustee is now a party or by which the Trustee is bound, or constitute a default under any of the foregoing, violate any Requirement of Law applicable to the Trustee, or, except as specifically provided in this Indenture, result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the Trustee.

(e) There is no litigation or proceeding pending against the Trustee affecting the right of the Trustee to execute, deliver or perform its obligations under this Indenture.

(f) So long as no Indenture Event of Default has occurred and is then continuing or existing, except as necessary to transfer the Trust Estate to a successor Trustee, the Trustee shall not pledge or assign the Trustee's right, title and interest in and to Trust Estate or the Revenues and collateral, security interests and attendant rights and obligations which may be derived under this Indenture.

Section 8.04. Compensation. As long as this Indenture is in effect, the Trustee shall be entitled to payment and reimbursement for its reasonable fees and expenses for its ordinary services rendered hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as and when the same become due and all advances, agent and counsel fees and other ordinary expenses reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services as and when the same become due. In the event that it should become necessary for the Trustee to perform extraordinary services, the Trustee shall be entitled to reasonable additional compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the negligence or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee's right to compensation and reimbursement shall survive the satisfaction and discharge of this Indenture or its resignation or removal hereunder and payment in full of the Notes.

Section 8.05. Notice of Default; Right to Investigate. The Trustee shall, within 30 days after it receives notice thereof, give written notice by first-class mail to the Owners of the Notes of all Indenture Events of Default known to the Trustee and send a copy of such notice to HPTE, unless such defaults have been remedied. The Trustee shall not be deemed to have notice of any Indenture Event of Default unless it has actual knowledge thereof or has been notified in writing of such Indenture Event of Default by HPTE or the Owners of at least 25% in aggregate principal amount of the Outstanding Notes. The Trustee may, however, at any time request HPTE to provide full information as to the performance of any covenant under the IAA; and, if information satisfactory to it is not forthcoming, the Trustee may make or cause to be made an investigation into any matter related to the IAA.

Section 8.06. Obligation to Act on Defaults. If any Indenture Event of Default shall have occurred and be continuing of which the Trustee has actual knowledge or notice, the Trustee shall exercise such of the rights and remedies vested in it by this Indenture and shall use the same degree of care in their exercise as a prudent person would exercise or use in the circumstances in the conduct of his or her own affairs; provided, that if in the opinion of the Trustee such action may tend to involve extraordinary expense or liability, it shall not be obligated to take such action

Section 8.07. Reliance on Documents, Etc. The Trustee may conclusively rely and act on any written resolution, notice, request, consent, waiver, certificate, statement, affidavit, voucher, bond, or other paper or document which it in good faith believes to be genuine and to have been passed or signed by the proper persons or to have been prepared and furnished pursuant to any of the provisions of this Indenture; and the Trustee shall be under no duty to make any investigation as to any statement contained in any such instrument, but may accept the same as conclusive evidence of the accuracy of such statement.

The Trustee shall be entitled to rely upon opinions of Counsel and shall not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own negligence or willful misconduct.

Section 8.08. Trustee May Own Notes. The Trustee may in good faith buy, sell, own and hold any of the Notes and may join in any action which any Owner may be entitled to take with like effect as if the Trustee were not the party to this Indenture.

Section 8.09. Construction of Ambiguous Provisions. The Trustee may construe any ambiguous or inconsistent provisions of this Indenture, and any such construction by the Trustee shall be binding upon the Owners. In construing any such provision, the Trustee will be entitled to rely upon advice and opinions of Counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own negligence or willful misconduct.

Section 8.10. Resignation of the Trustee. The Trustee may resign and be discharged of the trusts created by this Indenture by written resignation filed with HPTE not less than 60 days before the date when it is to take effect; provided notice of such resignation is mailed by registered or certified mail to the Owner of each Outstanding Certificate at the address shown on the registration books. Such resignation shall take effect only upon the appointment of a successor Trustee as specified in Sections 8.12 and 8.13 below. If no successor Trustee is appointed within 60 days following the date designated for the resignation of the Trustee, the resigning Trustee may apply to a court of competent jurisdiction to appoint a successor Trustee. The rights of the Trustee to be held harmless, to insurance proceeds, or to other amounts due arising prior to the date of such resignation shall survive resignation.

Section 8.11. Removal of the Trustee. Any Trustee hereunder may be removed at any time, after payment of all outstanding fees and expenses of the Trustee being so removed, by HPTE or by the Owners of a majority in aggregate principal amount of the Notes then Outstanding, upon written notice being filed with the Trustee, HPTE and the Owner of each Outstanding Certificate at the address shown on the registration books. Such removal shall take effect only upon the appointment of a successor Trustee. The rights of the Trustee to be held harmless, to insurance proceeds, or to other amounts due arising prior to the date of such removal shall survive removal. Notwithstanding the foregoing, HPTE shall not be entitled to remove the Trustee pursuant to this Section 8.11 if an Indenture Event of Default has occurred and is continuing.

Section 8.12. Appointment of Successor Trustee. If the Trustee or any successor trustee resigns or is removed or dissolved, or if its property or business is taken under the control of any state or federal court or administrative body, a vacancy shall forthwith exist in the office of the Trustee, and HPTE shall appoint a successor, and shall cause a notice of such appointment to be

mailed by registered or certified mail to the Owners of all Outstanding Notes at the address shown on the registration books. If HPTE fails to make such appointment within 30 days after the date notice of resignation is filed, the Owners of a majority in aggregate principal amount of the Notes then Outstanding may do so. If the Owners have failed to make such appointment within 60 days after the date notice of resignation is filed, the Trustee may petition a court of competent jurisdiction to make such appointment.

Section 8.13. Qualification of Successor. Any successor trustee shall be a national or state commercial bank with trust powers having capital and surplus of at least \$50,000,000, if there be one able and willing to accept the trust on reasonable and customary terms.

Section 8.14. Instruments of Succession. Any successor trustee shall execute, acknowledge and deliver to HPTE an instrument accepting such appointment under this Indenture in addition to any documents, agreements or instruments required for such successor trustee to act as Trustee under this Indenture; and thereupon such successor trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust under this Indenture, with like effect as if originally named Trustee herein. The Trustee ceasing to act under this Indenture shall pay over to the successor trustee all moneys held by it under this Indenture; and, upon request of the successor trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to the successor trustee all the estates, properties, rights, powers and trusts under this Indenture of the Trustee ceasing to act.

Section 8.15. Merger of the Trustee. Any corporation into which any Trustee hereunder may be merged or with which it may be consolidated, or any corporation resulting from any sale, merger or consolidation of its corporate trust department or assets as a whole or substantially as a whole or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which any Trustee hereunder shall be a party, shall be the successor trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.16. Intervention by the Trustee. In any judicial proceeding to which the Trustee or HPTE is a party and which, in the opinion of the Trustee and its Counsel, has a substantial bearing on the interests of Owners of the Notes, the Trustee may intervene on behalf of the Owners and shall do so if requested in writing by the Owners of at least 25% in aggregate principal amount of Outstanding Notes and furnished indemnity. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 8.17. Books and Records of the Trustee; Trustee Record Keeping. The Trustee shall keep such books and records relating to the Accounts created under this Indenture as shall be consistent with industry practice and make such books and records available for inspection by HPTE, at all reasonable times and for six years following the discharge of this Indenture according to Article VI hereof.

Section 8.18. Environmental Matters. Any real property or interest in real property constituting any portion of the Trust Estate shall be subject to the following provisions:

(a) The Trustee's responsibilities for any interest in real property constituting any portion of the Trust Estate, prior to an Indenture Event of Default, shall be performed as Trustee on behalf of the Owners of the Notes without any duty to monitor or investigate whether the real property constituting any portion of the Trust Estate complies with environmental laws or is subject to any hazardous substance.

(b) Following an Indenture Event of Default, if the Trustee determines that the release, threatened release, use, generation, treatment, storage or disposal of any hazardous substance on, under or about real property constituting any portion of the Trust Estate gives rise to any liability or potential liability under any federal, State, local or common law, or devalues or threatens to devalue such real property, the Trustee may take whatever action is deemed necessary by the Trustee to address the threatened or actual releases of hazardous substances, or to bring about or maintain such real property's compliance with federal, State or local environmental laws and regulations. The Trustee shall not be obligated to take any actions contemplated in this Section unless either (i) it deems it necessary pursuant to the advice of Counsel, or (ii) it is directed to do so and is indemnified to its satisfaction as expressly set forth in Section 7.02 hereunder.

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.01. Supplemental Indentures and Amendments Not Requiring Certificate Owners' Consent. The Trustee may, with the written consent of HPTE, but without the consent of or notice to the Owners, enter into such indentures or agreements supplemental hereto, for any one or more or all of the following purposes:

- (a) to grant additional powers or rights to the Trustee;
- (b) to subject to this Indenture additional revenues, properties or collateral;
- (c) to authorize the execution and delivery of Additional Notes for the purposes and under the conditions set forth in Section 2.10 hereof; or
- (d) for any purpose not inconsistent with the terms of this Indenture or to cure any ambiguity, or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provision contained herein or to make such other amendments to this Indenture which do not materially adversely affect the interests of the Owners of the Notes.

Section 9.02. Supplemental Indentures and Amendments Requiring Certificate Owners' Consent.

(a) Exclusive of supplemental indentures and amendments covered by Section 9.01 hereof, the written consent of HPTE and the consent of the Owners of a majority in aggregate principal amount of the Notes then Outstanding, shall be required for any indenture or indentures supplemental hereto.

(b) Notwithstanding the foregoing, without the consent of the Owners of all of the Notes at the time Outstanding nothing herein contained shall permit, or be construed as permitting:

(i) a change in the terms of redemption or maturity of the principal amount of or the interest on any Outstanding Certificate, or a reduction in the principal amount of or premium payable upon any redemption of any Outstanding Certificate or the rate of interest thereon, without the consent of the owner of such Certificate;

(ii) the deprivation of the Owner of any Note then Outstanding of the interest created by this Indenture (other than as originally permitted hereby) without the consent of the Owner of such Certificate;

(iii) a privilege or priority of any Note or Notes over any other Note or Notes (except with respect to the possible subordination of Additional Notes); or

(iv) a reduction in the aggregate principal amount of the Notes required for consent to such supplemental indenture.

(c) If at any time HPTE shall request the Trustee to enter into a supplemental indenture which requires the consent of the Note Owners as provided herein, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be sent by Electronic Means or mailed to the Owners of the Notes at the addresses last shown on the registration records of the Trustee. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Note Owners. If, within 60 days or such longer period as shall be prescribed by HPTE following the mailing of such notice, the required consents have been furnished to the Trustee as herein provided, no Note Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee from executing the same or from taking any action pursuant to the provisions thereof.

ARTICLE X

MISCELLANEOUS

Section 10.01. Evidence of Signature of Owners and Ownership of Notes. Any request, consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or the ownership of Notes shall be sufficient (except as otherwise herein expressly provided) if made in the following manner, but the Trustee may, nevertheless, in its discretion require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Owner or his attorney of such instrument may be proved by the certificate of any officer authorized to take acknowledgments in the jurisdiction in which he purports to act that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before a notary public.

(b) The fact of the owning by any person of Notes and the amounts and numbers of such Notes, and the date of the owning of the same, may be proved by a certificate executed by any trust company, bank or bankers, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank or to such bankers, as the property of such party, the Notes therein mentioned, if such certificate shall be deemed by the Trustee to be satisfactory. The Trustee may, in its discretion, require evidence that such Notes have been deposited with a bank, bankers or trust company before taking any action based on such ownership. In lieu of the foregoing the Trustee may accept other proofs of the foregoing as it shall deem appropriate.

Any request or consent of the Owner of any Note shall be conclusive upon and shall bind all future owners of such Note and of any Note issued upon the transfer or exchange of such Note in respect of anything done or suffered to be done by HPTE or the Trustee in accordance therewith, whether or not notation of such consent or request is made upon any such Note.

Section 10.02. Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than HPTE, the Trustee and the Owners any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation of this Indenture; and all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Trustee shall be for the sole and exclusive benefit of HPTE, the Trustee, and the Owners.

Section 10.03. Electronic Storage. The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 10.04. Titles, Headings, Etc. The titles and headings of the articles, sections and subdivisions of this Indenture have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions of this Indenture.

Section 10.05. Severability. In the event any provision of this Indenture shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Indenture.

Section 10.06. Governing Law. This Indenture shall be governed and construed in accordance with the laws of The State of Colorado.

Section 10.07. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.08. Notices. All notices, Notes or other communications to be given hereunder shall be sufficiently given and shall be deemed given when sent by Electronic Means or delivered or mailed by first-class mail, postage prepaid, addressed as follows:

to the Trustee: Zions Bank

1001 17th Street
Suite 850
Denver, CO 80202
Telephone: (720) 947-7438
Facsimile: (855) 547-6178
E-mail: neil.witoff@zionsbancorp.com
with a copy to: denvercorporatetrust@zionsbancorp.com
Attention: Corporate Trust Department

to HPTE: Colorado High Performance Transportation Enterprise
2829 W. Howard Place
Denver, CO 80204
Telephone: (720) 248-8544
Facsimile: (303) _____
E-mail: Nicholas.Farber@state.co.us
Attention: Director

with copies to: Colorado State Treasurer
140 State Capitol
200 East Colfax Avenue
Denver, CO 80203
Telephone: (303) 866-2441
Facsimile: (303) 866-2123
E-mail: eric.rothaus@state.co.us
Attention: Deputy State Treasurer

Any notice party may, by written notice, designate any further or different addresses to which subsequent notices, Notes or other communications shall be sent.

Section 10.09. Successors and Assigns. All the covenants, promises and agreements in this Indenture contained by or on behalf of the Trustee shall bind and inure to the benefit of its successors and assigns, whether so expressed or not.

Section 10.10. Events Occurring on Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Indenture, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, HPTE and the Trustee have each caused this Indenture to be executed as of the date first above written.

**COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE**

By: _____
Director

**ZIONS BAN CORPORATION, NATIONAL
ASSOCIATION,
as Trustee**

By: _____
Vice President and Trust Officer – Zions
Bank Division

APPROVED:

[ATTORNEY
Attorney General

GENERAL]

By: _____
Name: _____
Title: Assistant Attorney General

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of May, 2021, by Nicholas Farber, as Director of the Colorado high Performance Transportation Enterprise.

Notary Public

My commission expires: _____

[SEAL]

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of May, 2021, by Neil Witoff, as a Vice President of Zions Bancorporation, National Association.

Notary Public

My commission expires: _____

[SEAL]

EXHIBIT A

DEFINITIONS

“*Accounts*” means the accounts and subaccounts which are established pursuant to Article III of this Indenture.

“*Act*” means the Part 8 of Article 4 of Title 43, C.R.S., including without limitation C.R.S. Sections 43-4-802 through 43-4-812.

“*Additional Notes*” means any Notes in addition to the Series 2021 Notes executed and delivered pursuant to Section 2.10 of this Indenture.

“*Additional Rent*” means all rent paid to HPTE by CDOT in addition to Pre-Paid Rent for the privilege of using some or all of the Property following the Hold Period.

“*Allocation*” means the action of the Transportation Commission in making moneys available for all payments due under the IAA, including the payment of CDOT Backup Loans and Top-Off Payments.

“*Authorized Denominations*” means \$100,000 and additional increments of \$5,000 or integral multiples thereof.

“*Bank Loan Obligations*” means all payment obligations of HPTE to the Owners pursuant to the Loan Agreements and the Series 2021 Notes, including without limitation, the obligation to pay the principal of, interest on and other amounts due under the Series 2021 Notes.

“*Beneficial Owners*” means any person for which a DTC Participant acquires an interest in Notes.

“*Burnham Yard CDOT Backup Loan Account*” means the account created within the Transportation Special Fund whereby any proceeds of CDOT Backup Loans and/or Top-Off Payments shall be deposited; *provided* that the proceeds of such CDOT Backup Loans and Top-Off Payments shall not be commingled with any other moneys.

“*Burnham Yard Costs of Issuance Account*” means the subaccount within the Burnham Yard Project Account of the same name created pursuant to Section 3.01(a) of this Indenture.

“*Burnham Yard Loan Repayment Account*” has the meaning set forth in Section 3.03(a) of this Indenture.

“*Burnham Yard Project*” means the acquisition of the Property by HPTE and undertaking by HPTE of its responsibilities and obligations with respect to the Property pursuant to the IAA.

“*Burnham Yard Project Account*” has the meaning set forth in 3.01(a) of this Indenture.

“*Burnham Yard Revenue Account*” has the meaning set forth in Section 3.02(a) of this Indenture.

“*Business Day*” means any day, other than a Saturday, Sunday or legal holiday or a day (a) on which banks in the city where the operations office of the Trustee is located are required or authorized by law or executive order to close; or (b) on which the Federal Reserve System is closed.

“*Capitalized Interest Subaccount*” has the meaning set forth in Section 3.03(a) of this Indenture.

“*CDOT*” means the Colorado Department of Transportation, an executive agency of the State.

“*CDOT Backup Loan*” means any loan made to HPTE by CDOT pursuant to Section V of the IAA as a CDOT Backup Loan thereunder.

“*CDOT Representative*” means the (a) Controller or Chief Financial Officer of CDOT or (b) any other officer or employee of CDOT authorized by law or by a writing signed by the Executive Director to act as a CDOT Representative under the IAA or the Lease.

“*Cede & Co.*” means DTC’s nominee or any new nominee of DTC.

“*Costs of Issuance*” means all items of expense directly or indirectly payable by or on behalf of HPTE related to the authorization, execution and delivery of this Indenture, the IAA, the Lease or related to the authorization, sale, execution and delivery of the Notes, including, but not limited to, costs of preparation and reproduction of documents, initial fees and expenses of the Trustee, legal fees and expenses, including fees and expenses of Special Counsel, counsel to the Trustee, if any, and counsel to the Owners, if any, fees and expenses of HPTE’s financial advisor and other professionals, fees and expenses for preparation, execution and safekeeping of the Notes, and any other cost, charge or fee in connection with the original sale and the execution and delivery of the Notes.

“*Counsel*” means an attorney at law or law firm (who may be counsel for the Trustee) who is satisfactory to HPTE.

“*C.R.S.*” means the Colorado Revised Statutes, as amended.

“*Denver*” means the City and County of Denver, Colorado.

“*Depository*” means any securities depository, in accordance with then current guidelines of the Securities and Exchange Commission, which shall act as securities depository for the Notes.

“*Disposition Proceeds*” means the amount or amounts received by HPTE in exchange for the sale of some or all of the Property.

“*DTC*” means The Depository Trust Company, New York, New York, and its successors and assigns.

“*DTC Participant*” means any broker-dealer, bank or other financial institution from time to time for which DTC holds Notes as Depository.

“*Electronic Means*” means telecopy, facsimile transmissions, e-mail transmissions or other similar electronic means of communication providing evidence of transmission.

“*Eligible Additional Property Expenditures*” means expenditures by HPTE relating to or for the purpose of the permitting, entitlement, site investigation, due diligence, environmental permitting and study of environmental impacts, Small Area Planning process, title investigation and remediation, environmental remediation, and development of the Property, including payments to consultants, engineers, attorneys, and other professionals, and any other amounts expended by HPTE relating to the development or disposition of the Property or preparation for development or disposition thereof, as approved or authorized by an HPTE Representative.

“*Extraordinary Mandatory Redemption*” means any redemption made pursuant to Section 4.03 of this Indenture.

“*Federal Securities*” means non-callable bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“*Fiscal Year*” means HPTE’s fiscal year, which begins on July 1 of each calendar year and ends on June 30 of the following calendar year, or any other 12-month period which HPTE or other appropriate authority hereafter may establish as HPTE’s fiscal year.

“*Force Majeure*” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America, CDOT or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; pandemics, epidemics and other public health emergencies; or any other cause or event not within the control of HPTE or the Trustee.

“*Governor*” means the Governor of the State of Colorado.

“*Ground Lease*” means a lease by HPTE (other than the Lease) to one or more Persons of all or a portion of the Property.

“*Ground Rent*” means the rent paid to HPTE by a tenant under a Ground Lease.

“*Hold Period*” has the meaning set forth in the IAA.

“*HPTE*” has the meaning set forth in the introductory paragraph of this Indenture.

“*HPTE Representative*” means (a) the Director of the HPTE and (b) any other officer or employee of HPTE authorized by law or by a writing signed by the Director of the HPTE to act as a HPTE Representative under the IAA or this Indenture.

“IAA” means the Burnham Yard Acquisition Interagency Agreement dated as of May __, 2021 between CDOT and HPTE, as such IAA may be amended or supplemented from time to time.

“IAA Remedy” or “Remedies” means any or all remedial steps provided in the IAA whenever an IAA Event of Default has happened and is continuing, which may be exercised by the Trustee as provided in this Indenture.

“Improvements” means the improvements to be made to the Property by HPTE with a portion of the proceeds of the Notes.

“Indenture” means this State of Colorado Colorado High Performance Transportation Enterprise Burnham Yard Indenture of Trust, dated as of May __, 2021, executed and delivered by HPTE and the Trustee, as the same may be amended or supplemented.

“Indenture Event of Default” means those defaults specified in Section 7.01 of this Indenture.

“Initial Term” means, with respect to the Lease, the period commencing on the date the Lease is executed and delivered (unless a different commencement date is specifically set forth in the Lease) and ending on May 31, 2051, unless sooner terminated as provided therein.

“Interest Payment Date” means each December 15, commencing with respect to the Series 2021 Notes, December 15, 2021.

“Interest Portion” means the interest due and payable on each Note on each Interest Payment Date.

“Lease” means the Lease dated as of May __, 2021 entered into pursuant to the IAA between HPTE, as lessor, and CDOT, as tenant, as supplemented or amended from time to time.

“Loan Agreements” means one or more of those substantially identical agreements between HPTE and the Owners providing for the loan of the aggregate principal amount of the Series 2021 Notes by the Owners to the Trustee to be applied and repaid as provided in this Indenture.

“Loan Obligations” has the meaning set forth in the Loan Agreements.

“Notes” means the Series 2021 Notes and any Additional Notes.

“Outstanding” means, with respect to the Notes, all Notes executed and delivered pursuant to this Indenture as of the time in question, except:

(a) all Notes theretofore canceled or required to be canceled under Section 2.09 of this Indenture;

(b) Notes in substitution for which other Notes have been executed and delivered under Section 2.07 or 2.08 of this Indenture;

(c) Notes which have been redeemed as provided in Article IV of this Indenture;

(d) Notes for the payment or redemption of which provision has been made in accordance with Article VI of this Indenture; provided that, if such Notes are being redeemed, the required notice of redemption has been given or provision satisfactory to the Trustee has been made therefor; and

(e) Notes deemed to have been paid pursuant to Section 6.01 of this Indenture.

“*Owners*” means the registered owners of any Notes.

“*Permitted Investments*” means any lawful investment permitted for the investment of funds of HPTE under Section 24-75-601.1, C.R.S., or any successor thereto.

“*Person*” means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

“*Prepaid Rent*” means the sum of \$15,000,000 paid by CDOT to HPTE pursuant to the IAA and the Lease on or about the Series 2021 Notes Closing Date as prepaid rent under the Lease for the initial five (5) years of the Initial Term thereof.

“*Principal Portion*” means the principal due and payable on the Notes on each principal payment date under this Indenture.

“*Project*” means the acquisition of Burnham Yard, any improvements thereto, and payment of the Costs of Execution and Delivery.

“*Project Costs*” means the costs of acquiring fee simple title to the Property, Costs of Issuance and Eligible Additional Property Expenditures.

“*Property*” means an approximately 60-acre parcel of land beginning at 13th Avenue at its northernmost point to roughly 4th Avenue at its southernmost point (known as the “*Burnham Yard*”), in Denver, Colorado, together with any and all additions and modifications thereto and replacements thereof.

“*Refinancing Proceeds*” means any and all proceeds of a loan to HPTE or issuance of Additional Notes by HPTE hereunder that are to be applied to pay principal of, premium if any and interest on the Notes at maturity and all Bank Loan Obligations or otherwise pay all principal of, premium, if any, and interest on all Outstanding Notes.

“*Regular Record Date*” in respect of the Notes means the first day of the calendar month in which an Interest Payment Date (or the Business Day immediately preceding such day, if such first day is not a Business Day) occurs.

“*Rent*” means, collectively, Prepaid Rent, Additional Rent paid by CDOT pursuant to the Lease after the Hold Period, and Ground Rent paid by parties other than CDOT.

“*Requirement of Law*” means any applicable federal, state or local statute, ordinance, rule or regulation, any judicial or administrative order (including any such consent order), request or judgment, any common law doctrine or theory, any provision or condition of any permit required to be obtained or maintained, or any other binding determination of any governmental authority relating to the ownership or operation of property, including but not limited to any of the foregoing relating to zoning, environmental, health or safety matters.

“*Revenues*” means all amounts received by HPTE (or the Trustee for the benefit of HPTE) from Rent, Disposition Proceeds, Refinancing Proceeds, Top-Off Payments and proceeds of CDOT Back-Up Loans or any other proceeds of the development, sale or lease of some or all of the Property pursuant to C.R.S. § 43-4-806(6)(d), (f), (g) and/or (m), and any moneys and securities, including investment income, held by the Trustee in the Accounts established under this Indenture.

“*Series 2021 Notes*” means the “State of Colorado Colorado High Performance Transportation Enterprise Burnham Yard Revenue Notes (Burnham Yard Project), Series 2021,” dated May __, 2021, which may be in one or more series, executed and delivered pursuant to this Indenture.

“*Series 2021 Notes Closing Date*” means May __, 2021.

“*Special Counsel*” means (a) as of the initial date of issuance of the Series 2021 Notes, Kaplan Kirsch & Rockwell LLP, or (b) as of any other date, Kaplan Kirsch & Rockwell LLP or any other counsel with nationally recognized expertise in the issuance of municipal debt. So long as a Loan Agreement is in effect, HPTE shall have the right to select Special Counsel.

“*State*” means the State of Colorado.

“*State Treasurer*” means the State Treasurer of the State of Colorado.

“*Top-Off Payment*” means a payment made by CDOT to HPTE for goods provided or services rendered to CDOT by HPTE pursuant to Sections III.3 and IV.1 of the IAA.

“*Transportation Commission*” means the transportation commission created by Section 43-1-106, C.R.S.

“*Transportation Special Fund*” has the meaning set forth in Section 3.01 of this Indenture.

“*Trust Estate*” means all of the property placed in trust by HPTE in favor of the Trustee pursuant to the Granting Clauses of this Indenture.

“*Trustee*” means Zions Bancorporation, National Association, acting in the capacity of trustee pursuant to this Indenture, and any successor thereto appointed under this Indenture or assign permitted under this Indenture.

“*Trustee Representative*” means (a) any officer of the Trustee; and (b) any other person or persons designated to act on behalf of the Trustee this Indenture by a written certificate furnished to HPTE containing the specimen signature of such person and signed on behalf of the Trustee by

any officer of the Trustee. The identity of the Trustee Representative may be changed by the Trustee from time to time by furnishing a new certificate to HPTE.

* * *

EXHIBIT B

[To Come]