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BANOWSKY & LEVINE  
A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS

February 4, 2013

VIA REGULAR MAIL AND  
CERTIFIED MAIL RRR NO. 7004 1350 0000 5364 8130

Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Public Information Request submitted to the Northeast Texas Rural Rail  
Transportation District ("NETEX")

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Ladies and Gentlemen:

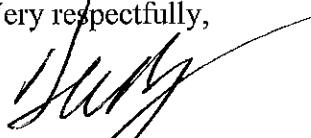
This firm represents NETEX in connection with the matter referenced above. NETEX has received three (3) separate requests to inspect or copy some of its files. Copies of each of these requests for information are enclosed. The requested files include the attached Ground Lease Agreement (the "Ground Lease"), dated January 9, 2013, between NETEX, as lessor, and Cotton Belt Turnpike, LP, a Texas limited partnership, as lessee (the "Lessee"). Lessee has stated that it believes that the Ground Lease, in its entirety, should be withheld from public disclosure and that the Lessee considers the Ground Lease to be within one of the exceptions under Subchapter C of the Texas Public Information Act (the "Act"). It is NETEX's belief that Lessee is claiming the exception set forth in Section 552.110 of the Act (Confidentiality of Trade Secrets and Commercial or Financial Information).

By letter dated January 23, 2013 (a copy of which has been previously provided to you and is attached hereto for your convenience) the undersigned notified the Lessee, in the form promulgated by the Attorney General for such notification, that a request for information had been received, and informed the Lessee of its right to object to the release of the Ground Lease.

By this letter, and pursuant to Section 552.301(a) of the Act, NETEX hereby formally requests a decision from the Attorney General about whether the information that Lessee is seeking to withhold falls within one of the exceptions set forth in Chapter C of the Act, and specifically the exception set forth in Section 552.110 of the Act.

Thank you for your prompt attention to this matter. Should you have any questions or comments, or should you require any additional information, please do not hesitate to contact me.

Very respectfully,



David W. Banowsky

Enclosures: Requests for information, Letter to Lessee, and Ground Lease

cc: Requestors:	
Mr. Christopher Kurinec	<i>via electronic mail; w/o enclosures</i>
Mr. Tim Wyatt	<i>via electronic mail; w/o enclosures</i>
Ms. Brenda Short	<i>via electronic mail; w/o enclosures</i>
Cotton Belt Turnpike, LP c/o Public Werks, Inc. 3811 Turtle Creek Blvd. Suite 1300 Dallas, Texas 75219 Attn: John N. Crew, President	<i>via regular mail; w/o Ground Lease</i>
Northeast Texas Rural Rail Transportation District 641 Church St. Sulphur Springs, TX 75482 Attention: Angie Huie	<i>via electronic mail; w/o Ground Lease</i>
Colesen C. Evans Winstead PC 500 Winstead Building 2728 N. Harwood Street Dallas, Texas 75201	<i>via electronic mail; w/o Ground Lease</i>

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BANOWSKY & LEVINE  
A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS

January 23, 2013

VIA CERTIFIED MAIL RRR  
NO. 7004 1350 0000 5364 8628

Cotton Belt Turnpike, LP  
c/o Public Werks, Inc.  
3811 Turtle Creek Blvd.  
Suite 1300  
Dallas, Texas 75219  
Attn: John N. Crew, President

Re: Public Information Request submitted to the Northeast Texas Rural Rail  
Transportation District ("NETEX")

Dear Mr. Crew:

This firm represents NETEX in connection with the matter referenced above. NETEX has received a formal request to inspect or copy some of its files. A copy of the request for information is enclosed. The requested files include records NETEX received from you or from your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the Attorney General that one or more exceptions apply to your records. You are not required to submit arguments to the Attorney General, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the Attorney General will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the Attorney General, you must:

- (a) identify the legal exceptions that apply,

(b) identify the specific parts of each document that are covered by each exception, and

(c) explain why each exception applies. *Gov't Code §552.305(d)*.

A claim that an exception applies without further explanation will not suffice. (Attorney General Opinion H-436). You may contact this office to review the information at issue in order to make your arguments. NETEX will provide the Attorney General with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The Attorney General is generally required to issue a decision within 45 working days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

**In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. *Gov't Code §552.305(e)*.** You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. *Gov't Code §552.305(e)*.

#### **Commonly Raised Exceptions.**

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. I have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

#### **Section 552.101: Information Made Confidential by Law.**

Open Records Decision No. 652 (1997).

#### **Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information.**

##### Trade Secrets:

*In re Bass*, 113 S.W.3d 735 (Tex. 2003).

*Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

Commercial or Financial Information:

*Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. filed) (construing previous version of section 552.110), abrogated by *In re Bass*, 113 S.W.3d 735 (Tex. 2003).

*Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Open Records Decision No. 639 (1996).

Open Records Decision No. 661

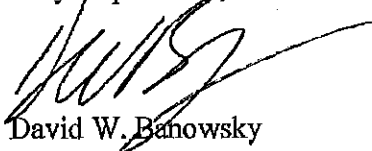
**Section 552.113: Confidentiality of Geological or Geophysical Information.**

Open Records Decision No. 627 (1994).

**Section 552.131: Confidentiality of Certain Economic Development Negotiation Information.**

If you have questions about this notice or release of information under the Act, please refer to the Public Information Handbook published by the Office of the Attorney General, or contact the Attorney General's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To obtain copies of the Public Information Handbook or Attorney General Opinions, including those listed above, please visit the Attorney General's website at <http://www.texasattorneygeneral.gov> or call the Attorney General's Opinions Library at (512) 936-1730.

Very respectfully,



David W. Bahowsky

Enclosure: Copy of request for information

cc: Requestor:

Mr. Christopher Kurinec  
4912 CR 2714  
Caddo Mills, TX  
910-639-2885

Via Certified Mail RRR# 7004 1350 0000 5364 8635  
and Via Email

Cotton Belt Turnpike, LP  
January 23, 2013  
Page 4

Office of the Attorney General Via Certified Mail RRR# 7004 1350 0000 5364 8642  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

Northeast Texas Rural Rail Transportation District (Via e-mail)  
641 Church St.  
Sulphur Springs, TX 75482  
Attention: Angie Huie

Colesen C. Evans (Via e-mail)  
Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201

> CC: [Dan.Flynn@house.state.tx.us](mailto:Dan.Flynn@house.state.tx.us); [jatkins@huntcounty.net](mailto:jatkins@huntcounty.net)  
> From: [christopherkurinec@yahoo.com](mailto:christopherkurinec@yahoo.com)  
> Subject: Request copy of roll call vote on 9 January 2013 and copy of lease agreement  
> Date: Fri, 18 Jan 2013 16:03:10 -0600  
> To: [ahuie46@msn.com](mailto:ahuie46@msn.com); [cltismillsap@yahoo.com](mailto:cltismillsap@yahoo.com)

>

> Hello,

> I am officially requesting a copy of the lease agreement that was approved by NETEX on 9 January 2013 and a copy of the Roll Call Vote so that our community can know who voted yay and nay, and the scope of the lease that NETEX has agreed to with Publicwerks INC.

> I did attend this meeting on the 9th and am very interested in this project, as are my neighbors and fellow citizens who will be directly or indirectly impacted by this project.

> I did call last week requesting this information, but assumed a written request would allow for a more formal request. I will also be mailing this same letter.

> I appreciate any and all help that you can provide me in educating the local population and affected property owners to this agreement and the goals of NETEX.

>

> Sincerely

> Christopher Kurinec

> 910-639-2885

> 4912 CR 2714

> Caddo Mills, TX

Subject: Public Information Request of NETEX documents  
Date: Thu, 24 Jan 2013 10:24:32 -0600  
From: [twyatt@co.collin.tx.us](mailto:twyatt@co.collin.tx.us)  
To: [Cletis@NETEXrail.org](mailto:Cletis@NETEXrail.org); [Angie@NETEXrail.org](mailto:Angie@NETEXrail.org); [ahuie46@msn.com](mailto:ahuie46@msn.com)



**COLLIN COUNTY**

Public Information Office  
2300 Bloomdale Road  
Suite 4154  
McKinney, Texas 75071  
[www.collincountytx.gov](http://www.collincountytx.gov)

*January 24, 2013*

**Northeast Texas Rural Rail Transportation District**

Attn: **Cletis Millsap**, Chairman; **Angie Huie**, Administrative Assistant  
641 Church St.  
Sulphur Springs, TX 75482

**SENT BY FAX/EMAIL: 903-439-0809;** [Cletis@NETEXrail.org](mailto:Cletis@NETEXrail.org); [Angie@NETEXrail.org](mailto:Angie@NETEXrail.org)

Dear Mr. Millsap, Ms. Huie,

This request is made under the *Texas Public Information Act*, Chapter 552, Texas Government Code, which guarantees access to information in the custody of governmental agencies. I respectfully request copies of the following information:

Any and all approved agreement(s) between the **Northeast Texas Rural Rail Transportation District** (NETEX), an established governmental subdivision of the State of Texas, and **Public Werks, Inc.**, and/or **Cotton Belt Turnpike, LP**, regarding any properties, operational railroad, right-of-way owned and/or controlled within the NETEX corridor as described by NETEX on its website.

In the interest of expediency, and to minimize the research and/or duplication burden on your staff, I would be pleased to personally examine the relevant records if you would grant me *immediate* access to the requested material, or I would gladly accept a scanned copy of the documents requested via email ( [twyatt@collincountytx.gov](mailto:twyatt@collincountytx.gov) ) or fax, **972-547-4699**. Additionally, and since time is a factor, please communicate with me by telephone or email, rather than by mail. My direct telephone number is: **972-548-4673**.

I shall look forward to hearing from you promptly, as specified in the law. Thank you for your cooperation.

*Sincerely,*

**Tim Wyatt**  
Public Information Officer



GROUND LEASE AGREEMENT

by and between

NORTHEAST TEXAS RURAL RAIL  
TRANSPORTATION DISTRICT, as Landlord

and

COTTON BELT TURNPIKE, LP, as Tenant

Dated January 9, 2013  
(The Lease Execution Date)

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## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (hereinafter the "Lease" or the "Agreement") entered into this 9th day of January, 2013, by and between the NORTHEAST TEXAS RURAL RAIL TRANSPORTATION DISTRICT, a Texas rural rail transportation district created under Chapter 172 of the Texas Transportation Code, by the counties of Collin, Delta, Franklin, Hopkins, Hunt and Titus, hereinafter referred to as "Landlord" or "Lessor" or "NETEX," and COTTON BELT TURNPIKE, LP, a limited partnership, organized and existing under the laws of the State of Texas and authorized to do business in the State of Texas, hereinafter referred to as "Tenant" or "Lessee."

### ARTICLE I

#### DEFINITIONS

Section 1.1. Definitions. For all purposes of this Lease, capitalized terms used in this Lease shall have the respective meanings set forth below, provided that capitalized terms used in this Lease:

"Abandonment" shall mean the failure of the Tenant to operate the Toll Road Facility as a toll road from and after the Commercial Operation Date for a continuous period of one year following Landlord's written notice to all Lenders of such failure or at such other time as may be required by a Lender or Lenders. For the purposes of this definition, the determination of the Tenant to use none of or only a portion of the ROW for the Project shall not be considered an Abandonment of the ROW or said portion thereof so long as Tenant has not otherwise failed to operate the Toll Road Facility as a toll road from and after the Commercial Operation Date for a continuous period of one year following Landlord's written notice to all Lenders of such failure or at such other time as may be required by a Lender or Lenders.

"Acquired ROW" shall have the meaning set forth in Section 3.3(a) of this Lease.

"Additional Rent" shall have the meaning set forth in Section 4.4 of this Lease.

"Affiliate" with respect to any Person, shall mean a Person which directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

"Applicable Law" shall mean the laws of the state of Texas and: (a) any applicable federal law; (b) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and (c) any Governmental Approval, in each case having the force of law and applicable from time to time to the Toll Road Premises.

"Bankruptcy Law" shall mean the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended from time to time and any successor statute thereto. "Bankruptcy Law" also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of

creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

"Business Day" shall mean any day on which federally chartered banks located in the State of Texas are open for business.

"Change in Control" shall mean with respect to a Person any direct or indirect change in the ownership or Control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the Person (including the Control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the Control over the right to appoint or remove directors, a general partner, a managing member or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in a Person or group of Persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly, having Control.

"Change in Law Event" shall mean the coming into effect of: (a) any Applicable Law enacted after the Term Commencement Date; or (b) any modification (including repeal) of any Applicable Law existing on the Term Commencement Date that comes into effect after the Term Commencement Date.

"Commercial Operation Date" shall mean the date on which the Toll Road is opened to the public for vehicular traffic with tolls being collected.

"Contract Services" shall mean the Design-Build Work and the Operating Services.

"Control" "Controlled by" and "under common Control with" shall mean, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person.

"Coverage Requirement" shall mean a determination by the Independent Consultant in the Feasibility Report that, using a standard acceptable to the Lenders, Projected Net Revenues sufficiently cover Projected Debt Service for the first five calendar years following the Projected Commercial Operation Date.

"Design-Build Work" shall mean everything required to be furnished and done for and relating to the design, acquisition, construction and commissioning of the Toll Road Facility by the Tenant.

"Equipment" shall mean all machinery, equipment and other tangible personal property acquired and installed as part of the Toll Road, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto.



"Existing Improvements" shall mean any improvements and moveable or immoveable property located on the ROW as of the Lease Execution Date.

"Expiration Date" shall mean the sooner to occur of (a) the conclusion of the Term, (b) the Termination Date, (c) the 10th anniversary of the Term Commencement Date if the Commercial Operation Date has not occurred, and (d) such other date on which this Lease shall Terminate.

"Feasibility Report" shall mean a study or studies by an Independent Consultant demonstrating the financial and engineering feasibility of the Toll Road, setting forth the projected cash flows of and assumptions related to the Toll Road, Projected Net Revenues, and Projected Debt Service, and projected Supplemental Lease Rental Payments, including assumptions on traffic, financing costs and the impact of present or future competing facilities.

"Financial Model" shall mean a financial model prepared by or at the direction of the Tenant including projections and assumptions for the Toll Road Facility showing, among other things, projected operating costs of the Project, Rent payments to the Landlord under this Lease, and Project Debt.

"Financing Agreements" shall mean any credit agreement, loan agreement, reimbursement, bond indenture or resolution, interest rate swap or hedge agreement (including any ISDA agreements), security agreements or any other agreements entered into with respect to or in connection with the Project Debt.

"Fixed Lease Rental Payment" shall mean \$1,000 per month during the first year following the Term Commencement Date, and \$5,000 per month thereafter.

"Force Majeure" shall have the meaning set forth in Section 39.8 of this Lease.

"Funding Agreement" shall mean the Grant Funding Agreement, dated October 29, 2002, between the State of Texas acting by and through TxDOT and NETEX.

"GAAP" shall mean generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

"Governmental Approvals" shall mean all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Toll Road Facility.

"Governmental Body" shall mean any federal, state, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body (including the Landlord, acting in its governmental capacity other than as a party to this Lease), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of the Toll Road Premises.

"Hazardous Substance" shall mean any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law pertaining to the environment or otherwise, or capable of causing harm to human health or the environment, including, "hazardous waste" as defined under RCRA.

"Hazardous Substance Law(s)" shall mean all Legal Requirements relating to pollution or protection of the environment, including, without limitation, common laws and laws relating to releases or threatened releases of Hazardous Substance into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater, land, and surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, cleanup, transport or handling of Hazardous Substance, and all laws and regulations with regard to record keeping, notification, disclosure and reporting requirements respecting Hazardous Substance.

"Improvements" shall mean all structures, improvements, fixtures, equipment and other appurtenances hereafter situated on or under the surface of the Land, including alterations and replacements thereof and additions thereto, and including tie-ins to integrate the Toll Road with the Texas highway system.

"Independent Consultant" shall mean any independent consulting firm or independent engineering firm professionally recognized in matters pertaining to the construction and operation of toll road facilities selected by Tenant demonstrating the financial and engineering feasibility of the Toll Road.

"Insurance Proceeds" shall mean the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Tenant under this Lease.

"Insurance Receivables" shall mean Insurance Proceeds which a person is entitled to receive but which have not been received.

"Land" shall mean the ROW and any Existing Improvements; provided, however, the Land excludes the Rail ROW.

"Landlord" shall mean the Northeast Texas Rural Rail Transportation District, a Texas rural rail transportation district created under Chapter 172 of the Texas Transportation Code, by the counties of Collin, Delta, Franklin, Hopkins, Hunt and Titus, or any permitted successor or assignee of the interest of Landlord under this Lease.

"Landlord Indemnitee" shall mean NETEX and each of its officers, directors, members, employees, agents, contractors and subcontractors.

"Landlord Event of Default" shall have the meaning set forth in Section 21.1 of this Lease.

"Landlord Person" shall mean: (a) any director, officer, employee or agent of the Landlord in each case acting as such; or (b) any contractor, any operator, any subcontractor and any representative, advisor (including any legal and financial advisor) of the Landlord, in any such Person's capacity as a provider of services directly or indirectly to the Landlord in connection with NETEX's activities in the ROW or pursuant to or in connection with this Lease.

"Lease Execution Date" shall mean January 9, 2013.

"Leasehold Mortgage" and "Leasehold Mortgagee" shall mean, respectively, any mortgage or deed of trust granted and held in full compliance with the terms of this Lease and constituting a lien upon the interest of Tenant in this Lease and the leasehold estate hereby created, and the party acting as mortgagee under such mortgage, or the beneficiary under such deed of trust.

"Legal Proceeding" shall mean every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Lease, and all appeals therefrom.

"Legal Requirement(s)" shall mean, (a) with reference to any entity (i) the certificate of incorporation and by-laws or partnership agreement, certificate of limited partnership, operating agreement, company agreement or other organizational or governing documents of such entity, and (ii) any Applicable Law (including any Hazardous Substance Laws) applicable to or binding upon such entity or its property (to the extent thereby affecting the Toll Road Facility); and (b) with reference to the Toll Road Facility (i) any Applicable Law (including any Hazardous Substance Laws), applicable to the Toll Road Facility, any appurtenance thereto, or the use or manner of use thereof, and (ii) the terms, conditions and requirements of any easement, restrictive declaration or other encumbrance upon the Land.

"Lenders" shall mean the lenders or agent for the lenders, bondholders or trustee for the bondholders, swap or hedge providers or other financing parties providing Project Debt.

"Lenders' Remedies Agreement" shall mean the lenders' remedies agreement in substantially the form attached hereto as Appendix C or such other lenders' remedies agreement that may be mutually agreed to by NETEX and the Lenders.

"Loss-and-Expense" shall mean, and is limited to, (in each case subject to Section 22.4 of this Lease) any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection, cost or expense relating to third-party claims for which the Tenant and/or Landlord is obligated to indemnify the Landlord and/or Tenant (as applicable) hereunder, including all reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding, excluding, however, any indemnification payment

obligation in respect of any contingent liability unless and until such liability becomes due and payable by, or any actual Loss-and-Expense are suffered by, the Landlord Indemnified Party and/or the Tenant Indemnified Party (as applicable), and except as explicitly excluded or limited under any provision of this Lease.

"NETEX Activities" shall mean any activities carried on or to be carried on by NETEX, or other persons permitted by NETEX, on the ROW, including the Rail ROW.

"Non-Disturbance and Attornment Agreements" shall mean Non-Disturbance and Attornment Agreements substantially in the form attached as Appendix D.

"Operating Period" shall mean the period between the Commercial Operation Date and the Termination Date.

"Operating Services" shall mean everything required to be furnished and done for and relating to the operation and maintenance of the Toll Road Facility by any Operator during the Operating Period.

"Operator" shall mean any operator of the Toll Road Facility other than the Tenant.

"Overdue Rate" shall mean a rate of interest equal to seven percent (7.0%).

"Permitted Encumbrances" shall mean, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Tenant and against which the Tenant has established appropriate reserves in accordance with GAAP;

(2) Any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Tenant, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Tenant to acquire and construct the Toll Road Facility or operate the Toll Road Facility;

(3) Any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen's, mechanics', workmen's, repairmen's, warehousemen's, landlords', vendors' or carriers' encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Tenant and against which the Tenant has established appropriate reserves;

(4) Servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which shall not in the aggregate materially and adversely impair the acquisition and construction of the Toll Road Facility or operation of the Toll Road Facility by the Tenant;

(5) Applicable zoning and building ordinances, municipal ordinances and regulations, and restrictive covenants, which do not materially interfere with the acquisition and construction of the Toll Road Facility and operation of the Toll Road Facility by the Tenant;

(6) Encumbrances which are created on or after the Term Commencement Date;

(7) Encumbrances which are created by a Change in Law Event on or after the Term Commencement Date;

(8) Any encumbrance created by an act or omission by any Governmental Body (including without limitation, any encumbrance imposed by TxDOT to integrate the Toll Road with the Texas highway system), or with respect to which the Landlord has given its consent; and

(9) Any servitudes, licenses, easements, restrictions, rights-of-way, rights and encumbrances specifically identified in Appendix E.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

"Phase I Environmental Site Assessment" shall mean an Environmental Site Assessment conducted in accordance with the (a) United States Environmental Protection Agency Standards and Practices for All Appropriate Inquiries (AAI) (40 CFR Part 312) and (b) guidelines established by the American Society for Testing and Materials (ASTM) in the ASTM E1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

"Prohibited Person" shall mean any Person (a) who has been convicted in a criminal proceeding of a felony or any crime involving moral turpitude in the ten preceding years, (b) who directly or indirectly Controls, is Controlled by, or is under common Control with a Person who has been convicted in a criminal proceeding of a felony or any crime involving moral turpitude in the ten preceding years, or (c) is not in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism), or other governmental action relating thereto.

"Primary Contractor" shall mean the primary contractor or contractors selected by the Tenant to do the Design-Build Work.

"Project" shall mean the Toll Road and any toll road and related facilities acquired or constructed by Tenant or an Affiliate of Tenant that are not located on the ROW but are integrated and contiguous with the Toll Road.

"Project Debt" shall mean any loans, notes, bonds or other indebtedness or borrowings or interest rate swaps or hedges related to the acquisition and construction of, improvements and modifications to, or refunding or refinancing of, the Project.

"Projected Commercial Operation Date" shall mean the date projected by the Independent Consultant in the Feasibility Report on which the Toll Road is opened to the public for vehicular traffic with tolls being collected.

"Projected Debt Service" shall mean shall mean principal, interest and other payments projected by the Independent Consultant in the Feasibility Report on Project Debt expected to be issued, incurred or entered into to finance the acquisition and construction of the Project (but excluding any equity of the Tenant or any Unit Holder).

"Projected Net Revenues" shall mean Projected Revenues less Projected Operation and Maintenance Expenses.

"Projected Operation and Maintenance Expenses" shall mean the reasonable and necessary expenses of the Tenant projected by the Independent Consultant in the Feasibility Report to be paid in administering, operating, maintaining, and repairing the Project.

"Projected Revenues" shall mean the total of all income and revenue from all sources projected by the Independent Consultant in the Feasibility Report to be collected by the Tenant in connection with the Project, including all tolls, rates, charges, rentals, fees and any other compensation, regardless of form, and investment income expected to be earned by the Tenant thereon.

"Rail ROW" shall mean a continuous strip of land of not less than fifty feet (50') in width within the ROW (and/or abutting or adjacent to the ROW pursuant to Section 3.3 hereof) as may be necessary, as determined by the Independent Consultant in the Feasibility Report, for Landlord to develop freight or passenger rail facilities; the Rail Row shall be further identified prior to the Term Commencement Date pursuant to Section 3.2(a)(vi) hereof.

"Rent" shall mean the Fixed Lease Rental Payment and the Supplemental Lease Rental Payment payable pursuant to Section 4.1 of this Lease and any Additional Rent payable pursuant to Section 4.4 of this Lease.

"Required Insurance" shall mean the insurance specified in Appendix B.

"Revenues" shall mean the total of all gross revenue from all sources collected by the Tenant in connection with the Project, including all tolls, rates, charges, rentals, fees and any other compensation, regardless of form, and investment income earned by the Tenant thereon, and without adjustment for expenses. Revenues shall be determined on a cash basis without regard to accruals.

"RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

"ROW" shall have the meaning set forth in Section 3.3 of this Lease.

"Subcontract" shall mean any contract entered into by the Primary Contractor and a subcontractor of a Primary Contractor of any tier, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

"Subcontractor" shall mean any person that enters into a Subcontract.

"Sublease" and "Sublessee" shall mean, respectively, any lease or agreement for occupancy of the Toll Road Facility, or any part thereof, other than this Lease, and a tenant or occupant under a Sublease.

"Supplemental Lease Rental Payment" shall mean a yearly rental payment calculated in accordance with the following formula:

Supplemental Lease Rental Payment =  $[[A(B/C)] \times D]$ ; provided, however, for the purposes of the foregoing Supplemental Lease Rental Payment formula, the quotient of (B/C) shall never be less than 0.5.

Where:

A = Revenues collected for the applicable calendar year

B = Total Square acres of ROW on which of the Toll Road is located (and excluding any Rail ROW), based on road surface, shoulder area, parking and the floor level of building, toll collection and structure sites on the ROW.

C = Total Square acres of the Project, based on road surface, shoulder area, parking and the floor level of building, toll collection and structure sites.

D = (a) if Revenues collected in such calendar year are equal to or less than \$15,000,000, then D = 0;

(b) if Revenues collected in such calendar year are more than \$15,000,000 and equal to or less than \$20,000,000, then D = 1%

(c) if Revenues collected in such calendar year are more than \$20,000,000 and equal to or less than \$30,000,000, then D = 2%

(d) if Revenues collected in such calendar year are more than \$30,000,000 and equal to or less than \$40,000,000, then D = 3%

(e) if Revenues collected in such calendar year are more than \$40,000,000, then D = 5%

"Taxes and Assessments" shall mean all taxes, property assessments, and charges and other governmental or public utility company charges of any kind and nature whatsoever, together with all interest and penalties thereon, which are assessed, levied, confirmed, imposed upon or against (i) the Toll Road or the value of the Toll Road, improvements thereto or fixtures therein, or rent received or payable hereunder, (ii) the gross receipts from the Toll Road, or (iii)

the possession of any interest hereunder or the conduct of any business in the Toll Road, in each instance payable with respect to the Term of this Lease, or any portion thereof; provided, that "Taxes and Assessments" shall not include any taxes, assessments, fines, penalties, or others amounts incurred as a result of NETEX Activities or the Rail ROW.

"Tenant" shall mean Cotton Belt Turnpike, LP, a Texas limited partnership, or any permitted successor or assignee of the interest of Tenant under this Lease.

"Tenant Event of Default" shall have the meaning set forth in Section 20.1 of this Lease.

"Tenant Indemnitee" shall mean Tenant and each of its officers, directors, members, employees, agents, contractors and subcontractors.

"Tenant Person" shall mean: (a) any director, officer, employee or agent of the Tenant in each case acting as such; or (b) any Primary Contractor, any Operator, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Tenant, in any such Person's capacity as a provider of services directly or indirectly to the Tenant in connection with the Toll Road Facility.

"Tenant's Renewal Notice" shall have the meaning set forth in Section 3.1(b) of this Lease.

"Term" shall have the meaning set forth in Section 3.1 of this Lease.

"Term Commencement Date" shall mean the date on which the conditions set forth in Section 3.2 of this Lease are satisfied or waived by Tenant.

"Terminate," "Terminated," and "Termination" of this Lease shall refer to the expiration of the Term of this Lease, or any sooner termination of the Term of this Lease pursuant to any of the provisions herein.

"Termination Date" mean the date upon which this Lease Terminates.

"Texas Turnpike Corporation" shall mean the Texas Turnpike Corporation, a private toll road corporation duly formed and existing under Chapter 11, Title 32, Revised Statutes, and continued in existence as provided in Section 30 of HB 749, 72nd Regular Session with the continuing rights and powers provided in Chapter 11, Title 32, Revised Statutes.

"Toll Road Facility" shall mean the Toll Road Premises and the Equipment, plus any other licenses, permits, easements or similar rights acquired or constructed by Tenant, an Affiliate of Tenant or Landlord that are located on the ROW.

"Toll Road Premises" shall mean the Land and the Improvements, including the Toll Road.

"Toll Road" shall mean the new toll road and related structures to be constructed and operated on the ROW, including all utility connections and landscaping related to such toll road and related structures constructed and operated on the ROW.



"Toll Road Debt" shall mean that portion of the Project Debt allocable to the Toll Road Facility based on, in Tenant's reasonable determination, either (i) the ratio of the square footage of the Toll Road Facility to the square footage of the Project, or (ii) the actual application of the proceeds of Project Debt, including, in particular, the following amount allocable to the Toll Road Facility: (a) all amounts outstanding, including interest and default interest accrued, from the Tenant to the Lenders under the Financing Agreements or to any Affiliate of the Tenant providing debt on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith, provided that default interest will not include any increased interest, fees or penalty amounts payable by the Tenant for any reason other than a failure by the Tenant to pay any amount when due; (b) the cost of early termination of interest rate or currency hedging arrangements or make-whole, as the case may be, amount payable by the Tenant to the Lenders as a result of a prepayment under the Financing Agreements due to the termination of this Lease; and (c) all other reasonable transaction fees, costs and expenses for which the Tenant is responsible under the Financing Agreements.

"TxDOT" shall mean the Texas Department of Transportation.

"Unit Holder" shall mean any holder or owner of Units.

"Units" shall mean membership interest, units or other interests of any class in the capital of the Tenant.

## ARTICLE II

### LEASE OF LAND

Section 2.1. Lease of Land. Landlord for and in consideration of the Rent, covenants and agreements herein contained, hereby demises and leases unto Tenant, and Tenant does hereby take, hire and accept, subject to Permitted Encumbrances and the terms, covenants, conditions and agreements hereinafter expressed, the Land; provided, however, prior to the modification of Appendix A as provided in Section 3.2(a)(vi) herein, Landlord does not warrant any property or imply any ownership, title or anything associated with a title to any and all properties described in Appendix A; provided, further, following the modification of Appendix A as provided in Section 3.2(a)(vi) herein, Landlord shall represent and warrant, as of the Term Commencement Date, that Landlord owns the Land and Rail ROW in fee simple.

## ARTICLE III

### TERM AND CONDITIONS

Section 3.1. (a) Initial Term. This Lease will continue in full force and effect for a term (the "Initial Term") of 55 years, commencing on the Term Commencement Date, and ending at 11:59 p.m. (Dallas, Texas time) on the last day of the calendar month which is 55 years after the Term Commencement Date, unless such Initial Term is sooner terminated as hereinafter provided or is extended pursuant to Section 3.1(b) of this Lease or otherwise by mutual written agreement of the parties hereto.

(b) Renewal Terms. In addition to the Initial Term, Tenant or Tenant's assignee has the option to exercise two separate and successive renewal options (individually, a "Renewal Option", and collectively, the "Renewal Options") to extend the Initial Term of this Lease for successive period(s) of 25 years each (individually, a "Renewal Term", and collectively, the "Renewal Terms"), each of which Renewal Terms will be upon the same terms and conditions hereof as the Initial Term. At least 180 days prior to the expiration of the Initial Term or the then applicable Renewal Term of this Lease, as the case may be, and not more than one year prior to such dates, Tenant may advise Landlord in writing of Tenant's election to extend the Initial Term or the then applicable Renewal Term of this Lease for the next applicable Renewal Term ("Tenant's Renewal Notice"). If Tenant timely provides the Tenant's Renewal Notice, the Term of this Lease will be automatically extended for the additional period of years covered by the Renewal Option so exercised. If Tenant fails to timely provide Tenant's Renewal Notice, then the applicable Renewal Option (and all subsequent Renewal Options, if any) granted hereunder will thereupon automatically terminate, without further notice, and be of no further force or effect nor thereafter exercisable. The Initial Term and, if applicable, any Renewal Terms of this Lease are sometimes hereinafter referred to individually and/or collectively as the "Term".

Section 3.2. Conditions to Term Commencement Date. (a) The Term Commencement Date shall be subject to meeting the following conditions prior to December 31, 2015:

- (i) delivery of a Feasibility Report by the Tenant to the Landlord projecting (A) that the Coverage Requirement can be met and/or that the Project is otherwise feasible in Tenant's and Lenders' sole discretion, and (B) the amount of the Supplemental Lease Rental Payments,
- (ii) receipt by the Tenant of a Phase I Environmental Site Assessment identifying no actual or potential environmental contamination,
- (iii) the payment, or waiver of payment by TxDOT, of any amounts required to be paid to TxDOT pursuant to Section 1 of the Funding Agreement,
- (iv) the receipt by Tenant of a Leasehold Policy of Title Insurance showing title to the leasehold estate to be conveyed to the Tenant subject to no exceptions other than encumbrances as are expressly agreed to by the Tenant,
- (v) delivery of a survey prepared in accordance with the requirements set forth on Appendix F, attached hereto, and
- (vi) the modification of Appendix A to identify the Land and the Rail ROW, and to provide that the Rail ROW is excluded from this Lease; provided, however, such modification of Appendix A shall be agreed upon in writing by Landlord and Tenant.

The Term Commencement Date shall occur upon Tenant providing written notification to Landlord that all of the foregoing conditions have been met or waived as set forth in Section 3.2(b) of this Lease. Following the Term Commencement Date, Tenant shall, promptly upon receipt thereof, provide to Landlord at no cost and expense to Landlord, the Phase I Environmental Site Assessment, the commitment for title insurance, the survey, any soils or

geotechnical reports, and any other due diligence materials obtained by Tenant or for Tenant in connection with this Lease; provided, however, Tenant makes no representations or warranties as to the truth, accuracy, scope, quality of work, or completeness of any materials delivered to Tenant (e.g., that such materials are current, complete, accurate or the final version thereof) pursuant to this paragraph. If Tenant fails to give written notification that all conditions have been met or waived prior to December 31, 2015, the Term Commencement Date shall not occur and this Lease shall automatically terminate. If Tenant, prior to December 31, 2015, delivers written notification to Landlord that any of the foregoing conditions cannot be met, and Tenant fails to waive such condition as set forth in Section 3.2(b) of this Lease, the Term Commencement Date shall not occur and this Lease shall automatically terminate effective as of the date of such notification.

(b) Notwithstanding the provisions of Section 3.2(a) of this Lease, the Tenant may waive any condition set forth in Section 3.2(a) of this Lease other than the condition specified in Section 3.2(a)(vi) by delivery of a written waiver to the Landlord, and in such case, assuming the other conditions of Section 3.2(a) of this Lease that have not been waived have been fully satisfied, the Term Commencement Date shall occur upon Tenant providing written notification thereof to the Landlord.

Section 3.3. ROW. (a) ROW shall mean those certain pieces or parcels of land located in the State of Texas, Counties of Hunt and Collin, all as more particularly described in Appendix A attached hereto upon which the Toll Road Facility may be constructed, together with all the rights, ways, privileges, servitudes and appurtenances thereunto belonging or in any way appertaining, as they exist on the Term Commencement Date, or as they may thereafter exist, as Appendix A shall be amended pursuant to Section 3.2(a)(vi) of this Lease; provided, however, if prior to the modification of Appendix A (as provided in Section 3.2(a)(vi) hereof) any additional right-of-way is necessary for the acquisition and construction of the Rail ROW, and if permitted by Applicable Law, Tenant shall use its best efforts to acquire additional right-of-way adjacent to and/or abutting the existing ROW ("Acquired ROW") on behalf of Landlord, and any such Acquired ROW shall be automatically added to and become a part of the Rail ROW under the Lease; provided, however, the costs associated with any such Acquired ROW shall be (i) paid for entirely by Landlord, or (ii) the amount of Tenant's first scheduled Quarterly Installment Payment(s) shall be reduced by an amount equal to such costs.

(b) Operation of Rail Facilities. Tenant acknowledges and agrees that the Landlord's primary obligation is to the preservation of rail service capability and capacity within the Rail ROW, and Tenant shall not unreasonably interfere with the acquisition, construction or operation of any rail facility on the Rail ROW.

Section 3.4. Mutual Easements. (a) Landlord hereby grants, conveys and assigns to Tenant, prior to the Term Commencement Date, and subject to all matters of record, a temporary, non-exclusive easement over, upon, across, through and under the ROW for the purpose of conducting studies, tests, preparatory work and all other activities necessary in anticipation of acquiring and constructing the Toll Road Facility.

(b) Landlord hereby grants, conveys and assigns to Tenant, and subject to all matters of record, a temporary, non-exclusive easement over, upon, across, through and under the Rail

ROW, commencing on the Term Commencement Date, for the purpose of conducting studies, tests, preparatory work and all other activities necessary in anticipation of acquiring and constructing the Toll Road Facility or as may be necessary to acquire and construct the Toll Road Facility, including use as laydown and staging areas for construction materials; provided, however, Tenant shall not unreasonably interfere with the acquisition, construction or operation of any rail facility on the Rail ROW during any such construction period.

(c) Tenant hereby grants, conveys and assigns to Landlord, subject to all matters of record, a temporary, non-exclusive easement over, upon and across the ROW to access and egress from the Rail ROW, so long as the exercise of such right does not unreasonably interfere with the acquisition, construction or operation of the Toll Road Facility and so long as Landlord provides Tenant at least 24 hours' prior written notice (except in the event of a real or apparent emergency) and, upon Tenant's request, allows a representative of Tenant to accompany Landlord during any such entry.

Section 3.5. No Relationship. No contractual, legal or other relationship shall be created between Landlord and any contractor, subcontractor or consultant as a result of Tenant's engagement of such contractor, subcontractor or consultant. This Lease shall not create any obligation on the part of Landlord to pay any sum to any contractor, subcontractor or consultant or to see that payment is made by Tenant to any contractor, subcontractor or consultant.

## ARTICLE IV

### RENT

Section 4.1. Amount. Throughout the Term, Tenant shall pay to Landlord:

(a) the Fixed Lease Rental Payment due in monthly installments on or before the first day of each month, and

(b) the Supplemental Lease Rental Payment payable, if any, in quarterly installments (each a "Quarterly Installment Payment") on or before January 1, April 1, July 1 and October 1 of each calendar year. Each calendar year's Supplemental Lease Rental Payment is based upon Tenant's good faith estimate of Tenant's Revenues for such calendar year. On or before 90 days following the end of each calendar year, Tenant shall determine the amount of actual Supplemental Lease Rental Payment due for the preceding calendar year based on actual Revenues for the preceding calendar year, and Tenant shall provide written notice (the "Supplemental Payment Notice") to Landlord of the correct amount of the Supplemental Lease Rental Payment for the prior calendar year. If the actual Supplemental Lease Rental Payment for the prior calendar year is more than the sum of Tenant's Quarterly Installment Payments for such calendar year, the Tenant shall include with the Supplemental Payment Notice a payment to Landlord for such deficiency. If the actual Supplemental Lease Rental Payment for the prior calendar year is less than the sum of Tenant's Quarterly Installment Payments for such calendar year, the Landlord shall reduce the amount of Tenant's next scheduled Quarterly Installment Payment by an amount equal to such overpayment.

(c) Tenant shall maintain at all times during the Term of this Lease, at the office of Tenant, books of account and records prepared in accordance with GAAP consistently applied with respect to Tenant's Revenues, and shall retain such books, records and such other documents as are reasonably necessary to properly audit the Revenues and Supplemental Lease Rental Payments. Each Supplemental Payment Notice sent to Landlord shall be conclusively binding upon Landlord unless Landlord, within 120 days of Landlord's receipt of such Supplemental Payment Notice, sends a notice to Tenant exercising Landlord's right to perform such audit. If Landlord timely delivers such notice, Tenant shall make available for reasonable inspection by a third-party certified public accounting firm ("Accounting Firm") acceptable to Tenant and engaged by Landlord at its expense, at the office of Tenant, during normal business hours, Tenant's books and records relating to the Revenues and Supplemental Lease Rental Payments for the year in question. If such an audit by the Accounting Firm alleges a miscalculation in the Supplemental Payment Notice, Landlord may, within 30 days following the completion of the audit, submit a claim for the miscalculated amount to the Tenant, detailing the nature of the miscalculation. If following Landlord's audit and notice to Tenant of a disputed item(s) of Revenues and/or Supplemental Lease Rental Payment, after a good faith diligent effort to reach agreement, the parties are unable to resolve any dispute as to the correctness of such Supplemental Payment Notice within 30 days following such notice of objection, either party may refer the issues raised to a third-party accounting firm mutually acceptable to Landlord and Tenant, and the decision of such third-party accounting firm shall be conclusively binding upon Landlord and Tenant ("Secondary Review"). In connection with Landlord's audit, Landlord and the Accounting Firm shall execute and deliver to Tenant a confidentiality agreement, in form and substance reasonably satisfactory to Tenant (such approval not to be unreasonably withheld, conditioned or delayed), whereby such parties agree not to voluntarily disclose to any third party any of the information obtained in connection with such review. Landlord shall pay the fees and expenses relating to Landlord's audit (and the Secondary Review, if applicable), unless the audit reveals that Tenant miscalculated any Supplemental Lease Rental Payment by more than six percent (6%), in which case Tenant shall pay the reasonable fees and expenses incurred in connection with such audit and the Secondary Review (if applicable). Any overpayment due to Landlord from Tenant (or underpayment payable by Landlord to Tenant, as applicable) shall be refunded by Tenant to Landlord (or credited by Landlord to Tenant, as applicable) within 30 days following the mutual determination.

Section 4.2. Payment. Landlord and Tenant intend that Rent shall be paid to Landlord absolutely net of all costs, expenses and obligations of every kind and nature whatsoever with respect to the Land. Rent shall be paid to Landlord by Tenant, without notice or demand (except with respect to Additional Rent), and without abatement, deduction or set-off of any amount whatsoever, except as otherwise expressly provided herein, within 20 days from and after the due dates set forth in this Section 4. Tenant covenants to pay to Landlord at such place as Landlord may from time to time give notice, as provided in Article 27, the Rent referred to in this Lease in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Landlord's acceptance of an incorrect amount with respect to Rent shall not be treated as a waiver of Landlord's right to the correct sum due.

Section 4.3. Enforcement Costs. Tenant agrees to pay the fees, costs and expenses of the Landlord together with any reasonable fees and disbursements incurred by the Landlord's

attorneys and consultants in any proceedings for enforcement of the Landlord's rights or Tenant's obligations hereunder and any disputes relating thereto, except for any such proceeding that results in a final, unappealable judgment in favor of Tenant as to all matters in controversy. The provisions of this Section 4.3 shall survive the Termination of this Lease.

Section 4.4. Additional Rent. All sums that may become payable to Landlord upon notice to Tenant as provided in Article 8 or Article 13 or otherwise hereunder, and all other charges and expenses of whatsoever nature that Tenant assumes or agrees to pay, upon receipt of notice from Landlord, pursuant to this Lease shall be deemed Additional Rent hereunder and payable as aforesaid, and Landlord shall have (in addition to any other right or remedy of Landlord as expressly provided for in this Lease) the same rights and remedies in the event of the nonpayment of any such sums by Tenant as in the case of default by Tenant in the payment of the Fixed Lease Rental Payment and the Supplemental Lease Rental Payment payable pursuant to Section 4.1 of this Lease.

## ARTICLE V

### TOLL ROAD FACILITY

Section 5.1. Toll Road Facility. Subject to Section 6.1 herein and Section 6.2 herein, Tenant may construct, build, acquire, operate, maintain, raise equity for, and finance the Toll Road Facility without the approval of the Landlord. Any Toll Road Facility must be of a character and quality, and acquired and constructed, in accordance with standards customarily followed in the toll road industry for toll roads of like size and character. Following commencement of construction of the Toll Road, Tenant shall use commercially reasonable efforts to complete the Project with diligence.

Section 5.2. Additional Land Acquisitions. Landlord acknowledges and agrees that Tenant or its Affiliates may acquire additional real estate in the general area of the Toll Road, including without limitation, for the purpose of enhancing the development of the Toll Road Facility, or otherwise.

Section 5.3. Security for Completion of Construction. If any security prior to the commencement of construction of the Project is required by the Lenders or Unit Holders, Tenant shall provide evidence of such security to Landlord.

## ARTICLE VI

### USE AND OPERATION OF TOLL ROAD FACILITY

Section 6.1. Prohibited Uses. Tenant shall not use or allow the Toll Road Facility or any part thereof to be used, occupied or operated for any unlawful purpose, or in any manner that will constitute waste, or shall void, or make voidable, any insurance then in force with respect to the Toll Road Facility. Tenant shall, at Tenant's sole cost and expense, comply with all present and future Legal Requirements.

Section 6.2. Permissible Uses. During the Term of this Lease the Toll Road Facility may be used and operated only as a toll road with related facilities and for related purposes.

## ARTICLE VII

### TAXES AND ASSESSMENTS

Section 7.1. Payment of Taxes and Assessments. During the Term, Tenant covenants and agrees to pay when due (subject to the remaining provisions of this Article), all Taxes and Assessments. If, by law, any such Tax or Assessment may at the option of the taxpayer be paid in installments, Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Tax or Assessment) in installments and shall pay only such installments as may become due during the term of this Lease as the same respectively become due and payable. Any ad valorem tax on the ROW relating to a fiscal period of the taxing authority, a part of which period is included within the Term of this Lease and a part of which is included in a period of time before the Term Commencement Date or after Termination of this Lease, shall be prorated between Landlord and Tenant as of the Term Commencement Date or the date of Termination of this Lease. The provisions of this Section 7.1 shall survive the Termination of this Lease.

## ARTICLE VIII

### INSURANCE

Section 8.1. Required Insurance.

(a) Required Insurance. At all times during the Term, the Tenant shall obtain, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable.

(b) Primary Contractor, Subcontractors and Operator. The Tenant shall ensure that all Primary Contractor, Subcontractors and any Operator secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Toll Road Facility.

(c) Compliance with Insurer Requirements. The Tenant and the Landlord shall comply promptly with the requirements of all insurers pertaining to the Toll Road Facility under any policy of Required Insurance to which such is an insured, a co-insured, or an additional insured person. Neither party to this Lease shall knowingly do or permit anything to be done or fail to take any reasonable action that results in the cancellation or the reduction of coverage under any policy of Required Insurance to which such is an insured, a co-insured, or an additional insured person.

(d) Failure to Provide Insurance Coverage. If the Tenant fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Tenant fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, the Landlord may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by the Landlord the amount thereof shall be reimbursable to the Landlord promptly upon written demand to the Tenant with interest at the Overdue Rate. The failure of the Tenant to obtain and maintain any Required

Insurance shall not relieve the Tenant of its liability for any losses intended to be insured thereby, be a satisfaction of any Tenant liability under this Lease or in any way limit, modify or satisfy the Tenant's indemnity obligations hereunder.

Section 8.2. No Separate Insurance. Tenant shall not carry separate insurance concurrent in coverage with any insurance required to be furnished by Tenant under the provisions of this Lease unless Landlord shall be included as a named insured or additional insured, as the case may require, with loss payable as hereinabove provided. Tenant shall promptly notify Landlord of the issuance of any such separate insurance and shall cause certified copies of such policies to be delivered to Landlord as provided in this Article.

## ARTICLE IX

### COVENANTS AGAINST WASTE AND TO REPAIR AND MAINTAIN THE TOLL ROAD FACILITY

Section 9.1. No Waste. Tenant shall not cause or permit any waste on the Land.

Section 9.2. Maintenance, Repair and Replacement. During the Term, the Tenant will maintain, preserve, keep and operate, or cause to be maintained, preserved, kept and operated, any properties constituting the Toll Road Facility (including all additions, improvements and betterments thereto and extensions thereof and every part and parcel thereof) in good and efficient repair, working order and operating condition. The Tenant may from time to time make any repairs, renewals, replacements and substitutions to said properties, and construct additions and improvements thereto and extensions and betterments thereof without the consent of the Landlord. The Landlord shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Toll Road Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Toll Road Facility, or to furnish any utilities or services for the Toll Road Facility and the Tenant hereby agrees to assume full responsibility therefor.

The Tenant shall have the right to install, remove, repair, replace or finance or permit to be installed, removed, repaired, replaced or financed, at the Toll Road Facility, machinery and equipment, including, without limitation, telecommunications equipment, data processing equipment and trade fixtures installed by the Tenant, and all furniture, furnishings and other personal property not constituting part of the Toll Road Facility.

Section 9.3. Removal of Improvements, Furniture, Fixtures and Equipment. Subject to Tenant's obligation set forth in Section 9.2, Tenant may remove any improvements, fixtures, machinery or equipment used in the physical operation of the Toll Road Facility without the consent of the Landlord.

Section 9.4. Removal of Existing Improvements. As of the Term Commencement Date, Tenant is granted the right to demolish, remove and dispose of all Existing Improvements remaining on the ROW, in its discretion, without payment of any compensation to Landlord therefor or in respect thereof, and without any obligation to restore or replace any such Existing



Improvements upon Termination; provided, however, Tenant shall not have the right to demolish, remove or dispose of any improvements or property located on the Rail ROW.

## ARTICLE X

### COMPLIANCE WITH LEGAL REQUIREMENTS

Section 10.1. Compliance Generally. Throughout the Term of this Lease, Tenant shall, at its sole cost and expense, promptly comply with all applicable Legal Requirements.

Section 10.2. Landlord as Governmental Body. Whether or not express reference is made to this Section 10.2 of this Lease, for so long as Landlord shall be a Governmental Body, references in this Lease to any Legal Requirement shall be construed without reference to any inapplicability or unenforceability thereof by reason of Landlord's governmental rights, power, authority or status, it being the intent of the parties that Tenant shall comply with all Legal Requirements that would apply if Landlord were not a Governmental Body, except to the extent expressly stated to the contrary herein, and that Landlord shall not be obligated to assert on Tenant's behalf, or waive for Tenant's benefit, any governmental right, power or authority.

Section 10.3. Changes in Legally Permissible Uses. Tenant shall not initiate or consent to any rezoning or other change to any Legal Requirements relating to permissible uses, or manners of use, of the Land without the prior written consent of Landlord which shall not be unreasonably withheld or delayed.

## ARTICLE XI

### DAMAGE TO OR DESTRUCTION OF THE TOLL ROAD FACILITY

Section 11.1. Continued Compliance With Lease Obligations. Subject to Sections 21.1 and 21.2 of this Lease, Tenant's responsibility to pay the Rent, and, except as may be otherwise provided in any applicable provisions of the Lease, Tenant's obligation to perform all other covenants and agreements under this Lease, shall not be affected by any such damage to or destruction of the Toll Road Facility, and Tenant hereby waives the provisions of any statute or law now or hereafter in effect that would otherwise relieve Tenant from such obligations.

## ARTICLE XII

### CONDEMNATION

Section 12.1. Taking of Substantially All of the Premises. If, at any time during the Term of this Lease, the whole or substantially all of the Land shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, or by agreement between Landlord, Tenant and those authorized to exercise such right, this Lease shall Terminate on the date of such taking and the Rent shall be apportioned and paid to the date of such taking. Landlord and Tenant agree that any taking of a portion of the Land during the Term that renders it impractical to operate the remainder of the Project for the purposes thereof shall be treated as a taking of substantially all of the Land.

Section 12.2. Taking of Less than Substantially All of the Premises. If less than substantially all of the Land shall be taken, then this Lease shall be deemed Terminated as to the part so taken as of the date of such taking, but shall continue in full force and effect for that part not taken, without reduction, abatement or effect upon the Term of this Lease and other sums of money and charges herein provided to be paid by Tenant.

Section 12.3. Taking of Temporary Use. If temporary use of the whole or any part of the Toll Road Facility shall be taken at any time during the Term of this Lease for any public or quasi-public purpose, Tenant shall give prompt notice to Landlord and the Term of this Lease shall not be reduced or affected in any way and the respective rights and obligations of the parties herein.

Section 12.4. Date of Taking. For purposes of this Article, the Toll Road Facility or a part thereof shall be deemed to have been taken or condemned on the date on which actual possession of the Toll Road Facility or a part thereof, as the case may be, is acquired by any lawful power or authority or the date on which title vests therein, whichever is earlier. Any right of entry which may be granted by Landlord or Tenant to any condemning authority shall not affect the date on which the Toll Road Facility or a part thereof shall be deemed to have been taken or condemned.

Section 12.5. Payment of Condemnation Award. Any condemnation award, or payment pursuant to an agreement made under threat of condemnation, that (i) has not been specifically made to either Landlord or Tenant by a Governmental Body, or (ii) has been specifically made to either Landlord or Tenant by a Governmental Body, shall be payable as follows:

(a) first, to Tenant in an amount equal to:

1. if prior to the Commercial Operation Date,

(A) the greater of: (1) the costs and expenses that were actually incurred by or on behalf of the Tenant directly in connection with any of the actions described in Section 3.2(a) herein (including, if applicable, any title insurance premiums paid or incurred and any payments or liquidated damages payable in connection with the termination or cancellation of contracts regarding such actions), the Financial Model and the Design-Build Work through the Termination Date, and (2) an amount equal to 100% of the Toll Road Debt outstanding as of the Termination Date, plus any applicable prepayment penalty, as well as the cost of any early terminations of interest rate swaps, hedges, currency hedges and similar arrangements; plus

(B) Amounts actually paid or incurred by or on behalf of the Tenant prior to the Termination Date in connection with a Force Majeure, Change in Law Event or similar event; minus

(C) An amount on deposit to the credit of any bank account held by or on behalf of the Tenant that has not been applied by the Tenant directly in connection with the Design-Build Work.

2. if following the Commercial Operation Date,

(A) The greater of: (1) the amount equal to the costs actually incurred by the Tenant for the Feasibility Report, the Financial Model and the Design-Build Work, less the value of the accrued amortization of such costs, provided that: (y) accrued amortization will be determined (in accordance with GAAP for purposes of determining the amortization period) by calculating, using a straight line amortization schedule, the total amount accrued through the Termination Date, and (z) in no event shall such amount be greater than the amount of the costs actually incurred by the Tenant for the Design-Build Work, less accrued amortization on the Termination Date as shown on the Financial Model projections as of the Contract Date; and (2) an amount equal to 100% of the Toll Road Debt outstanding as of the Termination Date, plus any applicable prepayment penalty, as well as the cost of any early terminations of interest rate swaps, hedges, currency hedges and similar arrangements; minus

(B) An amount on deposit to the credit of any bank account held by or on behalf of the Tenant.

(b) second, Landlord shall be paid an amount for the ROW so taken equal to its fair market value as if it were vacant and unimproved, based on the then permitted highest and best use by Landlord of the ROW so taken;

(c) third, if the award/payment shall have been made in respect of a partial taking of the Land (but not if there has been a taking of all or substantially all of the Land), then from the remainder of the proceeds there shall be paid to the Tenant in an amount sufficient to pay in full the cost of any repair, replacement and rebuilding necessitated by such taking. The amount so paid shall include, but shall not be limited to, the amount of any award/payment specified to be for the purpose of effecting such repairs, replacements and rebuilding;

(d) fourth, from the remainder of the award/payment, if any, Landlord shall be paid an amount equal to the discounted, then present value of the Landlord's reversionary interest in the part of the Land so taken; and

(e) fifth, any balance shall be payable to Tenant.

### ARTICLE XIII

#### LIENS

Section 13.1. Liens. Other than Permitted Encumbrances, Tenant shall not suffer or permit any stop notice, vendor's, mechanic's, laborer's or materialman's statutory or similar lien to be filed against the Toll Road Facility or any interest of Landlord or Tenant therein or in any funds or accounts of Landlord by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone holding the Toll Road Facility or any part thereof through or under Tenant (including but not limited to work, labor, services or materials supplied in connection with the construction). If any such notice or lien shall at any time be filed, Tenant shall, within 30 days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law. If Tenant shall fail to cause such notice or lien to be discharged within the period

aforesaid, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such mechanic's lien by the lien or and to pay the amount of the judgment for and in favor of the lien or with interest, cost and allowances. Nothing contained in this Lease shall be deemed or construed in any way as constituting (i) the consent of Landlord to the filing of any such lien on Landlord's interest in the Toll Road Facility or this Lease or (ii) the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman or the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of the Toll Road Facility or any part thereof, nor as giving Tenant a right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any such liens against the Land. Any amounts paid by Landlord pursuant to this Article 13 shall be reimbursed by Tenant to Landlord upon demand with interest at the Overdue Rate.

#### ARTICLE XIV

[RESERVED]

#### ARTICLE XV

### SURRENDER OF THE TOLL ROAD PREMISES

Section 15.1. Surrender Upon Termination. Except as otherwise expressly directed or authorized in writing by Landlord, upon Termination of this Lease, Tenant shall surrender to Landlord the Toll Road Premises free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances, other than Permitted Encumbrances, and otherwise in a reasonable state of conservation and repair.

Section 15.2. Tenant's Property. Except as otherwise provided in this Lease, upon the Termination of this Lease, the Toll Road Premises shall become the sole property of Landlord or Landlord's assigns, be deemed to have been abandoned, and may, in Landlord's sole discretion, be retained by Landlord or its assigns as its property, be stored by Landlord (if required by law) at the expense of Tenant, or be disposed of, without accountability on the part of Landlord to Tenant or any Sublessee.

Section 15.3. Delivery of Documents; Succession to Contracts. Upon Termination of this Lease, Tenant shall deliver to Landlord all Subleases, files, plans, records, registers and other papers and documents in Tenant's possession, custody or control that may be necessary or convenient for the ownership, maintenance, operation and management of the Toll Road Facility.

#### ARTICLE XVI

### ASSIGNMENT AND CHANGE IN CONTROL

Section 16.1. Assignment of Lease. Tenant shall not assign or otherwise transfer, directly or indirectly, its interest in this Lease or the leasehold created hereunder without the prior written approval of the Landlord, which such approval shall not be unreasonably withheld, conditioned or delayed, except for an assignment or sublease to the Texas Turnpike Corporation or any other Affiliate of Tenant, as to which, any such assignment or transfer shall not require the Landlord's consent; provided, however, that, if required, Landlord shall not unreasonably withhold its consent to any assignment of all of Tenant's interest in this Lease, provided that the proposed transferee (a) is as creditworthy as the Tenant, (b) has as good a business reputation as the Tenant, (c) will use the Toll Road Facility only for the permitted use (d) is not a Prohibited Person. Landlord shall have the right to waive any of the foregoing conditions as set forth in subsections (a) through (d) of this Section 16.1. Any assignment or other transfer shall be conditioned upon compliance with the following:

- (i) Tenant or the assignee shall deliver to Landlord an executed instrument of transfer of this Lease in recordable form, containing the name and address of the transferee thereof; and
- (ii) Tenant or the assignee shall deliver to Landlord an instrument of assumption by the assignee, in recordable form, of all of Tenant's obligations under this Lease.

Section 16.2. No Relief Upon Assignment. No assignment of this Lease shall relieve the assignor from any of the obligations of Tenant hereunder, notwithstanding any consent to such assignment by Landlord or the acceptance of Rent by Landlord directly from any assignee, and Tenant shall remain fully, primarily and jointly and severally liable for the payment of Rent and the performing of the obligations of Tenant hereunder. Tenant's obligations shall not be waived, released or impaired by any agreement of Landlord with any assignee or Leasehold Mortgagee modifying or extending the time for performance of any term or provision of this Lease. In the event that, following any assignment hereof, this Lease shall have been rejected, disaffirmed or modified in any bankruptcy or similar proceeding, or shall have been terminated due to the default of the then-lessee hereunder, the obligations of the initial lessee and any other assignees hereunder shall be unaffected.

Section 16.3. Change in Control. There shall be no limitation on Tenant's ability to effect, cause, permit or suffer any Change in Control of Tenant; provided, however, Tenant shall not cause, permit or suffer any Change in Control of Tenant to occur that transfers Control to a Prohibited Person.

## ARTICLE XVII

### SUBLETTING

#### Section 17.1. Sublease Limitations.

(a) Tenant may, without Landlord's prior written consent, sublet the Toll Road Premises or any portion thereof, provided that:

1. the Sublease requires that the portion of the Toll Road Facility demised thereunder be used primarily for a purpose consistent with this Lease in accordance with Section 6.2 of this Lease;

2. the Sublease shall be, and expressly state that it is, subject and subordinate to this Lease, as it may be from time to time amended, extended or otherwise modified or supplemented and to any lease executed in replacement of this Lease (as it may be from time to time amended, extended or otherwise modified or supplemented); and

3. the Sublease shall provide that following any Termination of this Lease the Sublessee shall, at Landlord's election, attorn to Landlord.

(b) Regardless of Landlord's consent thereto, no Sublease shall relieve Tenant of its obligations under this Lease.

(c) Tenant shall furnish to Landlord a true, correct and complete copy of each Sublease within 20 days of the execution thereof. Tenant shall not modify any Sublease provided to Landlord without Landlord's consent. Tenant shall promptly furnish to Landlord a copy of each Sublease amendment.

(d) No Sublease (including any renewal or extension provided for therein) shall extend beyond the Term of this Lease.

(e) Upon written request by Tenant, Landlord shall enter into Non-Disturbance and Attornment Agreements with any Sublessees without compensation or condition.

## ARTICLE XVIII

### RIGHT OF LANDLORD TO SELL OR ASSIGN; RIGHT OF FIRST REFUSAL

Section 18.1. Right of Landlord to Sell or Assign; Right of First Refusal. Subject to Section 18.2 of this Lease, Landlord shall, to the extent permitted by Applicable Law, have the unqualified right to sell, encumber and/or assign part or all of its rights, title and interest under this Lease and in the Land; provided, however, that any sale or mortgage of, or deed of trust placed on, Landlord's fee interest in the Land shall be subject to each and every provision of this Lease, including the rights of any Leasehold Mortgagee.

Section 18.2. Right of First Refusal. To the extent permitted by Applicable Law, Landlord hereby grants to Tenant a right of first refusal to purchase all or any portion of Landlord's right, title and interest in and to the Land, on the terms and conditions set forth in this Section 18.2. If Landlord receives an "Offer" (as defined below) which Landlord desires to accept, then Landlord shall deliver written notice to Tenant thereof (a "Transfer Notice"), together with the Sale Contract (as defined below), within ten business days following its receipt of the Offer. The Transfer Notice shall set forth the terms and conditions of the Offer and shall state the desire of Landlord to sell to Tenant the property described in the Offer, on such terms and conditions and pursuant to the Sale Contract. Within 20 business days following Landlord's actual delivery to Tenant of the Transfer Notice (the "Acceptance Period"), Tenant, at its option by written notice to Landlord, may elect to purchase the property described in the Offer, on the

same terms and conditions contained in the Transfer Notice and pursuant to the Sale Contract. Notwithstanding the foregoing, if Tenant declines to purchase the property described in an Offer, and any term(s) of such Offer subsequently change, then the terms of this Section 18.2 shall be applied to such subsequent Offer, superseding the prior election hereunder. As used herein, an "Offer" shall mean a bona fide, written offer by an unrelated third-party (a "Third-Party") to purchase from Landlord all or any portion of Landlord's right, title and interest in and to the Land, and shall include the Third-Party's offer to purchase the Land and any contract evidencing such Offer (the "Sale Contract").

## ARTICLE XIX

### MORTGAGING

Section 19.1. Leasehold Mortgage Permitted; Lenders' Remedies Agreement to Apply. Tenant shall have the right to place a Leasehold Mortgage on Tenant's interest in this Lease, upon the condition that all rights acquired under such Leasehold Mortgage shall be, and such Leasehold Mortgage shall expressly state that it is, subject and subordinate to all of the rights and interests of Landlord hereunder. The execution and delivery of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of Tenant's leasehold interest nor shall the holder of a Leasehold Mortgage be deemed to be an assignee or transferee of this Lease so as to require such holder to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. The respective rights and obligations of Landlord and any Leasehold Mortgagee in connection with any Leasehold Mortgage, including Landlord's obligation to give any Leasehold Mortgagee notice and an opportunity to cure any default under this Lease before Terminating this Lease, shall be as set forth in the Lenders' Remedies Agreement, which is incorporated herein to the extent applicable to this Lease. Landlord, Tenant and Agent Bank (as defined in the Lenders' Remedies Agreement) shall enter the Lenders' Remedies Agreement contemporaneously with any Leasehold Mortgage.

Section 19.2. Agreement of Landlord to Enter New Lease Upon Termination. In addition to the procedures provided for under the Lenders' Remedies Agreement, if necessary in order to effect a transfer of Tenant's interest hereunder as contemplated by the Lenders' Remedies Agreement, Landlord shall have the right to Terminate this Lease by giving a notice under Section 23.1 of this Lease and shall give notice of such Termination to each Leasehold Mortgagee, provided that on written request of the Leasehold Mortgagee made within 45 days after Landlord shall have given such notice, Landlord shall enter into a new lease of the Land with such Leasehold Mortgagee, or its designee, within 60 days after receipt of such request, which new lease shall be effective as of the effective date of such Termination of this Lease for the remainder of the Term of this Lease, at the same Rent and upon the same terms, covenants, conditions and agreements as are herein contained; provided, that such Leasehold Mortgagee, or its designee shall otherwise be in compliance in all material respects with the Lenders' Remedies Agreement and shall have cured any defaults of Tenant hereunder. Landlord shall have no obligation, and nothing herein contained shall be deemed to impose an obligation on the part of Landlord, to deliver physical possession of the Land to such Leasehold Mortgagee unless Landlord at the time of the execution and delivery of such new lease shall have obtained physical possession thereof. Such new lease shall have the same relative priority in time and in right as this Lease and shall have the benefit of, and shall vest in, the Leasehold Mortgagee or its

designee all of the rights, title, interest, powers and privileges of Tenant hereunder in and to the Land, subject to the terms and conditions of this Lease, until expiration of the Term.

Section 19.3. No Merger; Amendments to Lease; Etc.

(a) No union of the interests of Landlord and Tenant herein shall result in a merger of this Lease in the fee interest while any Leasehold Mortgage is outstanding.

(b) No agreement between Landlord and Tenant modifying, canceling or surrendering this Lease shall be effective without the prior written consent of the applicable Leasehold Mortgagee.

(c) Landlord covenants it will not treat this Lease as terminated by any election made under Section 365 of the Bankruptcy Code of 1978 or under any similar law or right of any nature, and hereby assigns to the Leasehold Mortgagee any right to acquiesce or not to acquiesce in any such termination.

Section 19.4. Leasehold Mortgagee Requested Amendments. Landlord and Tenant agree to cooperate, at no cost to Landlord, in including in this Lease by suitable amendment from time to time any provision that may reasonably be requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, and Landlord and Tenant each agrees, at no cost to Landlord, to execute and deliver any agreement reasonably necessary to effect any such amendment; provided, however, that any such amendment shall be in form and substance reasonably acceptable to Landlord and shall not in any way affect the Term or the Rent or other amounts payable to Landlord under this Lease nor otherwise adversely affect any rights or benefits of Landlord under this Lease; and provided further that Tenant shall pay Landlord for any reasonable attorneys' fees incurred by Landlord in connection with the review and preparation of any such amendment requested pursuant to this Section 19.4.

## ARTICLE XX

### TENANT DEFAULT PROVISIONS

Section 20.1. Tenant Events of Default Defined. The occurrence of one or more of the following events shall constitute a "Tenant Event of Default" under this Lease:

(a) Failure of the Tenant to pay any Rent that has become due and payable by the terms of Section 4.1 of this Lease or any Additional Rent due and payable to the Landlord upon demand, and such default shall continue for a period of 90 days after written notice specifying in detail (i) such default, and (ii) the necessary action to cure such default, shall have been delivered to Tenant;

(b) Any material representation or warranty made by the Tenant shall prove to be false, misleading or incorrect in any material respect as of the date made, and such default shall continue for a period of 90 days after written notice specifying in detail (i) such default, and (ii) the necessary action to cure such default, shall have been delivered to Tenant; provided, however, that if such default is susceptible to cure but cannot, with due diligence, be remedied



by Tenant within 90 days, the period of time to cure the default shall be extended for such period as may be reasonably necessary to cure the same with all due diligence, provided Tenant has commenced to cure within such initial 90 day period and is continuing to proceed to cure such default with due diligence;

(c) Default (other than as provided in this Section 20.1 (a) and (b)) shall be made in the performance of any covenant or agreement on the part of Tenant to be performed hereunder, and such default shall continue for a period of 60 days after written notice specifying in detail (i) such default, and (ii) the necessary action to cure such default, shall have been delivered to Tenant; provided, however, that if such default is susceptible to cure but cannot, with due diligence, be remedied by Tenant within 60 days, the period of time to cure the default shall be extended for such period as may be reasonably necessary to cure the same with all due diligence, provided Tenant has commenced to cure within such initial 60 day period and is continuing to proceed to cure such default with due diligence; or

(d) The occurrence of any of the following events: (i) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Tenant; or (ii) any proceedings with respect to the Tenant being commenced under the Bankruptcy Law and if such proceedings are commenced against the Tenant and are disputed by the Tenant, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 120 days of such proceedings being instituted; or (iii) the Tenant making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Tenant under the Bankruptcy Law or otherwise and, if proceedings are commenced against the Tenant and are disputed by the Tenant, such proceedings are not stayed, dismissed or otherwise remedied within 120 days of such proceedings being instituted.

Section 20.2. Remedies Following a Tenant Event of Default. If a Tenant Event of Default shall have occurred and be continuing beyond all applicable cure periods, then Landlord shall, subject to Section 19.1 of this Lease, be entitled to any and all remedies available under Applicable Law (other than termination of this Lease), including the right to sue for damages and injunctive relief as a result thereof.

Section 20.3. Intentionally Deleted.

Section 20.4. Application of Payments Made in Arrears. If Tenant is in default for failure to pay Rent pursuant to the terms of this Lease, Tenant waives its right, if any, to designate the item against which any payments made by Tenant are to be credited and Tenant agrees that Landlord may apply any payment made by Tenant to such items as Landlord may see fit, irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payment shall be credited.

Section 20.5. Tenant Waivers. Except as otherwise provided in this Article 20, Tenant hereby waives any and all right of redemption or re-entry or repossession or to restore the

operation of this Lease or the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of any expiration or Termination of this Lease. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of said Land or any claim of injury or damage in connection with this Lease. The terms "enter," "re-enter," "re-entry," as used in this Lease, are not restricted to their technical legal meaning.

Section 20.6. Unenforceability of Provisions in Bankruptcy. Notwithstanding the foregoing, if under applicable law the provisions of this Article 20 are not enforceable by Landlord in accordance with their terms in any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt or similar debtor-relief proceeding, then a Tenant Event of Default under this Lease shall be deemed to have occurred upon the first to occur of: (i) the rejection or disaffirmance of this Lease or any of the obligations of Tenant hereunder in such proceeding, whether by virtue of an affirmative act or any failure to act within a specified time, or (ii) the failure of Tenant or any trustee, receiver or other person or entity in possession of Tenant's property in such proceedings, within 180 days after the filing of such proceeding, to expressly affirm this Lease and all obligations of Tenant hereunder, to pay all sums and perform all other obligations of Tenant then due but not previously paid or performed, and to recognize the payment of all obligations of Tenant under this Lease to be entitled to priority in such proceeding as costs and expenses of the administration of such proceeding, or (iii) the failure of Tenant or any trustee, receiver or other person or entity in possession of Tenant's property in such proceeding, within 180 days after the filing of such proceeding, to give Landlord adequate assurance of the future performance of all of Tenant's obligations under this Lease in the manner and within the time provided by applicable law, or (iv) any event, condition or set of circumstances occurs which under applicable law or any rule, order or direction of any court, judge or magistrate operates to Terminate this Lease or to permit the Termination of this Lease by Landlord in or notwithstanding such proceeding; provided, however, that nothing herein shall be construed to prohibit Landlord from terminating this Lease in accordance with the provisions of Article XXIII of this Lease, or otherwise exercising any of its remedies hereunder on the occurrence of any Event of Default under this Lease other than the filing or existence of any such bankruptcy, insolvency, reorganization, arrangement, readjustment of debt or similar debtor-relief proceeding.

## ARTICLE XXI

### LANDLORD DEFAULT PROVISIONS

Section 21.1. Landlord Events of Default Defined. The occurrence of one or more of the following events shall constitute a "Landlord Event of Default" under this Lease:

(a) Any material representation or warranty made by the Landlord shall prove to be false, misleading or incorrect in any material respect as of the date made, and such default shall continue for a period of 90 days after written notice specifying in detail (i) such default, and (ii) the necessary action to cure such default, shall have been delivered to Landlord; provided,

however, that if such default is susceptible to cure but cannot, with due diligence, be remedied by Landlord within 90 days, the period of time to cure the default shall be extended for such period as may be reasonably necessary to cure the same with all due diligence, provided Landlord has commenced to cure within such initial 90 day period and is continuing to proceed to cure such default with due diligence; provided, however, notwithstanding this cure period, Tenant shall not be prevented from operating the Toll Road Facility at all times during the period such default remains uncured; or

(b) Default (other than as provided in (a) above) shall be made in the performance of any covenant or agreement on the part of Landlord to be performed hereunder, and such default shall continue for a period of 60 days after written notice specifying such default shall have been given to Landlord; provided, however, that if such default is susceptible to cure but cannot, with due diligence, be remedied by Landlord within 60 days, the period of time to cure the default shall be extended for such period as may be reasonably necessary to cure the same with all due diligence, provided Landlord has commenced to cure within such initial 60 day period and is continuing to proceed to cure such default with due diligence; provided, however, notwithstanding this cure period, Tenant shall not be prevented from operating the Toll Road Facility at all times during the period such default remains uncured.

Section 21.2. Remedies Following a Landlord Event of Default. If a Landlord Event of Default shall have occurred and be continuing while the Lease is in effect then Tenant shall be entitled to any or all remedies available under Applicable Law (other than termination of this Lease), including the right to sue for damages and injunctive relief as a result thereof.

## ARTICLE XXII

### PROVISIONS APPLICABLE TO EVENTS OF DEFAULT

Section 22.1. Equitable Relief. Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that the other party will be entitled to, in addition to all other remedies each party is entitled to under the provisions of this Lease, the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the covenants of this Lease.

Section 22.2. Intentionally Deleted.

Section 22.3. Waiver. No failure by Landlord or by Tenant to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease or to exercise any right or remedy hereunder, and no acceptance by Landlord of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Landlord or by Tenant, and no breach thereof, may be waived, altered or modified except by a written instrument executed and acknowledged by and delivered to Landlord and Tenant. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant, agreement, provision, condition and limitation of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. This Lease may be

Terminated (except by expiration of the Term of the Lease) only by a written instrument of Termination executed by the appropriate party and delivered to the non-Terminating party, subject to the provisions of Article 19 of this Lease.

Section 22.4. No Special, Incidental, Indirect, Consequential, Punitive or Similar Losses or Damages; Waiver Thereof. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Lease, or any representation made in this Lease being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty or any other legal theory. As a material term of this Lease, each party hereby waives any right to recover special, incidental, indirect, consequential, punitive or similar losses or damages in connection with this Lease. This Section shall not limit the recovery of any such losses or damages under Article 24 in respect of claims by third parties.

## ARTICLE XXIII

### TERMINATION

Section 23.1. Termination Rights. This Lease may be terminated only in the following manner:

(a) Termination by Either Party. This Lease may be terminated by the Landlord or Tenant upon the occurrence of a taking as described in Section 12.1 of this Lease.

(b) Termination by Landlord. This Lease may be Terminated by the Landlord prior to the Expiration Date upon the occurrence of any of the following events:

1. The construction of the Project is not commenced by December 31, 2016.
2. The completion of construction of the Project and the Commercial Operation Date have not occurred by the 10th anniversary of the Term Commencement Date.
3. A mechanic's lien is filed against the fee or leasehold interest in the Land and a court of competent jurisdiction issues a final, non-appealable order that the applicable estate be sold to satisfy such lien and the applicable amount is not paid by the Tenant within 30 days after the date of entry of such order.
4. A judgment lien (other than a judgment in favor of Landlord) and a court of competent jurisdiction issues a final, non-appealable order that the said leasehold interest in the Land be sold to satisfy such lien and the applicable amount is not paid within 30 days after the date of the entry of such judgment.
5. At any time by notice to the Tenant upon the occurrence of an Abandonment.

(c) Tenant Termination Rights. This Lease may be Terminated by the Tenant prior to the Expiration Date, upon the occurrence of a Landlord Event of Default, pursuant to Article 21.

(d) Extent of Termination Rights. Except as provided or referred to in subsections (a) and (b) of this Section, neither party shall have the right to terminate this Lease for any reason other than the reasons specified in subsections (a) and (b) of this Section 23.1, and both the Landlord and the Tenant hereby waive their respective rights to terminate this Lease for other than the reasons specified in subsections (a) and (b) of this Section 23.1.

(e) Establishment of the Termination Date. The Termination Date for any early termination of this Lease as provided in subsections (a) or (b) of this Section shall be the date established in a notice of termination given by one party to the other party in accordance herewith.

(f) Continued Performance. The parties shall continue to perform their obligations under this Lease until the Termination Date, notwithstanding the giving of any notice of default.

Section 23.2. Rights Upon Termination of Lease. Upon any Termination of this Lease, Tenant shall quit and peacefully surrender the Toll Road Premises to Landlord, and Landlord, upon or at any time after any such Termination, shall have the right, without further notice, to enter upon and re-enter the Toll Road Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Toll Road Premises and may have, hold and enjoy the Toll Road Premises and the right to receive all rental and other income of and from the same.

## ARTICLE XXIV

### INDEMNIFICATION

#### Section 24.1. TENANT AGREEMENT TO INDEMNIFY.

(a) TENANT SHALL INDEMNIFY AND KEEP EACH LANDLORD INDEMNITEE INDEMNIFIED AT ALL TIMES FROM AND AGAINST ALL LOSS-AND-EXPENSE THAT ANY LANDLORD INDEMNITEE MAY SUSTAIN IN CONNECTION WITH ANY LOSS OF OR PHYSICAL DAMAGE TO PROPERTY OR ASSETS OF ANY LANDLORD INDEMNITEE, OR ANY CLAIM MADE BY ONE OR MORE THIRD PARTIES (INCLUDING FOR LOSS OF OR PHYSICAL DAMAGE TO PROPERTY OR ASSETS), OR ANY CLAIM FOR, OR IN RESPECT OF, THE DEATH, PERSONAL INJURY, DISEASE OR ILLNESS OF ANY PERSON, INCLUDING ANY LANDLORD INDEMNITEE, ARISING BY REASON OF ANY:

1. FRAUD OF THE TENANT;
2. BAD FAITH OF TENANT;
3. GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT;

4. NON-COMPLIANCE BY TENANT WITH ANY OF THE PROVISIONS OF THIS LEASE OR ANY DOCUMENT, INSTRUMENT OR AGREEMENT DELIVERED TO LANDLORD AS REQUIRED UNDER THIS LEASE;

5. HAZARDOUS SUBSTANCES IN, ON OR UNDER THE TOLL ROAD FACILITY (INCLUDING PRESENCE IN THE SURFACE WATER, GROUNDWATER, SOILS, OR SUBSURFACE STRATA) WHICH IS CAUSED BY OR ATTRIBUTABLE TO ANY ACTS OR OMISSIONS OF TENANT OR ANY TENANT INDEMNITEE;

6. BREACH BY TENANT OF, OR NON-COMPLIANCE BY TENANT WITH, ANY GOVERNMENTAL APPROVAL OR APPLICABLE LAW, OR THE FAILURE OF TENANT TO OBTAIN ALL NECESSARY GOVERNMENTAL APPROVALS IN ACCORDANCE WITH THIS LEASE; OR

7. ANY ACCIDENT, OCCURRENCE OR INJURY OF PERSONS OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING ON THE LAND, EXCEPT, IN EACH INSTANCE, TO THE EXTENT CAUSED BY OR ARISING BY REASON OF ANY ACTIVITY OR OMISSION IN CONNECTION WITH THE RAIL ROW.

EXCEPT, IN EACH INSTANCE, TO THE EXTENT CAUSED BY A LANDLORD EVENT OF DEFAULT OR THE WILLFUL MISCONDUCT OR FRAUD OR BAD FAITH OF A LANDLORD INDEMNITEE.

(b) TENANT'S INDEMNITY OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED BY ANY COVERAGE EXCLUSIONS OR OTHER PROVISIONS IN ANY POLICY OF REQUIRED INSURANCE OR OTHER INSURANCE MAINTAINED BY TENANT WHICH IS INTENDED TO RESPOND TO SUCH EVENTS; PROVIDED, HOWEVER, TENANT'S INDEMNITY OBLIGATIONS HEREUNDER SHALL BE APPLICABLE ONLY AFTER ANY POLICY OF INSURANCE WHICH IS INTENDED TO RESPOND TO SUCH EVENTS HAS BEEN FULLY EXHAUSTED OR HAS BEEN DETERMINED BY A FINAL ADJUDICATION NOT TO PROVIDE COVERAGE FOR SUCH EVENTS. THIS SECTION MAY BE RELIED UPON BY THE LANDLORD INDEMNITEES AND MAY BE ENFORCED DIRECTLY BY ANY OF THEM AGAINST THE TENANT IN THE SAME MANNER AND FOR THE SAME PURPOSE AS IF PURSUANT TO A CONTRACTUAL INDEMNITY DIRECTLY BETWEEN THEM AND THE TENANT.

Section 24.2. PROCEDURES. (a) LANDLORD AGREES TO GIVE PROMPT NOTICE TO THE TENANT OF THE ASSERTION OF ANY CLAIM, OR THE COMMENCEMENT OF ANY SUIT, ACTION OR PROCEEDING ("CLAIM") IN RESPECT OF WHICH INDEMNITY MAY BE SOUGHT AND WILL PROVIDE THE TENANT SUCH INFORMATION WITH RESPECT THERETO THAT THE TENANT MAY REASONABLY REQUEST. THE FAILURE TO SO NOTIFY THE TENANT SHALL NOT RELIEVE THE TENANT OF ITS OBLIGATIONS HEREUNDER, EXCEPT TO THE EXTENT SUCH FAILURE SHALL HAVE ADVERSELY PREJUDICED THE TENANT.

(b) THE TENANT SHALL BE ENTITLED TO PARTICIPATE IN THE DEFENSE OF ANY CLAIM ASSERTED BY ANY THIRD PARTY ("THIRD PARTY CLAIM") AND SHALL BE ENTITLED TO CONTROL THE DEFENSE OF SUCH THIRD PARTY CLAIM AND APPOINT LEAD COUNSEL FOR SUCH DEFENSE (WHICH COUNSEL SHALL BE REASONABLY SATISFACTORY TO THE LANDLORD INDEMNIFIED PARTY ), IN EACH CASE AT ITS EXPENSE.

(c) IF THE TENANT SHALL ASSUME CONTROL OF THE DEFENSE OF ANY THIRD PARTY CLAIM IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION 24.2, (I) THE TENANT SHALL OBTAIN THE PRIOR WRITTEN CONSENT OF THE LANDLORD INDEMNIFIED PARTY (WHICH SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED) BEFORE ENTERING INTO ANY SETTLEMENT OF SUCH THIRD PARTY CLAIM, IF THE SETTLEMENT DOES NOT RELEASE THE LANDLORD INDEMNIFIED PARTY FROM ALL LIABILITIES AND OBLIGATIONS WITH RESPECT TO SUCH THIRD PARTY CLAIM OR THE SETTLEMENT IMPOSES INJUNCTIVE OR OTHER EQUITABLE RELIEF AGAINST THE LANDLORD INDEMNIFIED PARTY AND (II) THE LANDLORD INDEMNIFIED PARTY SHALL BE ENTITLED TO PARTICIPATE IN THE DEFENSE OF SUCH THIRD PARTY CLAIM AND TO EMPLOY SEPARATE COUNSEL OF ITS CHOICE FOR SUCH PURPOSE. THE FEES AND EXPENSES OF SUCH SEPARATE COUNSEL SHALL BE PAID BY THE LANDLORD INDEMNIFIED PARTY, UNLESS THE TENANT AND THE LANDLORD INDEMNIFIED PARTY ARE BOTH NAMED AS PARTIES TO THE PROCEEDINGS, AND THE LANDLORD INDEMNIFIED PARTY HAS DETERMINED IN GOOD FAITH AND UPON ADVICE OF COUNSEL THAT REPRESENTATION OF BOTH PARTIES BY THE SAME COUNSEL WOULD BE INAPPROPRIATE DUE TO AN ACTUAL OR LIKELY CONFLICT BETWEEN THEM.

(d) EACH PARTY SHALL COOPERATE, AND CAUSE ITS RESPECTIVE AFFILIATES TO COOPERATE, IN THE DEFENSE OR PROSECUTION OF ANY THIRD PARTY CLAIM AND SHALL FURNISH OR CAUSE TO BE FURNISHED SUCH RECORDS, INFORMATION AND TESTIMONY AND ATTEND SUCH CONFERENCES, DISCOVERY PROCEEDINGS, HEARINGS, TRIALS OR APPEALS, AS MAY BE REASONABLY REQUESTED IN CONNECTION THEREWITH.

(e) EACH LANDLORD INDEMNIFIED PARTY SHALL USE COMMERCIALY REASONABLE EFFORTS TO SEEK FULL RECOVERY UNDER ALL INSURANCE POLICIES OR INDEMNITY AGREEMENTS COVERING ANY LOSS-AND-EXPENSE TO THE SAME EXTENT AS THEY WOULD IF SUCH LOSS-AND-EXPENSE WERE NOT SUBJECT TO INDEMNIFICATION HEREUNDER, OR FROM ANY OTHER PERSON ALLEGED TO BE RESPONSIBLE FOR ANY LOSS-AND-EXPENSE PAYABLE UNDER SECTION 24.1 OF THIS LEASE.

(f) THE AMOUNT OF ANY LOSS-AND-EXPENSE PAYABLE UNDER SECTION 24.1 OF THIS LEASE BY THE TENANT SHALL BE NET OF ANY AMOUNTS PAYABLE TO THE LANDLORD INDEMNIFIED PARTY UNDER APPLICABLE INSURANCE POLICIES, INDEMNITY AGREEMENTS OR FROM ANY OTHER PERSON ALLEGED TO BE RESPONSIBLE THEREFOR. IF THE LANDLORD INDEMNIFIED PARTY RECEIVES ANY AMOUNTS UNDER APPLICABLE INSURANCE POLICIES, OR

FROM ANY OTHER PERSON ALLEGED TO BE RESPONSIBLE FOR ANY LOSS-AND-EXPENSE, SUBSEQUENT TO AN INDEMNIFICATION PAYMENT BY THE TENANT, THEN SUCH LANDLORD INDEMNIFIED PARTY SHALL PROMPTLY REIMBURSE THE TENANT FOR ANY PAYMENT MADE OR EXPENSE INCURRED BY SUCH TENANT IN CONNECTION WITH PROVIDING SUCH INDEMNIFICATION PAYMENT UP TO THE AMOUNT RECEIVED BY THE LANDLORD INDEMNIFIED PARTY, NET OF ANY EXPENSES INCURRED BY SUCH LANDLORD INDEMNIFIED PARTY IN COLLECTING SUCH AMOUNT.

Section 24.3. ASSIGNMENT OF CLAIMS. IF THE LANDLORD INDEMNIFIED PARTY RECEIVES ANY PAYMENT FROM TENANT IN RESPECT OF ANY LOSS-AND-EXPENSE PURSUANT TO SECTION 24.1 OF THIS LEASE AND THE LANDLORD INDEMNIFIED PARTY COULD RECOVER (OR COULD HAVE RECOVERED) ALL OR PART OF SUCH LOSS-AND-EXPENSE FROM A THIRD PARTY (A "POTENTIAL CONTRIBUTOR") BASED ON THE UNDERLYING CLAIM ASSERTED AGAINST THE TENANT, THE LANDLORD INDEMNIFIED PARTY SHALL ASSIGN SUCH OF ITS ASSIGNABLE RIGHTS TO PROCEED AGAINST THE POTENTIAL CONTRIBUTOR AS ARE NECESSARY TO PERMIT THE TENANT TO RECOVER FROM THE POTENTIAL CONTRIBUTOR THE AMOUNT OF SUCH PAYMENT; PROVIDED THAT IF ANY SUCH ASSIGNMENT WOULD AFFORD THE POTENTIAL CONTRIBUTOR ANY DEFENSE TO THE PAYMENT OF THE SAME, SUCH ASSIGNMENT SHALL NOT TAKE PLACE, AND THE LANDLORD INDEMNIFIED PARTY WILL, AT THE TENANT'S DIRECTION AND EXPENSE, TAKE ALL REASONABLE ACTIONS TO SEEK TO RECOVER SUCH CLAIM FROM SUCH POTENTIAL CONTRIBUTOR.

Section 24.4. LANDLORD AGREEMENT TO INDEMNIFY.

(a) TO THE EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD SHALL INDEMNIFY AND KEEP EACH TENANT INDEMNITEE INDEMNIFIED AT ALL TIMES FROM AND AGAINST ALL LOSS-AND-EXPENSE THAT ANY TENANT INDEMNITEE MAY SUSTAIN IN CONNECTION WITH ANY LOSS OF OR PHYSICAL DAMAGE TO PROPERTY OR ASSETS OF ANY TENANT INDEMNITEE, OR ANY CLAIM MADE BY ONE OR MORE THIRD PARTIES (INCLUDING FOR LOSS OF OR PHYSICAL DAMAGE TO PROPERTY OR ASSETS), OR ANY CLAIM FOR, OR IN RESPECT OF, THE DEATH, PERSONAL INJURY, DISEASE OR ILLNESS OF ANY PERSON, INCLUDING ANY TENANT INDEMNITEE, ARISING BY REASON OF ANY:

1. FRAUD OF THE LANDLORD;
2. BAD FAITH OF LANDLORD; OR
3. GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD;

EXCEPT, IN EACH INSTANCE, TO THE EXTENT CAUSED BY A TENANT EVENT OF DEFAULT OR THE WILLFUL MISCONDUCT OR A NEGLIGENT ACT OR OMISSION OF A TENANT INDEMNITEE.



(b) LANDLORD'S INDEMNITY OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED BY ANY COVERAGE EXCLUSIONS OR OTHER PROVISIONS IN ANY POLICY OF REQUIRED INSURANCE OR OTHER INSURANCE MAINTAINED BY LANDLORD WHICH IS INTENDED TO RESPOND TO SUCH EVENTS; PROVIDED, HOWEVER, TENANT'S INDEMNITY OBLIGATIONS HEREUNDER SHALL BE APPLICABLE ONLY AFTER ANY POLICY OF INSURANCE WHICH IS INTENDED TO RESPOND TO SUCH EVENTS HAS BEEN FULLY EXHAUSTED OR HAS BEEN DETERMINED BY A FINAL ADJUDICATION NOT TO PROVIDE COVERAGE FOR SUCH EVENTS. THIS SECTION MAY BE RELIED UPON BY THE TENANT INDEMNITEES AND MAY BE ENFORCED DIRECTLY BY ANY OF THEM AGAINST THE LANDLORD IN THE SAME MANNER AND FOR THE SAME PURPOSE AS IF PURSUANT TO A CONTRACTUAL INDEMNITY DIRECTLY BETWEEN THEM AND THE LANDLORD.

Section 24.5. PROCEDURES. (a) TENANT AGREES TO GIVE PROMPT NOTICE TO THE LANDLORD OF THE ASSERTION OF ANY CLAIM IN RESPECT OF WHICH INDEMNITY MAY BE SOUGHT AND WILL PROVIDE THE LANDLORD SUCH INFORMATION WITH RESPECT THERETO THAT THE LANDLORD MAY REASONABLY REQUEST. THE FAILURE TO SO NOTIFY THE LANDLORD SHALL NOT RELIEVE THE LANDLORD OF ITS OBLIGATIONS HEREUNDER, EXCEPT TO THE EXTENT SUCH FAILURE SHALL HAVE ADVERSELY PREJUDICED THE LANDLORD.

(b) THE LANDLORD SHALL BE ENTITLED TO PARTICIPATE IN THE DEFENSE OF ANY THIRD PARTY CLAIM AND SHALL BE ENTITLED TO CONTROL THE DEFENSE OF SUCH THIRD PARTY CLAIM AND APPOINT LEAD COUNSEL FOR SUCH DEFENSE (WHICH COUNSEL SHALL BE REASONABLY SATISFACTORY TO THE TENANT INDEMNIFIED PARTY), IN EACH CASE AT ITS EXPENSE.

(c) IF THE LANDLORD SHALL ASSUME CONTROL OF THE DEFENSE OF ANY THIRD PARTY CLAIM IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION 24.5, (I) THE LANDLORD SHALL OBTAIN THE PRIOR WRITTEN CONSENT OF THE TENANT INDEMNIFIED PARTY (WHICH SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED) BEFORE ENTERING INTO ANY SETTLEMENT OF SUCH THIRD PARTY CLAIM, IF THE SETTLEMENT DOES NOT RELEASE THE TENANT INDEMNIFIED PARTY FROM ALL LIABILITIES AND OBLIGATIONS WITH RESPECT TO SUCH THIRD PARTY CLAIM OR THE SETTLEMENT IMPOSES INJUNCTIVE OR OTHER EQUITABLE RELIEF AGAINST THE TENANT INDEMNIFIED PARTY AND (II) THE TENANT INDEMNIFIED PARTY SHALL BE ENTITLED TO PARTICIPATE IN THE DEFENSE OF SUCH THIRD PARTY CLAIM AND TO EMPLOY SEPARATE COUNSEL OF ITS CHOICE FOR SUCH PURPOSE. THE FEES AND EXPENSES OF SUCH SEPARATE COUNSEL SHALL BE PAID BY THE TENANT INDEMNIFIED PARTY, UNLESS THE LANDLORD AND THE TENANT INDEMNIFIED PARTY ARE BOTH NAMED AS PARTIES TO THE PROCEEDINGS, AND THE TENANT INDEMNIFIED PARTY HAS DETERMINED IN GOOD FAITH AND UPON ADVICE OF COUNSEL THAT REPRESENTATION OF BOTH PARTIES BY THE SAME COUNSEL WOULD BE INAPPROPRIATE DUE TO AN ACTUAL OR LIKELY CONFLICT BETWEEN THEM.

(d) EACH PARTY SHALL COOPERATE, AND CAUSE ITS RESPECTIVE AFFILIATES TO COOPERATE, IN THE DEFENSE OR PROSECUTION OF ANY THIRD PARTY CLAIM AND SHALL FURNISH OR CAUSE TO BE FURNISHED SUCH RECORDS, INFORMATION AND TESTIMONY AND ATTEND SUCH CONFERENCES, DISCOVERY PROCEEDINGS, HEARINGS, TRIALS OR APPEALS, AS MAY BE REASONABLY REQUESTED IN CONNECTION THEREWITH.

(e) EACH TENANT INDEMNIFIED PARTY SHALL USE COMMERCIALY REASONABLE EFFORTS TO SEEK FULL RECOVERY UNDER ALL INSURANCE POLICIES OR INDEMNITY AGREEMENTS COVERING ANY LOSS-AND-EXPENSE TO THE SAME EXTENT AS THEY WOULD IF SUCH LOSS-AND-EXPENSE WERE NOT SUBJECT TO INDEMNIFICATION HEREUNDER, OR FROM ANY OTHER PERSON ALLEGED TO BE RESPONSIBLE FOR ANY LOSS-AND-EXPENSE PAYABLE UNDER SECTION 24.4 OF THIS LEASE.

(f) THE AMOUNT OF ANY LOSS-AND-EXPENSE PAYABLE UNDER SECTION 24.4 OF THIS LEASE BY THE LANDLORD SHALL BE NET OF ANY AMOUNTS PAYABLE TO THE TENANT INDEMNIFIED PARTY UNDER APPLICABLE INSURANCE POLICIES, INDEMNITY AGREEMENTS OR FROM ANY OTHER PERSON ALLEGED TO BE RESPONSIBLE THEREFOR. IF THE TENANT INDEMNIFIED PARTY RECEIVES ANY AMOUNTS UNDER APPLICABLE INSURANCE POLICIES, OR FROM ANY OTHER PERSON ALLEGED TO BE RESPONSIBLE FOR ANY LOSS-AND-EXPENSE, SUBSEQUENT TO AN INDEMNIFICATION PAYMENT BY THE LANDLORD, THEN SUCH TENANT INDEMNIFIED PARTY SHALL PROMPTLY REIMBURSE THE LANDLORD FOR ANY PAYMENT MADE OR EXPENSE INCURRED BY SUCH LANDLORD IN CONNECTION WITH PROVIDING SUCH INDEMNIFICATION PAYMENT UP TO THE AMOUNT RECEIVED BY THE TENANT INDEMNIFIED PARTY, NET OF ANY EXPENSES INCURRED BY SUCH TENANT INDEMNIFIED PARTY IN COLLECTING SUCH AMOUNT.

Section 24.6. ASSIGNMENT OF CLAIMS. IF THE TENANT INDEMNIFIED PARTY RECEIVES ANY PAYMENT FROM LANDLORD IN RESPECT OF ANY LOSS-AND-EXPENSE PURSUANT TO SECTION 24.4 OF THIS LEASE AND THE TENANT INDEMNIFIED PARTY COULD RECOVER (OR COULD HAVE RECOVERED) ALL OR PART OF SUCH LOSS-AND-EXPENSE FROM A THIRD PARTY (A "POTENTIAL CONTRIBUTOR") BASED ON THE UNDERLYING CLAIM ASSERTED AGAINST THE LANDLORD, THE TENANT INDEMNIFIED PARTY SHALL ASSIGN SUCH OF ITS ASSIGNABLE RIGHTS TO PROCEED AGAINST THE POTENTIAL CONTRIBUTOR AS ARE NECESSARY TO PERMIT THE LANDLORD TO RECOVER FROM THE POTENTIAL CONTRIBUTOR THE AMOUNT OF SUCH PAYMENT; PROVIDED THAT IF ANY SUCH ASSIGNMENT WOULD AFFORD THE POTENTIAL CONTRIBUTOR ANY DEFENSE TO THE PAYMENT OF THE SAME, SUCH ASSIGNMENT SHALL NOT TAKE PLACE, AND THE TENANT INDEMNIFIED PARTY WILL, AT THE LANDLORD'S DIRECTION AND EXPENSE, TAKE ALL REASONABLE ACTIONS TO SEEK TO RECOVER SUCH CLAIM FROM SUCH POTENTIAL CONTRIBUTOR.

## ARTICLE XXV

### INVALIDITY OF PARTICULAR PROVISIONS

Section 25.1. Invalidity of Particular Provisions. If any term or provision of this Lease, or portion thereof, or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law. In addition, if a court or arbitrator in construing this Lease determines that any provision hereof is invalid or unenforceable, such court or arbitrator is instructed and authorized to replace any such invalid or unenforceable provision with a provision that is valid and enforceable and that is designed to achieve to the extent reasonably practicable, the same results as were intended or sought to be achieved by the invalid or unenforceable provision.

## ARTICLE XXVI

### ESTOPPEL CERTIFICATES OF LANDLORD

Section 26.1. Landlord Estoppel Certificates. Within 30 days of delivery to Landlord of written notice by Tenant or a Leasehold Mortgagee, Landlord agrees that, at any time and from time to time, but not more than twice in any calendar year, Landlord will, at the expense of the Tenant, execute, acknowledge and deliver a statement in writing certifying that (to the best knowledge, after due inquiry, of the signer) this Lease is unmodified and in full force and effect (or if there shall have been modifications, that the Lease is in full force and effect as modified and stating the modifications), the dates to which the Rent and other charges have been received, the address to which notices to Landlord shall be sent, and stating whether or not Tenant is in default in this Lease and, if in default, specifying each such default of which the signer may have knowledge. Landlord further agrees that any such statement delivered pursuant to this Section may be relied upon by any prospective transferee of Tenant's interest in this Lease, or by any Leasehold Mortgagee or any assignee of any Leasehold Mortgagee, but reliance on such statement shall not extend to any default as to which the signer shall have no actual knowledge. Landlord further agrees to execute and deliver, at Tenant's request and expense, a Subordination, Non-Disturbance and Attornment Agreement, substantially in the form of Appendix D hereto, in favor of a Sublessee.

Section 26.2. Landlord Acknowledgments. Landlord agrees that at any time and from time to time, upon not less than 30 days prior written notice of a Leasehold Mortgagee, Landlord will execute, acknowledge and deliver to the Leasehold Mortgagee a statement in writing, acknowledging receipt by Landlord of notice from the Leasehold Mortgagee of its name and address, and of the existence of its Leasehold Mortgage.

## ARTICLE XXVII

### NOTICES

Section 27.1. Notices in Writing; Receipt of Notices. All notices, consents, approvals or written communications given pursuant to the terms of this Lease will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(a) if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(b) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission;

(c) if delivered by electronic mail during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and

(d) if delivered by a reputable overnight courier such as FedEx, the first Business Day on or following the date of delivery by such courier to the recipient.

Section 27.2. Landlord's Notice Address. Notices required to be given to the Landlord shall be addressed as follows:

Northeast Texas Rural Rail Transportation District  
641 Church Street  
Sulphur Springs, Texas 75482  
Attn: Cletis Millsap, Chairman  
Fax: (903) 439-0809

Section 27.3. Tenant's Notice Address. Notices required to be given to the Tenant shall be addressed as follows:

Cotton Belt Turnpike, LP  
3811 Turtle Creek Boulevard, Suite 1300  
Dallas, Texas 75219  
Attn: John N. Crew, Chairman  
Fax: (214) 692-5302

Section 27.4. Leasehold Mortgagee Notices. All notices, demands and requests which are required or permitted to be given by Landlord and/or Tenant to a Leasehold Mortgagee or any other person shall be sent by Landlord and/or Tenant, as the case may be, in writing, by registered or certified mail, return receipt requested, or reputable overnight courier such as

FedEx, addressed to the Leasehold Mortgagee or other person at such place as the Leasehold Mortgagee or other person may from time to time designate in written notice to Landlord and/or Tenant. Notices, demands and requests served or given in the manner aforesaid shall be deemed sufficiently served or given for all purposes on the date of receipt by the addressee, or the date on which such notice would have been received had the same not been refused by the addressee, or the business day on which a mail carrier or courier had actually attempted to deliver such notice, demand, or request to the address for such party of which the sender shall most recently have had notice.

Section 27.5. Other Notice Addresses. Landlord, Tenant, Leasehold Mortgagee or any other person may designate by notice in writing given in the manner specified in this Article a new or other address to which such notice or demand shall be given or made.

## ARTICLE XXVIII

### QUIET ENJOYMENT

Section 28.1. Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon paying the Rent and all other charges herein provided for and upon observing and keeping in all material respects, all of the covenants, agreements and provisions of this Lease on its part to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Toll Road Premises during the term of this Lease without hindrance or molestation by or from anyone claiming by, through or under Landlord, subject, however, to Landlord's rights herein, any right of eminent domain Landlord may have, the Permitted Encumbrances, and any encumbrance hereafter arising by operation of law, or the act or sufferance of Tenant.

## ARTICLE XXIX

### CONDITION OF THE LAND

Section 29.1. As Is Condition. Tenant represents that the Land, and the present uses and nonuses thereof, have been examined by Tenant and that Tenant shall accept the same "AS IS" on the Term Commencement Date.

Section 29.2. No Landlord Representation or Warranty. LANDLORD HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HABITABILITY, MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE TOLL ROAD FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, COMPLIANCE OF THE TOLL ROAD FACILITY WITH APPLICABLE LAWS, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE TOLL ROAD FACILITY, OR THE SUITABILITY OF THE TOLL ROAD FACILITY FOR THE PURPOSES OR NEEDS OF TENANT OR ANY SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO TENANT WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE TOLL ROAD PROJECT OR ANY MATTER AFFECTING THE TOLL ROAD PROJECT. TENANT, ON BEHALF OF ITSELF AND ANY AND ALL SUBLESSEES, HAS UNDERTAKEN SUCH DILIGENCE AND INVESTIGATION AS IT

HAS DETERMINED TO BE NECESSARY OR DESIRABLE AND IS SATISFIED THAT THE TOLL ROAD FACILITY IS SUITABLE AND FIT FOR PURPOSES OF TENANT AND ANY SUBLESSEE(S). LANDLORD SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO TENANT OR ANY SUBLESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE TOLL ROAD FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

#### ARTICLE XXX

##### MEMORANDUM OF LEASE

Section 30.1. Memorandum of Lease. Upon request of either party, each party shall join in the execution of a memorandum of lease in proper form for recording, setting forth the existence and Term of this Lease, and Landlord and Tenant shall each take such further action as may be necessary to permit such recording. The cost of recording shall be borne by the party requesting such recordation.

#### ARTICLE XXXI

##### COVENANTS TO BIND AND BENEFIT THE RESPECTIVE PARTIES

Section 31.1. Successors and Assigns. It is further covenanted and agreed by and between the parties hereto that the covenants and agreements herein contained shall bind and inure to the benefit of Landlord and Tenant and their respective successors and assigns, subject to the limitations herein on Tenant's right to assign its rights hereunder.

Section 31.2. Construction of Certain References. The use of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors and assigns of Landlord or Tenant" shall be deemed to include the heirs, legal representatives and permitted assigns of any individual Landlord or Tenant.

#### ARTICLE XXXII

##### GOVERNING LAW

Section 32.1. Governing Law. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by Texas law (without giving effect to Texas conflict of law principles).

#### ARTICLE XXXIII

##### ENTRY ON TOLL ROAD PREMISES BY LANDLORD

Section 33.1. Right of Entry. In addition to Landlord's right to entry under any other provision of this Lease, Tenant shall permit Landlord and its authorized representatives to enter the Toll Road Premises at all reasonable times for inspection and other reasonable purposes with prior written notice to and accompaniment by Tenant during such showing and during business hours. Nothing herein shall create or imply any duty upon Landlord to make any repairs or do any work with respect to the Toll Road Premises, and performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. In no event shall Landlord's exercise of its right of entry hereunder constitute an eviction or give rise to any liability of any type or nature on the part of Landlord.

Section 33.2. Showing the Premises. Landlord shall have the right to enter the Toll Road Premises at all reasonable times during usual business hours for the purpose of showing the same to prospective purchasers, fee mortgagees and/or other persons, with prior written notice to and accompaniment by Tenant during such showing and during business hours.

#### ARTICLE XXXIV

#### ENTIRETY OF AGREEMENT

Section 34.1. Entirety of Agreement. This Lease contains the entire agreement between the parties hereto with respect to the transactions contemplated by the Lease. Without limiting the generality of the foregoing, this Lease shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

#### ARTICLE XXXV

#### LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 35.1. No Landlord General Liability to Damage or Injury. Except as provided herein, Landlord shall not in any event whatsoever be liable for, and shall be indemnified in accordance with the provisions of Article 24 for, any injury or damage to any person or property occurring on, in or about the Toll Road Premises and its appurtenances, nor for any injury or damage to the Toll Road Facility or to any property belonging to Tenant or any other person which may be caused by any fire or breakage, flood, leakage, or other water flow, the use, misuse or abuse of the Toll Road Facility, or which may arise from any other cause whatsoever, except as is solely due to (i) Landlord's fraud, bad faith or willful misconduct or that of its representatives, agents, employees, officers and directors acting within the scope of their authority, or (ii) any activity or omission in connection with the Rail ROW.

Section 35.2. Limitation on Specific Landlord Liability: Exceptions. Except as provided herein, Landlord shall not be liable for any failure of water supply, gas or electric current, nor for any injury or damage to any property or any person or to the Toll Road Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, subsurface area or from any part of the Toll Road Premises or leakage of gasoline or oil from pipes, tanks, appliances, sewer or plumbing works therein, or from any other places, nor the interference with light or other incorporeal hereditaments by any body, or caused by any public

or quasi-public work except as is solely due to Landlord's affirmative negligence or that of its representatives, agents, employees, officers and directors acting within the scope of their authority and in a proprietary, as opposed to governmental, capacity.

Section 35.3. Tenant Liability Prior to Term Commencement Date. Prior to the Term Commencement Date, **Tenant hereby agrees to hold harmless, protect, defend and indemnify, and hereby releases, each Landlord Indemnitee and the ROW from and against any and all claims, demands, causes of action, losses, liabilities, liens, encumbrances, costs or expenses (including without limitation reasonable attorneys' fees and litigation costs) arising out of, connected with or incidental to: (a) any injuries to persons (including death), (b) any damage to the ROW or any other property (real or personal), or (c) any mechanics', workers' or other liens on the ROW, all of the foregoing only to the extent by reason of or relating to the work or activities conducted on the ROW by Tenant or Tenant's representatives prior to the Term Commencement Date. This indemnity shall not, however, apply to (i) matters which are merely discovered by the Tenant in the course of its inspections to the extent not exacerbated by Tenant or its representatives, and (ii) the consequences of any act or omission on the part of any Landlord Indemnitee.** Other than as expressly provided in the immediately preceding sentence, prior to the Term Commencement Date, Tenant shall not in any event whatsoever be liable for any injury or damage to any person or property occurring on, in or about the Land and its appurtenances, nor for any injury or damage to the Toll Road Facility or to any property belonging to Landlord or any other person which may be caused by any fire or breakage, flood, leakage, or other water flow, the use, misuse or abuse of the Toll Road Facility, or which may arise from any other cause whatsoever.

#### ARTICLE XXXVI

##### BROKER

Section 36.1. Broker. Each party covenants, warrants and represents to the other that it has dealt with no broker in connection with the negotiation or execution of this Lease and each party agrees to indemnify and hold harmless against any claims for brokerage commissions of any kind or nature which are based in any way on any breach of the foregoing representation. The foregoing indemnity shall survive any Termination of this Lease.

#### ARTICLE XXXVII

##### REPRESENTATIONS AND WARRANTIES; WAIVER OF SOVEREIGN IMMUNITY

Section 37.1. Representations and Warranties of the Tenant. The Tenant hereby represents and warrants as of the Lease Execution Date:

(a) Existence and Powers. The Tenant is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas, and has the authority to do business in the State of Texas and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Lease.



(b) Due Authorization and Binding Obligation. This Lease has been duly authorized, executed and delivered by all necessary action of the Tenant and constitutes a legal, valid and binding obligation of the Tenant, enforceable against the Tenant in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(c) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Tenant of this Lease nor the performance by the Tenant of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Tenant of the terms or conditions hereof: (i) conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Tenant; or (ii) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Tenant or any of its Affiliates is a party or by which the Tenant or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(d) Intentionally Deleted.

(e) No Litigation Affecting the Tenant. Except as disclosed in writing to the Landlord, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Tenant's knowledge, overtly threatened or publicly announced against the Tenant or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Lease by the Tenant or the validity, legality or enforceability of this Lease against the Tenant, or any other agreement or instrument entered into by the Tenant in connection with the transactions contemplated hereby, or on the ability of the Tenant to perform its obligations hereunder or under any such other agreement or instrument.

Section 37.2. Representations and Warranties of the Landlord. The Landlord hereby represents and warrants, as of the Lease Execution Date:

(a) Existence and Powers. The Landlord has the full legal right, power and authority to execute, deliver and perform its obligations under this Lease.

(b) Due Authorization and Binding Obligation. This Lease has been duly authorized, executed and delivered by the Landlord, and constitutes a legal, valid and binding obligation of the Landlord, enforceable against the Landlord in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(c) No Conflict. To the best of its knowledge, neither the execution and delivery by the Landlord of this Lease nor the performance by the Landlord of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Landlord of the terms or conditions hereof: (i) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Landlord; or (ii) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract,

agreement or instrument, to which the Landlord is a party or by which the Landlord or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(d) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the Landlord of this Lease or the performance by the Landlord of its payment or other obligations hereunder except otherwise as such have been duly obtained or made.

(e) No Litigation Affecting the Landlord. Except as disclosed in writing to the Tenant, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against the Landlord, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Lease by the Landlord or the validity, legality or enforceability of this Lease against the Landlord, or any other agreement or instrument entered into by the Landlord in connection with the transactions contemplated hereby or on the ability of the Landlord to perform its obligations hereunder or under any such other agreement or instrument.

(f) Intentionally Deleted.

Section 37.3. Sovereign Immunity Waiver. To the extent permitted by Applicable Law, the Landlord shall not claim and hereby waives any claim of governmental immunity in a breach of contract action initiated by the Tenant in connection with this Lease or any other agreement contemplated by or entered into in connection with this Lease. Upon the occurrence and continuance of a Landlord Event of Default, Landlord agrees not to object to, and to use its best efforts to facilitate, the enactment of a waiver of suit by the applicable Governmental Body in connection with a breach of contract action initiated by the Tenant in connection with this Lease or any other agreement contemplated by or entered into in connection with this Lease. With the exception of the foregoing, nothing contained in this Section 37.3 shall be construed as a waiver by Landlord of governmental immunity from any lawsuit or as the consent of Landlord to the bringing of any action against Landlord or any Landlord Person.

## ARTICLE XXXVIII

### INTENTIONALLY DELETED

## ARTICLE XXXIX

### MISCELLANEOUS PROVISIONS

Section 39.1. Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 39.2. Table of Contents. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as a part of the Lease or supplemental thereto or amendatory thereof.

Section 39.3. Construction; Multiple Counterparts. The provisions of this Lease were fully negotiated by Tenant and Landlord, and this Lease shall not be construed for or against Landlord or Tenant, but shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result. This Lease may be executed in any number of counterparts, each of which is an original, but all of which shall constitute one instrument.

Section 39.4. Rights of Redemption Waiver. Tenant represents and warrants to Landlord that this Lease is made and entered into solely for business or mercantile purposes, and Tenant hereby forever expressly releases and waives any rights of redemption respecting the Land, or Landlord's interest therein, now or hereafter existing in favor of Tenant under any present or future law.

Section 39.5. References to Days. Provisions in this Lease relating to number of days, other than Business Days, shall be calendar days.

Section 39.6. Limitations on Landlord Responsibilities. Landlord shall not be deemed to have incurred or assumed any obligation or responsibility in connection with the construction, renovation, maintenance, demolition and/or removal of the Toll Road Facility, or any changes or alterations or their construction, maintenance or operation, by reason of its approval of any plans and specifications, nor shall any such approval be deemed a representation by Landlord of the sufficiency of such plans and specifications, the stability or structural integrity or strength of any part of the Toll Road Facility, or the quality or suitability of any materials or equipment.

Section 39.7. Time of the Essence. Time shall be of the essence as to each provision of this Lease.

Section 39.8. Force Majeure. Whenever a period of time is herein prescribed for the taking of any action by Landlord or Tenant, the party responsible for taking such action will not be liable or responsible for any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever (other than financial inability) beyond the control of the party responsible for taking such action. The period of time for taking action will be extended by the number of days of delay. However, the provisions of this Section 39.8 will never be construed as allowing an extension of time with respect to Tenant's obligation to pay Rent when and as due under this Lease.

Section 39.9. Landlord-Tenant Relationship. This Lease is intended solely to create a landlord-tenant relationship between Landlord and Tenant. Notwithstanding any other provision of this Lease, Landlord is not for any purpose a partner or joint venturer of Tenant in the Toll Road Project. Except as expressly provided for in the Lease, Landlord shall not under any circumstances be responsible or obligated for any losses or liabilities of Tenant.

Section 39.10. Confidentiality; Open Records Act.

(a) Each party to this Lease agrees to keep confidential and not use, reveal, provide or transfer to any third party any Confidential Information (as defined below) it obtains or has obtained concerning the other party to this Lease or the Toll Road Facility, except as follows:

1. subject to Section 39.10(b) of this Lease, to the extent that disclosure to a third party is required by applicable law or regulation;
2. information which, at the time of disclosure, is generally available to the public (other than as a result of a breach of this Lease or any other confidentiality agreement to which a party to this Lease is a party or of which it has knowledge), as evidenced by generally available documents or publications;
3. information that was in its possession prior to disclosure (as evidenced by appropriate written materials) and was not acquired directly or indirectly from any other party to this Lease;
4. to the extent disclosure is necessary or advisable, to its employees, consultants or advisors, or to its affiliates or their employees, consultants or advisors, in each case solely for the purpose of carrying out their duties under this Lease;
5. to banks or other financial institutions or agencies or any independent accountants or legal counsel or investment advisors employed in connection with the Toll Road Facility, or by any party to the Agreement, to the extent disclosure is necessary or advisable to obtain financing, including, without limitation, the Toll Road Facility financing;
6. to potential investors in connection with the Toll Road Facility financing and raising equity;
7. to potential purchasers of a party to this Lease or any affiliate of a party to this Lease that directly or indirectly owns an equity interest in such party to this Lease;
8. to the extent necessary, disclosure to third parties to enforce this Lease;
9. to another party to this Lease; or
10. to parties that have signed or agreed to be bound by this confidentiality provision; provided, however, that in each case of disclosure pursuant to (iv), (v), (vi), (vii) or (ix), the persons or entities to whom disclosure is made agree to be bound by this confidentiality provision. The obligation of each party not to disclose Confidential Information except as provided herein shall not be affected by the termination of this Lease. As used in this Section, the term "Confidential Information" shall mean information concerning this Lease and the properties, operations, business, trade secrets, technical know-how and other non-public information and data of or relating to the parties to this Lease or the Toll Road Facility, including, but not limited to, any information provided to Landlord pursuant to Section 3.2 herein.

The restrictions on disclosure of Confidential Information set forth above in Section 39.10(a) of this Lease shall lapse two years from the date of the Termination of this Lease.

(b) If any Person requests NETEX to disclose any Confidential Information under the Texas Open Records Act (Tex. Govt. Code Ann. § 552.001 et seq.) or equivalent or successor

statute (the "Open Records Act"), prior to making such disclosure, NETEX shall notify Tenant of such request, in which case Tenant shall promptly and timely inform NETEX whether any of the requested materials constitute confidential, proprietary, commercial, financial or trade secret information of Tenant which may be exempted from disclosure under the Open Records Act, and, in that event, NETEX and Tenant shall cooperate with each other in preparing appropriate responses or filings to the Attorney General of the State and to any Person making such request, including any appeals involved therein, to prevent a disclosure of such information. In such event, each party shall further cooperate with the other to promptly identify any possible third party whose privacy or property interests may be implicated by any such request to disclose information in order to enable Tenant to timely furnish to any such third party any statutory notice required by the Open Records Act and seek any applicable exemptions from disclosure under the Open Records Act. So long as Tenant is pursuing the actions described above in a timely manner, NETEX to the extent permitted by Applicable Law shall protect confidential, proprietary or trade secret information of Tenant as to which Tenant requests NETEX to do so, unless otherwise compelled by court order. All reasonable and necessary costs associated with NETEX's cooperation with Tenant hereunder in connection with any proceedings shall be borne by Tenant, and NETEX shall be fully reimbursed for any of such costs it has reasonably incurred including reasonable attorneys' fees.

## ARTICLE XL

### AMENDMENT OF LEASE; CONDEMNATION OF EASEMENTS

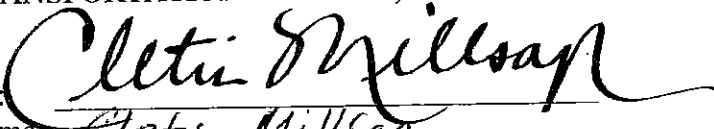
Section 40.1. Amendment of Lease. The parties expressly acknowledge and agree that further information to be developed after the Lease Execution Date is necessary more precisely to determine the exact metes and bounds of the ROW, the Rail ROW and the Land; the existence and location of any easements that may be in effect with respect to the ROW; and the specifics of any other matters relating to the initial design of the Toll Road, including off ramps, interchanges and similar items. Accordingly, the parties agree to negotiate in good faith and in a commercially reasonable manner and to agree from time to time to enter into reasonable modifications of this Agreement, to the extent additional information to be developed indicates that amendments hereto are reasonably necessary and appropriate. The parties agree to act in good faith and in a commercially reasonable manner with respect to any such future negotiations, and to pursue those negotiations in a prompt and timely manner, giving due consideration to the exigencies inherent in the Project at such future time or times. The parties further agree to adopt changes to this Agreement reasonably necessary and consistent with prevailing capital market conditions and customary financings of similar projects, to accommodate and facilitate any indebtedness secured by or to be secured by a lien on the Toll Road Facility. Landlord acknowledges that Tenant may be required to, among other things, obtain Project Debt financing and equity for the Toll Road Facility and that potential Lenders, Unit Holders and other parties may require additional changes to this Lease in connection with the financing of the Toll Road Facility. Landlord agrees that it will in good faith and in a commercially reasonable manner negotiate changes to this Lease as may be required to obtain such financing without any changes in the Rent or additional costs other than reimbursement for actual costs and expenses incurred by Landlord in negotiating such changes to this Lease; provided, however, that no amendment to this Lease will require any land or improvement comprising the Rail ROW to be leased to Tenant.

Section 40.2. Condemnation by NETEX. If Tenant desires Landlord to remove through condemnation any outstanding encumbrances (including, but not limited to, easements) that exist within the Land, Landlord shall use Landlord's condemnation authority and resources to achieve such removal and/or acquisition. Tenant shall reimburse NETEX in full for all costs, awards and expenses paid or incurred by NETEX in connection with, and NETEX shall be the lawful owner of any property interests acquired by NETEX under this Section 40.2 ("Condemned Property"), and, upon completion of the applicable condemnation proceedings, the Condemned Property shall be automatically added to and become a part of the Land under the Lease.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties have hereto executed this Lease on the day and year first hereinabove written.

NORTHEAST TEXAS RURAL RAIL  
TRANSPORTATION DISTRICT, Landlord

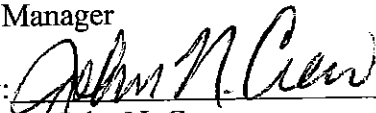
By:   
Name: Cletis Millsap  
Title: Chairman

IN WITNESS WHEREOF, the parties have hereto executed this Lease on the day and year first hereinabove written.

COTTON BELT TURNPIKE, LP,  
a Texas limited partnership

By: Cotton Belt Partners GP, LLC,  
its General Partner

By: Texas Turnpike Corporation,  
its Manager

By:   
Name: John N. Crew  
Title: President



**APPENDIX A**

**DESCRIPTION OF LAND**

**SEE ATTACHED APPENDIX A – LAND**

# HUNT COUNTY, COMMERCE LINE - SEG. II

PKK  
2-23-95

## EXHIBIT "A"

Those portions of the 8.89 miles of the St. Louis Southwestern Railway Company of Texas, Commerce Line, formerly known as the Ft. Worth Branch, in the County of Hunt, State of Texas, beginning at the intersection of a line drawn at right angles from the original located center line of said Company's main track at Engineer Station 3980+91 and Mile Post 555.00, near Simtrott, and extending southwesterly to the boundary common to the Counties of Hunt and Collin at Engineer Station 4449+87.1 and Mile Post 563.89, southwesterly of Clinton, and more particularly described by parcel reference and deed recording as follows:

SSWT Valuation Map	Parcel Number	SSWT Acquisition Deeds Grantor	Hunt County Recordation		
			Book	Page	Date
V-5/5	9	A.J. Johnson	H	177	Dec. 3, 1888
"	10	John Baker, et al	H	531	Mar. 17, 1890
"	11	A.J. Johnson	H	177	Dec. 3, 1888
"	12	A.J. Johnson	C	405	May 2, 1893
"	13	W.A. Mitchell	H	111	Dec. 3, 1888
"	13a	W.A. Mitchell	T1	332	Dec. 7, 1887
"	14	J.M. Frazier	76	407	May 12, 1894
"	15	Geo. L. Hume	83	518	Jan. 21, 1898
"	16	C.L. Lytton, et al	76	100	Feb. 6, 1894
"	17	M.C. Cartwright, et ux	76	100	Feb. 6, 1894
V-5/6	1	M.C. Cartwright, et ux	76	100	Feb. 6, 1894
"	2	J.M. Cook	T1	501	July 29, 1887

SSWT Valuation Map	Parcel Number	SSWT Acquisition Deeds Grantor	Hunt County Recordation		
			Book	Page	Date
V-5/6	3	J.B. Boyle	V1	22	Jan. 1888
"	4	Geo. L. Hume	93	518	Jan. 21, 1888
"	5	W.C. Cone	V1	59	Jan. 2, 1888
"	6	J.B. Smith, et ux	T1	479	Jan. 2, 1888
"	7	J.M. Massey	V1	4	Jan. 2, 1888
"	8	J.B. Smith, et ux	T1	479	Jan. 2, 1888
"	9	H.M. Pile	V1	11	Jan. 2, 1888
"	10	D.W. Dorris	T1	477	Jan. 2, 1888
"	11	R. Baswell, et ux	V1	9	Jan. 2, 1888
"	12	J.B. Smith, et ux	T1	479	Jan. 2, 1888
"	13	W.C. Cone	V1	59	Jan. 2, 1888
"	14	J.B. Smith, et ux	T1	479	Jan. 2, 1888
"	15	L.C. Smith	74	354	Nov. 27, 1893
"	16	W.T. Edgar	V1	538	Apr. 25, 1888
V-5/7	1	L.C. Smith	74	354	Nov. 27, 1893
"	2	W.T. Edgar	V1	538	Apr. 25, 1888
"	3	V.O. McAdams, et al	H	181	Dec. 1, 1888
"	4	E.J. Horne, et ux	T1	476	Jan. 2, 1888
"	5	R.H. Stewart, et ux	V1	126	Jan. 2, 1888
"	6	Jessie Askins	V1	33	Jan. 2, 1888
"	7	W.H. Donaldson	V1	122	Jan. 2, 1888
"	8	M.C. Thompson	V1	29	Jan. 2, 1888
"	9	E. Jacobs	73	314	June 10, 1893
"	10	E.A. Jordan, et ux	X1	258	June 7, 1888
"	3A	W.B. Bruce, Heirs	388	486	May 29, 1936

Excepting from the land described in the above deeds that portion of land described in said deed recorded December 3, 1888, from A.J. Johnson to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), lying northeasterly of a line drawn at right angles from the original located center line of St. Louis Southwestern Railway Company's main track (Commerce Line) at Engineering Station 3980+91 and Mile Post 555.00, near Simtrott.

Also, excepting therefrom that portion of land described in said deed recorded June 7, 1888, from A.E. Jordan, et ux, to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), lying in Collin County.

COLLIN COUNTY - COMMERCE LINE, SEG. II

PK  
2-13-95

EXHIBIT "A"

Those portions of the 14.31 miles of the St. Louis Southwestern Railway Company of Texas, Commerce Line, formerly known as the Fort Worth Branch, in the County of Collin, State of Texas, beginning at the intersection of the boundary common to the Counties of Hunt and Collin with the original located centerline of said Company, at Engineer Station 4449+87.1 and Mile Post 563.89, southwesterly of Clinton, and extending southwesterly, westerly and northwesterly to the easterly line of land described in Indenture dated December 27, 1990, from St. Louis Southwestern Railway Company, et al, to Dallas Area Rapid Transit Property Acquisition Corporation, recorded January 11, 1991, in Deed Book 3424, Page 183, Deed Records of said County, at Engineer Station 5204+88 and Mile Post 578.20, easterly of Wylie, and more particularly described by parcel reference and deed recording as follows:

SSWT Valuation Map	Parcel Number	SSWT Acquisition Deeds Grantor	Collin County Recordation		
			Book	Page	Date
V-5/7	10	E. A. Jordan, et ux.	35	447	Mar. 2, 1888
"	11	Held by Limitation	No Record - See Exhibit A-1		
"	12	W. T. Jordan	35	449	Mar. 2, 1888
"	13	B. T. Barry, Trustee	42	175	Oct. 9, 1889
"	19	Jim Harris	35	480	Mar. 9, 1888
"	UN 13	J.C. Hubbard	35	451	Mar. , 1888
V-5/8	1	Jim Harris	35	480	Mar. 9, 1888
"	2	J. H. Gaines	35	482	Feb. 25, 1888
"	3	Held by Limitation	No Record - See Exhibit A-2		
"	4	C. H. Walcott	35	478	Mar. 9, 1888

SSWT Valuation Map	Parcel Number	SSWT Acquisition Deeds Grantor	Collin County Recordation		
			Book	Page	Date
V-5/B	5	Held by Limitation	No Record - See Exhibit A-3		
"	Un 6	J.N. Payne	35	454	Mar. 2, 1888
V-5/9	2	J. S. Stinebaugh	35	464	Mar. 3, 1888
"	3	J. A. Stellings	35	447	Mar. 2, 1888
"	4	Held by Limitation	No Record - See Exhibit A-4		
"	5	E. J. White, et al	35	462	Mar. 3, 1888
"	6	Held by Limitation	No Record - See Exhibit A-5		
"	7	J. I. Webb, et al	35	456	Mar. 3, 1888
"	8	Daniel Stimpson (condemnation)	C	208	Oct. 17, 1898
"	9	J. K. Adams, et al	41	437	Jun. 15, 1889
"	10	T. A. James, et ux.	41	443	Jun. 17, 1889
"	10	T. A. James, et ux.	41	436	Jun. 15, 1889
"	10	Mrs. M. M. Boyd (condemnation)	C	98	Oct. 15, 1898
"	11	E. C. Thomson, et ux.	35	139	Jan. 27, 1888
"	12	M. E. Shaw, et al	35	138	Jan. 26, 1888
"	13	M. E. Shaw, et al	35	138	Jan. 26, 1888
"	14	M. E. Shaw, et al	35	441	Feb. 25, 1888
"	15	Mrs. C. Graves	35	460	Mar. 3, 1888
"	16	Held by Limitation	No Record - See Exhibit A-6		
"	16A	G. W. Williams, et ux.	317	68	Mar. 28, 1936
V-5/10	1	Held by Limitation	No Record - See Exhibit A-6		
"	2	C. C. Daugherty (condemnation)	C	77	Oct. 15, 1898
"	3	C. C. Daugherty	73	180	Feb. 20, 1896
"	4	J. D. Bass, et ux.	41	440	Jun. 17, 1889
"	5	E. A. Boren, et ux.	81	523	Dec. 9, 1898
"	6	Held by Limitation	No Record - See Exhibit A-7		

SSWT Valuation Map	Parcel Number	SSWT Acquisition Deeds Grantor	Collin County Recordation		
			Book	Page	Date
V-5/10	7	Held by Limitation	No Record - See Exhibit A-7		
"	8	John Lewis	44	191	Feb. 25, 1890
"	9	Held by Limitation	No Record - See Exhibit A-8		
"	10	P. M. White, et ux.	44	197	Feb. 28, 1890
"	11	G. A. Wilson	44	189	Feb. 25, 1890
"	12	W. S. Forman	35	137	Jan. 26, 1888
"	1A	G. W. Williams, et ux.	317	68	Mar. 28, 1938
"	2A	Maude E. Daugherty	317	87	Mar. 28, 1938
V-5/11	1	W. S. Forman	35	137	Jan. 26, 1888
"	2	J. H. Burns	44	212	Feb. 27, 1890
"	3	W. S. Forman	35	137	Jan. 26, 1888

Excepting therefrom that portion of said land described in said deed recorded January 26, 1888, in Book 35, page 137, from W.S. Forman to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), lying westerly of said easterly line of land described in said Easement Indenture dated December 27, 1990, recorded January 11, 1991, in Book 3424, page 183, Records of Collin County, Texas.

EXHIBIT A-1

A strip of land 100 feet wide situated in John Copeland H.R. Survey, County of Collin, State of Texas, lying 50 feet on each side of the following described center line:

Beginning at the point of intersection of the original located center line of St. Louis Southwestern Railway Company's main track (Commerce Line), with the northerly line of land described in deed dated July 26, 1887, from W.T. Jordan to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), recorded March 2, 1888, in Book 35, Page 449, Deed Records of said County; thence, northeasterly along said original located center line to the westerly line of land described in deed dated July 26, 1887, from E.A. Jordan et ux to St. Louis, Arkansas & Texas Railway Company, recorded March 2, 1888, in Book 35, Page 447, Deed Records of said County.

The side lines of the above described 100 foot wide strip of land being lengthened or shortened respectively, terminates southwesterly in said northeasterly line, and terminates easterly in said westerly line.

1205A-1.exh



EXHIBIT A-2

A strip of land 100 feet wide situated in James Osgood H.R. Survey, County of Collin, State of Texas, lying 50 feet on each side of the following described center line:

Beginning at the point of intersection of the original located center line of St. Louis Southwestern Railway Company's main track (Commerce Line), with the easterly line of land described in deed dated July 22, 1887, from C.H. Walcott to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), recorded March 9, 1888, in Book 35, Page 478, Deed Records of said County; thence, northeasterly along said original located center line to the westerly line of land described in deed dated October 17, 1887, from J.H. Gaines to St. Louis, Arkansas & Texas Railway Company, recorded March 2, 1888, in Book 35, Page 452, Deed Records of said County.

The side lines of the above described 100 foot wide strip of land being lengthened or shortened respectively, terminates westerly in said easterly line, and terminates easterly in said westerly line.

1205A-2.exh

EXHIBIT A-3

A strip of land 100 feet wide situated in W.C. Ward H.R. Survey, County of Collin, State of Texas, lying 50 feet on each side of the following described center line:

Beginning at the point of intersection of the original located center line of St. Louis Southwestern Railway Company's main track (Commerce Line), with the easterly line of land described in deed dated July 14, 1887, from J.A. Payne to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), recorded March 2, 1888, in Book 35, Page 454, Deed Records of said County, being also the easterly line of land described in deed dated July 25, 1887, from S.D. Thornton et ux to St. Louis, Arkansas & Texas Railway Company, recorded March 3, 1888, in Book 35, Page 458, Deed Records of said County; thence, northeasterly along said original located center line to the southerly line of land described in deed dated July 22, 1887, from C.H. Walcott to St. Louis, Arkansas & Texas Railway Company, recorded March 9, 1888, in Book 35, Page 478, Deed Records of said County.

The side lines of the above described 100 foot wide strip of land being lengthened or shortened respectively, terminates westerly in said easterly lines, and terminates northerly in said southerly line.

1205A-3.exh

EXHIBIT A-4

A strip of land 100 feet wide situated in S.M. Rainer H.R. Survey, County of Collin, State of Texas, lying 50 feet on each side of the following described center line:

Beginning at the point of intersection of the original located center line of St. Louis Southwestern Railway Company's main track (Commerce Line), with the easterly line of land described in deed dated July 14, 1887, from E.J. White, et ux to St. Louis, Arkansas and Texas Railway Company (now St. Louis Southwestern Railway Company), recorded March 3, 1888, in Book 35, Page 462, Deed Records of said County; thence, northeasterly along said original located center line to the westerly line of land described in deed dated July 15, 1887, from J.L. Stallings to St. Louis, Arkansas & Texas Railway Company, recorded March 3, 1888, in Book 35, Page 447, Deed Records of said County.

The side lines of the above 100 foot wide strip of land being lengthened or shortened respectively, terminates westerly in said easterly line, and terminates easterly in said westerly line.

EXHIBIT A-5

A strip of land 100 feet wide situated in S.M. Rainer H.R. Survey, County of Collin, State of Texas, lying 50 feet on each side of the following described center line:

Beginning at the point of intersection of the original located center line of St. Louis Southwestern Railway Company's main track (Commerce Line), with the easterly line of land described in deed dated July 14, 1887, from John I. Webb, et ux to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), recorded March 3, 1888, in Book 35, Page 456, Deed Records of said County; thence, northeasterly along said original located center line to the westerly line of land described in deed dated July 14, 1887, from E.J. White, et ux to St. Louis, Arkansas & Texas Railway Company, recorded March 3, 1888, in Book 35, Page 462, Deed Records of said County.

The side lines of the above 100 foot wide strip of land being lengthened or shortened respectively, terminates westerly in said easterly line, and terminates easterly in said westerly line.

1205A-5.EXH

SSW/TEX. V-5/9 Par. 16  
" " V-5/10 Par. 1

EXHIBIT A-6

A strip of land 100 feet wide situated in W.H. Moore H.R. Survey, County of Collin, State of Texas, lying 50 feet on each side of the following described center line:

Beginning at the point of intersection of the original located center line of St. Louis Southwestern Railway Company's main track (Commerce Line), with the easterly line of the 100 foot wide strip of land described in Condemnation dated October 12, 1887, from C.C. Daugherty to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), recorded October 15, 1898, in Book "C", Page 77, Court Records of said County; thence, easterly and northeasterly along said original located center line to the southwesterly line of land described in deed dated July 27, 1887, from Carmella Graves to St. Louis, Arkansas & Texas Railway Company, recorded March 3, 1888, in Book 35, Page 460, Deed Records of said County.

The side lines of the above described 100 foot wide strip of land being lengthened or shortened respectively, terminates westerly in said easterly line; and terminates northeasterly in said southwesterly line.

1205A-6

EXHIBIT A-7

Two strips of land situated in County of Collin, State of Texas, and more particularly described as follows:

STRIP ONE:

A strip of land 100 feet wide situated in W.A. S. Bohannon H.R. Survey, lying 50 feet on each side of the following described center line:

Beginning at the point of intersection of the original located center line of the St. Louis Southwestern Railway Company's main track (Commerce Line), with the southerly line of land described in deed dated October 19, 1887, from J.D. Bass et ux to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), recorded June 17, 1889, in Book 41, Page 440, Deed Records of said County; thence, southwesterly along said original located center line to the northeasterly line of St. Louis Southwestern Railway Company's 60 foot wide strip of land.

The side lines of the above described Strip One being lengthened or shortened respectively, terminates southwesterly in said northeasterly line, and terminates northeasterly in said southerly line.

STRIP TWO:

A strip of land 60 feet wide situated in a portion of W.A. S. Bohannon H.R. Survey, and a portion of Stephen Coose H.R. Survey, lying 30 feet on each side of the following described center line:

Beginning at the point of intersection of the original located center line of St. Louis Southwestern Railway Company's main track (Commerce Line), with the southerly line of land described in deed dated August 16, 1887, from John Lewis to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), recorded February 25, 1890, in Book 44, Page 191, Deed Records of said County; thence, southeasterly and easterly along said original located center line to the southwesterly line of St. Louis Southwestern Railway Company's 100 foot wide strip of land.

The side lines of the above described Strip Two being lengthened or shortened respectively, terminates northwesterly in said southerly line, and terminates northeasterly in said southwesterly line.

1205A-7.exh

EXHIBIT A-8.

A strip of land 100 feet wide situated in W.C. Twitty H.R. Survey, County of Collin, State of Texas, lying 50 feet on each side of the following described center line:

Beginning at the point of intersection of the original located center line of St. Louis Southwestern Railway Company's main track (Commerce Line), with the westerly line of land described in deed dated August 16, 1887, from John Lewis to St. Louis, Arkansas & Texas Railway Company (now St. Louis Southwestern Railway Company), recorded February 25, 1890, in Book 44, Page 191, Deed Records of said County; thence, northwesterly along said original located center line to the easterly line of land described in deed dated August 30, 1897, from P.M. White et ux to St. Louis, Arkansas & Texas Railway Company, recorded February 26, 1890, in Book 44, Page 197, Deed Records of said County.

The side lines of the above described 100 foot wide strip of land being lengthened or shortened respectively, terminates westerly in said easterly line, and terminates easterly in said westerly line.

1205A-8.exh



## APPENDIX B

### INSURANCE REQUIREMENTS

The Tenant will obtain and maintain, or cause to be obtained and maintained, the following insurance coverages applicable to the Contract Services. Copies of these policies shall be delivered to the Landlord upon Landlord's written request to the Tenant. All insurance coverages listed below will be purchased specifically and exclusively for the Toll Road Facility, with coverage limits devoted solely to the Toll Road Facility.

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1 million bodily injury by accident, each accident, and \$1 million bodily injury by disease, each employee.

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$2 million per occurrence and \$4 million annual aggregate. The Landlord is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$2 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Landlord is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$10 million per occurrence and in the aggregate.

(e) **Pollution Legal Liability Insurance** to indemnify for bodily injury, property damage, or amounts which the Tenant, its employees, its agents, or its contractors are legally obligated to pay for clean up/remediation work arising out of the Contract Services. Such insurance will have minimum limits of \$5 million any one claim and in the aggregate.

The Tenant shall maintain PLL or "site specific" insurance to respond to claims, demands or action arising out of the ownership, operation and use of the roadway and related assets. Such insurance shall have a minimum limit of \$25 million.

## APPENDIX C

### FORM OF LENDERS' REMEDIES AGREEMENT

THIS LENDERS' REMEDIES AGREEMENT is made and entered into as of \_\_\_\_\_, 201\_\_, among the NORTHEAST TEXAS RURAL RAIL TRANSPORTATION DISTRICT, a Texas rural rail transportation district created under Chapter 172 of the Texas Transportation Code, by the counties of Collin, Delta, Franklin, Hopkins, Hunt and Titus ("NETEX"), [agent bank], acting as agent to the Lenders pursuant to the Financing Agreements (as defined below) (the "Agent"), and COTTON BELT TURNPIKE, LP, a limited partnership, organized and existing under the laws of the State of Texas and authorized to do business in the State of Texas (the "Project Company").

#### RECITALS

NETEX and the Project Company have entered into the Ground Lease (as such term is defined below);

Pursuant to the Credit Agreement (defined below), the Lenders (defined below) have agreed, subject to the terms and conditions contained therein, to make available to the Project Company the loan facility specified therein to finance certain costs to be incurred and expenditures to be made by the Project Company in connection with the Toll Road Facility (defined below); and

It is a condition precedent to the obligations of the Lenders under the Credit Agreement that this Agreement be executed and delivered by the parties.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

#### ARTICLE 1

##### DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement shall have the respective meanings given to such terms in the Ground Lease, and:

"Agent's Cure Notice" has the meaning set forth in Section 3.9.

"Agent's Cure Period" has the meaning set forth in Section 3.9.

"Agent's Indicative Notice" means either an Agent's Indicative Step-In Notice or an Agent's Indicative Transfer Notice given in accordance with Section 3.4.

"Agent's Indicative Step-In Notice" has the meaning given to it in Section 3.4.

"Agent's Indicative Transfer Notice" has the meaning given to it in Section 3.4.

"Agent's Step-In Notice" means a notice given by the Agent to NETEX pursuant to Section 4.1.

"Agent's Step-Out Notice" has the meaning given it in Section 5.11.

"Agent's Withdrawal Notice" has the meaning set forth in Section 3.4.

"Agreement" means this agreement including any recitals, schedules and appendices to this agreement, as amended, supplemented or restated from time to time.

"Antecedent Liabilities" means, as at any time:

(1) all amounts due and payable by the Project Company to NETEX under the Ground Lease at such time; and

(2) all obligations which should have, but have not, been performed and outstanding liabilities of the Project Company under the Ground Lease, in each case at such time.

"Appointed Representative" means the Lenders' Representative identified in a Step In Notice.

"Bankruptcy Law" means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended from time to time and any successor statute thereto. "Bankruptcy Law" shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

"Bankruptcy Officer" means any trustee, receiver, liquidator, sequestrator, administrator or other custodian in connection with the bankruptcy of the Project Company or any of its assets.

"Bankruptcy Proceedings" means:

(1) any:

(a) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;

(b) appointment of an Bankruptcy Officer in connection with;

(c) order or resolution passed in connection with; or

(d) formal agreement reached regarding,

a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of the

Project Company (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or

(2) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of the Project Company or any other similar process or event occurring in relation to the Project Company's assets in any other jurisdiction.

"Business Day" means a day of the year, other than (i) a Saturday, Sunday, or a legal holiday on which the principal office of the Agent is not open for the purpose of conducting substantially all of the Agent's business activities, or (ii) a legal holiday on which the principal offices of commercial banks in New York, New York are closed, or (iii) a day on which The New York Stock Exchange is closed.

"Credit Agreement" means the [name of credit agreement].

"Credit Agreement Event of Default" means an event of default as defined in the Credit Agreement.

"Debt Discharge Date" means the date on which all amounts due and owing to the Lenders under the Financing Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Lenders are under no further obligation to advance under the relevant Financing Agreement.

"Discharged Obligations" has the meaning set forth in Section 6.4.

"Discharged Rights" has the meaning set forth in Section 6.4.

"Existing Improvements" has the meaning given to it in the Ground Lease.

"Finance Parties" has the meaning given to it in the Credit Agreement.

"Financing Agreements" means the Credit Agreement and any security agreements and other agreements entered into with respect to or in connection with the Credit Agreement, as set forth in Schedule 1 hereto.

"Ground Lease" means the Ground Lease Agreement, dated \_\_\_\_\_, 2013, between NETEX, as "Landlord," and the Project Company, as "Tenant," demising the Land.

"Indicative Notice Period" means the period commencing on the date of delivery of an Indicative Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of an Agent's Withdrawal Notice; or
- (3) 365 days following the date of delivery of the Indicative Notice.

"Land" has the meaning given to it in the Ground Lease.

"Lenders" means the lenders or agent for the lenders, bondholders or trustee for the bondholders, swap or hedge providers or other financing parties under any Credit Agreement.

"Lenders' Representative" means:

- (1) the Agent or Lender;
- (2) a receiver of the Project Company appointed under or in connection with the Security Documents; or
- (3) any other person approved by NETEX (such approval not to be unreasonably withheld or delayed).

"Liability Report" has the meaning given in Section 3.6.

"Material Antecedent Liabilities" means Antecedent Liabilities that are:

- (1) financial liabilities; or
- (2) non-financial liabilities, the breach of which shall trigger any remedy of NETEX under Article 20 of the Ground Lease or Section 24.1 of the Ground Lease.

"Material Contracts" any material contracts entered into by the Project Company for the design, acquisition, construction or operation of the toll Road Facility.

"NETEX's Event Notice" means a notice given by NETEX to the Agent under Section 3.1.

"NETEX's Termination Notice" means a notice given by NETEX to the Agent under Section 3.2.

"Notice Period" means:

- (1) any Agent's Cure Notice Period;
- (2) any NETEX's Termination Notice Period; and
- (3) any Agent's Indicative Notice Period.

"Project Documents" means, collectively, the Ground Lease and any other agreement (other than this Agreement) entered into from time to time by NETEX and the Project Company (with or without other parties) in connection with the Toll Road Facility; and "Project Document" means any one of the foregoing.

"Reported Antecedent Liabilities" means the Antecedent Liabilities identified in the Liability Report.

"Revocation of Termination Notice" means a written notice from NETEX to the Agent revoking a NETEX's Termination Notice.

"Security Documents" means those documents set forth in Section 1.1 of the Credit Agreement.

"Security Trustee" has the meaning given to it in the Credit Agreement.

"Step-In Date" means five Business Days after delivery of an Agent's Step-In Notice.

"Step-In Period" means, subject to Section 4.3, the period from the Step-In Date up to and including the earliest of:

- (1) the Step-Out Date;
- (2) the date of any transfer under Article 4;
- (3) the date of any termination under Section 4.5; and
- (4) the Expiration Date.

"Step-Out Date" means the date that is 20 Business Days after the date of a Step-Out Notice.

"Step-Out Notice" means a notice from the Agent or Appointed Representative to NETEX pursuant to Section 5.1.

"Suitable Substitute Project Company" means a person that is not a Restricted Person and that is approved by NETEX (such approval not to be unreasonably withheld or delayed) as:

- (1) having the legal capacity, power and authority to become a party to and perform the obligations of the Project Company under the Ground Lease; and
- (2) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Project Company under the Ground Lease.

"Termination Notice Period" means the period beginning on the date of giving of an NETEX's Termination Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of service of a revocation of an NETEX's Termination Notice; and
- (3) the proposed Termination Date (subject to the minimum notice requirements under Section 3.2(1)) set forth in NETEX's Termination Notice.

"Toll Road Facility" has the meaning given to it in the Ground Lease.

"Toll Road Premises" has the meaning given to it in the Ground Lease.

## SECTION 1.2. INTERPRETATION.

This Agreement shall be interpreted according to the following provisions, except to the extent that the context or the express provisions of this Agreement otherwise require.

(1) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(2) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(3) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(4) References Hereto. The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Agreement.

(5) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard time.

(6) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(7) References to Including. The words "include," "includes" and "including" are to be construed as meaning "include without limitation," "includes without limitation" and "including without limitation," respectively.

(8) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice or instruments made under the relevant statute.

(9) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(10) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(11) References to All Reasonable Efforts. The expression "all reasonable efforts" and expressions of like import, when used in connection with an obligation of the Lenders, the Agent, the Security Trustee, the Appointed Representative or any other Lenders' Representative, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person's own benefit.

(12) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(13) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(14) Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Texas.

(15) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

(16) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(17) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles, consistently applied, in the United States.

(18) Consents. Any consent required to be given under this Agreement must be in writing.

## ARTICLE 2

### CONSENT TO SECURITY



SECTION 2.1. CONSENT. NETEX acknowledges notice of, and (notwithstanding anything to the contrary in the Ground Lease) consents to, the first priority lien and security interest granted by the Project Company in favor of the Finance Parties under the Financing Agreements over:

- (1) the Project Company's rights under the all Project Documents (including the Ground Lease);
- (2) the Project Company's rights under the Material Contracts;
- (3) the Project Company's interest in any warranties, guarantees, letters of credit or other performance or payment security granted under any Toll Road Facility Contracts or Subcontracts;
- (4) the Project Company's assets, including any cash, securities, investments or balances in any Project Company bank accounts;
- (5) the Project Company's rights to Insurance Proceeds and Insurance Receivables;
- (6) any equity interests in the Project Company, and
- (7) any other Project Company Collateral (as defined in the Financing Agreements).

SECTION 2.2. NO NOTICE OF OTHER SECURITY. NETEX confirms that as of the date of this Agreement it has not received written notice of any other security interest granted over the Project Company's rights described in Section 2.1(1) other than pursuant to the Financing Agreements.

SECTION 2.3. NETEX OBLIGATIONS. Except as specifically provided for in this Agreement, NETEX has no obligations (whether express, implied, collateral or otherwise) to the Agent or the Lenders in connection with this Agreement, the Ground Lease or the Toll Road Facility. All of the obligations and liabilities given, undertaken or arising on the part of NETEX under this Agreement are given solely to the Agent on behalf of the Lenders and do not confer any rights on or in favor of the Project Company or any Affiliate of the Project Company or any other person.

SECTION 2.4. NETEX'S RIGHTS NOT PREJUDICED. The parties acknowledge that nothing in the Financing Agreements, this Agreement or any other agreement between any of them (including any giving by the Agent of a notice hereunder) will, except as between the Lenders, the Agent and NETEX as expressly set forth in this Agreement, affect the rights of NETEX under the Ground Lease (but an exercise by NETEX of those rights will not preclude a proper exercise by the Agent of its rights under this Agreement).

### ARTICLE 3

#### NOTICES

SECTION 3.1. NETEX'S EVENT NOTICES.

NETEX shall provide the Agent written notice (a "NETEX's Event Notice") promptly upon issuing to the Project Company any notice regarding the occurrence of a Tenant Event of Default. An NETEX's Event Notice shall contain a summary of the facts relating to the relevant event. No failure of NETEX to give a NETEX's Event Notice shall create any NETEX liability, or impair any right of NETEX under the Agreement, the Ground Lease or any related agreement.

SECTION 3.2. NETEX'S TERMINATION NOTICE. NETEX shall not terminate or deliver any notice Terminating the Ground Lease in respect of a Tenant Event of Default pursuant to Section 20.1 of the Ground Lease without giving to the Agent written notice (an "NETEX's Termination Notice") stating:

- (1) that a Tenant Event of Default has occurred and the proposed Termination Date, which will be not sooner than \_\_\_\_\_ days after the NETEX's Termination Notice; and
- (2) the grounds for Termination in reasonable detail.

SECTION 3.3. AGENT'S NOTICE OF CREDIT AGREEMENT EVENT OF DEFAULT. Concurrently with delivery by it to the Project Company of any notice of a Credit Agreement Event of Default, the Agent shall provide a copy of such notice to NETEX.

SECTION 3.4. AGENT'S INDICATIVE NOTICE. Without prejudice to the Security Trustee's rights under the Security Documents, at any time upon the occurrence of a Tenant Event of Default or the receipt of a NETEX's Termination Notice, and where relevant to a Tenant Event of Default the continuance of such a Tenant Event of Default, the Agent or the Security Trustee may give notice to NETEX of its intention to nominate a Lenders' Representative to step-in in accordance with Section 4.1 (an "Agent's Indicative Step-In Notice") or to effect a transfer in accordance with Section 6.1 (an "Agent's Indicative Transfer Notice").

SECTION 3.5. AGENT'S WITHDRAWAL NOTICE. If at any time after the giving of an Agent's Indicative Notice or an NETEX's Termination Notice, the Agent has determined that it is not, or is no longer, considering appointing a Lenders' Representative or effecting a transfer of the Project Company's rights and liabilities under the Ground Lease to a Suitable Substitute Project Company in accordance with this Agreement, the Agent or the Security Trustee shall give notice (an "Agent's Withdrawal Notice") to NETEX, and thereafter the provisions of this Agreement shall not be applicable with respect to the event that led to such Agent's Indicative Notice or NETEX's Termination Notice and NETEX shall be at liberty to take any and all action available to it under the Ground Lease and other Project Documents.

#### SECTION 3.6. NOTICE OF ANTECEDENT LIABILITIES.

Unless an Agent's Withdrawal Notice has been given, not later than 30 days after the date of delivery by NETEX of a NETEX's Termination Notice or the date of delivery by the Agent or the Security Trustee of an Agent's Indicative Notice, as the case may be, NETEX shall give the Agent a notice (the "Liability Report") containing details of:

- (1) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of NETEX's Termination Notice or Agent's Indicative Notice, as the case may be; and

(2) any financial liabilities of which NETEX is aware (after reasonable inquiry) that will fall due under the Ground Lease on or after the date of delivery of NETEX's Termination Notice or Agent's Indicative Notice, as the case may be, and on or prior to:

(a) in the case of an NETEX's Termination Notice, the proposed Termination Date set forth in that notice; and

(b) in the case of an Agents Notice, \_\_\_\_\_ days after the date of delivery of the Agent's Indicative Transfer Notice.

SECTION 3.7. SUBSEQUENT NETEX NOTICE OF LIABILITIES. After the delivery of the Liability Report, unless an Agent's Withdrawal Notice has been given, NETEX shall, promptly upon becoming aware of them, notify the Agent in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of NETEX's Termination Notice or Agent's Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

SECTION 3.8. NO RIGHT TO TERMINATE OR TAKE RESTRICTED ACTION. NETEX shall not terminate or deliver any notice terminating the Ground Lease during any Notice Period that would have the effect of terminating the Ground Lease prior to the expiration of the \_\_\_\_\_ day period referred to in Section 3.2; provided, however, that until the expiration of such period NETEX shall be entitled to require the Project Company to remedy any Tenant Event of Default and shall be entitled to exercise all rights under the Ground Lease other than Termination of such agreement.

SECTION 3.9. AGENT'S RIGHT TO CURE A PROJECT COMPANY BREACH OR DEFAULT WITHOUT STEP-IN OR TRANSFER. The Agent or the Security Trustee shall have the right to take such actions as may be necessary, in the Agent or Security Trustee's sole discretion, to cure or remedy a Tenant Event of Default prior to any Step-In Period and without the necessity of issuing an Agent's Indicative Step-In Notice or Agent's Indicative Transfer Notice. Prior to exercising any such right, the Agent or the Security Trustee shall deliver a written notice thereof to NETEX (an "Agent's Cure Notice"). NETEX shall have no duty to deal with the Agent or the Security Trustee in any such circumstances, but NETEX will accept performance by the Agent or the Security Trustee as performance by the Project Company. Any acts by the Agent or the Security Trustee in the exercise of such right shall be deemed to be acts of the Project Company for the purposes of the Ground Lease, including the indemnity provisions thereof. The Agent or the Security Trustee may exercise such rights for a period (the "Agent's Cure Period") commencing on the date of delivery of an Agent's Cure Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of an Agent's Withdrawal Notice; or
- (3) \_\_\_\_\_ days following the delivery of an NETEX's Event Notice.

#### ARTICLE 4

## STEP-IN

SECTION 4.1. AGENT'S STEP-IN NOTICE. Subject to Section 4.3, and without prejudice to the Security Trustee's rights under the Security Documents, the Agent may give NETEX a notice (an "Agent's Step-In Notice") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

SECTION 4.2. CONTENTS OF STEP-IN NOTICE. In the Agent's Step-In Notice, the Agent shall:

- (1) state that it intends to exercise its step-in rights under this Agreement; and
- (2) identify the Appointed Representative.

SECTION 4.3. ONE STEP-IN PERIOD. There will be not more than one Step-In Period following any one Agent's Indicative Notice or NETEX's Termination Notice.

SECTION 4.4. APPOINTED REPRESENTATIVE RIGHTS. On the Step-In Date, the Appointed Representative shall be entitled to exercise and enjoy the rights of the Project Company under the Ground Lease, including any rights to cure a Project Company breach, subject to the performance by or on behalf of the Project Company's obligations under the Ground Lease. During the Step-In Period, NETEX shall deal with the Appointed Representative and not the Project Company.

SECTION 4.5. RIGHT TO TERMINATE. NETEX shall not terminate the Ground Lease during the Step In Period except as set forth in this Section. NETEX shall be entitled to terminate the Ground Lease during the Step-In Period by written notice to the Project Company, the Agent and the Appointed Representative:

(1) if the Reported Antecedent Liabilities that are financial liabilities owed to NETEX have not been paid to NETEX or guaranteed to NETEX's reasonable satisfaction on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid or guaranteed to NETEX's reasonable satisfaction by the due date;

(2) if amounts owed to NETEX, of which NETEX was not aware (having made reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged or sufficiently guaranteed to NETEX's reasonable satisfaction by:

(a) if notice of the liability is given to the Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date;

(b) if notice of the liability is given to the Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by NETEX, acting reasonably, when it gives such notice or by the Agent, acting reasonably, by notice to NETEX within five Business Days of receipt of the notice from NETEX), 20 Business Days after the Step-In Date; or

(c) otherwise, 20 Business Days after delivery of the notice;

(3) on grounds arising after the Step-In Date in accordance with the terms of the Ground Lease; or

(4) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Ground Lease but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Reported Antecedent Liabilities which are non-financial liabilities (including, if necessary to effect any such remedy, diligent efforts to obtain possession or control of the Toll Road Facility).

## ARTICLE 5

### STEP-OUT

SECTION 5.1. AGENT'S STEP-OUT NOTICE. The Agent or the Appointed Representative may at any time during the Step-In Period deliver to NETEX a notice (an "Agent's Step-Out Notice") which specifies the Step-Out Date.

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD. Upon the expiration of the Step-In Period:

(1) the rights of NETEX against the Appointed Representative and the rights of the Appointed Representative against NETEX shall be cancelled; and

(2) NETEX shall no longer deal with the Appointed Representative and shall deal with the Project Company in connection with the Ground Lease.

SECTION 5.3. PROJECT COMPANY REMAINS BOUND. Subject to Section 6.4, the Project Company shall continue to be bound by the terms of the Ground Lease notwithstanding the occurrence of an Agent's Cure Notice, an Agent's Indicative Notice, an Agent's Step-In Notice, a Step-In Period, an Agent's Step-Out Notice, a Step-Out Date, any action by the Agent, Appointed Representative, Security Trustee or the Lenders or any provision of this Agreement, and for greater certainty the Project Company shall be liable for any and all obligations and liabilities arising under the Ground Lease prior to the expiration of the Step-in Period from actions or inactions of the Agent, the Appointed Representative, Security Trustee or Lenders. The Project Company shall remain liable for any unpaid amounts due and payable to NETEX by the Project Company under the Ground Lease.

## ARTICLE 6

### SENIOR LENDER REPLACEMENT OF THE PROJECT COMPANY

SECTION 6.1. PROJECT COMPANY TRANSFER NOTICE. Subject to Section 6.2, at any time:

(1) upon the occurrence of a Tenant Event of Default, and where relevant to such a Tenant Event of Default during the continuance of a Tenant Event of Default; or

(2) during the Step-In Period,

the Agent may, on 30 Business Days' notice to NETEX and any Appointed Representative, take any action available to it to cause the transfer of the Project Company's right, title, obligations and interest in, to and under the Ground Lease and any Material Contract to a Suitable Substitute Project Company in accordance with the provisions of Section 6.4.

SECTION 6.2. NETEX CONSENT. NETEX shall notify the Agent as to whether any person to whom the Agent proposes to transfer the Project Company's rights and liabilities under the Ground Lease is a Suitable Substitute Project Company, not later than 20 Business Days after the date of receipt from the Agent of all information reasonably required by NETEX to decide whether the proposed transferee is a Suitable Substitute Project Company.

SECTION 6.3. WITHHOLDING OF CONSENT. NETEX shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Company and it shall, without limitation, be reasonable for NETEX to withhold its consent:

- (1) if there are unremedied breaches under the Ground Lease and there is no remedial program reasonably acceptable to NETEX in respect of the breaches; or
- (2) The proposed Suitable Substitute Project Company is, in the reasonable opinion of NETEX, less creditworthy than the Project Company.

SECTION 6.4. TERMS OF TRANSFER. Upon the transfer referred to in Section 6.1 becoming effective:

- (1) the Project Company and NETEX shall be released from their obligations under the Ground Lease to each other, including with respect to indemnification under the Ground Lease whether arising prior to or after such transfer (the "Discharged Obligations");
- (2) the Suitable Substitute Project Company and NETEX shall assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Project Company instead of the Project Company;
- (3) the rights of the Project Company against NETEX under the Ground Lease and vice versa (the "Discharged Rights") will be cancelled;
- (4) the Suitable Substitute Project Company and NETEX shall acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Project Company instead of the Project Company; provided, however, that the Suitable Substitute Project Company shall not assume any material new obligations and NETEX shall not assume any material new rights without the prior written consent of the Agent, acting reasonably;
- (5) any subsisting ground for termination of the Ground Lease by NETEX shall be deemed to have no effect and any subsisting NETEX's Termination Notice will be automatically revoked; and

(6) NETEX shall enter into a lenders' remedies agreement with (i) the Suitable Substitute Project Company, and (ii) a representative of the Lender(s) lending to the Suitable Substitute Project Company, on substantially the same terms as this Agreement.

## ARTICLE 7

[RESERVED]

## ARTICLE 8

### COVENANTS

SECTION 8.1. NETEX COVENANTS. NETEX agrees with the Agent that NETEX shall:

(1) as soon as is reasonably practicable, at the Project Company's expense, take whatever action the Agent, an Appointed Representative or a Suitable Substitute Project Company taking a transfer in accordance with Article 6 may reasonably require for perfecting any transfer or release under this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Agent or Appointed Representative or Suitable Substitute Project Company reasonably requires;

(2) not, prior to the Debt Discharge Date, unless the Agent has (acting reasonably) consented in writing:

- (a) appoint a Bankruptcy Officer;
- (b) commence any Bankruptcy Proceedings;
- (c) sanction, by voting or failing to vote, any Bankruptcy Proceedings and shall, if requested to do so by the Agent, vote against any Bankruptcy Proceedings;
- (d) without prejudice to its rights of set-off under the Ground Lease, including rights to take amounts owing by the Project Company into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Finance Party in respect of any monies owing to it by the Project Company for or on account of the Project Company's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or
- (e) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in items (a), (b), (c) or (d) above; and

(3) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between NETEX and a third party, the effect of which would be reasonably likely to render NETEX unable to satisfy its obligations under the Ground Lease or to cause the occurrence of an Landlord Event of Default; and

SECTION 8.2. AGENT COVENANTS. The Agent shall promptly:

- (1) notify NETEX when it believes the Debt Discharge Date will occur or has occurred, and in any event shall so notify no later than 20 Business Days after its occurrence;
- (2) notify NETEX of any event of default under the Credit Agreement;
- (3) notify NETEX of any decision by the Lenders to take action upon Project Company default under the Credit Agreement;
- (4) unless notice is already provided under the above provisions, notify NETEX of any decision by the Lenders to:
  - (a) appoint a Bankruptcy Officer;
  - (b) commence a Bankruptcy Proceedings;
  - (c) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or
  - (d) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in items (a), (b) or (c) above; and
- (5) upon request by NETEX, and provided the Debt Discharge Date has occurred, cause all security on any real or personal property constituting part of the Toll Road Facility to be promptly discharged and released on the date requested by NETEX (which will be on or after the Debt Discharge Date).

SECTION 8.3. PROJECT COMPANY COVENANT. The Project Company acknowledges and consents to the arrangements set forth in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

## ARTICLE 9

### ASSIGNMENT

SECTION 9.1. RESTRICTION ON ASSIGNMENT. No party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except as provided in this Article.

SECTION 9.2. ASSIGNMENT BY AGENT. The Agent may assign or transfer its rights and obligations under this Agreement to a successor Agent in accordance with the Financing Agreements without the consent of NETEX, provided that the Agent delivers to NETEX not less than 10 Business Days prior to such assignment a notice setting out such contact information regarding the assignee as NETEX may reasonably require.



SECTION 9.3. ASSIGNMENT BY LENDER. Any Lender may assign or transfer its rights and obligations under the Financing Agreements in accordance with the terms of the Financing Agreements without the consent of NETEX.

SECTION 9.4. ASSIGNMENT BY NETEX. NETEX shall assign or transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Ground Lease concurrently with the assignment of the Ground Lease to such assignee, and the Agent and the Lenders shall co-operate with NETEX in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by NETEX.

SECTION 9.5. NEW AGREEMENT. If Section 9.2 applies in relation to the Agent, NETEX and the Project Company shall, upon request by the new Agent, enter into a new lenders' remedies agreement with the new Agent on substantially the same terms as this Agreement.

## ARTICLE 10

### GENERAL

SECTION 10.1. TERM. This Agreement shall remain in effect until the earlier of:

- (1) the Debt Discharge Date;
- (2) the date upon which a new lenders' remedies agreement is entered into pursuant to Section 9.5 following an assignment or transfer by the Agent of its rights and obligations under this Agreement to a successor Agent; or
- (3) subject to compliance with Section 6.4(6) above, the date of transfer of all of the Project Company's right, title and interest in, to and under the Ground Lease, to a Suitable Substitute Project Company pursuant to Section 6.1.

SECTION 10.2. NO STATE RESPONSIBILITY FOR DEBT.

None of the State, NETEX, or any other agency, instrumentality or political subdivision of the State, and no board member, director, officer, employee, agent or representative of any of them, shall have any liability whatsoever for payment of the principal sum of any Senior Debt, any other obligations issued or incurred by the Project Company in connection with the Ground Lease or the Toll Road Facility, or any interest accrued thereon or any other sum secured by or accruing under the Financing Agreements. Except for a violation by NETEX of its express obligations to Lenders set forth in this Agreement for which a mandamus action may be pursued, no Lender shall be entitled to seek any damages or other amounts from NETEX, whether for Senior Debt or any other obligation amount. NETEX's review of the Financing Agreements or other Toll Road Facility financing documents is not a guarantee or endorsement of the Senior Debt, any other obligations issued or incurred by the Project Company in connection with the Ground Lease or the Toll Road Facility, and is not a representation, warranty or other assurance as to the ability of the Project Company to perform its obligations with respect to the Senior Debt or any other obligations issued or incurred by the Project Company in connection with the

Ground Lease or the Toll Road Facility, or as to the adequacy of the Service Fee to provide for payment of the Senior Debt or any other obligations issued or incurred by the Project Company in connection with the Ground Lease or the Toll Road Facility, except that the foregoing does not affect any of NETEX's liability to the Project Company under the Ground Lease and any Termination Payment that is measured in whole or in part by outstanding Senior Debt.

SECTION 10.3. CONFLICT OR INCONSISTENCY. If there is any conflict or inconsistency between the provisions of this Agreement and the Ground Lease, the provisions of this Agreement shall prevail.

SECTION 10.4. ENTIRE AGREEMENT. Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set forth in this Agreement.

SECTION 10.5. VENUE. For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of Texas and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

SECTION 10.6. WAIVER. The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

SECTION 10.7. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

SECTION 10.8. CONFIDENTIALITY. The Agent shall be bound to comply with the confidentiality obligations on the part of the Project Company contained in the Ground Lease in relation to all information matters obtained from any other party under or in connection with the Toll Road Facility.

SECTION 10.9. NOTICES. Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or by registered mail to the address of each party set forth below:

if to NETEX:

Northeast Texas Rural Rail Transportation District  
641 Church Street  
Sulphur Springs, Texas 75482  
Attn: Cletis Millsap, Chairman  
Fax: (903) 439-0809

if to the Agent:

\_\_\_\_\_  
\_\_\_\_\_

if to the Project Company:

Cotton Belt Turnpike, LP  
3811 Turtle Creek Boulevard, Suite 1300  
Dallas, Texas 75219  
Attn: John N. Crew, [Title]  
Fax: (214) 692-5302

or to such other address as any party may, from time to time, designate in the manner set forth above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

NORTHEAST TEXAS RURAL RAIL  
TRANSPORTATION DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[AGENT BANK]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COTTON BELT TURNPIKE, LP,  
a Texas limited partnership

By: Cotton Belt Partners GP, LLC,

its General Partner

By: Texas Turnpike Corporation,  
its Manager

By: \_\_\_\_\_  
Name: John N. Crew  
Title: President

SCHEDULE 1  
SENIOR FINANCING AGREEMENTS

## **APPENDIX D**

### **FORM OF NON-DISTURBANCE AGREEMENT**

#### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS AGREEMENT is made as of this \_\_ day of \_\_\_\_, 20\_\_, by NORTHEAST TEXAS RURAL RAIL TRANSPORTATION DISTRICT, a Texas rural rail transportation district created under Chapter 172 of the Texas Transportation Code, by the counties of Collin, Delta, Franklin, Hopkins, Hunt and Titus, hereinafter referred to as "Ground Lessor," and [name of sublessee], a limited liability company, hereinafter referred to as "Ground Sublessee."

#### **WITNESSETH**

WHEREAS, the Ground Lessor is the fee owner of the those certain pieces or parcels of land located in the State of Texas, Counties of \_\_\_\_, all as more particularly described in Appendix A to the Ground Lease (the "Premises"); and

WHEREAS, Cotton Belt Turnpike, LP, a Texas limited partnership (the "Ground Lessee") and Ground Lessor have entered into a certain Ground Lease Agreement, dated \_\_\_\_, 2013 (the "Ground Lease"), pursuant to which Ground Lessor has leased the Premises to Ground Sublessee and Ground Lessee has undertaken to develop certain improvements thereon; and

WHEREAS, Ground Lessee has entered into a certain sublease (the "Sublease"), dated \_\_\_\_, 20\_\_, with \_\_\_\_ (the "Ground Sublessee") covering the portion of the Premises described in Exhibit D1 attached hereto (the "Demised Premises"); and

WHEREAS, pursuant to Section 26.1 of the Ground Lease, Ground Lessor has been requested by Ground Lessee to enter into a non-disturbance agreement with Ground Sublessee; and

WHEREAS, the Ground Lessor and Ground Sublessee desire to agree upon their respective rights and obligations if certain events occur;

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. Capitalized terms used but not defined in this Agreement shall have the respective meanings ascribed to such terms in the Ground Lease.
2. Ground Lessor consents to the Sublease and Ground Sublessee acknowledges and agrees that the Sublease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of Ground Sublessee thereunder in and to the Premises are and shall be subject and subordinate to the Ground Lease and to all of the terms and conditions contained therein, and to any renewals, modifications, replacements, consolidations and extensions thereof. Ground Lessor's consent to the Sublease shall not be deemed a waiver of any terms of the Ground Lease in favor of any conflicting or inconsistent terms of the Sublease

and Ground Sublessee acknowledges and agrees that in the event of any such inconsistency or conflict the terms of the Ground Lease shall control.

3. In the event that the Ground Lease shall have been terminated for any reason (other than as a result of a Tenant Event of Default resulting from acts or omissions on the part of Ground Sublessee) prior to the sooner of (i) the expiration or other termination of the Sublease, and (ii) the scheduled expiration date of the Ground Lease provided for in Section 3.1 thereof, then the following shall apply:

(a) So long as Ground Sublessee is not then in default hereunder or under the Sublease beyond any applicable notice and cure period, Ground Lessor will recognize Ground Sublessee and will not disturb Ground Sublessee in its possession of the Demised Premises for any reason other than one which would entitle Ground Lessor to terminate the Sublease under its terms or would cause, without any further action by Ground Lessor, the termination of the Sublease or would entitle Ground Lessor to dispossess Ground Sublessee from the Demised Premises;

(b) Ground Sublessee shall be bound to Ground Lessor under all of the terms, covenants and conditions of the Sublease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Sublease, with the same force and effect as if Ground Lessor were the landlord under the Sublease, and Ground Sublessee does hereby attorn to Ground Lessor as its landlord, said attornment to be effective and self operative without the execution of any further instruments on the part of any of the parties hereto immediately upon the termination of the Ground Lease. Ground Sublessee agrees, however, upon the election of, and within fifteen (15) days after written demand by, Ground Lessor to execute an instrument in confirmation of the foregoing provisions, satisfactory to Ground Lessor, in which Ground Sublessee shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy; and

(c) Notwithstanding anything herein, in the Ground Lease or in the Sublease to the contrary, in the event the Ground Lease shall have terminated, Ground Lessor shall have the right to enter into a new lease of the Premises (a "Substitute Lease") which need not be on the same terms and conditions of the Ground Lease. In such event, from and after the commencement of the term of any Substitute Lease (i) the Sublease shall be subject and subordinate to the Substitute Lease and the terms and conditions thereof, (ii) the provisions of this Agreement shall continue to apply, with all references herein to the Ground Lease being deemed to refer to the Substitute Lease and all references herein to Ground Sublessee being deemed to refer to the tenant under the Substitute Lease, and (iii) Ground Lessor shall have no further obligations or liabilities under the Sublease. Notwithstanding anything to the contrary in this subparagraph 3(c), to the extent that any Substitute Lease contains any terms or conditions that are materially different from the terms of the Ground Lease and that would materially adversely affect Ground Sublessee's rights or obligations, such terms and conditions shall not apply to Ground Sublessee and in lieu of such terms and conditions Ground Sublessee shall continue to be bound by the corresponding terms and conditions of the Ground Lease.

4. Ground Sublessee agrees with Ground Lessor that if the Ground Lease is terminated, then Ground Lessor shall not be (a) liable for any action or omission of any prior

landlord under the Sublease, or (b) subject to any offsets, defenses or counterclaims which Ground Sublessee might have against any prior landlord, or (c) bound by any rent or additional rent which Ground Sublessee might have paid for more than the current month to any prior landlord except to the extent expressly required by the Sublease in the form submitted to Ground Lessor, or (d) bound by or responsible for any security deposit or other amounts which Ground Sublessee may have paid to any prior landlord, or (e) bound to perform any work or construct any improvements upon the Premises.

5. All covenants, stipulations, promises, agreements and obligations of the Ground Lessor contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Ground Lessor, and not of any member, director, officer, employee or agent of the Ground Lessor in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Ground Lessor or any natural person executing this Agreement on behalf of the Ground Lessor nor to any assets of the Ground Lessor other than its interest in the Premises.

6. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns.

7. All notices, consents and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express or DHL, and shall be deemed given three days after mailing or one business day after delivery to an overnight carrier, as the case may be, when postmarked and addressed as follows:

If to Ground Lessor:

Northeast Texas Rural Rail Transportation District  
641 Church Street  
Sulphur Springs, Texas 75482  
Attn: Cletis Millsap, Chairman  
Fax: (903) 439-0809

If to Ground Sublessee:

\_\_\_\_\_  
\_\_\_\_\_

or to such other address as shall from time to time have been designated by written notice by such party to the other parties as herein provided.

8. This Agreement shall supersede and control any prior agreements except for those provisions, if any, contained in the Ground Lease, which provide for the subordination of the Sublease and the leasehold interest of Ground Sublessee thereunder to the Ground Lease. This Agreement shall not be modified or amended and no provision herein shall be waived except in



writing by the party against whom enforcement of any such modification or amendment is sought.

9. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. References herein to any party shall be construed to mean, as of any time of reference, the person or entity holding the interest of such party at the time of reference.

10. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals on the day and year first hereinabove written.

NORTHEAST TEXAS RURAL RAIL  
TRANSPORTATION DISTRICT, Ground Lessor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Name of Ground Sublessee], Ground Sublessee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **APPENDIX E**

### **SITE-RELATED INFORMATION; PERMITTED ENCUMBRANCES**

[None.]

## **APPENDIX F**

### **SURVEY REQUIREMENTS**

**SEE ATTACHED APPENDIX F SURVEY REQUIREMENTS**

## SURVEY REQUIREMENTS

### I. FOR TEXAS:

#### A. SURVEYOR'S CERTIFICATE.

The undersigned Registered Land Surveyor/Engineer (herein the "Surveyor") hereby certifies that (a) this plat of survey and the property description set forth hereon are true and correct and prepared from an actual on-the-ground survey of the real property (herein the "Property") shown hereon; (b) such survey was conducted by the Surveyor, or under the Surveyor's supervision; (c) all monuments shown hereon actually exist, and the location, size and type of material thereof are correctly shown; (d) except as shown hereon, there are no encroachments onto the Property or protrusions therefrom, there are no visible easements or rights-of-way on the Property and there are no visible discrepancies, conflicts, shortages in area or boundary line conflicts; (e) the size, location and type of improvements are as shown hereon, and all are located within the boundaries of the Property and set back from the Property lines the distances indicated; (f) the distance from the nearest intersecting street or road is as shown, (g) the Property has access to and from a public roadway; (h) all recorded easements and other exceptions, as noted in the Title Company's Commitment for Title Insurance No. \_\_\_\_\_, dated \_\_\_\_\_, have been correctly platted hereon; (i) the boundaries, dimensions and other details shown hereon are true and correct; (j) the Property is not located in a 100-Year Flood Plain or in an identified "flood-prone area", as defined by the U.S. Department of Housing and Urban-Development, pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map Panel # \_\_\_\_\_, dated \_\_\_\_\_, which such map panel covers the area in which the Property is situated and (k) this survey satisfies all requirements of a Category 1A, Condition \_\_\_\_\_ survey pursuant to the standards of the Texas Society of Professional Surveyors.

The Surveyor expressly understands and agrees that (a) this Certificate is made to induce Purchaser Bank, its successors and assigns to purchase or lease the Property and to induce \_\_\_\_\_ (herein the "Title Company") to issue a policy of title insurance insuring fee or leasehold title in the Purchaser; (b) both Purchaser and Title Company are entitled to rely on this plat of survey as being true and accurate; and (c) the consideration paid to the Surveyor for the preparation and certification of such survey has been paid, in part, for the benefit of Purchaser and Title Company and in anticipation of their reliance hereon.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Registered Land Surveyor/Engineer

State of \_\_\_\_\_, RLS No. \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

#### B. SURVEY REQUIREMENTS.

The Survey delivered to \_\_\_\_\_ (the "Purchaser") must include the attached Certificate and meet the following standards:

1. Every parcel of land whose boundaries are surveyed by a licensed surveyor shall be conformable with the record title boundaries of such land as shown in the Preliminary Title Report or Title Commitment delivered to Purchaser. When it is necessary or desirable to revise or modernize the record description, it should be certified on the plat of survey that the real estate, in the revised or modernized description, is the same as the record description or it should be noted that the record description is faulty or ambiguous and why.

2. Show all monuments, stakes or marks found or placed and note which were found and which were placed. Proof of establishment of all boundaries is of the utmost importance and it should be apparent, from an examination of the plat of survey, why the surveyor adopted the location delineated. This often requires a showing of actual measured distances and bearings around the entire block and showing any monuments found which indicate property lines. Where occupation alone is chosen as the best possible location, enough ties to buildings, walls, fences, surveyor's monuments, etc. and their actual or estimated age, must be shown to indicate the pattern of occupation within the block. Interior parcel lines must clearly indicate contiguity, gores and/or overlaps.
3. When the surveyor has doubt as to the location on the ground of street or lot lines or monuments (for such reasons as street and lot lines being definable or indefinite because of insufficient monuments or markers in the ground or where errors are found to exist in the legal descriptions or recorded plats), the surveyor shall clearly indicate the nature of the difficulty and give his professional opinion as to range and scope of different possibilities involved and the effect of same on the surveyed positions.
4. Show any physical evidence at or near a boundary that is or appears to be a line of possession or occupation. This will include buildings, fences, hedges, etc. Where there is no physical evidence of possession along the record line the survey shall note along that line "no physical evidence of line".
5. Show the location, dimensions and type of buildings on the surveyed property. Show their location by the shortest dimension to the exterior boundaries and their relationship to any known setback lines.
6. As a result of having viewed the property with reasonable diligence, shown any physical evidence of possible easements, such as roads, rights of way, railroads, drains, telephone, telegraph or electric lines, water, sewer, oil or gas pipelines, driveways, billboards, etc. if they are on or run across the surveyed property and appear to serve the public or adjoining property owners. If there are any surface indications of underground easements, such as manholes, pipeline markers, sewer or drain outlets, etc. on (or near if pertinent) the surveyed property, show them.
7. In built-up areas with walls on the property line, show them and indicate whether they are or appear to be independent or party walls. Show location and thickness of these walls, and if a building on the surveyed property appears to use a wall of adjoining premises, show this.
8. Show by dimension the extent of any apparent encroachments by buildings or other improvements appurtenant to the surveyed property or the adjoining property.
9. As a result of having viewed the property with reasonable diligence, show any cemeteries and burial grounds located with the surveyed tract (i.e. "family" cemeteries), either with the boundaries accurately located or with as much information as possible and a note that the boundaries are uncertain, if that is the case.
10. Show the existence of any lakes, ditches, streams or rivers running through or bordering on the premises being surveyed. The detailed locations are required only when a boundary or property line is determined thereby.
11. Show any and all roads, streets, or alleys running adjacent to the boundaries of or partly or entirely on the surveyed property with width, right of way lines, name and location clearly indicated. If the above cannot be determined, then this will be noted.

12. If the survey shows an easement that is established by a recorded instrument, the identification of the easement shall show the record reference of the instrument, and unless otherwise noted, this showing indicates that the physical evidence and record description of the easement conform.
13. The accuracy of measurements and calculations performed in the preparation of the survey shall conform to professionally recognized standards as applicable to the type survey performed. All field measurements must be balanced, both as to angles and distances, so as to provide a mathematical closure. Show the basis of bearings, assumed or otherwise, the scale of the plat and a north arrow. The plat of survey shall show the following information of any curve length of arc, radius, central angle and bearing to the radius point from the beginning and end point of the curve.
14. All surveys must carry a date within thirty (30) days of the date of its attached certificate. Updating of a survey by recertification is acceptable if conditions as of date of recertification are shown thereon.
15. Cite any qualifications of the preceding requirements in the space below, or such standards as may be required by the office of the title company issuing the policy for this transaction, if and only if said requirements for the title company are more stringent than those enumerated above.
16. All surveys must carry a metes and bounds description of the property to be conveyed and any granted and/or reserved easements.
17. All surveys must identify the boundary of any recorded lots or parcels in any recorded tract map, parcel map, division of land map, record of survey, certificate of compliance, parcel map exemption, or other map or document approved by a local agency establishing a subdivision or all or part of the subject property