

LEASE AGREEMENT

Between

THE TRI-STATE TRANSIT AUTHORITY

(LESSOR)

and

METROPOLITAN HUNTINGTON, LLC

(LESSEE)

THIS LEASE AGREEMENT (the "Lease Agreement") is made and entered into at Huntington, West Virginia to be effective as of June 23, 2004 by and between THE TRI-STATE TRANSIT AUTHORITY, a West Virginia public corporation with an address of 1120 Virginia Avenue, Huntington, West Virginia 25704 ("LESSOR") and METROPOLITAN HUNTINGTON, LLC, an Ohio limited liability company with an address of 150 East Broad Street, Columbus, Ohio 43215 ("LESSEE").

W I T N E S S E T H:

WHEREAS, LESSOR is the fee simple owner of the real property more particularly described on Annex 1, which is attached hereto and made a part hereof; and

WHEREAS, LESSOR and LESSEE desire that LESSOR develop in and on said real property the IMPROVEMENTS (as that term is hereinafter defined) and lease to LESSEE the DEMISED PREMISES (as that term is hereinafter defined), all on the terms and conditions hereinafter contained;

NOW, THEREFORE, for value received, and in consideration of the foregoing and of the terms and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LESSOR and LESSEE do hereby make the following agreement, intending to be legally bound hereby:

ARTICLE 1

Definition of Certain Terms

When used herein, the following terms shall have the following meanings:

1.01. The term "AFFILIATE" means a PERSON who directly or indirectly controls, is controlled by, or is under control with another PERSON. For purposes of this definition, a PERSON is deemed to control an entity of which he is a director, officer, member, or general partner, or in which he is the beneficial owner of 10% or more of its outstanding voting securities.

1.02. The term "ANNUAL ADDITIONAL RENT" means, for each LEASE YEAR, twenty percent (20%) of the amount (if any) by which OPERATING RECEIPTS exceed OPERATING EXPENSES for such LEASE YEAR.

1.03. The term "ANNIVERSARY" means the date which is the first anniversary of the COMMENCEMENT DATE and the same date each calendar year thereafter during the LEASE TERM.

1.04. The term "APPURTENANT EASEMENTS" shall have the meaning set forth in Section 2.01 of this Lease Agreement.

1.05. The term "ARCHITECT" means Meacham & Apel Architects, Inc., or such other architect(s) as LESSOR may from time to time procure in connection with the IMPROVEMENTS.

1.06. The term "BASE RENT" shall have the meaning set forth in Section 7.01 of this Lease Agreement.

1.07. The term "BASE RENT COMMENCEMENT DATE" shall have the meaning set forth in Section 7.01 of this Lease Agreement.

1.08. The term "COMMENCEMENT DATE" means the first day of the month next-succeeding the later of (i) the date upon which LESSOR shall have achieved SUBSTANTIAL COMPLETION of the first of the separate components of the IMPROVEMENTS (i.e., the date that the first of the INTERMODAL FACILITY NO. 1 IMPROVEMENTS, INTERMODAL FACILITY NO. 2 IMPROVEMENTS, GRAND HALL IMPROVEMENTS, PUBLIC AREA IMPROVEMENTS and THEATER IMPROVEMENTS is substantially completed) or (ii) the DATE OF POSSESSION of any such component of the IMPROVEMENTS.

1.09. The term "CONTRACTOR" means the contractor(s) procured by LESSOR as the contractor(s) for construction of the IMPROVEMENTS.

1.10. The term "DATE OF POSSESSION" shall have the meaning set forth in Section 3.07 of this Lease Agreement.

1.11. The term "DEMISED PREMISES" means all of that real property situated in Cabell County, West Virginia and more particularly described in the legal description set forth on Annex 1, which is attached hereto and made a part hereof, together with any IMPROVEMENTS constructed thereon.

1.12. The term "EFFECTIVE DATE" means the date first set forth on the page 1 of this Lease Agreement.

1.13. The term "ELECTION NOTICE" shall have the meaning set forth in Section 19.03 hereof.

1.14. The term "EQUIPMENT" means any and all personal property, machinery, equipment, trade fixtures and supplies which LESSEE may hereafter cause to be installed, maintained or kept in or on the IMPROVEMENTS or otherwise at the DEMISED PREMISES.

1.15. The term "FIRST ADDITIONAL TERM" shall have the meaning set forth in Section 3.02 of this Lease Agreement.

1.16. [Reserved]

1.17. The term "GRAND HALL IMPROVEMENTS" means the central core circulation area (including the vertical circulation elements) located between the INTERMODAL FACILITY NO. 2 IMPROVEMENTS and the PUBLIC AREA IMPROVEMENTS which LESSOR shall cause to be constructed or installed in and on the DEMISED PREMISES substantially in accordance with the GRAND HALL PLANS AND SPECIFICATIONS and the terms of this Lease Agreement.

1.18. The term "GRAND HALL PLANS AND SPECIFICATIONS" means those certain plans, specifications and drawings for the construction of the GRAND HALL IMPROVEMENTS as the same are more particularly described and detailed on Annex 2, which is attached hereto and made a part hereof, together with such changes thereto and such other detailed plans, specifications and drawings for construction of the GRAND HALL IMPROVEMENTS as may from time to time be prepared by or for LESSOR and approved by LESSEE, which approval shall not be unreasonably withheld, conditioned or delayed.

1.19. The term "IMPOSITIONS" shall have the meaning set forth in Section 8.01 of this Lease Agreement.

1.20. The term "IMPROVEMENTS" means, collectively, the INTERMODAL FACILITY NO. 1 IMPROVEMENTS, the INTERMODAL FACILITY NO. 2 IMPROVEMENTS, the THEATER IMPROVEMENTS, the GRAND HALL IMPROVEMENTS, the PUBLIC AREA IMPROVEMENTS and any other improvements which hereafter shall be constructed or installed in or on the DEMISED PREMISES, but excluding the EQUIPMENT, the development rights described in Section 2.06 hereof and any improvements made by LESSEE in or to the DEMISED PREMISES.

1.21. The term "INTERMODAL FACILITY NO. 1 IMPROVEMENTS" means the multi-level structured parking facility containing 311 parking spaces and related improvements (including, without limitation, all gating, access systems and security systems) which LESSOR shall cause to be constructed or installed in and on the DEMISED PREMISES substantially in accordance with the INTERMODAL PLANS AND SPECIFICATIONS and the terms of this Lease Agreement.

1.22. The term "INTERMODAL FACILITY NO. 2 IMPROVEMENTS" means the multi-level structured parking facility containing 596 parking spaces and related improvements (including, without limitation, all gating, access systems and security systems) which LESSOR shall cause to be constructed or installed in and on the DEMISED PREMISES substantially in accordance with the INTERMODAL PLANS AND SPECIFICATIONS and the terms of this Lease Agreement.

1.23. The term "INTERMODAL IMPROVEMENTS" means, collectively, the INTERMODAL FACILITY NO. 1 IMPROVEMENTS, the INTERMODAL FACILITY NO. 2

IMPROVEMENTS, the elevated walkway connecting said facilities (the "WALKWAY") and any related surface parking areas, access drives, service drives and circulation areas. The INTERMODAL IMPROVEMENTS do not include the THEATER IMPROVEMENTS.

1.24. The term "INTERMODAL PLANS AND SPECIFICATIONS" means those certain plans, specifications and drawings for the construction of the INTERMODAL IMPROVEMENTS, as the same are more particularly described and detailed on Annex 3, which is attached hereto and made a part hereof, together with such changes thereto and such other detailed plans, specifications and drawings for construction of the INTERMODAL IMPROVEMENTS as may be from time to time prepared by or for LESSOR and approved by LESSEE, which approval shall not be unreasonably withheld, conditioned or delayed.

1.25. The term "INITIAL TERM" shall have the meaning set forth in Section 3.01 of this Lease Agreement.

1.26. The term "LEASE TERM" means the INITIAL TERM plus the FIRST ADDITIONAL TERM (if any), the SECOND ADDITIONAL TERM (if any), and the THIRD ADDITIONAL TERM (if any).

1.27. The term "LEASE YEAR" means (i) the twelve-month period commencing on the COMMENCEMENT DATE and ending at midnight on the day before the first ANNIVERSARY and (ii) each successive twelve-month period thereafter during the LEASE TERM.

1.28. The term "LEASEHOLD MORTGAGE" shall have the meaning set forth in Section 10.01 hereof.

1.29. The term "LEASEHOLD MORTGAGEE" shall have the meaning set forth in Section 10.02 hereof.

1.30. The term "LESSEE" means Metropolitan Huntington, LLC and its successors and assigns.

1.31. The term "LESSEE EVENT OF DEFAULT" shall have the meaning set forth in Section 19.01 of this Lease Agreement.

1.32. The term "LESSOR" means The Tri-State Transit Authority and its successors and assigns.

1.33. The term "LESSOR EVENT OF DEFAULT" shall have the meaning set forth in Section 19.05 of this Lease Agreement.

1.34. The term "OPERATING EXPENSES" means all of LESSEE's costs and expenses paid or incurred in each LEASE YEAR in connection with operating, maintaining, repairing and managing the INTERMODAL IMPROVEMENTS (and the land upon which the

same are situated) as reasonably determined by LESSEE in accordance with generally accepted accounting principles, consistently applied, including, without limitation, the following:

- (A) All labor costs for all persons performing services required or utilized in connection with the operation, repair and maintenance of, and control of access to, the INTERMODAL IMPROVEMENTS, including, but not limited to, amounts incurred for wages, salaries, and other compensation for services; payroll, social security, unemployment, and other similar taxes; worker's compensation insurance; uniforms; disability benefits, pensions, hospitalization, retirement plans, group insurance, or any other similar or like expenses incurred under the provisions of any collective bargaining agreement. In the event that labor or services are performed for or in connection with the INTERMODAL IMPROVEMENTS by persons who also perform labor or provide services for or in connection with the PUBLIC AREA IMPROVEMENTS, GRAND HALL IMPROVEMENTS, THEATER IMPROVEMENTS or the adjoining, integrated retail, entertainment, office and commercial complex owned by LESSEE or any AFFILIATE of LESSEE ("PRIVATE DEVELOPMENT"), the costs for such labor or services shall be apportioned on a pro rata basis reasonably acceptable to LESSOR and LESSEE.
- (B) All management fees, the cost of maintaining and operating a management office at the PROJECT, and all fees for legal and accounting services relating to the INTERMODAL IMPROVEMENTS (collectively, the "MANAGEMENT COSTS AND FEES") ; provided, however, that MANAGEMENT COSTS AND FEES for any LEASE YEAR shall not exceed 10% of OPERATING RECEIPTS for such LEASE YEAR; and provided further, however, if the management personnel stationed at the management office also perform management services for other portions of the PROJECT, the cost of maintaining and operating such management office shall be apportioned on a pro rata basis reasonably acceptable to LESSOR and LESSEE.
- (C) All rental and/or purchase costs (including interest charges) of materials, supplies, hand tools and equipment used in the operation, repair, replacement and maintenance, and the control of access to, the INTERMODAL IMPROVEMENTS. All such purchased items included in this category of OPERATING EXPENSES shall, at the termination of this LEASE, be property of the LESSOR.
- (D) All amounts charged to LESSEE by contractors and/or suppliers for services, materials, equipment and supplies furnished in connection with the operation, repair, maintenance of, and control of access to, any part of the INTERMODAL IMPROVEMENTS including, without limitation, the

heating, air conditioning, ventilating, plumbing, electrical, elevator, and other systems.

- (E) All premiums and deductibles paid by LESSEE for fire and extended coverage insurance, liability and extended coverage insurance, elevator insurance, boiler insurance, and other insurance required to be carried (with respect to the INTERMODAL IMPROVEMENTS only) by LESSEE hereunder. In the event that insurance policies covering the INTERMODAL IMPROVEMENTS also cover other components of the IMPROVEMENTS and do not separate or apportion premiums attributable to the INTERMODAL IMPROVEMENTS, the premiums shall be apportioned on a pro rata basis reasonably acceptable to LESSOR and LESSEE.
- (F) Charges for all utilities, including, but not limited to, water, electricity, gas, sewer and communication lines and services serving the INTERMODAL IMPROVEMENTS.
- (G) Payroll taxes, federal taxes, state and local unemployment taxes, and social security taxes paid for the persons described in item (A) above.
- (H) Sales, use and excise taxes on goods and services purchased by LESSEE, and all personal property taxes on the INTERMODAL IMPROVEMENTS personal property, except any EQUIPMENT not used in the operation of the INTERMODAL IMPROVEMENTS.
- (I) License, permit and inspection fees for the INTERMODAL IMPROVEMENTS.
- (J) All landscape expenses and costs of repairing, resurfacing, sealing and striping of the parking and circulation areas located in the INTERMODAL IMPROVEMENTS.
- (K) Cost of all maintenance service agreements for the INTERMODAL IMPROVEMENTS, including, without limitation, those for equipment, alarm service, janitorial services, pest control, uniform supply, landscaping, and any parking equipment. In the event that a maintenance service agreement covering the INTERMODAL IMPROVEMENTS also covers the PUBLIC AREA IMPROVEMENTS, GRAND HALL IMPROVEMENTS, THEATER IMPROVEMENTS or the PRIVATE DEVELOPMENT, the cost of such agreement shall be apportioned on a pro rata basis reasonably acceptable to LESSOR and LESSEE.
- (L) All amounts deposited by LESSEE into the RESERVE ACCOUNT established in accordance with Section 9.03 of this Lease Agreement.

Expenditures from the RESERVE ACCOUNT shall not be included in OPERATING EXPENSES.

- (M) The total amount of all IMPOSITIONS (as hereinafter defined) and similar charges assessed, levied or imposed by a governmental authority upon the INTERMODAL IMPROVEMENTS and the land upon which the same are situated, other than penalties for late payment; and all costs and expenses paid or incurred by LESSEE in contesting or determining the validity or amount thereof.
- (N) Cost of all reasonable and customary advertising and promotional materials and services for the INTERMODAL IMPROVEMENTS.
- (O) The annual amortization of the cost of capital improvements (if any) made to the INTERMODAL IMPROVEMENTS by LESSEE from sources other than the RESERVE ACCOUNT, calculated in accordance with generally accepted accounting principles.
- (P) Forty-nine and 56/100 percent (49.56%) of BASE RENT paid during periods when full BASE RENT is being paid, and one hundred percent (100%) of BASE RENT paid during periods when BASE RENT is being abated or deferred as provided in Section 7.02 hereof.

Except to the extent the same are considered permitted uses of the funds in the RESERVE ACCOUNT, no portion of the costs or expenses incurred by LESSEE, the THEATER SUBLESSEE or any other person in connection with operating, maintaining, repairing and managing the THEATER IMPROVEMENTS shall be considered or included as OPERATING EXPENSES.

1.35. The term "OPERATING RECEIPTS" means the total amount of cash or cash equivalents, and the fair market value of any non-cash or in kind consideration received by LESSEE from its operation of the INTERMODAL IMPROVEMENTS. There shall be excluded from OPERATING RECEIPTS (a) amounts collected and paid by LESSEE to any governmental unit for any sales or excise tax; (b) insurance and condemnation proceeds; (c) proceeds from any financing or refinancing of the EQUIPMENT or LESSEE's leasehold interest in the DEMISED PREMISES; (d) proceeds from the sale or trade-in of EQUIPMENT and fixtures; and (e) credits, rebates or refunds made to customers. All amounts (if any) paid by the THEATER OPERATOR and any other sub-tenants of the INTERMODAL IMPROVEMENTS to reimburse LESSEE for expenditures that LESSEE has included in OPERATING EXPENSES shall be included as OPERATING RECEIPTS. No other portion of the payments received by LESSEE under the THEATER SUBLEASE or from any other sub-tenants of the INTERMODAL IMPROVEMENTS (whether denominated "rent" or otherwise) shall be considered OPERATING RECEIPTS.

1.36. The term "PERMITTED ENCUMBRANCES" shall have the meaning set forth in Section 20.02(A)(ii) of this Lease Agreement.

1.37. The term "PERSON" means any individual, partnership, limited liability company, corporation, firm, joint venture or other entity, or any combination thereof.

1.38. The term "PLANS AND SPECIFICATIONS" means the INTERMODAL PLANS AND SPECIFICATIONS, the THEATER PLANS AND SPECIFICATIONS, the GRAND HALL PLANS AND SPECIFICATIONS and the PUBLIC AREA PLANS AND SPECIFICATIONS, together with such other detailed plans, specifications and drawings for construction of IMPROVEMENTS as may from time to time be prepared by or for LESSOR and approved by LESSEE, which approval shall not be unreasonably withheld, conditioned or delayed.

1.39. The term "PROJECT" means the urban renewal project known (or to be known) as "Pullman Square" consisting of (a) the DEMISED PREMISES; (b) the IMPROVEMENTS; and (c) the PRIVATE DEVELOPMENT.

1.40. The term "PUBLIC AREA IMPROVEMENTS" means the private roadways, mass transit vehicle boarding and drop-off areas and pavilion and public square areas (including associated sidewalks, benches, landscaping and other amenities) which LESSOR shall cause to be constructed or installed in and on the DEMISED PREMISES substantially in accordance with the PUBLIC AREA PLANS AND SPECIFICATIONS and the terms of this Lease Agreement.

1.41. The term "PUBLIC AREA PLANS AND SPECIFICATIONS" means those certain plans, specifications and drawings for the construction of the PUBLIC AREA IMPROVEMENTS, as the same are more particularly described and detailed on Annex 4, which is attached hereto and made a part hereof, together with such changes thereto and such other detailed plans, specifications and drawings for construction of the PUBLIC AREA IMPROVEMENTS as may from time to time be prepared by or for LESSOR and approved by LESSEE, which approval shall not be unreasonably withheld, conditioned or delayed.

1.42. The term "REA" shall have the meaning set forth in Section 20.02 of this Lease Agreement.

1.43. The term "RENEWAL TERM" means any one or all of the FIRST ADDITIONAL TERM, the SECOND ADDITIONAL TERM, and the THIRD ADDITIONAL TERM, as the case may be.

1.44. The term "RESERVED EASEMENTS" shall have the meaning set forth in Section 2.02 of this Lease Agreement.

1.45. The term "SUBSTANTIAL COMPLETION" means, with respect to the INTERMODAL FACILITY NO. 1 IMPROVEMENTS, the INTERMODAL FACILITY NO. 2

IMPROVEMENTS, the THEATER IMPROVEMENTS, the GRAND HALL IMPROVEMENTS and/or the PUBLIC AREA IMPROVEMENTS, as the context requires, the point at which: (i) the ARCHITECT has certified to LESSOR and LESSEE in a writing reasonably acceptable to LESSOR and LESSEE that the work called for in the INTERMODAL PLANS AND SPECIFICATIONS, the THEATER PLANS AND SPECIFICATIONS, the GRAND HALL PLANS AND SPECIFICATIONS or the PUBLIC AREA PLANS AND SPECIFICATIONS, as the case may be, has been substantially completed in accordance with the INTERMODAL PLANS AND SPECIFICATIONS, the THEATER PLANS AND SPECIFICATIONS, the GRAND HALL PLANS AND SPECIFICATIONS or the PUBLIC AREA PLANS AND SPECIFICATIONS, as the case may be, so as to permit LESSEE to occupy and utilize the INTERMODAL FACILITY NO. 1 IMPROVEMENTS, the INTERMODAL FACILITY NO. 2 IMPROVEMENTS, the THEATER IMPROVEMENTS, the GRAND HALL IMPROVEMENTS, or the PUBLIC AREA IMPROVEMENTS, as the case may be, for LESSEE's intended use and (ii) all work requiring approval by municipal and other governmental authorities having jurisdiction has been inspected and approved and any temporary occupancy permit necessary to permit LESSEE to occupy and utilize the INTERMODAL FACILITY NO. 1 IMPROVEMENTS, the INTERMODAL FACILITY NO. 2 IMPROVEMENTS, the THEATER IMPROVEMENTS, the GRAND HALL IMPROVEMENT or the PUBLIC AREA IMPROVEMENTS, as the case may be, for LESSEE's intended use, has been issued. For purposes of this LEASE, a component of the IMPROVEMENTS may be considered SUBSTANTIALLY COMPLETE if the applicable IMPROVEMENT is ready for beneficial occupancy for LESSEE's intended uses, even though minor details or adjustments which do not materially interfere with LESSEE's use and occupancy of the IMPROVEMENT may not then have been completed, but which work LESSOR agrees will thereafter be completed.

1.46. The term "THEATER" means the multi-screen theater complex to be operated by the THEATER OPERATOR within the THEATER IMPROVEMENTS.

1.47. The term "THEATER FIT OUT" means the interior improvements to the THEATER as set forth in that portion of the THEATER PLANS AND SPECIFICATIONS contained in Bid Package BP-3 (as such Bid Package is more fully described on Annex 5 to this Lease Agreement).

1.48. The term "THEATER OPERATOR" means Marquee Cinemas-WV, Inc., or such other PERSON(s) to whom LESSEE may from time to time sublease the THEATER IMPROVEMENTS with the consent of the LESSOR, which consent shall not be unreasonably withheld, conditioned or delayed.

1.49. The term "THEATER IMPROVEMENTS" means, collectively, the THEATER SHELL and THEATER FIT OUT which LESSOR shall cause to be constructed or installed in and on the DEMISED PREMISES in accordance with the THEATER PLANS AND SPECIFICATIONS and the terms of this Lease Agreement.

1.50. The term "THEATER PLANS AND SPECIFICATIONS" means those certain plans, specifications and drawings for the construction of the THEATER IMPROVEMENTS, as the same are more particularly described and detailed on Annex 5, which is attached hereto and made a part hereof, together with such changes thereto and such other detailed plans, specifications and drawings for construction of the THEATER IMPROVEMENTS as may from time to time be prepared by or for LESSOR and approved by LESSEE, which approval shall not be unreasonably withheld, conditioned or delayed.

1.51. The term "THEATER SHELL" means the floor, walls and roof enclosure for the THEATER, including the exit stairs, two (2) service elevators and one (1) passenger elevator.

1.52. The term "THEATER SUBLEASE" means that certain Lease Agreement dated June 18, 2004 between Metropolitan Huntington, LLC, as landlord, and Marquee Cinemas-WV, Inc., as tenant, pursuant to which the THEATER IMPROVEMENTS are subleased by LESSEE to the THEATER OPERATOR for operation of the THEATER; and includes all subsequent modifications and amendments thereto and all substitutions therefor. LESSEE shall not enter into, materially amend or materially modify the THEATER SUBLEASE or any subsequent sublease of the THEATER IMPROVEMENTS without the written consent of LESSOR, which consent shall not be unreasonably withheld, conditioned or delayed.

1.53. The term "THIRD ADDITIONAL TERM" shall have the meaning set forth in Section 3.04 of this Lease Agreement.

ARTICLE 2

Creation of Leasehold

2.01. Demise; APPURTENANT EASEMENTS. Upon the terms, covenants, limitations, agreements and conditions hereinbefore and hereinafter set forth in this Lease Agreement, LESSOR does hereby demise and let unto LESSEE, and LESSEE does hereby lease and hire from LESSOR, the DEMISED PREMISES together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining thereto and further together with any rights or easements inuring to the benefit of the DEMISED PREMISES, to LESSOR as the owner thereof or to LESSEE as the holder of a leasehold estate therein, including, without limitation, the rights and easements described in Annex 6, which is attached hereto and incorporated herein by this reference (the "APPURTENANT EASEMENTS") to have, possess and hold the same exclusively (except as expressly otherwise provided in this LEASE) unto LESSEE, its successors and assigns, at all times during the LEASE TERM. It is contemplated that a forty (40) foot strip in the former Ninth Street right of way that is currently part of the PUBLIC AREA IMPROVEMENTS will, upon completion, be dedicated to the City of Huntington as a public street to be reopened as Ninth Street. LESSEE agrees to cooperate with LESSOR in taking all actions and executing all instruments necessary for such dedication, provided, however that LESSOR and LESSEE acknowledge their mutual desire to retain, and make any dedication of the Ninth Street right of way subject to, an easement

in favor of LESSOR for construction, use, maintenance, repair and replacement of the WALKWAY, which easement will, following the dedication, be an APPURTENANT EASEMENT included in the DEMISED PREMISES. LESSOR and LESSEE further acknowledge and agree that LESSOR shall have the right to lease back from LESSEE, at no charge to LESSOR, the approximately 900 square foot area located on the ground floor of the GRAND HALL directly below the staircase for LESSOR's ticketing, information, waiting area and office facilities in the PROJECT.

2.02. RESERVED EASEMENTS. LESSOR hereby retains and reserves unto itself, and LESSEE hereby grants and conveys to LESSOR, non-exclusive easements and rights-of-way on, over, across and through those portions of the DEMISED PREMISES upon which LESSOR will be constructing walkways and access and circulation drives as part of the INTERMODAL IMPROVEMENTS, GRAND HALL IMPROVEMENTS and PUBLIC AREA IMPROVEMENTS, for purposes of (a) providing a means of access and circulation for the mass transit vehicles (the 'MTV's") operated by LESSOR over the DEMISED PREMISES to and from 3rd Avenue, 9th Street, and other public roadways; (b) providing areas for the boarding and discharging of passengers from the MTV's (including, without limitation, the MTV loading and discharge area along 3rd Avenue) and waiting areas for passengers for the MTV's; and (c) providing a means of vehicular and pedestrian circulation within the DEMISED PREMISES, and ingress and egress to and from 3rd Avenue, 9th Street and other public roadways. LESSOR further hereby retains and reserves unto itself, and LESSEE hereby grants and conveys to LESSOR (i) the SIGNAGE EASEMENT identified in Section 5.02 of this Lease Agreement and (ii) non-exclusive easements and rights-of-way for waiting areas in Building 4 (pavilion) as identified in the PUBLIC AREA PLANS AND SPECIFICATIONS. The easements described in this Section 2.02 are herein collectively called the "RESERVED EASEMENTS."

2.03. Priority of Leasehold Estate. It is the intention of LESSOR and LESSEE, and LESSOR does hereby represent, covenant and warrant to LESSEE, that the leasehold estate of LESSEE created by this Lease Agreement is and shall at all times during the LEASE TERM be the prime leasehold estate in and to the DEMISED PREMISES, prior to all other leases, liens, easements, claims, title defects, encumbrances, tenancies or other possessory rights or claims in, to or on the fee simple estate of LESSOR in and to the DEMISED PREMISES, except for the PERMITTED ENCUMBRANCES, RESERVED EASEMENTS and the rights of the Federal Transit Administration resulting from LESSOR's use of the FTA GRANT (as hereinafter defined).

2.04. Title Insurance. In the event that LESSEE shall require title insurance in respect of its interests under this Lease Agreement, LESSEE shall obtain the same at its sole cost and expense; provided that, LESSOR shall cooperate with LESSEE to minimize expenses associated with the issuance of any such title insurance by effecting the simultaneous issuance thereof with LESSOR'S policy of title insurance, if any.

2.05. Transit Events Sponsored By LESSOR. LESSOR and LESSEE acknowledge that a grant from the Federal Transit Administration ("FTA GRANT") has been instrumental in the development of the INTERMODAL IMPROVEMENTS and the PROJECT.

LESSOR and LESSEE have endeavored to promote transit themes in the development of the PROJECT. In order to continue such efforts to promote transit themes, LESSEE hereby agrees to grant to LESSOR, from time to time, a license to use the PUBLIC AREA IMPROVEMENTS, GRAND HALL IMPROVEMENTS and portions of the INTERMODAL IMPROVEMENTS at no charge for transit related events sponsored by LESSOR, provided that LESSOR shall schedule no more than four such events in any calendar year and shall coordinate the planning, timing and location of such events with LESSEE to assure that such events do not unreasonably interfere with LESSEE's operations on the DEMISED PREMISES.

2.06 DEVELOPMENT RIGHTS. LESSOR hereby retains and reserves unto itself, and LESSEE hereby grants and conveys to LESSOR, subject to the provisions of this Section 2.06, the exclusive right to develop and construct improvements in the air space above the INTERMODAL IMPROVEMENTS (the "AIR SPACE"). Should LESSOR desire to develop the AIR SPACE, the following provisions shall apply:

(A) **Development Proposal.** Before proceeding with any development of the AIR SPACE, LESSOR shall first present its development proposal to LESSEE and invite LESSEE's participation therein. No third parties shall be invited to participate unless LESSEE declines to do so.

(B) **Plans and Specifications.** Regardless of whether LESSEE elects to participate in the development of the AIR SPACE, no development may proceed unless and until detailed plans and specifications for the construction of any improvements in the AIR SPACE shall have been submitted to and approved by LESSEE, which approval shall not be unreasonably withheld, conditioned or delayed; provided that it shall not be considered unreasonable for LESSEE to consider, and condition its approval on, the compatibility of the proposed improvements with the existing IMPROVEMENTS in terms of aesthetics, functionality and engineering/architectural stability.

(C) **Existing Operations.** Before undertaking any development of the AIR SPACE, LESSOR shall prepare and submit to LESSEE for LESSEE's review and approval a plan setting forth the measures to be employed during the development process to minimize any disruption to, or interference with, LESSEE's operations at the PROJECT; and no development shall be undertaken until such plan has been approved by LESSEE, which approval shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 3

LEASE TERM; Possession

3.01. INITIAL TERM. The "INITIAL TERM" shall be the period commencing on the COMMENCEMENT DATE and expiring at midnight on the day before the twenty-seventh (27th) ANNIVERSARY.

3.02. FIRST ADDITIONAL TERM. In the event that LESSEE is not then in default hereunder, LESSEE shall have the right and option to renew and extend the LEASE TERM for a first additional period of thirteen (13) years (the "FIRST ADDITIONAL TERM") commencing immediately upon expiration of the INITIAL TERM and expiring thirteen (13) years thereafter, by giving written notice to that effect to LESSOR at any time after the EFFECTIVE DATE (but in no event later than twelve (12) months prior to expiration of the INITIAL TERM).

3.03. SECOND ADDITIONAL TERM. In the event that LESSEE is not then in default hereunder, LESSEE shall have the further right and option to renew and extend the LEASE TERM for a second additional period of ten (10) years (the "SECOND ADDITIONAL TERM") commencing immediately upon expiration of the FIRST ADDITIONAL TERM and expiring ten (10) years thereafter, by giving written notice to that effect to LESSOR at any time after the EFFECTIVE DATE (but in no event later than twelve (12) months prior to expiration of the FIRST ADDITIONAL TERM).

3.04. THIRD ADDITIONAL TERM. In the event that LESSEE is not then in default hereunder, LESSEE shall have the further right and option to renew and extend the LEASE TERM for a third additional period of ten (10) years (the "THIRD ADDITIONAL TERM") commencing immediately upon expiration of the SECOND ADDITIONAL TERM and expiring ten (10) years thereafter, by giving written notice to that effect to LESSOR at any time after the tenth (10th) ANNIVERSARY of the COMMENCEMENT DATE (but in no event later than twelve (12) months prior to expiration of the SECOND ADDITIONAL TERM).

3.05. [RESERVED]

3.06. Limitations; Conditions. Unless the parties hereto otherwise agree, LESSEE shall not be permitted to extend the LEASE TERM beyond the THIRD ADDITIONAL TERM. LESSEE shall have the right, at its option and in accordance with the terms hereof, to exercise its aforesaid options to renew and extend the LEASE TERM either successively or concurrently; provided that, (i) LESSEE'S failure to timely exercise its rights in respect of a RENEWAL TERM or (ii) any expiration or termination of this Lease Agreement during the INITIAL TERM or any RENEWAL TERM, as the case may be, shall terminate all rights of further extension of the LEASE TERM.

3.07. Access During Construction; DATE OF POSSESSION.

(A) Prior to the DATE OF POSSESSION, LESSEE and its duly authorized representatives may enter upon the DEMISED PREMISES at all reasonable times to view and inspect the DEMISED PREMISES and the status of construction of the IMPROVEMENTS. In addition, during construction of any IMPROVEMENTS hereunder and prior to the DATE OF POSSESSION and in preparation for LESSEE'S occupancy of the DEMISED PREMISES, LESSEE shall have the right to enter upon the DEMISED PREMISES and to perform and install therein the EQUIPMENT and other fixtures and improvements not included with the pertinent PLANS AND SPECIFICATIONS. In connection with any such entry under this Section 3.07(A), LESSEE shall (i) advise LESSOR in advance, (ii) coordinate and cooperate with LESSOR and observe all safety rules, regulations and directives imposed by LESSOR and the CONTRACTOR, (iii) not unreasonably interfere with the activities of LESSOR or its agents or contractors in and on the DEMISED PREMISES or cause any damage to the DEMISED PREMISES, and (iv) indemnify and hold LESSOR harmless from any claims, actions, damages, liabilities, costs or expenses, including attorneys' fees, arising from or out of the entry by LESSEE, its agents, employees, contractors or invitees on the DEMISED PREMISES pursuant to this Section 3.07(A).

(B) Subject to the RESERVED EASEMENTS and other rights reserved by and granted to LESSOR herein, LESSEE shall be entitled to take exclusive possession of, and shall be afforded by LESSOR, exclusive possession of, each component of the IMPROVEMENTS which is included in the DEMISED PREMISES (as well as such portion of the DEMISED PREMISES upon which such component is situated) as soon as reasonably possible after the date of SUBSTANTIAL COMPLETION of such component of the IMPROVEMENTS (the "DATE OF POSSESSION"), at which time LESSOR shall deliver such component of the IMPROVEMENTS (as well as such portion of the DEMISED PREMISES upon which such component is situated) to LESSEE free and clear from all liens, encumbrances, easements, leases, title defects, tenancies and other possessory rights or claims, except for the PERMITTED ENCUMBRANCES, RESERVED EASEMENTS, and other rights reserved by or granted to LESSOR in this LEASE AGREEMENT.

3.08. Lease Hold-Over Provisions. If LESSEE shall remain in possession of the DEMISED PREMISES after the expiration or termination of the LEASE TERM, LESSEE shall be deemed to be a tenant from month-to-month, paying monthly rent equal to one hundred fifty percent (150%) of the monthly BASE RENT most recently paid by LESSEE to LESSOR hereunder, and otherwise shall occupy the DEMISED PREMISES subject to the terms and conditions set forth herein.

ARTICLE 4

Development of DEMISED PREMISES.

4.01. PLANS AND SPECIFICATIONS.

(A) CHANGES TO PLANS AND SPECIFICATIONS. LESSOR shall have sole authority to make changes to the PLANS AND SPECIFICATIONS. LESSEE shall have the right to review and approve any and all material changes to any of the PLANS AND SPECIFICATIONS, which approvals LESSEE shall not unreasonably withhold, condition or delay.

(B) Expense; Effect of Review and Approval. All of the PLANS AND SPECIFICATIONS described hereunder shall be provided at the sole cost and expense of LESSOR. The review and approval by LESSEE of the PLANS AND SPECIFICATIONS from time to time is solely at the cost and expense and for the benefit of LESSEE, and, in reviewing and approving the same, LESSEE assumes no liability for the design of the IMPROVEMENTS, nor shall any such review or approval by LESSEE release LESSOR from any obligation or liability in respect thereof.

(C) Plans and Specifications for PRIVATE DEVELOPMENT. Pursuant to an Agreement for the Joint Development of Pullman Square between LESSOR and LESSEE, as modified (the "JOINT DEVELOPMENT AGREEMENT"), LESSEE is to develop and construct the PRIVATE DEVELOPMENT. All of the plans and specifications for the PRIVATE DEVELOPMENT shall be provided at the sole cost and expense of LESSEE. LESSOR shall have the right to review and approve any and all material changes to any of the plans and specifications for any elements of the PRIVATE DEVELOPMENT which materially impact the IMPROVEMENTS, which approvals LESSOR shall not unreasonably withhold, condition or delay. The review and approval by LESSOR of material changes to the PRIVATE DEVELOPMENT plans and specifications from time to time is solely at the cost and expense and for the benefit of LESSOR, and, in reviewing and approving the same, LESSOR assumes no liability for the design of the PRIVATE DEVELOPMENT, nor shall any such review or approval by LESSOR release LESSEE from any obligation or liability in respect thereof.

4.02. Construction of INTERMODAL IMPROVEMENTS.

(A) Construction Standards. LESSOR shall cause the INTERMODAL IMPROVEMENTS to be developed, constructed, installed and placed in and upon the DEMISED PREMISES: (i) in substantial compliance with the INTERMODAL PLANS AND SPECIFICATIONS; (ii) in compliance with all applicable laws, codes, regulations, ordinances, rulings, easements, building and use restrictions, reservations, covenants and conditions, including, without limitation, compliance in all respects with the Americans With Disability Act (42 USCA §12101, et. seq.); (iii) with LESSOR furnishing and providing, or causing the CONTRACTOR to furnish and provide, all necessary tools, equipment, materials, supplies,

labor, supervision and services; and (iv) otherwise in accordance with the terms and conditions of this Lease Agreement. LESSOR and LESSEE acknowledge and agree that LESSOR's responsibility for payment of costs and expenses relating to the construction of the INTERMODAL IMPROVEMENTS and the THEATER SHELL is, pursuant to the JOINT DEVELOPMENT AGREEMENT, limited to the amount of eligible funding from the FTA GRANT. The parties further acknowledge that LESSOR's responsibility for payment of costs and expenses relating to the construction of the remaining IMPROVEMENTS is limited to the amount of eligible funding from a grant from the West Virginia Economic Development Grant Committee ("STATE GRANT"). Notwithstanding any other provision of this Lease Agreement to the contrary, neither LESSOR nor LESSEE shall be responsible for payment of any costs for or related to the IMPROVEMENTS in excess of the FTA GRANT funds and STATE GRANT funds. In the event the costs and expenses relating to the construction of the INTERMODAL IMPROVEMENTS and THEATER SHELL exceed the available FTA GRANT funds, or the costs and expenses relating to the construction of the remaining IMPROVEMENTS, including the THEATER FIT OUT, exceed the available STATE GRANT FUNDS, LESSOR and LESSEE will, in good faith, attempt to revise the applicable portions of the PLANS AND SPECIFICATIONS to reduce the costs to the amount of the available funding from the FTA GRANT or STATE GRANT, as the case may be.

(B) Construction of the INTERMODAL IMPROVEMENTS commenced on or about July 1, 2003 and, subject to the provisions of Article 23 hereof, LESSOR shall cause SUBSTANTIAL COMPLETION of the INTERMODAL IMPROVEMENTS to be achieved on or before November 18, 2004.

On or promptly following the date upon which LESSOR shall achieve SUBSTANTIAL COMPLETION of each component of the INTERMODAL IMPROVEMENTS, LESSEE shall take possession of such component and LESSOR and LESSEE shall enter into a writing to be signed by, and to be in form and substance satisfactory to both of, LESSOR and LESSEE wherein the date of SUBSTANTIAL COMPLETION of each component of the INTERMODAL IMPROVEMENTS shall be set forth and identified as such.

4.03. Construction of THEATER IMPROVEMENTS.

(A) LESSOR shall cause the THEATER IMPROVEMENTS to be developed, constructed, installed and placed in and upon the DEMISED PREMISES: (a) in substantial compliance with the THEATER PLANS AND SPECIFICATIONS; (b) in compliance with all applicable laws, codes, regulations, ordinances, rulings, easements, building and use restrictions, reservations, covenants and conditions, including, without limitation, compliance in all respects with the Americans With Disability Act (42 USCA §12101, et. seq.); (c) with LESSOR furnishing and providing, or causing the CONTRACTOR to furnish and provide, all necessary tools, equipment, materials, supplies, labor, supervision and services; and (d) otherwise in accordance with the terms and conditions of this Lease Agreement. LESSOR and LESSEE acknowledge that the THEATER SHELL that is a part of the THEATER IMPROVEMENTS is being funded by the FTA GRANT and that the THEATER FIT OUT is being funded by the STATE GRANT. LESSOR and LESSEE acknowledge and agree that, in accordance with the

JOINT DEVELOPMENT AGREEMENT, LESSOR's responsibility for the payment of costs and expenses relating to the THEATER IMPROVEMENTS is limited to the amounts available from the FTA GRANT and STATE GRANT and that neither LESSOR nor LESSEE is not responsible for payment of any costs for or related to the THEATER IMPROVEMENTS in excess of the FTA GRANT funds and STATE GRANT funds.

(B) Subject to the provisions of Article 23 hereof, LESSOR shall cause SUBSTANTIAL COMPLETION of the THEATER SHELL to be achieved on or before August 21, 2004 and SUBSTANTIAL COMPLETION of the THEATER FIT OUT to be achieved on or before November 18, 2004.

On or promptly following the date upon which LESSOR shall achieve SUBSTANTIAL COMPLETION of the THEATER IMPROVEMENTS, LESSEE shall take possession of the THEATER IMPROVEMENTS and LESSOR and LESSEE shall enter into a writing to be signed by, and to be in form and substance satisfactory to both of, LESSOR and LESSEE wherein the date of SUBSTANTIAL COMPLETION of the THEATER IMPROVEMENTS shall be set forth and identified as such.

4.04 Construction of GRAND HALL IMPROVEMENTS.

(A) LESSOR shall cause the GRAND HALL IMPROVEMENTS to be developed, constructed, installed and placed in and upon the DEMISED PREMISES: (i) in substantial compliance with the GRAND HALL PLANS AND SPECIFICATIONS; (ii) in compliance with all applicable laws, codes, regulations, ordinances, rulings, easements, building and use restrictions, reservations, covenants and conditions, including, without limitation, compliance in all respects with the Americans With Disability Act (42 USCA §12101, et. seq.); (iii) with LESSOR furnishing and providing, or causing the CONTRACTOR to furnish and provide, all necessary tools, equipment, materials, supplies, labor, supervision and services; and (iv) otherwise in accordance with the terms and conditions of this Lease Agreement. LESSOR and LESSEE acknowledge and agree that LESSOR's responsibility for the payment of costs and expenses relating to the GRAND HALL IMPROVEMENTS is, in accordance with the JOINT DEVELOPMENT AGREEMENT, limited to the amounts available from the STATE GRANT and that neither LESSOR nor LESSEE is not responsible for payment of any costs for or related to the GRAND HALL IMPROVEMENTS in excess of the STATE GRANT funds.

(B) Subject to the provisions of Article 23 hereof, LESSOR shall cause SUBSTANTIAL COMPLETION of the GRAND HALL IMPROVEMENTS to be achieved on or before November 18, 2004.

On or promptly following the date upon which LESSOR shall achieve SUBSTANTIAL COMPLETION of the GRAND HALL IMPROVEMENTS, LESSEE shall take possession of the GRAND HALL IMPROVEMENTS and LESSOR and LESSEE shall enter into a writing to be signed by, and to be in form and substance satisfactory to both of, LESSOR and LESSEE wherein the date of SUBSTANTIAL COMPLETION of the GRAND HALL IMPROVEMENTS shall be set forth and identified as such.

4.05. Construction of PUBLIC AREA IMPROVEMENTS.

(A) LESSOR shall cause the PUBLIC AREA IMPROVEMENTS to be developed, constructed, installed and placed in and upon the DEMISED PREMISES: (i) in substantial compliance with the PUBLIC AREA PLANS AND SPECIFICATIONS; (ii) in compliance with all applicable laws, codes, regulations, ordinances, rulings, easements, building and use restrictions, reservations, covenants and conditions, including, without limitation, compliance in all respects with the Americans With Disability Act (42 USCA §12101, et. seq.); (iii) with LESSOR furnishing and providing, or causing the CONTRACTOR to furnish and provide, all necessary tools, equipment, materials, supplies, labor, supervision and services; and (iv) otherwise in accordance with the terms and conditions of this Lease Agreement. LESSOR and LESSEE acknowledge and agree that LESSOR's responsibility for the payment of costs and expenses relating to the PUBLIC AREA IMPROVEMENTS is, in accordance with the JOINT DEVELOPMENT AGREEMENT, limited to the budgeted amounts available from the STATE GRANT and that neither LESSOR nor LESSEE shall be responsible for payment of any costs for or related to the PUBLIC AREA IMPROVEMENTS in excess of the budgeted STATE GRANT funds.

(B) Subject to the provisions of Article 23 hereof, LESSOR shall cause SUBSTANTIAL COMPLETION of the PUBLIC AREA IMPROVEMENTS to be achieved on or before December 1, 2004.

On or promptly following the date upon which LESSOR shall achieve SUBSTANTIAL COMPLETION of the PUBLIC AREA IMPROVEMENTS, LESSEE shall take possession of the PUBLIC AREA IMPROVEMENTS and LESSOR and LESSEE shall enter into a writing to be signed by, and to be in form and substance satisfactory to both of, LESSOR and LESSEE wherein the date of SUBSTANTIAL COMPLETION of the PUBLIC AREA IMPROVEMENTS shall be set forth and identified as such.

4.06. Additional Terms and Conditions Relative to Construction of IMPROVEMENTS.

(A) Payment of Contractors. Subject to the availability and sufficiency of the FTA GRANT and STATE GRANT funds and its right to contest the obligation to do so as set forth in Section 6.01 hereof, LESSOR shall make payment, in a timely manner, of all monies due and owing to all PERSONS performing any work or furnishing any materials, fuel, machinery or supplies to LESSOR in connection with the construction of the IMPROVEMENTS.

(B) Construction Warranties. LESSOR shall assign and/or otherwise enforce or make available to LESSEE, for the benefit of LESSEE and LESSOR during the LEASE TERM, any and all contractor warranties, manufacturers' warranties or other warranties or guaranties which may have been provided to LESSOR by the CONTRACTOR, suppliers, manufacturers or others in connection with the construction of the IMPROVEMENTS

(C) Permanent Certificate of Occupancy; Licenses. Notwithstanding achievement of SUBSTANTIAL COMPLETION in respect of any IMPROVEMENTS and the issuance of any temporary certificate of occupancy in connection therewith, LESSOR agrees to and shall thereafter diligently pursue, to the extent available or applicable and so long as funding is available from the FTA GRANT or STATE GRANT, as applicable, issuance of permanent certificates of occupancy in connection with any IMPROVEMENTS and further shall cooperate with LESSEE to obtain any other licenses, permits or certificates necessary or appropriate for the conduct of LESSEE'S business in or on the DEMISED PREMISES.

(D) Failure to Achieve SUBSTANTIAL COMPLETION. In the event that LESSOR shall fail to achieve SUBSTANTIAL COMPLETION of all of the IMPROVEMENTS on or before July 1, 2005, then LESSEE shall have the right, at its option and in addition to any other rights or remedies it may have under applicable law, to terminate this Lease Agreement in accordance with the provisions of Section 19.06 hereof; provided, however, that if the failure to achieve SUBSTANTIAL COMPLETION is due to insufficiency of the FTA GRANT to fully pay the costs of constructing the INTERMODAL IMPROVEMENTS or THEATER SHELL, or the insufficiency of the STATE GRANT to fully pay the costs of constructing the THEATER FIT OUT, GRAND HALL IMPROVEMENTS or PUBLIC AREA IMPROVEMENTS, LESSOR shall not be liable for damages to LESSEE resulting from such termination.

ARTICLE 5

EQUIPMENT; Signs

5.01. EQUIPMENT. At all times during the LEASE TERM and thereafter, the EQUIPMENT shall be and be deemed to be owned by and the property of LESSEE and kept by LESSEE in and on the DEMISED PREMISES at the sole risk of LESSEE, and LESSOR shall promptly execute and deliver to LESSEE such landlord waivers or similar instruments as LESSEE may reasonably request from time to time and at any time to confirm that the EQUIPMENT is the property of LESSEE during the LEASE TERM.

5.02. Signs. In addition to any signage provided for in the PLANS AND SPECIFICATIONS, during the LEASE TERM, LESSEE shall have the right, at its sole cost and expense, to install, in accordance with all applicable laws and at such locations on the DEMISED PREMISES as LESSEE shall elect, such signage as LESSEE shall from time to time deem appropriate; provided that, LESSOR shall have approval rights with respect to the location and character of external signage, which approvals shall not be unreasonably withheld, conditioned or delayed. In addition to any signage provided for in the PLANS AND SPECIFICATIONS, during the LEASE TERM, LESSOR shall have the right, at its sole cost and expense, to install, in accordance with all applicable laws and at such locations on the DEMISED PREMISES as LESSOR shall elect, such directional and informational signage as LESSOR shall from time to time deem appropriate (the "SIGNAGE EASEMENT"); provided that, LESSEE shall have approval rights with respect to the size, design and color scheme, location and character of all such signage, which approvals shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 6

Liens

6.01. Removal of Liens. If the DEMISED PREMISES or any part thereof or of LESSEE'S leasehold interest in the DEMISED PREMISES shall at any time during the LEASE TERM become subject to any mechanic's, laborer's, materialmen's or other similar lien based upon the furnishing of materials, fuel, machinery, supplies or labor to the DEMISED PREMISES or to LESSEE and not expressly contracted for in writing by LESSOR, then LESSEE shall indemnify and save LESSOR harmless therefrom and shall cause the same to be discharged at its sole cost and expense within thirty (30) days after LESSEE shall have actual notice of the existence thereof, unless such lien and the claim occasioning it are contested or litigated in good faith by LESSEE, at its sole cost and expense, and LESSEE shall have posted a bond (with surety) or cash sufficient to insure that, upon final determination of the validity of such lien or claim, any final judgment rendered against LESSEE or LESSOR, with all related costs and charges, will be fully paid.

If the DEMISED PREMISES or any part thereof or of LESSEE'S leasehold interest in the DEMISED PREMISES shall at any time during the LEASE TERM become subject to any mechanic's, laborer's, materialmen's or other similar lien based upon the furnishing of materials, fuel, machinery, supplies or labor to the DEMISED PREMISES or to LESSOR and not expressly contracted for in writing by LESSEE, then unless LESSOR is not responsible for the applicable costs or expenses giving rise to the lien as provided in ARTICLE 4 hereof, LESSOR shall indemnify and save LESSEE harmless therefrom and shall cause the same to be discharged at its sole cost and expense within thirty (30) days after LESSOR shall have actual notice of the existence thereof, unless such lien and the claim occasioning it are contested or litigated in good faith by LESSOR, at its sole cost and expense, and LESSOR shall have posted a bond (with surety) or cash sufficient to insure that, upon final determination of the validity of such lien or claim, any final judgment rendered against LESSEE or LESSOR, with all related costs and charges, will be fully paid.

6.02. No Implied Consent. Nothing in this Lease Agreement shall be construed as constituting the express or implied consent or request of LESSOR or LESSEE to any contractor, subcontractor, laborer or materialman under contract with the other party hereunder for the performance of any labor or the furnishing of any materials, fuel, machinery or supplies or any specific improvements of, alterations of or repairs to the DEMISED PREMISES or any improvement thereto, nor as giving LESSOR or LESSEE any right, power or authority to act as agent of the other party hereunder to contract for, or to permit the performance or furnishing of, any labor, materials, fuel, machinery or supplies on any basis which would entitle any PERSON to assert and/or perfect a mechanic's lien or other claim encumbering the DEMISED PREMISES and/or the interests of LESSOR or LESSEE in the DEMISED PREMISES.

ARTICLE 7

RENT AND RELATED MATTERS

7.01. BASE RENT. Commencing on the earlier of (i) the first day of the first calendar month following the calendar month in which the THEATER first opens to the public for business or (ii) the first day of the first calendar month following the calendar month in which falls the 150th day after SUBSTANTIAL COMPLETION of the THEATER IMPROVEMENTS (such earlier date being herein referred to as the "RENT TRIGGER DATE," and such subsequent first day of the month being herein defined as the "BASE RENT COMMENCEMENT DATE") and continuing on the first day of each and every calendar month thereafter during the LEASE TERM (subject to adjustment as hereinafter provided), LESSEE shall pay to LESSOR, without deduction or setoff, as base rent ("BASE RENT") for the DEMISED PREMISES the annual sum of Four Hundred Fifty Thousand Dollars (\$450,000.00), payable in equal consecutive monthly installments of Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$37,500.00) each. At such time as the BASE RENT COMMENCEMENT DATE has been established, LESSOR and LESSEE agree to execute a writing evidencing and memorializing such date.

In the event the RENT TRIGGER DATE is a day which is other than the first day of a calendar month, then, in addition to and simultaneously with LESSEE'S payment of the first monthly installment of BASE RENT hereunder as provided above, LESSEE shall pay to LESSOR an amount equal to the product which is obtained when (a) the per diem amount of BASE RENT which LESSEE is obligated to pay to LESSOR hereunder (i.e., \$1,232.88) is multiplied by (b) the number of days which elapse during the period commencing on (and including) the RENT TRIGGER DATE to (but excluding) the BASE RENT COMMENCEMENT DATE.

The amount of BASE RENT payable by LESSEE to LESSOR hereunder shall be adjusted effective on each anniversary of the BASE RENT COMMENCEMENT DATE (each such date being herein called an "ADJUSTMENT DATE") during the LEASE TERM by the amount determined in the manner hereinafter set forth. The amount of the annual adjusted BASE RENT (the "ADJUSTED BASE RENT") is to be computed by multiplying the initial BASE RENT amount (\$450,000.00 per annum) by a fraction, the numerator of which shall be the Consumer Price Index For All Urban Consumers, SOUTH URBAN SIZE B/C (CPI-U), (December, 1996 =100) All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor (the "INDEX"), for the month which is two (2) months prior to the month in which the applicable ADJUSTMENT DATE occurs, and the denominator of which shall be the INDEX for the month in which the BASE RENT COMMENCEMENT DATE occurred (references in this Lease Agreement to BASE RENT shall include and mean ADJUSTED BASE RENT as the context requires).

For example, if the BASE RENT COMMENCEMENT DATE is December 1, 2004, the first ADJUSTMENT DATE would be December 1, 2005 and the first annual adjustment of BASE RENT would be made using the following formula:

$$\$450,000 \times \frac{\text{CPI-U SOUTH URBAN SIZE B/C for October, 2005}}{\text{CPI-U SOUTH URBAN SIZE B/C for December, 2004}}$$

The ADJUSTED BASE RENT shall be payable in 12 equal monthly installments commencing on each ADJUSTMENT DATE and continuing until (but excluding) the next ADJUSTMENT DATE, at which time a new ADJUSTED BASE RENT shall be calculated and payable. The ADJUSTED BASE RENT shall never be less than \$450,000 per annum.

The parties further agree that if the Bureau of Labor Statistics of the United States Department of Labor should discontinue publication of the INDEX, but shall publish in place thereof a different Consumer Price Index, then in that event, the INDEX number shall be adjusted accordingly using official conversion tables, if available, or if not, by any method reasonably satisfactory to both LESSOR and LESSEE. If the publication of the Consumer Price Index or the South Urban Size B/C subcategory is discontinued, the parties hereto shall accept comparable statistics as computed and published by an agency of the United States or by a responsible financial periodical of recognized authority reasonably acceptable to LESSOR and LESSEE.

7.02. Abatement of BASE RENT. If at any time during the LEASE TERM the THEATER ceases operation, and as a result LESSEE ceases receiving rent under the THEATER SUBLEASE, then, beginning with the first date the THEATER has ceased operation and the LESSEE has ceased receiving rent under the THEATER SUBLEASE and continuing so long as LESSEE is not receiving rent from the leasing of the THEATER IMPROVEMENTS, but in no event longer than 90 days, LESSEE's obligation to pay \$18,917.96 per month of BASE RENT (subject to adjustment on each ADJUSTMENT DATE using the same INDEX and formula provided in Section 7.01 for adjustments in BASE RENT) shall abate (the "PARTIAL ABATEMENT AMOUNT"). Beginning on the 91st day following the first date the THEATER has ceased operation and LESSEE has ceased receiving rent under the THEATER SUBLEASE, the PARTIAL ABATEMENT AMOUNT shall again commence to accrue as BASE RENT under this Lease Agreement, provided that LESSEE's obligation to pay the PARTIAL ABATEMENT AMOUNT shall be deferred for so long as LESSEE is not receiving rent from the leasing of the THEATER IMPROVEMENTS, but such deferral shall in no event continue for longer than 90 additional days (the "DEFERRED PARTIAL ABATEMENT"). Commencing on the earlier of (i) the 180th day following the first date the THEATER has ceased operation and LESSEE has ceased receiving rent under the THEATER SUBLEASE or (ii) the date LESSEE begins receiving rent on the THEATER IMPROVEMENTS, BASE RENT shall be payable in full, without abatement or deferral, and the amount of any DEFERRED PARTIAL ABATEMENT shall be payable in addition to the full amount of BASE RENT. The accrued amount of DEFERRED PARTIAL ABATEMENT shall be paid in addition to the full amount of BASE RENT in 18 equal consecutive monthly installments commencing on the first day of the

month following the month in which LESSEE begins receiving rent on the THEATER IMPROVEMENTS.

7.03. ANNUAL ADDITIONAL RENT. In addition to BASE RENT, LESSEE shall pay to LESSOR ANNUAL ADDITIONAL RENT which shall be determined and payable annually on or before the thirtieth (30th) day following the end of each LEASE YEAR. LESSEE shall submit to LESSOR not later than the thirtieth (30th) day following the end of each LEASE YEAR a statement (certified by LESSEE's chief financial officer) of OPERATING RECEIPTS and OPERATING EXPENSES for the LEASE YEAR just ended. If OPERATING RECEIPTS exceed OPERATING EXPENSES for such LEASE YEAR, the statement shall be accompanied by LESSEE's payment of ANNUAL ADDITIONAL RENT. In determining whether ANNUAL ADDITIONAL RENT is due for any LEASE YEAR, LESSEE shall be permitted to carry forward and include in OPERATING EXPENSES the amount of any excess OPERATING EXPENSES from prior LEASE YEARS (i.e., the amount by which OPERATING EXPENSES exceed OPERATING RECEIPTS) until such excess is exhausted.

LESSEE shall prepare and keep full, complete and proper books and source documents, in accordance with generally accepted accounting principles, of OPERATING RECEIPTS and OPERATING EXPENSES for the INTERMODAL IMPROVEMENTS for each LEASE YEAR. The books and source documents to be kept by the LESSEE shall include, without limitation (unless the same would not otherwise be maintained by a prudent operator of a parking facility): (i) cash register tapes, (ii) sales slips/receipts, (iii) settlement report sheets of transactions relating to the INTERMODAL IMPROVEMENTS, (iv) sales tax records, (v) parking census reports, (vi) parking agreements/ledgers, (vii) customer reports/records, and (viii) such other sales/parking charge records, if any, which would normally be examined by an independent accountant using accepted auditing standards in performing an audit of OPERATING RECEIPTS and OPERATING EXPENSES. LESSEE shall record at the time of each parking payment or other transaction, in the presence of the customer, all receipts from such payment or other transaction, whether for cash, credit or otherwise, in a cash register or cash registers having a cumulative total which shall be sealed in a manner approved by LESSOR, or by another system reasonably acceptable to the LESSOR.

LESSEE shall furnish to LESSOR within thirty (30) days following the end of each LEASE YEAR, a complete statement (hereinafter the "ANNUAL REPORT") certified by LESSEE's chief financial officer showing in all reasonable detail the amount and nature of such OPERATING RECEIPTS and OPERATING EXPENSES during such LEASE YEAR. All ANNUAL REPORTS shall be in such form and style and contain such details and breakdowns as LESSOR may reasonably require.

Notwithstanding the acceptance by LESSOR of payments of ANNUAL ADDITIONAL RENT, LESSOR shall have the right to all ANNUAL ADDITIONAL RENT actually due hereunder, and the right to examine, make extracts from and copy, at the LESSEE's offices at the PROJECT, LESSEE's books, source documents, accounts, records, sales tax reports, and business and occupation tax reports filed with applicable government agencies by LESSEE in order to verify the amount of OPERATING RECEIPTS and OPERATING EXPENSES in and

from the INTERMODAL IMPROVEMENTS. For a period of three (3) years after the expiration of each LEASE YEAR, LESSEE shall make all such documents and records available at the PROJECT upon ten (10) days' prior written notice from LESSOR.

At its option, LESSOR may at any time upon ten (10) days' written notice to LESSEE, arrange for an auditor selected by LESSOR to conduct a complete audit of the entire records and operations of LESSEE concerning business transacted at, upon or from the INTERMODAL IMPROVEMENTS or includable in OPERATING RECEIPTS or OPERATING EXPENSES during the period covered by any annual report issued by LESSEE. LESSEE shall make available to LESSOR's auditor at the PROJECT within ten (10) days following LESSOR's notice requiring such audit, all of the books, source documents, accounts and records referred to in this Section and any other materials which such auditor reasonably deems necessary or desirable for the purpose of making such audit. LESSEE shall promptly pay to LESSOR the amount of any deficiency in ANNUAL ADDITIONAL RENT payments disclosed by such audit; and LESSOR shall promptly refund to LESSEE the amount of any overpayments of ANNUAL ADDITIONAL RENT disclosed by such audit. If such audit shall disclose that LESSEE's ANNUAL REPORT is at variance to the extent of ten percent (10%) or more, LESSOR may bill to LESSEE the reasonable cost of such audit, which shall be paid by LESSEE within ten (10) days after LESSEE's receipt of LESSOR's invoice.

7.04. Manner of Payment. Any and all rent to be paid hereunder shall be paid by LESSEE to LESSOR in readily-available U.S. currency and without demand at LESSOR'S address first set forth at the beginning of this Lease Agreement or at such other location as LESSOR shall from time to time hereafter designate. Except as otherwise expressly provided in Section 19.06 of this Lease Agreement, payments of any and all rent hereunder shall be made by LESSEE to LESSOR without setoff or deduction of any kind.

7.05. Net Rent. Except as otherwise expressly provided herein, this Lease Agreement is intended to be a net lease and shall yield, net to LESSOR, the net rent specified during the term of this Lease Agreement.

ARTICLE 8

IMPOSITIONS

8.01 Payment of IMPOSITIONS. Commencing on the COMMENCEMENT DATE and continuing at all times thereafter during the LEASE TERM, LESSEE shall be responsible for and shall pay, when due, all personal property and real estate taxes and assessments, both general and special, and all other charges of any kind levied, assessed, charged, taxed or imposed by any governmental authority upon or in respect of the DEMISED PREMISES, the EQUIPMENT or the IMPROVEMENTS, including any tax or excise on rents levied or assessed by the State of West Virginia or any political subdivision thereof against LESSOR in respect of BASE RENT or any other rent payable hereunder in any form, as a substitution in whole or in part for taxes assessed or imposed by said state or any

political subdivision thereof on land and buildings or on land or buildings; exclusive, however, of (i) any franchise, corporation, estate, inheritance, succession, capital levy, stamp or transfer tax of LESSOR, (ii) any income, excess profits or revenue tax or any other tax, assessment, charge or levy upon any rent payable hereunder, except as heretofore expressly provided, (iii) any and all charges, assessments or other fees in the nature of property owner fees or assessments now or hereafter imposed in respect of the DEMISED PREMISES or in the development in which the DEMISED PREMISES are situated and (iv) any future real estate assessments relating to the DEMISED PREMISES in respect of which LESSOR currently has knowledge (collectively, the "IMPOSITIONS").

8.02. Tax Prorations. LESSEE shall be solely responsible for the payment of IMPOSITIONS for periods prior to the COMMENCEMENT DATE for all portions of the DEMISED PREMISES for which LESSEE has at any time held record title and the IMPOSITIONS against such portions of the DEMISED PREMISES shall not be prorated. If any other portion or portions of the DEMISED PREMISES were subject to real estate taxation during the period of LESSOR's ownership thereof prior to the COMMENCEMENT DATE and were never owned by LESSEE, then, on the COMMENCEMENT DATE, (i) LESSOR shall pay or shall have paid to the taxing authorities all then delinquent or due and payable real estate taxes and installments of assessments in respect of such portion(s) the DEMISED PREMISES which are attributable to LESSOR's period of ownership thereof, and (ii) LESSOR shall pay to LESSEE, or credit against the BASE RENT payment next payable, a portion of the real estate taxes which then constitute a lien, but which are not yet due and payable, in respect of such portion(s) the DEMISED PREMISES, prorated through the COMMENCEMENT DATE. Upon expiration or termination of this Lease Agreement, real estate taxes and assessments due or payable, or which are or become a lien upon or in respect of the DEMISED PREMISES shall be similarly prorated to the date of expiration or termination of this Lease Agreement. The proration(s) of said real estate taxes as provided for above shall be based upon a 365-day year and the most recently-available tax rates and valuations; provided that, at such time as final tax rates and valuations are determined by the taxing authorities for the period(s) of time in question, real estate taxes shall be reoprated based upon said final tax rates and valuations, and adjustment amounts, if any, shall be paid promptly to the entitled party.

8.03. Right to Contest Taxes or Other Charges. LESSEE may (but shall not be required to) contest, in its or in the name of LESSOR, the amount or validity of any taxes, assessments or other charges which LESSEE is required to pay as provided in this Article 8, or to apply for the reduction thereof. LESSOR shall, following receipt of notification from the applicable governmental authority, notify (or shall, in good faith, use all reasonable efforts to make all necessary arrangements to have the appropriate governmental authorities notify) LESSEE of any new or increased taxes, assessments, or other charges which LESSEE is obligated to pay under this Article 8, in sufficient time to permit LESSEE to contest or appeal the same or to seek reassessment in respect thereof. LESSOR shall, upon request by LESSEE, execute or join in executing all such documents as are necessary or desirable in connection with any such contest or appeal, and LESSOR shall, upon request by LESSEE and at LESSEE's sole cost and expense, join and actively participate in prosecuting any such proceeding.

8.04. Tax and Other Statements. LESSOR and LESSEE shall, in good faith, exercise all reasonable efforts to make all necessary arrangements to have the appropriate governmental authorities send directly to LESSEE all pertinent statements and bills in respect of taxes, assessments, and other charges to be paid by LESSEE as provided in this Article 8, and LESSEE shall furnish to LESSOR, prior to each such payment becoming delinquent, written evidence of the payment by LESSEE of any and all such statements and bills. If tax bills are received by LESSOR, LESSOR shall promptly forward the bills to LESSEE.

ARTICLE 9

USE, MAINTENANCE AND REPAIR; RESERVE ACCOUNT; UTILITIES; COMPLIANCE WITH LAWS

9.01. Use of DEMISED PREMISES. LESSEE shall have the right to possess, occupy and use the DEMISED PREMISES during the LEASE TERM for the following purposes:

- (a) the INTERMODAL IMPROVEMENTS shall be used as a public parking and intermodal mass transit facility, including, without limitation, such "Park and Ride" programs as LESSOR may from time to time establish, and for attendant and ancillary uses.
- (b) the GRAND HALL IMPROVEMENTS shall be used as a pedestrian circulation corridor, for the housing of LESSOR's ticketing, information and other facilities and as a point of access for intermodal transit operations, and for any purpose which does not violate applicable zoning regulations or other laws or codes.
- (c) the PUBLIC AREA IMPROVEMENTS shall be used for the circulation of MTV's, as transit customer waiting areas, as a park, for vehicle and pedestrian circulation, and for any purpose which does not violate applicable zoning regulations or other laws or codes.
- (d) the THEATER IMPROVEMENTS shall be used for the purposes set forth in the THEATER SUBLICENSE for so long as the THEATER SUBLICENSE is effective, and thereafter for any purpose which does not violate applicable zoning regulations or other laws or codes.

9.02. LESSEE'S Obligations. Except as otherwise expressly provided in this Lease Agreement (including, without limitation, Article 13 hereof with respect to casualty repairs or replacements, Article 14 hereof with respect to condemnation repairs or restoration or Section 4.06(B) hereof with respect to warranty obligations of other parties), from and after the DATE OF POSSESSION of each respective component of the IMPROVEMENTS, LESSEE, at its sole cost and expense, shall cause such component of the IMPROVEMENTS, and the portion

of the DEMISED PREMISES upon which such component is situated, and following the DATE OF POSSESSION of all of the IMPROVEMENTS shall cause the entire DEMISED PREMISES continually to be kept and maintained in a condition of good order and repair, and LESSEE shall cause to be performed such maintenance and repairs (but not items which, under generally accepted accounting principles, would be characterized as capital expenditures, unless the need for such capital expenditures results from the negligent acts or omissions of LESSEE) as shall be necessary and appropriate to accomplish the foregoing. Following SUBSTANTIAL COMPLETION of each component of the IMPROVEMENTS, LESSOR shall not be responsible for any maintenance, repairs, improvements or replacements to the DEMISED PREMISES of whatever kind, whether routine maintenance or capital improvements or replacements.

9.03. Reserve for Repairs and Replacements.

(A) Establishment and Funding of RESERVE ACCOUNT. In order to create a reserve for the repair and replacement of certain hereinafter identified components of the IMPROVEMENTS, LESSEE shall deposit annually into an account (the "RESERVE ACCOUNT") established and maintained at the bank at which LESSEE maintains its general operating account for the INTERMODAL IMPROVEMENTS (which bank, or a branch thereof, must be located in Huntington, West Virginia), commencing on the first day of the thirteenth (13th) month following the month in which the INTERMODAL IMPROVEMENTS are opened to the public for business (the "FUNDING DATE"), and annually thereafter on each anniversary of the FUNDING DATE during the LEASE TERM, the sum of \$50,000.00; provided, however, if at any time during the LEASE TERM the INTERMODAL IMPROVEMENTS are not open to the public for business as a result of a casualty loss or condemnation as described in Articles 13 and 14 hereof, LESSEE's obligation to make deposits into the RESERVE ACCOUNT shall be suspended until such time as the INTERMODAL IMPROVEMENTS are again open to the public for business, with the ensuing annual deposit being reduced proportionately based on the number of days the INTERMODAL IMPROVEMENTS were not open to the public for business.

LESSOR and LESSEE agree, upon the request of either of them made at any time (and from time to time) after the fifth (5th) anniversary of the COMMENCEMENT DATE, to review the status of the RESERVE ACCOUNT, all historical data relating thereto (i.e., deposits and expenditures), the availability of funds from other sources (e.g. the THEATER OPERATOR), and the estimated cost of anticipated or scheduled repairs/replacements to address the repair/replacement of APPROVED COMPONENTS (as hereinafter defined) and any expenditures previously made by others (e.g., the THEATER OPERATOR) to fund the repair/replacement of APPROVED COMPONENTS. Based on such review, LESSOR and LESSEE shall in good faith mutually determine whether any adjustment to the required annual deposit into the RESERVE ACCOUNT is warranted. If LESSOR and LESSEE determine that an adjustment is warranted, each agrees to execute an amendment to this Lease Agreement to reflect each such agreed adjustment.

(B) Expenditures from RESERVE ACCOUNT. LESSEE, without the requirement of any consent or approval from LESSOR, shall have the right and authority to

withdraw funds from the RESERVE ACCOUNT to pay for the repair and/or replacement of those components of the INTERMODAL IMPROVEMENTS and THEATER SHELL identified on Annex 7, which is attached hereto and incorporated herein by this reference (the "APPROVED COMPONENTS"). Should LESSEE desire to withdraw funds from the RESERVE ACCOUNT to pay for the repair or replacement of any component of the INTERMODAL IMPROVEMENTS or THEATER SHELL other than the APPROVED COMPONENTS (or for any other purpose), LESSEE must first obtain LESSOR's written consent to such withdrawal. If, subsequent to a withdrawal from the RESERVE ACCOUNT, LESSEE is reimbursed for any expenditure funded by such withdrawal by the THEATER OPERATOR or any other sub-tenant of the INTERMODAL IMPROVEMENTS, LESSEE shall deposit such reimbursement into the RESERVE ACCOUNT.

(C) Withdrawal by LESSOR after LESSEE EVENT OF DEFAULT. Should a LESSEE EVENT OF DEFAULT occur, LESSEE's right and authority to make withdrawals from the RESERVE ACCOUNT shall immediately terminate and all funds then in the RESERVE ACCOUNT may be withdrawn by LESSOR and placed in another bank account maintained by solely LESSOR for the purpose of providing a source of funds to pay for the maintenance and repair of the IMPROVEMENTS.

(D) Disposition Upon Expiration or Termination of LEASE TERM. Upon the expiration or earlier termination of the LEASE TERM all funds remaining in the RESERVE ACCOUNT shall become the sole property of LESSOR, and LESSEE shall have no further right or authority to make withdrawals from the RESERVE ACCOUNT.

(E) Reporting of RESERVE ACCOUNT Activity. LESSEE shall furnish to LESSOR reports of all withdrawals made from the RESERVE ACCOUNT, which reports may be in the form of a copy of a check or other instrument drawn upon the RESERVE ACCOUNT, or at LESSEE's option, a copy of its bank statement relating to the RESERVE ACCOUNT. Each such report may be furnished as and when a withdrawal is made, or at LESSEE's option, on a monthly basis, or if LESSOR should so request, on any other reasonable basis.

(F) Pledge of RESERVE ACCOUNT. Upon establishment of the RESERVE ACCOUNT LESSEE agrees to grant to LESSOR a security interest in the RESERVE ACCOUNT as security for the performance of LESSEE's obligations under this Lease Agreement.

9.04. Utilities.

(A) Installation of Utilities. With respect to each component of the IMPROVEMENTS, on or before the date of SUBSTANTIAL COMPLETION thereof, LESSOR shall cause all lines, facilities and other appurtenances providing water service, storm sewer service, sanitary sewer services, gas service, electric service and telephone service to be extended to and installed in the DEMISED PREMISES and connected to the IMPROVEMENTS in the manner and to the extent provided in the PLANS AND SPECIFICATIONS. LESSOR shall pay all connection fees, tap fees, capacity charges and other charges charged by the utility service

providers to tap into, connect to or otherwise access such utility services, except for any fees or charges that are not permitted to be paid in accordance with the requirements of the FTA GRANT and the STATE GRANT.

(B) Utility Charges. On and after the DATE OF POSSESSION of each component of the IMPROVEMENTS and thereafter throughout the LEASE TERM, LESSEE shall contract in its own name and pay for all charges for gas, water, electricity, sewer and other utility services furnished to that component of the IMPROVEMENTS and the portion of the DEMISED PREMISES upon which such component is situated.

(C) Interruption of Utilities. LESSEE acknowledges that any one or more of the utilities may be interrupted by reasons beyond the control of LESSOR and that any such interruption of such utilities beyond LESSOR'S reasonable control shall not be deemed to be an eviction of LESSEE or a disturbance of LESSEE'S right of possession, occupancy or use of the DEMISED PREMISES or render LESSOR liable to LESSEE for damages as a consequence of any such interruption. Notwithstanding the foregoing, LESSOR covenants and agrees to cooperate fully with LESSEE to exercise reasonable efforts to assist LESSEE in correcting any of the utility interruptions described in this Section 9.04(C).

9.05 Compliance with Laws. The LESSEE, at its sole expense, shall in its use of the DEMISED PREMISES comply with all laws, orders, and regulations of federal, state, county, and municipal authorities, and with any direction of any public officer, pursuant to law, which shall impose any duty upon LESSOR or LESSEE with respect to the DEMISED PREMISES; provided, however, that LESSEE's compliance obligation shall not include the making of any expenditures for items that would be characterized as capital improvements unless the need for such capital improvements is the result of the negligent acts or omissions of LESSEE, or the failure of LESSEE to properly maintain the DEMISED PREMISES. LESSEE, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business within the DEMISED PREMISES, or for the making of any permitted repairs, alterations, improvements or additions, and LESSOR, where necessary, will cooperate with LESSEE in applying for all such permits or licenses.

ARTICLE 10

Leasehold Financing

10.01. Encumbrance of LESSEE's Leasehold Interest. LESSEE shall have the right, from time to time and at any time during the LEASE TERM, to subject (following prior written notice to LESSOR) all or any part of LESSEE's leasehold interest in the DEMISED PREMISES and/or the IMPROVEMENTS to the lien of one or more mortgages or deeds of trust (each said mortgage or deed of trust, including any renewals, modifications, consolidations, replacements or extensions thereof being herein called a "LEASEHOLD MORTGAGE").

10.02. Rights of LEASEHOLD MORTGAGEES. Any mortgagee or trustee, or

any assignee or transferee of any such mortgagee or trustee, under a LEASEHOLD MORTGAGE who first: (i) shall have caused to be filed or recorded in the Office of the County Clerk of Cabell County, West Virginia, its LEASEHOLD MORTGAGE, together with any amendment, modification or assignment thereof, and (ii) shall have notified, or shall have caused LESSEE to notify, LESSOR in writing of the existence and recordation of its LEASEHOLD MORTGAGE and any amendment, modification or assignment thereof, and (iii) in any such notice and in subsequent notices shall have provided or caused to be provided to LESSOR the proper and current name and mailing address of each such mortgagee or trustee, or its assignee or transferee, and copies of any LEASEHOLD MORTGAGE, together with any amendment, modification or assignment thereof (each said mortgagee or trustee, or its assignee or transferee, having done all such things and updating the same as appropriate being herein called a "LEASEHOLD MORTGAGEE"), shall have the following rights: (A) the right, without the consent of LESSOR, to sell, convey, assign or otherwise transfer or dispose of any or all of its rights arising under, from or out of its LEASEHOLD MORTGAGE, including any and all claims arising thereunder or arising from or out of the LEASEHOLD MORTGAGE transactions, but subject to all of the terms, conditions and restrictions of this Lease Agreement, including the notice and filing requirements as aforesaid; and (B) the rights upon LESSEE's default as set forth in Article 19 of this Lease Agreement; and (C) the right to receive from LESSOR copies of any notices from LESSOR to LESSEE required or otherwise given under the provisions of or with respect to this Lease Agreement, and no notice by LESSOR to LESSEE under this Lease Agreement shall be deemed to have been duly given unless and until a copy thereof has been given to each LEASEHOLD MORTGAGEE at the address for each such LEASEHOLD MORTGAGEE as theretofore provided in writing to LESSOR in accordance with this Section 10.02.

10.03. No Encumbrance of LESSOR's Fee Interest. Under no circumstances shall LESSOR be obligated to subject its fee interest in the DEMISED PREMISES to the lien of any LEASEHOLD MORTGAGE. NO LEASEHOLD MORTGAGE executed by LESSEE shall encumber or purport to encumber LESSOR's fee interest in the DEMISED PREMISES.

ARTICLE 11

Indemnification

11.01. Indemnification. (a) With respect to each component of the IMPROVEMENTS, from and after the DATE OF POSSESSION thereof, except for injuries, deaths, losses, damages or other matters resulting from the wrongful acts or omissions or negligence of LESSOR or its agents, employees, contractors or servants and subject to the provisions of Section 12.07 hereof, LESSEE shall indemnify LESSOR and save it harmless from and against all loss, liability, damage or claim for injury, death, loss or damage of whatever nature to any PERSON or property caused by or resulting from the occupancy or use of such component of the IMPROVEMENTS (and the portion of the DEMISED PREMISES upon which it is situated) by LESSEE or its agents, employees, customers, contractors, servants, subtenants, licensees, guests or invitees, and from and against any and all costs, expenses or liabilities

(including reasonable fees of attorneys, paralegals, experts, court reporters and others) incurred by LESSOR in connection with any claim, action or proceeding in respect of any such loss, liability, damage or claim.

(b) From and after the EFFECTIVE DATE, except for injuries, deaths, losses, damages or other matters resulting from the wrongful acts or omissions or negligence of LESSEE, its sublessees or their respective agents, employees, customers, contractors, servants, licensees, guests or invitees, and subject to the provisions of Section 12.07 hereof, LESSOR shall indemnify LESSEE and save it harmless from and against all loss, liability, damage or claim for injury, death, loss or damage of whatever nature to any PERSON or property caused by or resulting from the ownership, occupancy or use of the DEMISED PREMISES by LESSOR or its agents, employees, contractors or servants and from and against any and all costs, expenses or liabilities (including reasonable fees of attorneys, paralegals, experts, court reporters and others) incurred by LESSEE in connection with any claim, action or proceeding in respect of any such loss, liability, damage or claim.

11.02. Procedures For Indemnification. In the event that any claim is asserted, or any action or proceeding is instituted, against a party entitled to indemnification hereunder ("Indemnitee") by reason of any event or occurrence in respect of which the other party hereunder is obligated to provide indemnity as provided in Section 11.01 of this Lease Agreement ("Indemnitor"), Indemnitor shall cause such claim, action or proceeding to be resisted, defended and resolved at Indemnitor's sole cost and expense; provided that: (i) Indemnitor shall first afford to Indemnitee notice of, and the right at Indemnitee's expense to participate in the contest or defense of, any such claim, action or proceeding and (ii) no settlement which affects the obligations of Indemnitor under this Article 11 to provide indemnity shall be made unless and until Indemnitee gives its written consent to such settlement, which consent shall not be unreasonably withheld, conditioned or delayed. Immediately upon its receipt thereof, Indemnitee shall deliver to Indemnitor copies of any and all notices from third PERSONS affecting the DEMISED PREMISES or any part thereof which may in any way relate to Indemnitor's duty to indemnify Indemnitee pursuant to this Article 11.

ARTICLE 12

Insurance

12.01. Comprehensive Public Liability Insurance; Garage Keeper's Legal Liability Insurance. At all times after the date upon which LESSEE enters upon the DEMISED PREMISES to perform any activities permitted by the provisions of Section 3.07(A) hereof, LESSEE shall carry and maintain a policy or policies of comprehensive public liability insurance (including broad form endorsement(s) providing contractual liability coverage) against claims for bodily injury, death and damage to person and property occurring on or about the DEMISED PREMISES, with responsible insurers licensed to transact insurance business in the State of West Virginia and with a per occurrence combined single limit of not less than One Million Dollars (\$1,000,000) on account of bodily injury, death or damage to person or property.

At all times after the date that LESSEE commences operation of the INTERMODAL IMPROVEMENTS, LESSEE shall carry and maintain a policy or policies of garage keeper's legal liability insurance with responsible insurers licensed to transact business in the State of West Virginia and with a per occurrence combined single limit of not less than One Million Dollars (\$1,000,000).

12.02. Insurance During Construction. At all times during construction of the IMPROVEMENTS, LESSOR shall obtain, carry and maintain, as to each component of the IMPROVEMENTS, at its sole cost and expense, or cause to be carried and maintained by the CONTRACTOR or others, with responsible insurers licensed to transact insurance business in the State of West Virginia, the form and amount of Builder's Risk Insurance presently maintained by the current CONTRACTOR for the INTERMODAL IMPROVEMENTS and the insurance required in the bid documents for the other IMPROVEMENTS, together with adequate insurance relative to Worker's Compensation, disability and unemployment compensation, as applicable.

12.03. Hazard Insurance.

(A) With respect to each component of the IMPROVEMENTS, not later than the date the Builder's Risk policy required to be maintained under Section 12.02 hereof with respect to such component expires or is otherwise terminated [which date shall be communicated by LESSOR to LESSEE in sufficient time so as to permit LESSEE to comply with the requirements of this Section 12.03(A)], and thereafter during the LEASE TERM, LESSEE, at its sole cost and expense, shall keep such component of the IMPROVEMENTS insured against all loss or damage by fire, lightning, wind storm, hail, aircraft, vehicles, smoke, explosion, vandalism, malicious mischief and all other hazards, risks and perils in respect of which extended coverage and "all risk" insurance is available, in an amount not less than 100% of the replacement cost of such component of the IMPROVEMENTS, exclusive of foundations, and which insurance shall not provide for any deductible. Notwithstanding the foregoing, if the DATE OF POSSESSION for any component of the IMPROVEMENTS occurs after the date of expiration or termination of the Builder's Risk policy for such component, then LESSOR shall reimburse LESSEE for that portion of the permanent property insurance premium allocated to the period commencing on the policy inception date and ending on the POSSESSION DATE.

(B) At all times during the LEASE TERM, LESSEE, at its sole expense, shall keep the EQUIPMENT insured against all loss or damage by fire, vandalism, malicious mischief and all other hazards, risks and perils in respect of which extended coverage and "all risk" insurance is available, in an amount equal to one hundred percent (100%) of the replacement cost thereof.

12.04. Named Insureds; Settlement of Claims; Proceeds. All policies of insurance required to be carried and maintained under this Article 12 shall be so carried and maintained for the mutual benefit of LESSOR and LESSEE, and LESSOR and LESSEE shall be named as insureds thereunder, as their interests may appear. All LEASEHOLD MORTGAGEES

shall be named in a "standard mortgagee clause" in respect of the policies of insurance required to be carried and maintained under this Article 12.

All losses or claims under any policy or policies of insurance required to be carried and maintained under Section 12.01 hereof shall be adjusted and settled by the party against whom the claim is asserted or jointly by LESSOR and LESSEE if the claim is asserted jointly against LESSOR and LESSEE. All losses or claims under any policy or policies of insurance required to be carried and maintained under Section 12.02 shall be adjusted and settled by LESSOR. All losses or claims under any policy or policies of insurance required to be carried and maintained under Section 12.03(A) hereof shall, if LESSEE is entitled to use the proceeds of such insurance for rebuilding or repairing the IMPROVEMENTS under the terms of this Lease Agreement, be adjusted and settled jointly by LESSOR and LESSEE and shall otherwise be adjusted and settled by LESSOR. All losses or claims under any policy or policies of insurance required to be carried and maintained under Section 12.03(B) hereof shall be adjusted and settled by LESSEE. In connection with any such settlement, LESSOR and LESSEE shall cooperate fully in order to obtain the best possible recovery under such insurance and shall execute and deliver any and all consents and other instruments and take all such other actions which may be necessary, appropriate or desirable in order to achieve such recovery.

All proceeds payable at any time during the LEASE TERM under any policy or policies of insurance required to be carried and maintained under Section 12.02 hereof shall be payable to LESSOR. All proceeds payable at any time under any policy or policies of insurance required to be carried and maintained under Section 12.03(A) hereof shall be payable to the escrow agent as provided in Section 13.03 hereof to be used to restore the DEMISED PREMISES in accordance with said Section 13.03. All proceeds payable at any time during the LEASE TERM under any policy or policies of insurance required to be carried and maintained under Section 12.03(B) hereof shall be payable to LESSEE.

Neither LESSOR nor LESSEE shall carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished hereunder if the effect of such separate insurance would be to reduce the protection afforded by or any payment to be made under any insurance carried hereunder.

12.05. Notice of Cancellation. Each policy of insurance required to be carried and maintained under this Article 12 shall provide that it cannot be cancelled unless LESSOR and LESSEE have been given actual notice of such proposed cancellation at least thirty (30) days prior to such cancellation.

12.06. Evidence of Insurance; Related Provisions. Originals, duplicate originals or certificates of each policy of insurance required to be carried and maintained under this Article 12, and renewal or other policies, as the case may be, or certificates thereof, shall be delivered by the party responsible for maintaining such insurance to the other party promptly upon the issuance or effectuation thereof by the insurer. All insurance required to be carried and maintained under this Article 12 shall be effected under valid and enforceable policies issued by insurers reasonably acceptable to LESSOR, of recognized responsibility, with all such insurers to

be generally recognized as major carriers and be accorded the highest rating available from A.M. BEST or another accepted rating service and, if not rated, of comparable financial responsibility.

12.07. Waiver of Subrogation. Anything in this Lease Agreement to the contrary notwithstanding, LESSOR and LESSEE each hereby waive any and all right that they may have to recover from the other for damages for any loss occurring to them by reason of any act or omission of the other, but only to the extent that the waiving party is actually compensated therefor by insurance; provided that, this waiver shall be effective only with respect to loss or damage occurring during such time as the waiving party's coverage under the appropriate policy of insurance is not adversely affected by this waiver. If, in order to avoid such adverse effect, an endorsement must be added to any such insurance policy, LESSOR and LESSEE each shall in good faith endeavor to cause such an endorsement to be added and thereafter maintained at all times after the EFFECTIVE DATE.

12.08. Blanket Coverage. Any insurance provided for in this Article 12 may be effected by a policy or policies of blanket insurance; provided that, the amount of the total insurance allocated to or in respect of the DEMISED PREMISES shall be sufficient to furnish in protection the equivalent of separate policies in the amounts herein required, and further provided that, in all other respects, any such blanket policy or policies of insurance shall comply with the other provisions of this Article 12. Any such blanket policy carried by LESSEE with respect to the insurance required hereunder shall contain a "per location" endorsement assuring that the aggregate limit under such blanket policy shall apply separately to the DEMISED PREMISES and that the insurer thereunder shall provide written notice to LESSOR if the available portion of such aggregate is reduced to less than the minimum amounts required hereunder by either payment of claims or the establishment of reserves for claims, whereupon LESSEE shall immediately cause the insurance to come into compliance with the terms of this Lease Agreement. Any blanket policy carried by LESSEE with respect to the hazard insurance required hereunder shall contain an "agreed value" endorsement with respect to each component of the IMPROVEMENTS in an amount not less than 100% of the replacement cost of each such component. LESSEE shall increase the limits of the hazard insurance required hereunder if LESSOR shall reasonably determine that the then current limits do not reflect 100% of the replacement cost of each component of the IMPROVEMENTS and shall increase the limits of the liability insurance required to be maintained by it as LESSOR shall reasonably require.

ARTICLE 13

Casualty Loss; Repairs; Termination

13.01. Minor Loss; Repair. In the event that the INTERMODAL FACILITY NO. 1 IMPROVEMENTS, INTERMODAL FACILITY NO. 2 IMPROVEMENTS, GRAND HALL IMPROVEMENTS or THEATER IMPROVEMENTS are damaged or destroyed by fire or other casualty at any time after the DATE OF POSSESSION of such component, and if the damage or destruction can reasonably be restored within a period of ninety (90) days after the date of such damage or destruction (as determined by a contractor and/or engineer mutually acceptable to LESSOR and LESSEE), or the PUBLIC AREA IMPROVEMENTS are damaged

or destroyed by fire or other casualty no matter the degree of damage, then: (i) this Lease Agreement shall not terminate, (ii) LESSEE shall with due diligence restore the DEMISED PREMISES to their original condition in accordance with the PLANS AND SPECIFICATIONS and (iii) from the date of the occurrence of such damage or destruction and throughout the period of any restoration hereunder to and until the restoration has been completed in a manner sufficient for LESSEE to resume its normal use and occupancy thereof, all BASE RENT shall be abated in the same proportion that rent is abated under the THEATER SUBLEASE as a result of such damage or destruction and the aforesaid restoration.

13.02. Major Loss. In the event that a component of the IMPROVEMENTS other than the PUBLIC AREA IMPROVEMENTS is damaged by fire or other casualty at any time after the DATE OF POSSESSION of such component and the damage or destruction cannot reasonably be restored within a period of ninety (90) days after the date of such damage or destruction (as determined by a contractor and/or engineer mutually acceptable to LESSOR and LESSEE), then LESSEE shall have the right and option to terminate this Lease Agreement by giving written notice of such termination to LESSOR within thirty (30) days after the occurrence of such damage or destruction, in which event (i) this Lease Agreement and LESSOR'S and LESSEE'S obligations hereunder shall terminate as of the date of such damage or destruction, (ii) all BASE RENT and other sums payable hereunder shall be apportioned as of said date of termination, provided, however, that LESSEE shall be solely responsible for all OPERATING EXPENSES and other costs and expenses for operations, utilities, IMPOSITIONS, insurance, repairs and maintenance relating to the DEMISED PREMISES through the date of exercise of its option to terminate this Lease Agreement, and (iii) LESSOR shall be entitled to all casualty insurance proceeds paid as a result of said fire or casualty. The election of LESSEE not to terminate this Lease Agreement, and/or the failure of LESSEE to exercise its option to terminate this Lease Agreement, within the aforesaid thirty (30) day period shall be deemed to and shall constitute LESSEE'S election to restore the damaged IMPROVEMENTS in accordance with the provisions of Section 13.01.

13.03. Escrow for Repairs. The cost of restoring the IMPROVEMENTS as aforesaid shall be borne by LESSEE, provided that (i) all insurance proceeds payable as a result of any such damage or destruction to the IMPROVEMENTS shall be made available to LESSEE for the purpose of restoring the IMPROVEMENTS as aforesaid; and (ii) LESSEE shall not be responsible for any costs in excess of the insurance proceeds collected as a result of such damage or destruction (unless LESSEE has failed to maintain the insurance required under Section 12.03(A) hereof). Provided the insurance proceeds are sufficient to fully restore the damaged IMPROVEMENTS, failure of LESSEE to undertake restoration of the IMPROVEMENTS within thirty (30) days from the day the insurance proceeds are available for such purpose shall constitute a LESSEE EVENT OF DEFAULT hereunder. In that regard, an interest-bearing escrow account shall be established by LESSOR and LESSEE under the control of an escrow agent who shall be mutually acceptable to LESSOR and LESSEE and who shall hold and distribute said proceeds for the purposes specified herein. Any interest earned in respect of said escrowed insurance proceeds shall be treated and distributed in the same manner as the insurance proceeds. In the event that LESSEE fails to restore the IMPROVEMENTS in accordance with the provisions of this Article 13, then, LESSOR, at its option, shall have the right, but not the

obligation, to restore the IMPROVEMENTS and all such insurance proceeds shall be made available to LESSOR to accomplish such restoration. In the event this Lease Agreement is terminated after said escrow is established, or in the event that the insurance proceeds exceed the cost of restoration, the funds remaining in the escrow shall be paid to LESSOR.

13.04. Loss Prior to Possession. In the event that a component of the IMPROVEMENTS is damaged or destroyed by fire or other casualty at any time prior to the DATE OF POSSESSION of such component, LESSOR shall be responsible for the repair and restoration thereof, and LESSOR shall proceed with due diligence to accomplish such repair and restoration. LESSOR shall make reasonable efforts to accomplish such repair and restoration such that SUBSTANTIAL COMPLETION of such component is achieved within the time frame established in this Lease Agreement, but LESSOR shall not be required to increase its cost of construction of such component or expend additional sums for overtime or expedited performance of such repair or restoration. In the event that the repair or restoration cannot be completed such that SUBSTANTIAL COMPLETION of such component is achieved within the time frame established in this Lease Agreement, the casualty giving rise to the delay shall be an "excused cause" for purposes of Article 23 hereof and the time frame for SUBSTANTIAL COMPLETION of such component shall be extended for a period equal to the delay arising from such casualty.

13.05. No Liability for Lost Profits. In no event shall either LESSOR or LESSEE ever be responsible for or liable to the other for any lost profits, lost income or any other matters resulting from any damage to or destruction to the IMPROVEMENTS in connection with casualty loss.

ARTICLE 14

Condemnation

14.01. Total Take. If all of the DEMISED PREMISES are taken by any condemning authority under the power of eminent domain or otherwise or by any purchase or other acquisition in lieu of or under threat of eminent domain or otherwise (a "Total Take"), this Lease Agreement shall terminate as of the date when possession of the DEMISED PREMISES is required by the condemning authority, in which event all BASE RENT and other sums payable hereunder shall be apportioned as of said effective date of termination.

14.02. Partial Take.

(A) If only a part of the DEMISED PREMISES is taken by any condemning authority under the power of eminent domain or otherwise or by any purchase or other acquisition in lieu of or under threat of eminent domain or otherwise (a "Partial Take") but which Partial Take constitutes a taking of either (i) a portion of the DEMISED PREMISES which LESSEE reasonably and in good faith believes will have a continuing material and adverse effect upon its use and occupancy of the DEMISED PREMISES or (ii) all or part of the INTERMODAL IMPROVEMENTS, THEATER IMPROVEMENTS or GRAND HALL

IMPROVEMENTS (with either said Partial Take being sometimes herein called a "Material Partial Take") then, LESSEE shall have the option to terminate this Lease Agreement by giving written notice to that effect to LESSOR within thirty (30) days after LESSOR gives LESSEE written notice of the Material Partial Take. Upon LESSEE'S exercise of such option this Lease Agreement shall terminate as of the date when possession of that portion of the DEMISED PREMISES so taken is required by the condemning authority and all BASE RENT and other sums payable hereunder shall be apportioned as of said effective date of termination, provided, however, that LESSEE shall be solely responsible for all OPERATING EXPENSES and other costs and expenses for operations, utilities, IMPOSITIONS, insurance, repairs and maintenance relating to the DEMISED PREMISES through the date of exercise of its option to terminate this Lease Agreement. With respect to the foregoing, LESSOR and LESSEE agree that a Partial Take which (i) affects only property located within the building set-back lines of the DEMISED PREMISES, or (ii) is in the form of a utility easement located on a portion of the DEMISED PREMISES which does not contain and is not intended to contain any building or other structural IMPROVEMENTS, shall in no event be considered a Material Partial Take.

(B) In the event of a Partial Take which does not result in a termination of this Lease Agreement (whether because it is not a Material Partial Take or because LESSEE has elected not to terminate or has failed to exercise its aforesaid termination option in respect of a Material Partial Take), then this Lease Agreement shall continue in full force and effect (except with respect to that portion of the DEMISED PREMISES which is the subject of the Partial Take), and within a reasonable time after the date upon which possession of the portion of the DEMISED PREMISES which is the subject of the Partial Take is required by the condemning authority, LESSEE shall with due diligence restore the remaining portions of the DEMISED PREMISES to a complete and finished architectural unit reasonably comparable to the condition of the DEMISED PREMISES immediately prior to the date of such Partial Take; provided, however, that neither LESSOR nor LESSEE shall be responsible for any costs of restoration in excess of the condemnation proceeds made available to LESSEE as provided in Section 14.03(B).

(C) From the date of a Partial Take which does not result in a termination of this Lease Agreement, and thereafter throughout the LEASE TERM, all BASE RENT shall be abated in the same proportion, if any, that rent is abated under the THEATER SUBLEASE as a result of such Partial Take and LESSEE's restoration activities in respect thereof.

14.03. Distribution of Condemnation Proceeds.

(A) Subject to the provisions of Section 14.03(C) hereof, in the event of any Total Take or any Partial Take which results in a termination of this Lease Agreement, LESSEE shall not be entitled to share in any appropriation award or condemnation proceeds paid as a result thereof.

(B) Subject to the provisions of the last sentence of this Section 14.03(B) and of Section 14.03(C) hereof, in the event of a Partial Take which does not result in a termination of this Lease Agreement, LESSOR shall be obligated to provide to LESSEE such portion of the

condemnation proceeds payable as a result of such Partial Take as is necessary to enable LESSEE to complete the restoration of the DEMISED PREMISES as aforesaid. In that regard, an interest-bearing escrow account shall be established by LESSOR and LESSEE under the control of an escrow agent who shall be mutually acceptable to LESSOR and LESSEE and who shall hold and distribute said condemnation proceeds for the purposes specified herein. Any interest earned in respect of said escrow of condemnation proceeds shall be treated and distributed in the same manner as the condemnation proceeds. Notwithstanding anything contained herein to the contrary, if LESSEE shall fail or neglect to restore the DEMISED PREMISES in the manner prescribed in Section 14.02 of this Lease Agreement, then LESSOR may, at its option, so restore the DEMISED PREMISES and shall have the right to use any and all condemnation proceeds paid by the condemning authority to so restore the same. In the event this Lease Agreement is terminated after said escrow is established, or in the event that the condemnation proceeds exceed the cost of restoration, the funds remaining in the escrow shall be paid to LESSOR.

(C) Notwithstanding anything contained herein to the contrary, (i) LESSEE and its subtenants shall be entitled to apply for and receive from the condemning authorities any and all sums which may be due and payable to LESSEE and its subtenants as a result of a Total Take or a Partial Take and in respect of LESSEE'S and its subtenants' moving expenses, the expenses of removal and/or of moving the EQUIPMENT, LESSEE'S and its subtenants' loss of business or goodwill, or any improvements which were made to the DEMISED PREMISES and/or paid for by LESSEE or its subtenants and (ii) nothing contained in this Article 14, including, without limitation, provisions relating to the potential termination of this Lease Agreement, shall be construed to terminate or eliminate LESSEE'S or its subtenants' rights, if any, upon any Total Take or any Partial Take to receive any or all of the aforesaid amounts.

ARTICLE 15

Alterations

15.01. Right to Make Alterations.

(A) Without LESSOR'S prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, LESSEE shall not make any alterations, improvements or additions to the DEMISED PREMISES. In addition to any other reasonable ground for withholding or conditioning its consent, it shall be a ground for LESSOR to withhold its consent to any proposed alterations, improvements or additions to the IMPROVEMENTS that the proposed alteration, addition or improvement would result in a material adverse effect on the function of the INTERMODAL IMPROVEMENTS as an intermodal transit facility. With the prior written consent of LESSOR, LESSEE shall have the right, at its sole cost and expense, to make such approved alterations, improvements and additions to the DEMISED PREMISES. In addition, LESSEE and the THEATER OPERATOR shall have the right to make, without further consent by the LESSOR, the alterations, additions and improvements described in Exhibit C to the THEATER SUBLEASE and in Section 10.03(a) of the THEATER SUBLEASE without the necessity of obtaining any further approval or consent from LESSOR.

(B) Any alterations, improvements or additions to the DEMISED PREMISES by LESSEE shall be made in a good and workmanlike manner and in compliance with all applicable laws, ordinances, codes, rules and regulations, and, with respect to alterations, improvements and additions made pursuant to foregoing Section 15.01(A) shall be made in accordance with plans and specifications approved by LESSOR, which approval LESSOR shall not unreasonably withhold, condition or delay. LESSOR shall not be liable for any labor or materials furnished to LESSEE, and any mechanic's or other lien for such labor and materials shall not attach to or affect LESSOR's interest in the DEMISED PREMISES. LESSEE hereby agrees to pay any mechanic's or other lien that was incurred or caused to be incurred by LESSEE, or to discharge any such lien by bond or deposit or provide an escrow deposit sufficient for that purpose, and failing to do so, LESSOR may, without having an obligation to do so, upon giving fifteen (15) days written notice to LESSEE, pay or discharge the same, and the amount so paid or deposited by LESSOR, together with interest at the rate of ten (10%) percent per annum, shall be deemed additional rent due hereunder and payable when the next installment of BASE RENT shall become due. Upon completion of the any work by or on behalf of LESSEE, LESSEE shall provide LESSOR with such documents as LESSOR may reasonably require (including, without limitation, sworn contractor's statements and supporting lien waivers) evidencing payment in full for such work. LESSEE shall be responsible for obtaining all required licenses, approvals or permits for any of its construction, alterations, improvements or installations allowed by this Article 15.

(C) All alterations, improvements and additions made by LESSEE hereunder shall be owned by LESSEE during the LEASE TERM. At the end of the LEASE TERM such alterations, improvements and additions shall, automatically and without further act by any party, be and become part of the DEMISED PREMISES and, as such, the property of LESSOR, without compensation to LESSEE.

ARTICLE 16

Surrender

Upon the expiration or sooner termination of this Lease Agreement, LESSEE will surrender to LESSOR the DEMISED PREMISES in a "broom-clean" condition and otherwise in a good quality, order and repair (reasonable wear and tear and damage due to casualty loss or condemnation excepted). Notwithstanding anything contained in this Article 16 or elsewhere in this Lease Agreement to the contrary, upon expiration or termination of this Lease Agreement, provided LESSEE is not in default hereunder, LESSEE shall have the right to remove from the DEMISED PREMISES any and all of the EQUIPMENT (but shall immediately repair any damage caused by or resulting from LESSEE'S removal of said EQUIPMENT and restore the DEMISED PREMISES to their condition prior to the installation of the EQUIPMENT being removed). Any EQUIPMENT or other personal property or trade fixtures that LESSEE fails to remove from the DEMISED PREMISES within thirty (30) days of the expiration or termination of this Lease Agreement shall be deemed abandoned by LESSEE and LESSOR may, at its option, remove the same without liability to LESSEE and LESSEE shall reimburse LESSOR

upon demand for all costs of removal and disposal of such EQUIPMENT, personal property and trade fixtures. Upon the expiration or termination of this Lease Agreement, LESSEE shall, upon request of LESSOR, remove any items installed by LESSEE at the DEMISED PREMISES pursuant to Article 15 of this Lease Agreement that, at the time of such installation, were identified by LESSOR as "to be removed" upon the expiration or termination of this Lease Agreement. The provisions of this Article 16 shall survive the termination or expiration of this Lease Agreement.

ARTICLE 17

Assignment and Subletting; Non-Disturbance

17.01. Transfers. Without the consent of LESSOR, LESSEE shall have the right from time to time and at any time upon notice to LESSOR to assign, transfer or convey all or any part of its rights in or to the DEMISED PREMISES or under this Lease Agreement (each a "Transfer") to (a) any AFFILIATE of LESSEE or (b) any purchaser of all of LESSEE's interest in the PROJECT. Otherwise, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld, conditioned or delayed, LESSEE shall not effect any such Transfer. No Transfer hereunder shall release or relieve LESSEE from any of its obligations under this Lease Agreement.

17.02. Subletting. With the prior written consent of LESSOR, which consent shall not be unreasonably withheld, conditioned or delayed, LESSEE shall have the right from time to time and at any time upon notice to LESSOR to sublet or grant concessions or licenses in or to any PERSON; provided that, no subletting by LESSEE hereunder shall release or relieve LESSEE from any of its obligations under this Lease Agreement. LESSOR shall have the right to review any sublease or license proposed by LESSEE prior to giving or withholding its consent. LESSOR and LESSEE acknowledge that LESSEE intends to grant certain concessions and licenses for vendors in areas other than the INTERMODAL IMPROVEMENTS. LESSEE may request from LESSOR blanket consents to LESSEE's licensing plan and format of agreement for such licenses.

17.03. Non-Disturbance. Upon the request of LESSEE, LESSOR will enter into an appropriate agreement with the subtenant of any space in the DEMISED PREMISES (hereinafter referred to as a "Non-Disturbance Agreement") which shall provide, in substance, that, so long as the subtenant complies with all of the terms of its sublease, LESSOR, in the exercise of any of its rights or remedies under this Lease Agreement, shall not deprive the subtenant of possession, or the right of possession, of its subleased space during the term of the sublease, or join the subtenant as a party in any action or proceeding to enforce or terminate this Lease Agreement, or obtain possession of the subleased space for any reason other than a breach by the subtenant of the terms of the sublease which would entitle LESSEE to dispossess the subtenant thereunder; provided that (a) such Non-Disturbance Agreement shall not cover any period beyond the term of this Lease Agreement; and (b) simultaneously with the execution of the Non-Disturbance Agreement, the subtenant, at the request of LESSOR, shall agree in writing that in the event of any termination of this Lease Agreement prior to the expiration of LEASE

TERM the subtenant shall be deemed attorney to LESSOR, and shall become a tenant of LESSOR under its sublease.

ARTICLE 18

[RESERVED]

ARTICLE 19

Default; Termination

19.01. LESSEE EVENT OF DEFAULT. LESSEE shall create an event of default (a "LESSEE EVENT OF DEFAULT") under this Lease Agreement if:

- (A) LESSEE shall fail to pay any installment of BASE RENT, ANNUAL ADDITIONAL RENT or any other amount required to be paid by LESSEE to LESSOR under the provisions of this Lease Agreement within fifteen (15) days after written notice of such failure is given by LESSOR to LESSEE; or
- (B) LESSEE shall fail to perform or comply with any other term or provision of this Lease Agreement and if such failure shall remain uncured for thirty (30) days after notice of such failure shall have been given by LESSOR to LESSEE (or, if such failure is not reasonably capable of being cured within such thirty (30) day period, then if LESSEE shall not promptly commence the correction of such failure within said thirty (30) day period or thereafter having so commenced such correction shall fail to proceed to complete such correction with due diligence and within a reasonable time); or
- (C) LESSEE shall make a general assignment for the benefit of its creditors; or
- (D) all or substantially all of LESSEE'S assets shall be sold upon execution or other legal process; or
- (E) LESSEE shall suffer a receiver to be appointed in any action or proceeding by or against LESSEE and such appointment is not stayed or discharged within sixty (60) days after the commencement thereof, or if LESSEE is a debtor in any insolvency proceeding conducted pursuant to the laws of any state or political subdivision of any state and such proceeding is not stayed or discharged within sixty (60) days after the commencement thereof, or if LESSEE shall be or become, either voluntarily or involuntarily, a debtor in any case commenced under the provisions of the U.S. Bankruptcy Code, as amended, and such case is not stayed or discharged within sixty (60) days after the commencement thereof; or
- (F) LESSEE ceases to operate the INTERMODAL IMPROVEMENTS as a public parking facility or abandons or vacates any material portion of the IMPROVEMENTS for a period of 180 or more consecutive calendar days.

19.02. LESSOR Remedies Upon LESSEE EVENT OF DEFAULT. If a LESSEE EVENT OF DEFAULT shall occur under this Lease Agreement, then, in addition to any other rights or remedies to which LESSOR may be entitled hereunder, in equity or at law, LESSOR shall have the following rights and remedies:

(A) LESSOR may, at LESSOR'S option, declare this Lease Agreement to be terminated and thereupon enter into and upon the DEMISED PREMISES or any part thereof, with or without process of law, and expel LESSEE therefrom and again have, possess and enjoy the same as if this Lease Agreement had not been made.

(B) LESSOR may, at LESSOR'S option, without terminating this Lease Agreement, enter into and upon the DEMISED PREMISES or any part thereof, with or without process of law, and expel LESSEE therefrom and attempt to relet the DEMISED PREMISES for the balance of the LEASE TERM at a rental rate which is commercially reasonable under the circumstances, in which event LESSEE shall remain responsible for the payment to LESSOR of all BASE RENT and other amounts payable by LESSEE to LESSOR or any PERSON on account of LESSEE's leasing of the DEMISED PREMISES under this Lease Agreement, and LESSOR may recover from LESSEE any deficiency between (i) any amounts so obtained by LESSOR pursuant to said reletting (less the reasonable costs and expenses, including, without limitation, attorneys and brokers fees and commissions, incurred by LESSOR in so reletting the DEMISED PREMISES) and (ii) the BASE RENT payable under this Lease Agreement, plus any costs and expenses related to the DEMISED PREMISES which are payable by LESSEE under the terms of this Lease Agreement (including, without limitation, taxes, insurance, utilities, maintenance, repairs, replacements and deposits into the RESERVE ACCOUNT) but which are not paid or payable by the new tenant upon such reletting.

(C) Any and all EQUIPMENT which LESSEE shall fail to remove prior to LESSOR'S entry into or upon the DEMISED PREMISES pursuant to Sections 19.02(A) or (B) above may be removed and stored by LESSOR at the sole cost and expense of LESSEE, who shall, upon demand, pay to LESSOR any and all expenses incurred in connection with such removal and storage. Any and all EQUIPMENT which is not removed by LESSEE from the DEMISED PREMISES or from storage, as the case may be, within thirty (30) days after LESSOR'S entry as aforesaid shall be deemed to have been abandoned by LESSEE and LESSOR may, at LESSOR's option, retain the same as its property or dispose of the same in such manner as LESSOR may deem fit at LESSEE'S cost.

(D) In addition, if the LESSEE EVENT OF DEFAULT constitutes a failure by LESSEE to pay any amount owed to LESSOR hereunder, then LESSEE shall pay to LESSOR said amount(s) together with interest thereon at the rate of ten percent (10%) per annum. If the LESSEE EVENT OF DEFAULT constitutes LESSEE'S failure to pay amounts to other persons, then LESSOR shall have the right (but not the obligation), at its option, to cure such LESSEE EVENT OF DEFAULT; in which event LESSEE shall pay to LESSOR the cost to LESSOR of curing such LESSEE EVENT OF DEFAULT, together with interest thereon at the rate of ten percent (10%) per annum. In either of the above situations, said amounts owed plus interest shall be paid by LESSEE to LESSOR immediately upon demand.

(E) In addition to the rights and remedies set forth in Section 19.02(A), (B), (C) and (D), LESSOR shall be entitled to seek in a court of competent jurisdiction any legal or equitable remedies to which it may be entitled.

Notwithstanding anything in this Lease Agreement to the contrary, if LESSEE shall be in default in the performance of any of the terms or provisions of this Lease Agreement and if LESSOR shall give to LESSEE notice in writing of such default specifying the nature thereof, and if LESSEE shall fail to cure such default within the time specified in this Lease Agreement, or immediately if such default requires emergency action, LESSOR may, in addition to its other legal and equitable remedies, cure such default for the account of and at the cost and expense of LESSEE, and the sums so expended by LESSOR, including reasonable legal fees, shall be deemed to be additional rent and shall be paid by LESSEE immediately upon demand by LESSOR.

19.03. Election Notice. LESSOR may elect to exercise the rights afforded to it under Section 19.02(A), (B) or (E) of this Lease Agreement only by giving notice of such election (each an "ELECTION NOTICE"), in addition to any notice provided for under Section 19.01 of this Lease Agreement, to:

(A) LESSEE; and

(B) To each LEASEHOLD MORTGAGEE of LESSEE (at the address for each such LEASEHOLD MORTGAGEE as theretofore provided in writing to LESSOR in accordance with Section 10.02 hereof).

19.04. Rights of LEASEHOLD MORTGAGEES Upon LESSEE EVENT OF DEFAULT. If LESSEE shall create or suffer a LESSEE EVENT OF DEFAULT under this Lease Agreement, and if any LEASEHOLD MORTGAGEE has otherwise complied with the provisions of Section 10.02 hereof, then, notwithstanding anything contained in this Lease Agreement to the contrary, each said complying LEASEHOLD MORTGAGEE shall have the following rights subject to the following limitations:

(A) LESSOR's right to complete the exercise of any of the rights or remedies afforded to LESSOR under Section 19.02 of this Lease Agreement shall be subject to the following rights of each LEASEHOLD MORTGAGEE:

(i) In the case of a LESSEE EVENT OF DEFAULT in respect of a monetary obligation of LESSEE under this Lease Agreement, any such LEASEHOLD MORTGAGEE shall have the right, within ten (10) days after the date upon which any ELECTION NOTICE is given by LESSOR, to pay to LESSOR such sums which are due and payable and thereby cure such LESSEE EVENT OF DEFAULT; or

(ii) In the case of a LESSEE EVENT OF DEFAULT in respect of a non-monetary obligation of LESSEE under this Lease Agreement (other than one of the

non-monetary obligations described in Section 19.04(A)(iii) below), any such LEASEHOLD MORTGAGEE shall have the right, within forty-five (45) days after the date upon which any ELECTION NOTICE is given by LESSOR, to cure or remove any such non-monetary default; provided that within fifteen (15) days of receipt of an ELECTION NOTICE arising from LESSEE EVENT OF DEFAULT in respect of a non-monetary obligation, LEASEHOLD MORTGAGEE gives LESSOR written notice of its intent to cure such LESSEE EVENT OF DEFAULT and provided further that if any such non-monetary LESSEE EVENT OF DEFAULT under this Section 19.04(A)(ii) cannot, after the continuing exercise of all due diligence, reasonably be cured or removed within such forty-five (45) day period, then the time after the delivery of such ELECTION NOTICE by which any such LEASEHOLD MORTGAGEE shall remedy such non-monetary LESSEE EVENT OF DEFAULT under this Section 19.04(A)(ii) shall be extended for such period as may reasonably be necessary, pursuant to the exercise of all due diligence, to so cure said LESSEE EVENT OF DEFAULT; or

(iii) In the case of a LESSEE EVENT OF DEFAULT in respect of a non-monetary obligation of LESSEE under this Lease Agreement which, by its nature, is not susceptible of being cured by any such LEASEHOLD MORTGAGEE unless and until any such LEASEHOLD MORTGAGEE shall have first obtained lawful possession of LESSEE's interests in the DEMISED PREMISES and under this Lease Agreement (including possession by a court-appointed receiver), any such LEASEHOLD MORTGAGEE shall have the right, within forty-five (45) days after the date upon which any ELECTION NOTICE is given by LESSOR, to elect to institute foreclosure proceedings so as to obtain lawful possession of LESSEE's interests in the DEMISED PREMISES and under this Lease Agreement, provided that such LEASEHOLD MORTGAGEE shall have given LESSOR written notice of its intent to cure such LESSEE EVENT OF DEFAULT within fifteen (15) days after the date upon which any ELECTION NOTICE was given by LESSOR and, in the event that any such LEASEHOLD MORTGAGEE timely institutes said foreclosure proceedings and with all due diligence continually prosecutes the same to completion, the time after the delivery of such ELECTION NOTICE by which any such LEASEHOLD MORTGAGEE shall remedy such non-monetary LESSEE EVENT OF DEFAULT under this Section 19.04(A)(iii) shall be extended for such period as may reasonably be necessary, pursuant to the exercise of all due diligence, for such LEASEHOLD MORTGAGEE to so obtain lawful possession of LESSEE's interests in the DEMISED PREMISES and under this Lease Agreement pursuant to such foreclosure action and to so cure all LESSEE EVENTS OF DEFAULT; provided that (a) any such LEASEHOLD MORTGAGEE shall be deemed not to have exercised due diligence in prosecuting said foreclosure proceedings unless, simultaneously with the institution of said foreclosure proceedings and thereafter, as necessary, said LEASEHOLD MORTGAGEE shall petition the court for appointment of a receiver to carry out LESSEE's obligations under this Lease Agreement during the pendency of said foreclosure proceedings and/or to cure LESSEE EVENTS OF DEFAULT under this Lease Agreement in accordance with this Section 19.04(A)(iii); and (b) any such LEASEHOLD MORTGAGEE or its receiver, upon obtaining such lawful possession of or otherwise acquiring LESSEE's interest in the DEMISED PREMISES and under this Lease Agreement, shall be required promptly to cure all LESSEE EVENTS OF DEFAULT then reasonably susceptible of being cured by such LEASEHOLD MORTGAGEE or its receiver and otherwise to perform and continue to perform LESSEE's obligations under this Lease Agreement; and (c) nothing herein

contained shall preclude LESSOR, subject to the provisions of this Section 19.04, from exercising any rights or remedies under this Lease Agreement with respect to any other LESSEE EVENT OF DEFAULT occurring during the pendency of any such foreclosure proceedings. Notwithstanding any provisions hereof to the contrary, subsequent to any such LEASEHOLD MORTGAGEE's obtaining lawful possession of LESSEE's interests in the DEMISED PREMISES and under this Lease Agreement pursuant to this Section 19.04(A) (iii), and provided that all LESSEE EVENTS OF DEFAULT susceptible of being cured have been cured and the act of discontinuing such possession or foreclosure shall not thereupon precipitate further LESSEE EVENTS OF DEFAULT, any such LEASEHOLD MORTGAGEE shall not be obligated to continue such possession or to continue such foreclosure proceedings.

(B) Each LEASEHOLD MORTGAGEE shall have and be subrogated to any and all rights of LESSEE with respect to the remedying of any LESSEE EVENT OF DEFAULT. LESSOR shall accept the performance by any such LEASEHOLD MORTGAGEE of any of the terms, covenants and provisions on LESSEE's part to be performed hereunder with the same force and effect as though performed by LESSEE.

(C) In the event of the termination of this Lease Agreement by reason of the happening of any LESSEE EVENT OF DEFAULT, promptly after LESSOR's repossession of the DEMISED PREMISES and IMPROVEMENTS, LESSOR shall deliver written notice of the fact of such termination and repossession to each LEASEHOLD MORTGAGEE hereunder. Upon written request made by any such LEASEHOLD MORTGAGEE within twenty (20) days after the delivery of such repossession notice by LESSOR, LESSOR and any such LEASEHOLD MORTGAGEE shall, within thirty (30) days after LESSOR's receipt of such request, enter into a new lease of the DEMISED PREMISES and the IMPROVEMENTS. Such new lease shall be effective as of the date of the termination of this Lease Agreement, shall continue for a term equal to that period, absent the termination hereof, which would have been the unexpired portion of the LEASE TERM as of the date of such termination, and shall otherwise be on the same terms, covenants, conditions and agreements as are contained in this Lease Agreement; provided that LESSOR's obligations to enter into any such new lease shall be contingent upon any such LEASEHOLD MORTGAGEE: (i) contemporaneously with the delivery of such request to enter into a new lease, paying to LESSOR all sums which are or would have been payable by LESSEE hereunder through the effective date of termination; and (ii) paying to LESSOR, at the time of the execution and delivery of such new lease, any and all sums hereunder which are or would have been due from the effective date of termination of this Lease Agreement to and including the date of the execution and delivery of such new lease, together with all reasonable expenses incurred by LESSOR in connection with the termination of this Lease Agreement, repossession of the DEMISED PREMISES and the execution and delivery of such new lease, including, without limitation, attorney fees and broker's fees and commissions; and (iii) on or prior to the date of execution and delivery of such new lease, agreeing in writing with LESSOR that, promptly following the delivery of such new lease, such LEASEHOLD MORTGAGEE will perform or cause to be performed all terms, covenants and agreements herein contained on LESSEE's part to have been performed, to the extent that LESSEE shall have failed to perform the same up to the date of execution and delivery of such new lease and to the extent that such terms, covenants and agreements, by their nature, are

reasonably susceptible of being performed by such LEASEHOLD MORTGAGEE; and (iv) on or prior to the date of execution and delivery of such new lease, agreeing in writing to indemnify LESSOR from and against any and all claims, actions or causes of action which LESSEE may have or claim to have arising directly or indirectly out of or in connection with LESSOR entering into said new lease with such LEASEHOLD MORTGAGEE. Upon the execution and delivery of such new lease, all subleases which theretofore may have been assigned and transferred, whether by operation of law or otherwise, to LESSOR shall thereupon be assigned and transferred without recourse by LESSOR to the LEASEHOLD MORTGAGEE, as the new tenant. Nothing contained in this subsection 19.04(C) shall be deemed to require LESSOR to enter a new lease or deliver lawful possession of the DEMISED PREMISES or the IMPROVEMENTS to any such LEASEHOLD MORTGAGEE unless and until LESSOR shall have first obtained the lawful possession thereof.

(D) Notwithstanding anything contained in this Section 19.04 to the contrary, if at any time there shall be more than one LEASEHOLD MORTGAGEE holding a LEASEHOLD MORTGAGE on LESSEE's interests in the DEMISED PREMISES or under this Lease Agreement, the LEASEHOLD MORTGAGEE holding the LEASEHOLD MORTGAGE having the highest priority shall have the sole right to proceed under this Section 19.04; provided that if the LEASEHOLD MORTGAGEE holding the highest priority shall fail or refuse to exercise its rights under this Section 19.04, each other LEASEHOLD MORTGAGEE, in the order of the priority of their respective LEASEHOLD MORTGAGES, shall have the right to proceed and exercise the rights granted hereunder within ten (10) days following the expiration of the time frames established for the immediately preceding LEASEHOLD MORTGAGEE as aforesaid.

19.05. LESSOR EVENT OF DEFAULT. LESSOR shall create an event of default (a "LESSOR EVENT OF DEFAULT") under this Lease Agreement if:

(A) LESSOR shall fail to pay any amount which is due and payable by LESSOR to LESSEE hereunder or to any other PERSON in respect of the DEMISED PREMISES within thirty (30) days after the same shall be due and payable (or, in the case of any amount the payment of which is contested in good faith by LESSOR and in connection with which LESSOR shall have established and maintained adequate payment reserves or bonds, within fifteen (15) days after the conclusion of such contest); or

(B) LESSOR shall fail to (i) achieve SUBSTANTIAL COMPLETION of the INTERMODAL IMPROVEMENTS on or before the date set forth in Section 4.02(B) hereof; (ii) achieve SUBSTANTIAL COMPLETION of the THEATER IMPROVEMENTS on or before the date set forth in Section 4.03(B) hereof; (iii) achieve SUBSTANTIAL COMPLETION of the GRAND HALL IMPROVEMENTS on or before the date set forth in Section 4.04(B) hereof; or (iv) achieve SUBSTANTIAL COMPLETION of the PUBLIC AREA IMPROVEMENTS on or before the date set forth in Section 4.05(B) hereof; and if any such failure described in this Section 19.05(B) shall remain uncured for fifteen (15) days after notice of such failure shall have been delivered by LESSEE to LESSOR; or

(C) LESSOR shall fail to perform or comply with any other term or provision of this Lease Agreement and if such failure shall remain uncured for thirty (30) days after notice of such failure shall have delivered by LESSEE to LESSOR (or, if such failure is not reasonably capable of being cured within such thirty (30) day period, then if LESSOR shall not promptly commence the correction of such failure within said thirty (30) day period or thereafter having so commenced such correction shall fail to complete such correction with due diligence and within a reasonable time); or

(D) If LESSOR shall be or become, either voluntarily or involuntarily, a debtor in any case commenced under the provisions of the U.S. Bankruptcy Code, as amended, and such case is not stayed or discharged within ninety (90) days after the commencement thereof.

19.06. LESSEE Remedies Upon LESSOR EVENT OF DEFAULT. If a LESSOR EVENT OF DEFAULT shall occur under this Lease Agreement, then, in addition to any other rights or remedies to which LESSEE may be entitled hereunder, in equity or at law, LESSEE shall have the following rights and remedies:

(A) LESSEE may, at its option, terminate this Lease Agreement by giving written notice to that effect to LESSOR, in which event this Lease Agreement shall terminate effective as of the date of such notice and any BASE RENT or other sums due and payable by LESSEE to LESSOR hereunder shall be apportioned as of the date of termination.

(B) In addition, if the LESSOR EVENT OF DEFAULT constitutes a failure by LESSOR to pay any amount owed to LESSEE hereunder, then LESSOR shall pay to LESSEE said amount together with interest thereon at the rate of ten percent (10%) per annum. If the LESSOR EVENT OF DEFAULT constitutes LESSOR'S failure to pay amounts to other persons, then LESSEE shall have the right (but not the obligation), at its option, to cure such LESSOR EVENT OF DEFAULT; in which event LESSOR shall pay to LESSEE the cost to LESSEE of curing such LESSOR EVENT OF DEFAULT (including reasonable attorney fees), together with interest thereon at the rate of ten percent (10%) per annum. In either of the above situations, said amounts owed plus interest shall be paid by LESSOR to LESSEE immediately upon demand.

(C) In addition to the rights and remedies set forth in Section 19.06(A) and (B), LESSEE shall be entitled to seek in a court of competent jurisdiction any legal or equitable remedies to which it may be entitled.

ARTICLE 20

Quiet Enjoyment; LESSOR Warranties and Representations; Environmental Matters.

20.01. Quiet Enjoyment. LESSOR covenants with and warrants and represents to LESSEE that, so long as LESSEE is not in default hereunder, LESSEE, its successors and assigns, shall at all times during the LEASE TERM peaceably and quietly have, hold, occupy

and enjoy the DEMISED PREMISES without hindrance or molestation by LESSOR and/or by any PERSON claiming rights in respect of the DEMISED PREMISES, other than rights created by LESSEE and rights arising out of or resulting from the PERMITTED ENCUMBRANCES.

20.02. Warranties and Representations.

(A) LESSOR Warranties. As material inducements for LESSEE to enter into this Lease Agreement, LESSOR covenants with LESSEE, and warrants and represents to LESSEE that:

- (i) the DEMISED PREMISES currently are zoned C-3 (Central Business District); and that the DEMISED PREMISES and each component of the IMPROVEMENTS will at the SUBSTANTIAL COMPLETION of each such component comply with (a) all building codes and zoning requirements applicable at the time of SUBSTANTIAL COMPLETION of each component of the IMPROVEMENTS, and (b) all applicable easements, restrictions, reservations, conditions, covenants and other laws, codes, ordinances, rules and regulations;
- (ii) LESSOR is the owner of marketable fee simple title in and to the portion of the DEMISED PREMISES upon which the INTERMODAL IMPROVEMENTS are situate free and clear from all title defects, liens, encumbrances, easements, leases, tenancies or other possessory rights, except for the matters which are set forth in Annex 8, which is attached hereto and made a part hereof (the "PERMITTED ENCUMBRANCES"). With respect to the remainder of the DEMISED PREMISES, the LESSOR was conveyed title to such property by LESSEE or pursuant to conveyance of a portion of Third Avenue from the City of Huntington immediately prior to the execution of this Lease Agreement and makes no express or implied representations or warranties with respect to the title to such property other than that it has no actual knowledge of any encumbrances other than the PERMITTED ENCUMBRANCES. The PERMITTED ENCUMBRANCES include (or may include) a Reciprocal Easement Agreement (the "REA") which, among other things, grants and creates a comprehensive set of easements which both benefit and encumber the DEMISED PREMISES. If the REA has not been filed for record on the EFFECTIVE DATE of this Lease Agreement, LESSEE agrees to subordinate its leasehold estate in the DEMISED PREMISES to the REA in a document recordable under the laws of the State of West Virginia;

- (iii) LESSOR has the right, power and authority to enter into this Lease Agreement and perform its obligations hereunder, and the individual executing this Lease Agreement on behalf of LESSOR is duly authorized and empowered to act for and bind LESSOR;
- (iv) the execution and delivery of this Lease Agreement by LESSOR, and the performance by LESSOR of its obligations hereunder, do not and will not contravene or conflict with (a) any existing provision of law or any rule or regulation of the State of West Virginia or the United States applicable to LESSOR or the DEMISED PREMISES, or (b) any order, writ, judgment, injunction, decree, determination or award presently in effect.
- (v) LESSOR has not received any notices, nor does LESSOR have knowledge of any threatened actions, regarding (a) the condemnation of the DEMISED PREMISES, (b) any violations of any laws, codes, ordinances, rules, regulations, easements, restrictions, reservations, conditions or covenants in respect of the DEMISED PREMISES or (c) any tax assessments or improvements assessments which would impose any economic burdens or obligations on or in respect of the DEMISED PREMISES.

Subject to the limitations contained in Section 24.14 hereof, LESSOR, to the extent permitted by law, agrees to and shall indemnify LESSEE and save it harmless from and against any and all loss, liability, damage or claims arising out of or in connection with any material breach or inaccuracy of any or all of the warranties and representations set forth in foregoing Section 20.02(A).

(B) Environmental Matters. LESSOR hereby expressly represents, warrants and covenants to LESSEE that as of the date hereof and throughout the LEASE TERM: (i) neither LESSOR nor any other person acting under LESSOR'S authority and control, including, but not limited to, LESSOR'S contractors, subcontractors, materialmen, tenants, subtenants, agents, representatives, officers or employees, have used or permitted, or shall use or permit, any "Hazardous Substances", as hereinafter defined, to be placed, held, stored or disposed of on the DEMISED PREMISES or any portion thereof, in violation of any "Environmental Laws", as hereinafter defined; (ii) to the best of LESSOR'S knowledge, after diligent inquiry in the form of that certain Environmental Assessment dated February, 2000 prepared by Woolpert, LLP, and those certain Environmental and Remediation Assessments (2 volumes) prepared by Triad Engineering dated August 22, 2002 (collectively, the "Site Assessment"), and subject to the matters disclosed in the Site Assessment, the Voluntary Remediation Agreement dated August 15, 2002 between the Huntington Urban Renewal Authority and the West Virginia Division of Environmental Protection ("VRA"), and the Land Use Covenant recorded in the Office of the Clerk of the County Commission of Cabell County, West Virginia in connection with the VRA (the "Land Use Covenant"), the DEMISED PREMISES do not now contain any Hazardous Substances in violation of any Environmental Laws; and (iii) LESSOR, throughout the LEASE

TERM, shall not permit any Hazardous Substances to be placed, held, stored or disposed of on the DEMISED PREMISES or any portion thereof or incorporated into any IMPROVEMENTS to be constructed thereon in violation of any Environmental Laws or in a manner that presents a risk to human health or the environment.

LESSEE hereby expressly represents, warrants and covenants to LESSOR that, except for the matters disclosed in the Site Assessment, the VRA and the Land Use Covenant, as of each respective DATE OF POSSESSION of a component of the IMPROVEMENTS and thereafter throughout the LEASE TERM, LESSEE shall not permit any Hazardous Substances to be placed, held, stored or disposed of on such component of the IMPROVEMENTS or the portion of the DEMISED PREMISES upon which such component is located, or any portion thereof, in violation of any Environmental Laws or in a manner that presents a risk to human health or the environment, by LESSEE or any other person acting under LESSEE'S authority, including, but not limited to, LESSEE'S contractor, subcontractors, materialmen, agents, representatives, officers and employees. LESSEE further represents, covenants and agrees that it will comply with, and cause its tenants to comply with, the terms of the VRA and Land Use Covenant.

The term "Hazardous Substances" shall mean any hazardous, toxic or dangerous wastes, substances or materials defined as such in or for the purpose of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, now or at any time hereafter in effect (collectively, the "Environmental Laws").

Subject to the limitations contained in Section 24.14 hereof, LESSOR, to the extent permitted by law, and LESSEE each hereby agrees to and shall indemnify and hold harmless the other and its officers, directors, trustees, shareholders, partners, members and employees from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever, paid, incurred or suffered by, or asserted against, such indemnified party or its respective officers, directors, trustees, shareholders, partners, members or employees, with respect to, or as a direct or indirect result of, any violation of the foregoing representations, warranties or covenants. The provisions of this Article shall survive the termination or expiration of this Lease Agreement.

(C) LESSEE Warranties. As material inducements for LESSOR to enter into this Lease Agreement, LESSEE covenants with LESSOR, and warrants and represents to LESSOR that:

- (i) LESSEE has the right, power and authority to enter into this Lease Agreement and perform its obligations hereunder, and the individual executing this Lease Agreement on behalf of LESSEE is duly authorized and empowered to act for and bind LESSEE; and

(ii) the execution and delivery of this Lease Agreement by LESSEE, and the performance by LESSEE of its obligations hereunder, do not and will not contravene or conflict with (a) any existing law or any rule or regulation of the States of West Virginia or Ohio, or the United States, applicable to LESSEE or the DEMISED PREMISES, or (b) any order, writ, judgment, injunction, decree, determination or award presently in effect and known to LESSEE.

ARTICLE 21

Inspection; Access

During the LEASE TERM, LESSOR and its duly authorized representatives may enter upon the DEMISED PREMISES at all reasonable times after reasonable notice to LESSEE to perform any obligations required to be performed by LESSOR under the terms of this Lease Agreement and to inspect the DEMISED PREMISES; provided that, any such entry shall not unreasonably interfere with the activities of LESSEE or its agents, contractors or sublessees in or on the DEMISED PREMISES nor cause or result in any damage to the DEMISED PREMISES. In addition, LESSOR shall have the right during the LEASE TERM, to hold a pass key for entry into the IMPROVEMENTS in the event of an emergency.

ARTICLE 22

Notices and Payments

22.01. Addresses for Notices. All notices and other communications required or permitted to be given or delivered under this Lease Agreement to LESSOR or to LESSEE (which notices or communications must be in writing), shall either be (i) delivered personally or (ii) placed in the U.S. Mail, Certified Mail, Return Receipt Requested, addressed as follows:

If to LESSOR:

THE TRI-STATE TRANSIT AUTHORITY
1120 Virginia Avenue
Huntington, West Virginia 25704
Attn: Arna V. Shaffer, General Manager and CEO

with a copy to:

Christopher J. Plybon, Esq.
Huddleston Bolen, LLP
611 Third Avenue
Huntington, West Virginia 25701

If to LESSEE:

METROPOLITAN HUNTINGTON, LLC
150 East Broad Street
Suite 305
Columbus, Ohio 43215
Attn: Timothy Rollins

with a copy to:

John P. Wellner, Esq.
Vorys, Sater, Seymour & Pease LLP
52 E. Gay Street
Columbus, OH 43215

Any notice delivered personally shall be deemed to have been given and delivered when so personally delivered. Any notice mailed as aforesaid shall be deemed to have been given and delivered as of the date so delivered as noted on the return receipt, unless the same is returned marked "Unclaimed" or "Refused", in which case the same shall be deemed given and delivered as of the date the same was "Refused" or first noted as "Unclaimed" by the postal service.

22.02. Changes. LESSOR and LESSEE may, by notice to the other party, from time to time and at any time each designate different PERSON(s) or address(es) for the giving of notices or other communications required or permitted to be given to the party designating such new address.

ARTICLE 23

Force Majeure

The time periods by which LESSOR and/or LESSEE are required to perform their obligations under this Lease Agreement shall be extended by the period of any delays arising by reason of "excused causes". "Excused causes" shall include, without limitation, war, nuclear disaster, insurrection, strikes or other labor disputes, unavailability of materials, riot, rationing, civil disobedience, fire, flood, hurricane, earthquake or other adverse weather conditions not reasonably anticipatable, any act of God, acts, actions, proceedings or regulations of any governmental authority (including, without limitation, delay in or failure of disbursement of the STATE GRANT or delay in or failure of conveyance by the City of Huntington of the designated portion of the Third Avenue right of way to be conveyed to LESSOR for inclusion in the DEMISED PREMISES) and any "cause for delay" for which the CONTRACTOR is granted an extension of time under the construction contract(s) for the IMPROVEMENTS. "Excused causes" shall not include (i) causes which result from a substantial fault or negligence of the

party seeking to invoke the protections afforded by this Article 23 or (ii) except as expressly set forth above with respect to disbursement of the STATE GRANT, and subject to the limitation on LESSOR's obligations to pay costs and expenses for the construction of the IMPROVEMENTS in excess of the FTA GRANT funds and STATE GRANT funds as set forth in this Lease Agreement, the lack of sufficient funds.

ARTICLE 24

Miscellaneous Provisions

24.01. Brokers, Finders and Others. LESSOR and LESSEE each (i) warrants and represents to the other that it has had no compensable dealings, negotiations, agreements, consultations or other transactions with any broker, finder or other intermediary in respect of the DEMISED PREMISES or this Lease Agreement, and that no PERSON is entitled to any brokerage fee, commission or other payment in respect of this Lease Agreement, the transactions contemplated thereby and/or the DEMISED PREMISES, arising from agreements, arrangements or undertakings made or effected by it with any third party, and (ii) agrees to and shall indemnify the other against any and all claims, actions and causes of actions arising out of or in connection with any breach or inaccuracy of any or all of the foregoing warranties and representations.

24.02. Memorandum of Lease. LESSOR and LESSEE shall, upon request by the other, execute and deliver a memorandum of lease or similar instrument reflecting such of the terms of this Lease Agreement as may be required by law or otherwise acceptable to the parties, which instrument shall be in a form recordable under the laws, regulations and customs of the State of West Virginia and its political subdivisions and which instrument may be recorded in appropriate public offices.

24.03. Estoppel Certificates. LESSOR or LESSEE shall, within ten (10) days after written request from the other party from time to time and at any time, complete, execute, acknowledge and deliver to the other party a written instrument in a form acceptable to both of LESSOR and LESSEE certifying: (i) that this Lease Agreement is unmodified and in full force and effect (or if there have been modifications, that it is in full force and effect as modified and stating the modifications), (ii) the dates to which BASE RENT and other amounts have been paid in advance, if any, (iii) whether or not, to the knowledge of such party, the requesting party is in default in the performance of any of its obligations under this Lease Agreement and, if so, specifying each such default of which such party has knowledge, and (iv) such other factual matters as may be acceptable to both of LESSOR and LESSEE, it being intended that any such instrument may be delivered to and relied upon by any prospective lender, assignee or purchaser of interests in this Lease Agreement or in the DEMISED PREMISES.

24.04. Successors and Assigns. Except as otherwise specifically provided herein, this Lease Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive, as well as immediate, successors and assigns) of LESSOR and LESSEE.

24.05. Governing Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

24.06. Remedies Cumulative. All rights and remedies of LESSOR and LESSEE enumerated in this Lease Agreement shall be cumulative and, except as specifically contemplated otherwise by this Lease Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised and enforced concurrently. No waiver by LESSOR or by LESSEE of any covenant or condition of this Lease Agreement to be kept or performed by any other party to this Lease Agreement shall constitute a waiver by the waiving party of any subsequent breach of such covenant or condition or authorize the breach or nonobservance on any other occasion of the same or any other covenant or condition of this Lease Agreement. No receipt of any payments by LESSOR from LESSEE after termination of this Lease Agreement or after the service of any notice of commencement of any suit or final judgment for possession of the DEMISED PREMISES shall reinstate, continue or extend the term of this Lease Agreement or affect any such notice, demand or suit or imply consent for any action for which consent is required.

24.07. Duplicate Originals. This Lease Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall constitute a single instrument.

24.08. Article and Section Captions. The Article and Section captions contained in this Lease Agreement are included only for convenience of reference and do not define, limit, explain or modify this Lease Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Lease Agreement.

24.09. Severability. If any provision of this Lease Agreement or the application of any provision to any PERSON or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Lease Agreement or the application of said provision to any other PERSON or circumstance, all of which other provisions shall remain in full force and effect, and it is the intention of LESSOR and LESSEE that if any provision of this Lease Agreement is susceptible of two or more constructions, one of which would render the provision valid and the other or others of which would render the provision invalid, then such provision shall have a meaning which renders it valid.

24.10. Amendments; Waiver. No change, termination or attempted waiver of any of the provisions of this Lease Agreement shall be binding upon LESSOR or LESSEE unless in writing and signed by the party affected. The waiver by LESSOR or LESSEE of, or the failure by LESSOR or LESSEE to take action with respect to, any breach of or default by the other under any of the terms, covenants or conditions contained herein shall not be deemed to be a waiver of any such term, covenant or condition or any subsequent or continuing failure in respect of the same. No officer, employee or other servant or agent of LESSOR or LESSEE is authorized to make any representation, warranty or other promise not contained in this Lease Agreement or another writing in respect of the subject matter hereof.

24.11. Covenants. All of the covenants contained herein shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each instance.

24.12. Payments. In the event that the payment of any amount owed hereunder shall be due and payable on a U.S. federal holiday or on a Saturday or Sunday, the same may be made on the next day which is not a U.S. federal holiday or a Saturday or Sunday, without penalty or default.

24.13. Accord and Satisfaction. Payment by LESSEE or receipt by LESSOR of a lesser amount than the rents herein stipulated may be, at LESSOR's sole option, deemed to be on account of the earliest due stipulated rents, or deemed to be on account of rent owing for the current period only, notwithstanding any instructions by or on behalf of LESSEE to the contrary, which instructions shall be null and void, and no endorsement or statement on any check submitted in payment of rent shall be deemed an accord and satisfaction, and LESSOR may accept such check or payment without prejudice to LESSOR's right to recover the balance of such rent or other sums or to pursue any other remedy in this Lease Agreement or in law or in equity against LESSEE.

24.14. Levy Revenues and Proceeds. Notwithstanding any provision of this Lease Agreement to the contrary, LESSEE agrees that LESSOR's levy revenues, and the proceeds thereof shall not be required to be used to fund the construction of the IMPROVEMENTS. LESSEE, for itself and its successors and assigns, further agrees that upon the occurrence of a LESSOR EVENT OF DEFAULT, or in the event of a breach of the representations and warranties contained herein by LESSOR, neither LESSEE, nor its successors or assigns, shall be entitled to recover from or look to recover from, nor shall liability be sought, obtained or enforced against LESSOR's levy revenues or the proceeds thereof. Any liability of LESSOR under this Lease Agreement may be enforced only against properties or assets of LESSOR other than its levy revenues or the proceeds thereof.

Article 25

Federal Transportation Administration Requirements

25.01. FTA Grant Requirements. LESSEE shall take all actions reasonably requested by LESSOR to assist LESSOR in complying with the requirements of the agreement governing the FTA Grant and related laws and regulations.

25.02. Non-Discrimination. LESSEE will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, or disability. LESSEE will take action to ensure that applicants are considered for employment, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin, or disability, including, without limitation, in the following respects: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay

or other forms of compensation; and selection for training, including apprenticeship. LESSEE also agrees to include these requirements in each sublease of the INTERMODAL IMPROVEMENTS and THEATER IMPROVEMENTS.

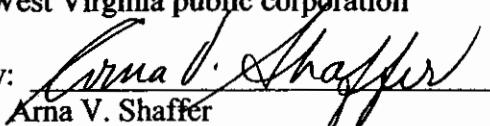
25.03. Employment Reports. LESSEE acknowledges that the STATE GRANT and other funding sources used by LESSOR include requirements for reporting of jobs/employment at the PROJECT. LESSEE agrees to cooperate and to require its subtenants to cooperate in obtaining all job/employment information required to be reported in connection with the PROJECT.

25.04. Disadvantaged Business Enterprise. It is in the Disadvantaged Business Enterprise Affirmative Action Plan of LESSOR that disadvantaged business enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. LESSEE will cooperate reasonably with LESSOR in LESSOR's efforts to implement its plan.

IN WITNESS WHEREOF, this Lease Agreement was executed on behalf of LESSOR and LESSEE by the duly authorized officials or officers thereof, to be effective as of the date first above written.

LESSOR:

THE TRI-STATE TRANSIT AUTHORITY, a
West Virginia public corporation

By: 
Arna V. Shaffer
Its: General Manager & CEO

STATE OF WEST VIRGINIA)
) SS:
COUNTY OF CABELL)

I, Dianna L. McCallister, a Notary Public of said County, do certify that Arna V. Shaffer, who signed the writing annexed hereto bearing date of June 23, 2004, as General Manager and CEO for The Tri-State Transit Authority, a West Virginia public corporation, has this day in my said County, before me, acknowledged the said writing to be the act and deed of said Authority.

Given under my hand this 23 day of June, 2004

Dianna L. McCallister
Notary Public
My Commission Expires: 3-11-2014



LESSEE:

METROPOLITAN HUNTINGTON, LLC, an
Ohio limited liability company

By: Metropolitan Partners, LLC,
an Ohio liability company,
Its Managing Member

By: Timothy Rollins
Timothy Rollins
Its: Authorized Representative

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

I, Kimberly E. Welty, a Notary Public of said County, do certify that Timothy Rollins, who signed the writing annexed hereto bearing date of June 23, 2004, as Authorized Representative of Metropolitan Partners, LLC, an Ohio limited liability company and Managing Member of Metropolitan Huntington, LLC, an Ohio limited liability company, has this day in my said County, before me, acknowledged the said writing to be the act and deed of said limited liability companies.

Given under my hand this 23rd day of June, 2004.

Kimberly E. Welty
Notary Public
My Commission Expires: _____



This Instrument Jointly Prepared by:

VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
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SCHEDULE OF ANNEXES

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Annex 1

Demised Premises

Tract #1 - West Intermodal Parcel

Beginning from a #5 Rebar and Cap at the intersection of the southern Veterans Memorial Boulevard right-of-way line and the eastern 8th Street right-of-way line; Thence running with the southern Veterans Memorial Boulevard right-of-way North 78°55'08" East a distance of 387.43' to a point being the corner of Veterans Memorial Boulevard and the proposed 9th Street western right-of-way line; Thence leaving the Veterans Memorial Boulevard right-of-way and running with the proposed western 9th Street right-of-way South 11°31'44" East a distance of 238.17' to a point; Thence leaving the proposed western 9th Street right-of-way and running South 78°25'58" West a distance of 34.50' to a point; Thence North 11°31'44" West a distance of 2.81' to a point; Thence South 78°25'58" passing the northwest corner of Tract #4 at 71.16', and with the northern line of the Uptowner Inns, inc. tract in all a distance of 351.70' to a point in the eastern right-of-way line of 8th Street; Thence following the 8th Street right-of-way North 11°54'57" West, passing a #5 Rebar and Cap at 73.00', in all a distance of 238.63' to the **Point of Beginning** containing 2.11 acres or 91771 square feet more or less.

Tract #2 - Proposed 9th Street

Commencing from a #5 Rebar and Cap at the intersection of the southern Veterans Memorial Boulevard right-of-way line and the eastern 8th Street right-of-way line thence running with the southern Veterans Memorial Boulevard right-of-way North 78°55'08" East a distance of 387.43' to a point being the **Point of Beginning**; Thence following the Veterans Memorial Boulevard right-of-way line North 78°55'08" East a distance of 40.00' to a point; Thence leaving the Veterans Memorial Boulevard right-of-way line and running South 11°31'44" East a distance of 488.92' to a point on the new northern right-of-way line of 3rd Avenue; Thence following the 3rd Avenue right-of-way line South 78°30'10" West a distance of 40.00' to a point; Thence leaving the new 3rd Avenue right-of-way line and running North 11°31'44" West a distance of 489.21' to the **Point of Beginning** containing 0.45 acres or 19563 square feet more or less.

Tract #3 - East Intermodal Parcel

Beginning at a #5 Rebar and Cap at the southwest intersection of the southern Veterans Memorial Boulevard right-of-way line and the western 10th Street right-of-way line, being an existing corner of the Huntington Urban Renewal Authority (H.U.R.A.) tract; Thence running with the western 10th Street right-of-way line South 11°35'18" East a distance of 193.58' to a point; Thence leaving the 10th Street right-of-way line and running South 78°28'16" West a distance of 435.06' to a point on the proposed eastern 9th Street right-of-way line; Thence following the proposed eastern 9th Street right-of-way line North 11°31'44" West a distance of 226.16' to a point on the southern Veterans Memorial Boulevard right-of-way line; Thence following the southern Veterans Memorial Boulevard right-of-way line North 78°55'08" East a distance of 215.01' to a #5 Rebar and Cap; Thence with a curve to the right with a radius of 443.16' and a delta angle of 09°04'00" with an arc length of 70.13' and a chord length of 70.05' bearing North 83°21'58" East to a #5 Rebar and Cap; Thence North 87°53'57" East a distance of 152.12' to the **Point of Beginning** containing 2.18 acres or 94905 square feet more or less.

Tract #4 - West Public Square Parcel

Beginning at a point at the intersection of the proposed 9th Street western right of way line and the new northern line of the 3rd avenue right of way; Thence running with the new northern 3rd Avenue right-of-way line South 78°30'10" West 105.50' to a point; Thence running North 11°34'02" West 253.90' to a point; Thence running North 78°25'58" East 71.16' to a point; Thence running South 11°31'44" East 2.81' to a point; Thence running North 78°25'58" East 34.50' to a point on the western line of the proposed 9th Street right-of-way; Thence following the proposed 9th Street western right-of-way line South 11°31'44" East 251.04' to the **Point of Beginning** containing 26,703 sq. ft. or .61 acres.

Excepting therefrom the following tract of land:

Exception Tract 1

Beginning from a point at the intersection of the new northern R/W line of 3rd Avenue and the western line of proposed 9th Street; thence
South 78°30'10" West 71.00' thence
North 11°31'54" West 134.99' thence
South 78°28'06" West 2.67' thence
North 11°31'54" West 39.67' thence
North 78°28'06" East 2.67' thence
North 11°31'54" West 30.00' thence
North 78°28'06" East 70.67' thence
South 11°31'54" East 30.00' thence
North 78°28'06" East 2.67' thence
South 11°31'54" East 39.67' thence
South 78°28'06" West 2.33' thence
South 11°31'54" East 134.96' containing 14,702 sq.ft. or 0.34 acres more or less.

This Tract #4 contains a net of 12,000 sq.ft. or .275 acres, more or less.

Tract #5 - East Public Square Parcel

Beginning from a point where the western right-of-way line of 10th Street intersects the new northern right-of-way line of 3rd Avenue;
Thence with the new 3rd Avenue right-of-way line running South 78°30'10" West a distance of 435.31' along the new 3rd avenue line to a point on the proposed 9th Street eastern right-of-way line;
Thence following the new eastern 9th Street right-of-way line North 11°31'44" West 262.76' to a point;
Thence leaving the 9th street right-of-way line and running North 78°28'16" East a distance of 435.06' to a point on the western 10th Street right-of-way line;
Thence following the western 10th street right-of-way line South 11°35'18" East a distance of 262.76' to the **Point of Beginning** containing 114,357 sq. ft. or 2.63 acres.

Excepting therefrom the following three(3) tracts of land:

Exception Tract 1:

Commencing from a point being the corner at the original 3rd avenue northern R/W and the western R/W line of 10th Street;
Thence running North 64°38'02" West 289.72' to the Point of Beginning being a point located to the southeast of the southeastern corner of the proposed Building #2; thence South 78°28'16" West 159.88'; thence South 33°28'16" West 10.25'; thence South 78°28'16" West 14.32'; thence North 56°31'44" West 13.50'; thence North 11°31'44" West 15.48'; thence North 33°28'16" East 11.78'; thence North 11°31'44" West 55.46'; thence North 78°28'16" East 182.67'; thence South 11°31'44" East 81.58' containing 15,239.09 sq.ft. or 0.350 acres more or less.

Exception Tract 2:

Commencing from a point being the corner at the original 3rd avenue northern R/W and the western R/W line of 10th Street; thence running South 11°35'20" East 23.81' to the Point of Beginning being a point located to the southeast of the southeastern corner of the proposed Building #3; thence South 78°30'10" West 112.67' ,thence North 11°31'44" West 180.00'; thence South 78°28'16" West 73.67'; thence North 11°31'44" West 81.58'; thence North 78°28'16" East 186.06'; thence South 11°35'18" East 261.58' containing 35,446 sq.ft. or 0.81 acres more or less.

Exception Tract 3:

Commencing from a point being the corner at the original 3rd avenue northern R/W and the western R/W line of 10th Street;
Thence running South 81°20'52" West 276.84' to the Point of Beginning being a point located to the southeast of the southeastern corner of the proposed Building #5 thence
South 78°28'16" West 145.00' thence
North 11°31'44" West 107.33' thence
North 78°28'16" East 145.00' thence
South 11°31'44" East 107.33' containing 15,563.32 sq.ft. or 0.357 acres more or less.

This Tract #5 contains a net of 48,110 sq.ft. or 1.11 acres, more or less.

Annex 2

Grand Hall Plans and Specifications

The Plans and Specifications for the GRAND HALL are identified as "Alternate #1" in those certain Drawings, Plans and Specifications comprised of drawings entitled "Pullman Square Marquee Theater Tenant Improvement," consisting of Bid Package BP-3, dated 3-3-04, prepared by Meacham & Apel Architects, Inc., Jezerinac Geers & Associates, Inc. and Korda/Nemeth Engineering, Inc.; and a Project Manual, dated 3-3-04, entitled "Pullman Square Marquee Theater Tenant Improvement," prepared by Meacham & Apel Architects, Inc., Jezerinac Geers & Associates, Inc. and Korda/Nemeth Engineering, Inc.

Annex 3

Intermodal Plans and Specifications

The Intermodal Plans and Specifications consist of the following two (2) sets of plans and specifications:

- (1) Those certain Drawings, Plans and Specifications comprised of drawings entitled "Pullman Square East Intermodal Facility (Building #1) and Pullman Square West Intermodal Facility (Building #7)," consisting of Bid Package BP-2, dated 5-1-03, prepared by Meacham & Apel Architects, Inc., Jezerinac Geers & Associates, Inc. and Korda/Nemeth Engineering, Inc.; and a Project Manual, dated 5-1-03, entitled "Pullman Square East Intermodal Facility (Building #1), 220 9th Street, and Pullman Square West Intermodal Facility (Building #7), 225 9th Street," prepared by Meacham & Apel Architects Inc., Jezerinac Geers & Associates, Inc. and Korda/Nemeth Engineering, Inc. Included as Alternate #1 are the plans and specifications for the WALKWAY.
- (2) Those certain Drawings, Plans and Specifications comprised of drawings entitled "Pullman Square Security Package," consisting of Bid Package BP-7, dated 5-26-04 prepared by Meacham & Apel Architects Inc., Korda/Nemeth Engineering, Inc., and Signature Controls; and a Project Manual, dated 5-26-04, entitled "Pullman Square Security Package," prepared by Meacham & Apel Architects Inc., Korda/Nemeth Engineering, Inc. and Signature Controls.

Annex 4

Public Area Plans and Specifications

The Public Area Plans and Specifications are comprised of the following four (4) sets of plans and specifications:

- (1) Those certain Drawings, Plans and Specifications comprised of drawings entitled "Pullman Square Landscape, Irrigation, and Pavers," consisting of Bid Package BP-6, dated 5-26-04, prepared by Meacham & Apel Architects, Inc., Korda/Nemeth Engineering, Inc. and Myers Schmallenburger; and a Project Manual, dated 5-26-04, entitled "Pullman Square Landscape, Irrigation, and Pavers," prepared by Meacham & Apel Architects, Inc., Korda/Nemeth Engineering, Inc. and Myers Schmallenburger.
- (2) Those certain Drawings, Plans and Specifications comprised of drawings entitled "Pullman Square Signage Package," consisting of Bid Package BP-8, as yet undated but anticipated to be dated 6-30-04, prepared by Meacham & Apel Architects, Inc.; and a Project Manual as yet undated but anticipated to be dated 6-30-04, entitled "Pullman Square Signage Package," prepared by Meacham and Apel Architects, Inc.
- (3) Those certain Drawings, Plans and Specifications comprised of drawings entitled "Pullman Square Sidewalk Package," consisting of Bid Package BP-9, dated 6-15-04, prepared by Meacham & Apel Architects, Inc.; and a Project Manual, dated 6-15-04, entitled "Pullman Square Sidewalk Package," prepared by Meacham & Apel Architects, Inc.
- (4) Those certain Drawings, Plans and Specifications comprised of drawings entitled "Pullman Square Building #4," consisting of Bid Package BP-10, as yet undated but anticipated to be dated 7-14-04, prepared by Meacham & Apel Architects, Inc., Jezerinac Geers & Associates, Inc., and Korda/Nemeth Engineering, Inc.; and a Project Manual, as yet undated but anticipated to be dated 7-14-04, entitled "Pullman Square Building #4," prepared by Meacham & Apel Architects, Inc., Jezerinac Geers & Associates, Inc., and Korda/Nemeth Engineering, Inc.

Annex 5

Theater Plans and Specifications

The Theater Plans and Specifications consist of the following two (2) sets of plans and specifications:

(1) Theater Shell

The Plans and Specifications for the THEATER SHELL are contained within the INTERMODAL PLANS AND SPECIFICATIONS as described on Annex 3.

(2) Theater Fit Out

Those certain Drawings, Plans and Specifications comprised of drawings entitled "Pullman Square Marquee Theater Tenant Improvement," consisting of Bid Package BP-3, dated 3-3-04, prepared by Meacham & Apel Architects, Inc., Jezerinac Geers & Associates, Inc., and Korda/Nemeth Engineering, Inc.; and a Project Manual, dated 3-3-04, entitled "Pullman Square Marquee Theater Tenant Improvement," prepared by Meacham & Apel Architects, Inc., Jezerinac Geers & Associates, Inc., and Korda/Nemeth Engineering, Inc.

Annex 6

Appurtenant Easements

1. Easements set forth in that certain Development and Easement Agreement dated March 26, 2003 among Huntington Urban Renewal Authority, The Tri-State Transit Authority and UpTowner Inns, Inc. of record in the Office of the Clerk of the County Commission of Cabell County, West Virginia in Bonds, Contracts and Leases Book No. 327, at page 1 (all references to recorded documents are references to the records of the aforesaid Clerk's Office).
2. Easements set forth in that certain Reciprocal Easement Agreement dated June 23, 2004 between the The Tri-State Transit Authority and Metropolitan Huntington, LLC of record in Bonds, Contracts and Leases Book No. 334, at page 231.

Annex 7

Approved Components (Reserve Account) *

1. Repair/Replacement of roof.
2. Repair/Replacement of rooftop HVAC units.
3. Repairing/Replacing expansion joints and re-applying filler.
4. Scheduled restriping of parking stalls and traffic markings.**
5. Material and/or structural repair of all parking deck surfaces and stairwells.
6. Replacement and/or major repair of elevator adjacent to Grand Hall.
7. Replacement of the equipment and apparatus of the INTERMODAL IMPROVEMENTS, including, without limitation, ticket dispensers, machinery, environmental equipment, fire protection equipment and sprinklers, bumper guards, toll collection booths and gating and security systems.
8. Extraordinary repairs, including structural and non-structural repairs.

* Routine, recurring (on a frequency of every two years or less) items are considered normal maintenance and are not to be funded out of the RESERVE ACCOUNT.

** Not more frequently than every two (2) years.

Annex 8

Permitted Encumbrances

1. Subject to the provisions of Article 8 of the Lease, all assessments and taxes for the tax year 2003 and all subsequent years.
2. Restriction upon the use of the Demised Premises that provides that the owner will "Not discriminate upon the basis of race, color, religion, sex, or national origin in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon" contained in the following documents:
 - (a) Deed from Huntington Urban Renewal Authority ("HURA") to UpTowner Inns, Inc. ("UpTowner") of record in the Office of the Clerk of the County Commission of Cabell County, West Virginia in Deed Book No. 1011, at Page 571 (all references to recorded documents are references to the records of the aforesaid Clerk's Office);
 - (b) Contract for Sale of Land For Private Redevelopment between HURA and UpTowner of record in Deed Book 1012, at Page 42, as amended by amendment of record in Deed Book 1012, Page 92, as supplemented by Supplement to Contract for Sale of Land For Private Redevelopment between HURA and UpTowner dated March 26, 2003, of record in Bonds, Contracts and Leases Book No. 326, at Page 655.
3. Terms, covenants and conditions of HURA's Urban Renewal Plan, which original plan and amendments thereto are of record in Bonds, Contracts & Leases Book Nos. 208, at page 629; 213, at page 63; 216, at page 240; 216, at page 442; 218, at page 193; 221, at page 109; 221, at page 115; 222, at page 98; 222, at page 318; 225, at page 75; 225, at page 82; 225, at page 93; 227, at page 232; 228, at page 20; 235, at page 463; 238, at page 650; 239, at page 567; and 328, at page 433; and in Deed Book Nos. 696 at page 478; and 716 at page 527.
4. Easement for sewer extending from the north line of Third Avenue to the said Line of former Second Avenue, the west line of which easement is parallel to and 30 feet east of said former west line of Ninth Street, as reserved in that deed dated May 19, 1981, from City of Huntington to HURA of record in Deed Book 823, at Page 771.
5. Land Use Covenant dated October 21, 2002, between HURA and the Department of Environmental Protection for the State of West Virginia, of record in Bonds, Contracts and Leases Book No. 324, at Page 288.
6. Development and Easement Agreement dated March 26, 2003 among HURA, the

Leases Book No. 327, at Page 1.

7. Memorandum of Option dated March 26, 2003 between Metropolitan Huntington, LLC ("Metropolitan") and HURA of record in Bonds, Contracts and Leases Book No. 327, at Page 111.
8. Supplemental Development and Easement Agreement dated March 26, 2003 among Metropolitan, TTA and UpTowner of record in Bonds, Contracts and Leases Book No. 327, at Page 99.
9. Agreement and Right of First Refusal dated March 26, 2003 between HURA and TTA of record in Bonds, Contracts and Leases Book No. 327, at Page 83.
10. Easement for a sewer line which was granted to the City of Huntington by HURA by deed dated October 7, 1976, of record in Bonds, Contracts and Leases Book No. 226, at Page 417.
11. Sewer line right of way dated January 15, 1936, granted by Gwinn Bros. & Company to the Huntington Sanitary Board, which right of way pertains to the easterly six inches of Lot 10 and all of Lot 11, Block 118 of the City of Huntington, and which right of way is of record in Bonds, Contracts and Leases Book 130, at Page 298.
12. Reciprocal Easement Agreement dated June 23, 2004 between TTA and Metropolitan of record in Bonds, Contracts and Leases Book No. 334, at Page 231.