

STATE OF NORTH CAROLINA

LEASE

COUNTY OF CUMBERLAND

This Lease Agreement (hereinafter the "Lease") is made and entered into this 31<sup>st</sup> day of January, 2000, by and between the CITY OF FAYETTEVILLE, North Carolina, hereinafter referred to as "LESSOR," and the Fayetteville Area Convention and Visitors Bureau (FACVB), a North Carolina nonprofit corporation, hereinafter referred to as "LESSEE". The LESSOR and LESSEE are herein sometimes separately referenced as "Party" and jointly referenced as "Parties" agree as follows:

1. DEFINITIONS

(a) Depot. The buildings, improvements, fixtures, parking lots, appurtenant structures, and facilities constructed and operated on the Demised Premises in accordance with the Agreement, as hereinafter defined, and known as the Cape Fear and Yadkin Valley Railway Passenger Depot.

(b) Demised Premises. The space described in Attachment A, of approximately One Hundred Twenty (120) square feet, within the Depot set aside for the operation of a visitors' center, and also together with a non-exclusive easement in the sidewalks, parking areas, aisles, entranceways, corridors and hallways, or access, egress, regress, for vehicular parking. The terms "Demised Premises" and "visitor's center" may be interchangeably used in this Lease.

(c) Final Completion. The date that LESSOR issues a Certificate of Occupancy, or other approval by LESSOR's Inspection Department that the Depot is ready for public use.

(d) Permanent Improvements. Shall include any and all buildings and fixtures, trade or otherwise, that are permanently affixed to the ground or any structure, building or other improvement on the Demised Premises, and can not be removed without destroying the use for which said buildings and fixtures, trade or otherwise, were originally intended to be used.

(e) Nonpermanent Improvements. Shall include any fixtures, trade or otherwise, or items of personal property that can be removed from the Demised Premises without destroying the use for which fixtures, trade or otherwise, were originally intended to be used.

(f) Unavoidable Delays. Any delay caused by damage or destruction by fire or other casualty, whether similar or dissimilar, acts of the federal, county, or state government, or of the LESSOR (other than as contemplated by this lease), strikes, embargoes, shortages of material, unusually adverse weather conditions, or other like or unlike events or conditions beyond the reasonable control of the LESSOR and without its fault or negligence.

(g) Agreement. That certain Enhancement Agreement entered into between LESSOR, and the North Carolina Department of Transportation (hereinafter DOT), dated the 25th day of April, 2000, the provisions of which are incorporated by reference as if fully set forth herein.

2. DEMISE OF PREMISES; TERM; BUDGETS.

(a) Demised Premises. LESSOR, for and in consideration of the installments, covenants, and conditions herein contained to be kept, performed and observed by LESSEE, does hereby lease and demise to LESSEE, and LESSEE does hereby accept from LESSOR, the property described on Attachment A hereto, hereinafter the "Demised Premises, subject to any existing rights-of-way or other easements of record.

(b) Warranty of Title. LESSOR hereby represents and warrants that LESSOR is the owner in fee simple absolute of the Demised Premises, subject to the covenants, conditions, restrictions, easements, and other matters of record.

(c) Warranty of Quiet Enjoyment. LESSOR covenants and agrees that LESSEE, upon payment of the rent installments and other charges as required and herein provided, and upon observance and performance of the covenants, conditions, and terms of this Lease, shall peaceably hold and enjoy the Demised Premises for the term hereby demised without hindrance or interruption by LESSOR or any other person or persons claiming under LESSOR, except as herein expressly provided.

(d) Lease Term. This Lease shall be for a term of twenty five (25) years commencing on the first day of the month after final completion of the Depot, or July 1, 2003, (the "Commencement Date"), whichever shall first occur (provided that the Depot shall have then been completed and, if not, either party shall have the right on ten (10) days notice to the other to cancel the lease) and ending on the last day of the 25th year thereafter, unless terminated as otherwise provided herein, or in accordance with Default and Remedies. At the time of Commencement, the parties shall record a Memorandum of Lease to memorialize this occurrence.

(e) Holdover. Any holdover period shall be deemed a month-to-month tenancy.

(f) Rental Payments, Taxes, Operating Deficiency and Utilities.

(1) Rent. The annual rental to be paid by LESSEE to LESSOR shall be the sum of Eleven Thousand One Hundred and Eighty Dollars (\$11,180.00), payable in 25 annual installments. The rent shall include the cost of all monthly utilities except that LESSEE shall pay all cost associated with telephonic or data services. The first annual rental payment shall be due in advance upon the date of commencement of the lease as set forth in § 2.(d) above, and each and every subsequent annual payment thereafter shall be due on the anniversary of the first payment. The annual rental payment shall be subject to a consumer price index (CPI) adjustment as follows:

(i) As promptly as practicable after the end the first five (5) years of the original term, Lessor shall compute any increase in the cost of living from the beginning month and year of the Commencement Date of this lease based upon Consumer Price Index (base year 1982-1984 = 100) - For All Urban Consumers, United States City Average Index of All Items (the "Index") published by the Bureau of Labor Statistics of the United States Department of Labor. The "base Index number" shall be the Index number indicated for the City of Fayetteville (or other near City in North Carolina) entitled "all items" for the month of June, 2000. The "current Index number" shall be the

corresponding Index number for the month of June for the fifth year of the term of this lease. The current Index number shall be divided by the base Index number, and integer one shall be subtracted from such quotient. Any resulting positive number shall be deemed to be the percentage of increase in the cost of living. The increase shall be determined by multiplying the percentage of increase by the annual rent at the time of the calculation.

(ii) Lessor shall give Lessee notice of such increase within a reasonable time after obtaining the necessary data for computing it. Lessor's computation shall be conclusive and binding, but shall not preclude any adjustment that may be required by a published amendment of the Index figures upon which the computation was based unless Lessee notifies Lessor of any claimed error therein within sixty (60) days after such notice is given.

(iii) The fixed annual rental payable in accordance with Paragraph 2 of this lease plus the increase calculated in accordance with this paragraph shall be due and payable to Lessor in equal annual installments, commencing with the sixth year of the term of this lease. Any retroactive payments then due for the period from the fifth anniversary date of this lease to the payment date for the next annual installment of rent shall be payable within five (5) days after the above provided notice is given. If there is any subsequent redetermination of such amount, the parties shall promptly make the indicated adjustment.

(iv) Regardless of the fluctuations in the Consumer Price Index, the fixed annual rental shall not, in any case, be reduced for the original term of this lease.

(v) If publication of the Consumer Price Index is discontinued, the parties shall accept comparable statistics on the cost of living for the City of Fayetteville, as such statistics are computed and published by a federal agency or by a recognized financial periodical selected by the parties or by arbitration. If comparable statistics are used in place of the Consumer Price Index, or if the Index figure is published at non-monthly intervals, the method of computation shall include all revisions required to carry out the intent of this paragraph.

(2) Late Charges. If LESSEE fails to pay any annual rental payment by the 15th day of the month following the due date thereof, LESSEE shall pay a late payment charge equal to the amount of the delinquency times a per diem rate calculated at the legal interest rate permitted for such purposes, which shall become due and payable to the LESSOR as liquidated damages for the administrative costs and expenses incurred by the LESSOR by reason of LESSEE'S failure to make prompt payment. The Late Charges shall be payable by LESSEE on demand. No failure by the LESSOR to insist upon strict performance by LESSEE of its obligation to pay Late Charges shall constitute a waiver by the LESSOR of its right to enforce the provisions of this section.

(g) Impositions Taxes, Fees, Utility Charges. LESSEE shall pay or cause to be paid all of the following items, if any ("Impositions"):

(1) Any ad valorem property taxes, special taxes and assessments on all capital improvements made solely by LESSEE on the Demised Premises;

(2) Any personal property and inventory taxes;

(3) Water, water meter and sewer installments, rates and charges, which shall be separately metered and billed to LESSEE;

(4) License and permit fees;

(5) Any service charges for lighting, sanitary sewer sanitation and water supply, (if separately metered and billed to LESSEE) and mutually agreeable charges for housekeeping of the demised premises;

(6) All excise, sales, value added, use, occupancy and similar taxes;

(7) Charges for communications and other like services rendered or used on or about the Demised Premises;

(8) Payments in lieu of each of the foregoing, whether or not expressly so designated;

(9) Fines, penalties and other similar or like charges applicable to any of the foregoing, and any interest or cost with respect thereto; and

(10) Any and all other federal, state, county and municipal governmental and quasi-governmental levies, fees, installments, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of every kind and nature whatsoever, and any interests or costs with respect thereto, which at any time during or after (but attributable to a period falling within) the Lease Term are:

(i) Assessed, levied, confirmed, imposed upon or would become due and payable out of or in respect of, or would be charged with respect to, the Demised Premises, the use and occupancy of the Demised Premises by LESSEE, any document or agreement to which LESSEE is a party, transferring as interest in LESSEE'S estate in the Demised Premises, and this transaction; and

(ii) Encumbrances or liens upon the Demised Premises not otherwise prohibited by this LEASE and permitted by law.

(12) Each such Imposition, or installment thereof, during the Lease Term shall be paid before the last day the same may be paid without fine, penalty, interest or additional cost; provided, however, that if, by law or agreement, any imposition may, at the option of the payor, be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), LESSEE may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, provided that all such installment payments relating to periods prior to the expiration of the Lease Term are required to be made prior to the expiration of the Lease Term.

(13) LESSEE, from time to time upon request of the LESSOR, shall furnish to the LESSOR an official receipt or other evidence reasonably satisfactory to the LESSOR evidencing the payment of any Imposition. If at any time during the Lease Term, a tax or excise on installment or the right to receive installments or other tax, however described is levied or assessed against the LESSOR as a substitute in whole or in part for any Impositions heretofore payable by LESSEE, LESSEE shall pay and discharge such tax or excise on installment before interest or penalties accrue, and the same shall be deemed an Imposition levied against the Demised Premises in accordance with this Section.

(h) Proration of Impositions. Any Imposition relating to a fiscal period of the imposing authority, a part of which period is included within the Lease Term, and a part of which is included within the period of time before or after the Lease Term, shall be apportioned between the LESSOR and LESSEE as of the beginning and ending dates of the Lease Term so that LESSEE shall pay that portion of such Imposition for that part of such fiscal period which is within the Lease Term.

(i) Contest of Impositions. LESSEE shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith. Upon termination of such proceedings, it shall be the obligation of LESSEE to pay the amount of such Imposition or part thereof as finally determined in such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith. LESSEE shall have the right to seek a reduction in the assessed valuation of the Demised Premises for ad valorem property tax purposes, and to prosecute any action or proceeding in connection therewith.

(j) Books and Financial Records. Adequate books and financial records of the LESSEE relative to the operation of the visitors' center shall be maintained by the LESSEE in accordance with generally accepted accounting principles for non-profit corporations and shall be made available to the LESSOR at its request. LESSEE shall be required to keep at all times during the term of this lease, and for three (3) years after the termination of this lease, all financial records required herein to be kept and provided to the LESSOR.

(k) LESSEE shall be required, subject to reasonable notice, to permit the City Manager of LESSOR, or his/her designee, to examine the books and financial records of LESSEE relative to the operation of the Visitor's Center only for the purpose of maintaining compliance with the terms of this Lease. Additionally, during the term of this Agreement, LESSEE shall provide to LESSOR such other monthly financial reports and data in such detail as may be required by the LESSOR'S Finance Director in accordance with acceptable accounting reporting standards.

### 3. USE OF PREMISES

Throughout the Lease Term, LESSEE shall use the Demised Premises for the operation of a visitor center located within a transportation museum in accordance with the Agreement. During the Term of the Lease, LESSEE shall not make or cause to be made any repairs, decoration, revisions, alterations and improvements to the Demised Premises, unless permitted by LESSOR, and DOT, provided that any such permitted repairs, decoration, revisions, alterations and improvements shall maintain the historic character of the Depot. LESSEE shall staff the visitors' center at all times the Depot is open to the public, to include those holidays observed by the City of Fayetteville, in §22-39 of the Fayetteville City Code, deemed appropriate by the LESSEE.

### 4. OPERATION

LESSEE shall operate the visitors' center in the Demised Premises in a manner consistent with the operation of other public visitor centers located within transportation museums similar in function. Any such operational methodology shall be mutually agreeable upon by LESSOR and LESSEE. Such operations shall be in accordance with all applicable health and safety regulations.

5. TERMINATION IF USE BECOMES UNLAWFUL, IMPOSSIBLE, OR IMPRACTICAL

(a) If it is or becomes unlawful for LESSOR, or anyone holding under LESSOR directly or indirectly, to operate the Depot, or if all or any part of the Demised Premises is condemned or changed by public authority so that it becomes impossible or impractical to use the Demised Premises in the manner described in this §3, then LESSEE shall have the right at any time thereafter to terminate this Lease by giving LESSOR sixty (60) days notice in writing of such termination upon the following terms and conditions:

(i) LESSEE shall vacate the premises within 30 days of any notice required herein, provided that LESSEE shall be entitled to a pro-rata refund of any unearned rents paid in advance.

(ii) Except for museum exhibits, artifacts, or memorabilia which are not the property of LESSOR and can be removed without damaging the Demised premises, LESSEE shall not be permitted to remove any permanent or non-permanent (except for removeable trade fixtures which can be removed without damage to the Demised Premises) improvements from the Demised Premises without the consent of the LESSOR.

(b) If the operation of the Depot is rendered impossible due to condemnation by a valid condemnor, the lease shall be terminated without penalty to LESSEE and the amount of any condemnation award paid to LESSEE by settlement, court order, or otherwise, shall be applied in the following order:

(i) Towards any unpaid rent or other amounts due LESSOR under the terms of this lease;

(ii) To the payment to LESSEE of any investment made by the LESSEE in the demised Premises;

(iv) Any remaining funds shall be paid to LESSOR..

(c) The purpose of this Section is to require LESSEE to construct and operate a visitors' center within the Depot of the nature described in Use of Premises, regardless of alterations that may need to be made from time to time in order to accommodate easements or right-of-way expansions or other impositions by public authorities, so long as such impositions are not materially detrimental to the facility's operation and make continued operation of the Depot financially impossible.

(d) If, as a result of condemnation, a portion of the Demised Premises is taken by the condemning authority, but the remaining portion shall nevertheless allow LESSEE to continue the operation of the visitors' center within the Depot, then and in that event any condemnation award paid to LESSEE by settlement, court order, or otherwise, shall be applied in accordance with the priority set forth in § 5.(b) on a pro-rata basis as the amount of the award or settlement relates to the fair market value of the entire leasehold estate as of the date of taking.

(e) If, an appraisal of the remaining portion of the Demised Premises, by a member of the Master Appraisal Institute selected by the LESSOR, shall show that the fair market value of the remainder of the Demised Premises has been so affected as to not make it economically feasible for the LESSEE to continue operation of the Demised Premises and make the annual installment payments, there shall be a corresponding adjustment to the remaining annual installment payments.

## 6. SIGNS

Subject to compliance with the LESSOR'S sign ordinance, the LESSEE may install and maintain sign(s) on the improvements, and at locations mutually agreeable on the Depot entrance and directional signs of sufficient number and size to adequately advertise the LESSEE'S use of the Demised Premises.

## 7. ALCOHOLIC BEVERAGES

LESSEE shall use reasonably diligent efforts to ensure that Alcoholic beverages are not to be sold, consumed, or otherwise permitted on the Demised Premises without the consent of LESSOR.

## 8. OWNERSHIP OF IMPROVEMENTS

(a) Easements and Dedications. In order to provide for the more orderly development of the Demised Premises as a public Depot, it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power lines, and other easements and dedications, and similar rights be granted or made on or within portions of said Demised Premises. As part of the mutual consideration recited herein, each party, upon request of the other party, shall join in executing and delivering such documents, from time to time, and throughout term of this Lease, as the parties deem appropriate or necessary for the several governmental agencies, public utilities, and companies for the purposes of granting such easements and dedications.

(b) Extension if Construction is Prevented or Delayed. If LESSOR is prevented from or unreasonably hindered in completing construction of the improvements required to be made by LESSOR by the Agreement prior to commencement of this Lease, due to unavoidable delays, provided LESSOR is diligent and uses its best efforts to complete said improvements in spite of the same, and LESSOR submits bona fide proof that it is on schedule to complete the improvements required by the Agreement, but for the events of unavoidable delay, LESSEE shall agree to an extension of the commencement of the Lease term as set forth in §2.(d) for an additional period of time equal to the delay caused by the events of unavoidable delay.

(c) Ownership of Improvements, Fixtures, and Equipment; Equipment Leases and Contracts. Except for museum exhibits, artifacts, or memorabilia which are not the property of LESSOR and can be removed without damaging the Demised premises, it is expressly understood and agreed that title to any and all permanent and nonpermanent improvements (except for removeable trade fixtures which can be removed by LESSEE without damage to the Demised Premises) whatsoever nature at any time constructed, placed, or maintained upon any part of the Demised Premises shall be and remain vested in the LESSOR. During the term of this lease, LESSEE shall be required to maintain at all times an accurate written inventory of all museum exhibits, artifacts, or memorabilia.

## 9. ENCUMBRANCE OF LEASEHOLD ESTATE

LESSEE shall not, at any time or from time to time during the Lease Term, encumber the leasehold estate by any type security instrument, deed of trust, or Financing Statements pursuant to the Uniform Commercial Code.

## 10. ENVIRONMENTAL

(a) LESSEE shall comply with all Environmental Laws (as hereinafter defined). LESSEE may handle, store, and use Hazardous Materials (as hereinafter defined), limited to the types, amounts and uses as reasonably necessary for the construction and operation of the visitors' center on the Demised Premises, provided that:

(1) LESSEE'S operations and activities on the Demised Premises, and more specifically its handling, storage use and disposal of Hazardous Materials, shall at all times comply with all Environmental Laws;

(2) LESSEE shall secure and abide by any and all permits required under applicable Environmental Laws for LESSEE'S handling, storage, use and disposal of any such Hazardous Materials; and

(3) LESSEE shall give or post all notices required by any and all applicable Environmental Laws pertaining to such Hazardous Materials. LESSEE shall provide the LESSOR with copies of all manifests, schedules, correspondence, reports and other documents of all types and kinds, when filed or provided to any governmental or quasi-governmental agency having jurisdiction or enforcement authority regarding Environmental Laws.

(b) Liability. LESSEE shall reimburse, defend, indemnify and save the LESSOR, and its employees, agents, contractors, independent contractors, volunteers and elected and appointed officials, harmless from and against any and all claims, losses, liabilities, and attorneys' fees and costs, arising out of or in any way concerned with the presence of Hazardous Materials placed on or beneath the Demised Premises or the violation of any Environmental Laws by LESSEE or by its agents, employees, contractors or invitees, including, without limitation, the costs of any required or necessary investigation, repair, cleanup or detoxification in the preparation of any enclosure or other required plans or remedies in connection therewith, whether voluntary or compelled by governmental authority. The indemnity obligations of LESSEE under this Section shall survive the termination or expiration of this Lease.

(c) Definitions. For purposes of this Section, the terms used herein shall be the same as defined in any applicable federal, state, or local law or regulation.

## 11. MAINTENANCE, INSPECTION AND EMPLOYMENT

(a) LESSOR Duty to Maintain. LESSOR, at own cost and expense at all times during the Lease Term, shall keep and maintain, or cause to be kept and maintained the first floor of the Demised Premises in a clean, safe, high quality and good state of appearance and repair, without noticeable wear and tear, to include the heating, ventilation, and air conditioning systems in good working order.



(b) Inspection. LESSEE shall permit the LESSOR and the LESSOR's agents or representatives to enter the Demised Premises at all reasonable times for the purpose of:

- (1) Inspecting the Demised Premises and construction work and improvements thereon;
- (2) Performing the LESSOR's obligations or enforcing the LESSOR's rights hereunder;
- (3) Determining whether or not the LESSEE is in compliance with its obligations hereunder; and

(4) In the case of emergency (i.e., a condition presenting imminent danger to the health or safety of any person or to property), making any necessary repairs to the Demised Premises and improvements thereon, provided that the LESSOR shall make a reasonable attempt to communicate with LESSEE to alert LESSEE to the repairs necessary.

## 12. INDEMNIFICATION OF LESSOR.

LESSEE'S INDEMNITY. LESSEE shall not do or permit any willful or negligent act or thing to be done upon the Demised Premises which may subject the LESSOR to any liability or responsibility for injury, damage to persons or property, or to any liability by reason of a violation of any law or of any requirement of a governmental authority, and shall exercise such control over the Demised Premises so as to fully protect the LESSOR against any such liability. The LESSEE shall indemnify and hold the LESSOR and any agent, contractor, independent contractor, volunteer, employee and elected and appointed official of the LESSOR (each an "Indemnified Party") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, expert witnesses', engineers', architects' and attorneys' fees, court costs and disbursements, which may be proximately caused by reason of the willful or negligent acts of LESSEE, its agents, employees, or officers in operating the visitors' center and otherwise performing its obligations under this lease.

Lessor's Indemnity. The LESSOR shall to the extent allowed by law, indemnify and hold the LESSEE, its agents, officers, elected and appointed officials, contractors, independent contractors, volunteers, and employees (each an "Indemnified Party") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, expert witnesses', engineers', architects' and attorneys' fees, court costs and disbursements, which may be proximately caused by reason of the willful or negligent acts of LESSOR, its agents, employees, or officers in operating the Depot and otherwise performing its obligations under this lease.

(c) Absence of Insurance. The obligations of each party under this Section shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Demised Premises or any part thereof.

(d) Defense of Claims. If any claim, action or proceeding is made or brought against any Indemnified Party against which it is indemnified pursuant to this Section, then, upon demand by the

LESSOR, LESSEE shall resist or defend such claim, action or proceedings in the LESSOR's name, if necessary, by attorneys for LESSEE'S insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as the LESSOR shall approve. The foregoing notwithstanding, the LESSOR may engage its own attorneys to defend it or to assist in its defense, and LESSEE shall pay the reasonable fees and disbursements of such attorneys or any other attorney specified herein.

(e) The provisions of this Article, Indemnification of LESSOR, shall survive the expiration of the Lease Term with respect to any liability, suit, obligation, fine, damage, penalty, claim, cost, charge or expense arising out of or on connection with any matter which is the subject of indemnification under this Article.

### 13. INSURANCE

(a) Required Insurance. The following insurance shall be secured by LESSEE and the premiums thereon paid by LESSEE with respect to the Demised Premises and its operations at all times during the Lease Term, and as a condition to the commencement thereof:

(1) Comprehensive General Liability Insurance covering property damage, bodily injury, and personal injury in an amount equal to not less than One Million and 00/100 Dollars (\$1,000,000.00) combined single limit, with an aggregate of Two Million Dollars (\$2,000,000.00), innkeeper's liability insurance on a per event basis if alcoholic beverages are served at the visitors' center, and employer's liability insurance except that the amount of liquor liability insurance when required shall only be Five Hundred Thousand and 00/100 Dollars (\$500,000.00);

(2) Broad form property damage insurance (covering damage by fire, wind storm, floods, together with "extended coverage" thereof) on any permanent improvements, if any, made by LESSEE and

(3) Statutory worker's compensation insurance;

None of the required coverages set forth herein shall be reduced without the consent of LESSOR. The amount of the minimum coverage in the above clauses may be lowered if an umbrella policy is furnished covering any excess of the liabilities described in said clauses with a limit of liability of not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence. Furthermore, the LESSOR may, from time to time, require LESSEE to increase the amounts of such coverages in order to account for inflation or to provide coverages consistent with coverages for similar visitors' centers.

(b) Responsibility to Maintain. LESSEE will procure and maintain the above insurance policies during the Lease Term.

(c) Requirements. All policies of insurance shall be written on an "occurrence" basis, if possible, and if any policy is written on a "claims made" basis, then such policy shall be written so that it can be continued in effect for a period of three years following expiration of the Lease Term.

(d) Policies. All insurance provided for under Insurance: Required Insurance shall be affected by policies issued by insurance companies rated by Best Reporting Service as A. VI or better and that

shall be licensed to do business in North Carolina. The LESSEE shall promptly deliver to the LESSOR certificates of insurance with respect to all the policies of insurance so procured, including existing, additional and renewal policies not less than thirty (30) days prior to the respective dates of expiration. Upon request, the LESSEE shall annually deliver a copy of any or all such insurance policies to the LESSOR.

(e) Endorsements. All policies of insurance provided for under this Section shall have attached thereto.

(1) An endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days' prior written notice to LESSEE and the LESSOR; and

(2) An endorsement to the effect that no act or omission of LESSEE or the LESSOR shall affect the obligations of the insurer to pay the full amount of any loss sustained.

(f) Additional Insured. All policies of insurance required by this Section shall be carried in the name of LESSEE, and all policies shall show LESSOR as an additional insured.

(g) Use of Casualty Insurance Proceeds. If all or any part of the Demised Premises or any buildings and improvements thereon are destroyed or damaged in whole or in part by fire or other casualty (whether or not insured), of any kind or nature, LESSOR shall give the LESSEE immediate notice thereof, and notice of whether or not such damage or destruction had been insured, and whether or not insurance proceeds, if any, will be sufficient for such repairs, alterations, restorations, replacements and rebuilding as may be necessary to put such property in the condition it was in immediately prior to such damage or destruction. LESSOR shall make all insurance claims necessary and appropriate to procure such funds as are needed to carry out such repairs, alterations, restorations, replacements and rebuilding. Proceeds from all insurance claims shall be deposited in a bank account jointly held by LESSEE and the LESSOR in a bank upon the approval of the LESSOR and, unless the LESSOR and LESSEE agree otherwise, be used first to pay in full the costs of restoration before using any part of the same for any other purpose. Subject to the approval of LESSOR'S governing body, LESSOR shall restore the destroyed or damaged Demised Premises, buildings, improvements or fixtures thereon to the extent of the value and as nearly as practicable to the character of the improvement existing immediately prior to such occurrence. If LESSOR'S governing body shall not approve the restoration, and LESSOR is not otherwise able to complete the restoration of the Demised Premises, then LESSEE may on notice to LESSOR cancel this lease. If LESSOR shall fail or neglect to restore with reasonable diligence or, having so commenced such restoration, shall fail to complete the same with reasonable diligence, then LESSEE may complete such restoration with the moneys in the joint account. LESSOR shall give the LESSEE notice of completion of the restoration within ten (10) days thereafter. Where feasible, all restoration work shall be completed within fifteen (15) months from the time of the casualty, which time may be extended due to unavoidable delays.

(h) Neither LESSEE nor anyone claiming by, through, under or in LESSEE'S behalf shall have any claim, right of action or right of subrogation against the LESSOR for or based upon any loss or damage caused by fire, explosion or other casualty (not limited to the foregoing) relating to the Demised Premises or to any property upon, in, or about the Demised Premises, whether such fire, explosion or other casualty shall arise from the negligence of the LESSOR, its agents, officers, or employees, or

otherwise.

#### 14. ASSIGNMENT AND SUBLEASE

(a) LESSEE'S Right to Assign, Sublease--Consent of LESSOR. LESSEE shall have the right to assign, convey, or transfer the entirety, or any portion thereof, of LESSEE'S interest in the Demised Premises, subject only to the written consent of LESSOR and DOT to such assignment which shall not be unreasonably withheld, unless such refusal to consent is based upon objective, demonstrable and good faith concerns of LESSOR and DOT regarding the transferee's ability to manage the Depot and/or perform under the terms of this lease. Unless otherwise agreed to in writing by the LESSOR, no sublease shall extend beyond the last day of the Lease Term.

(b) Unless otherwise agreed by LESSOR and DOT, in writing at the time of any sublease permitted herein, the approval of said sublease by LESSOR shall not relieve LESSEE of any obligations under the terms of this lease for that portion of the Demised Premises which is the subject of the sublease.

(c) Estoppel Certificates. Either party shall at any time and from time to time, upon not less than twenty (20) days' prior written request by the other party, execute, acknowledge, and deliver to such party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there has been any modification thereof that the same is in full force and effect, is modified, and stating the modification or modifications) and that there are no defaults existing, or if there is any claimed default stating the nature and extent thereof; and stating the dates to which the installment and other changes have been paid in advance. It is expressly understood and agreed that any such statement delivered pursuant to this Section may be relied upon by any prospective assignee or sublessee of the leasehold estate or estates of LESSEE, or any prospective purchaser of the estate of the LESSOR, or any Lender or prospective assignee of any Lender on the security of the Demised Premises or the fee estate or any part thereof, and any third person.

#### 15. DEFAULT AND REMEDIES

(a) If (i) the Demised Premises shall be deserted or vacated for more than ninety (90) days by LESSEE, (ii) proceedings are commenced against the LESSEE in any court under a bankruptcy act or for the appointment of a trustee or receiver of the LESSEE'S property, and LESSEE has failed to remedy the same within 30 days, or (iii) there shall be default in the performance of any other covenant, agreement condition, rule, or regulation herein contained on the part of the LESSEE required herein, and the same is not cured within the applicable grace period, LESSEE shall be declared in default.

(b) Time for Curing Default. In the event of LESSEE'S default, the rights of LESSOR may not be exercised until written notice of such default is delivered to the LESSEE. Except for a default under §15(a)(i) or (ii), LESSEE shall have right to cure any default within thirty (30) days with respect to any default that can be cured by the payment of money, or within ninety (90) days with respect to any other covenant or condition or term of this Lease; and, if such default is of such nature that it cannot be remedied within said time despite LESSEES good faith efforts, then LESSEE shall have such additional time as is reasonably necessary to cure such default, subject to the approval of LESSOR's City Manager, or his/her designee, and LESSEE thereafter diligently continues the curing of same.

(c) Remedies. Should LESSEE fail to cure the default during any grace period as provided herein, the LESSOR shall have the right to terminate the Lease, in which event the provisions of Termination and Surrender, §§16(a)-(e), shall apply. Alternatively, the LESSOR may proceed by appropriate judicial proceedings, either at law or in equity, to enforce the performance or observance by LESSEE of the applicable provisions of this Lease and/or to recover damages for breach thereof.

## 16. TERMINATION AND SURRENDER

(a) Purchase obligation/Leasehold Improvements. Upon expiration of the Lease Term, by default or otherwise as provided herein, the LESSOR shall have and hold all rights, title and interest in the Demised Premises and all Buildings, permanent and nonpermanent improvements and fixtures thereon, except for any nonpermanent improvements paid for solely with funds of LESSEE, without being subject to any claim, lien or interest of LESSEE. Any nonpermanent improvements paid for solely with funds of LESSEE shall be removed from the Demised Premises within 30 days of termination and/or surrender and if not so removed, shall become the property of the LESSOR.

(b) Surrender of Possession. Unless otherwise mutually agreed by the parties, LESSEE shall deliver possession of the Demised Premises and all buildings, improvements and fixtures thereon to LESSOR on the last day of the Lease Term.

(c) The Depot and Depot Site shall be used and operated at all times during the term of this Lease in accordance with this Lease and the Agreement (hereinafter the "surviving conditions"), which shall be a covenant(s) upon the property to run with the land, to inure to the benefit of the LESSOR, and shall be made a condition of any subsequent conveyance of the Depot Site, or any portion thereof, as permitted by LESSOR and DOT, and binding upon any future lessee(s), successor(s) or assign(s), who shall agree to the same in writing prior to the conveyance, and failure of the grantee(s), or any subsequent grantee(s), successor(s) or assign(s) to comply with said surviving conditions.

## 17. GENERAL PROVISIONS

(a) No Waiver of Breach. No failure by either LESSOR or LESSEE to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Lease, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

(b) Time of Essence. Time is of the essence of this Lease and of each provision.

(c) Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is also excluded.

(d) Unavoidable Delay; Force Majeure. If either party shall be delayed or prevented from the performance of any act required by this Lease by reason of labor disputes, inability to procure materials, unanticipated weather conditions, or circumstances without fault and beyond the reasonable control of

the party obligated (financial inability excepted), performance of such act shall be excused for the period of delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section shall excuse LESSEE from the prompt payment of any installment or other charge required of LESSEE except as may be expressly provided elsewhere in this Lease.

(e) Successors in Interest. Each and all of the covenants, conditions, and restrictions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of the LESSOR, and subject to the restrictions of Assignment and Sublease, the authorized encumbrances, assignees, transferees, subtenants, licensees, and other successors in interest of LESSEE.

(f) Entire Lease. This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement, or promise made by any party, or to any employee, officer, or agent of any party, which is not contained in this Lease shall be binding or valid.

(g) Partial Invalidity. If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(h) Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between LESSOR and LESSEE and neither the method of computation of installment, nor any other provisions contained in this Lease, nor any acts of the parties shall be deemed to create any relationship between LESSOR and LESSEE, other than the herein-described relationship of LESSOR and LESSEE.

(i) Interpretation and Definitions. The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against LESSOR or LESSEE. Unless otherwise provided in this Lease, or unless the context otherwise requires, the following definitions and rules of construction shall apply to this Lease:

(1) *Number and Gender.* In this Lease the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the word "person" includes a corporation, partnership, firm, or association wherever the context so requires.

(2) *Mandatory and Permissive.* "Shall", "will", and "agrees" are mandatory; "may" is permissive.

(3) *Captions.* Captions of the articles, sections, and paragraphs of this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provision of this Lease.

(4) *Parties.* Parties shall include the LESSOR and LESSEE named in this Lease.

(j) Attorneys' Fees. Unless otherwise specified in the Lease, In the event either LESSOR or

LESSEE shall bring any action or proceeding for damages for an alleged breach of any provision of this Lease, to recover installments, or to enforce, protect, or establish any right or remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceedings reasonable attorneys' fees, which shall be limited to the usual and customary hourly rate for attorneys in the attorney's geographical area and shall be limited to the hours actually expended for these services, and court costs.

(k) Modification. This Lease is not subject to modification except in writing and with approval of the LESSOR and LESSEE.

(l) Delivery of Notices--Method and Time.

(1) All notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the address stated in this Section. If notice is given by certified or registered mail, notice shall be deemed given on the third day following mailing.

(2) *Notices to LESSOR.* All notices, demands, or requests from LESSEE to LESSOR shall be given to LESSOR at:

City Manager  
433 Hay Street  
Fayetteville, NC 28301

(3) *Notices to LESSEE.* All notices, demands or requests from LESSOR to LESSEE shall be given to LESSEE at :

President, Vice President, or Designee  
Fayetteville Area Convention and Visitor's Bureau  
245 Person Street  
Fayetteville, NC 28301

(4) All copies of audits and financial records, requested by LESSOR from LESSEE and all installment payments shall be delivered to the City of Fayetteville, Finance Director, Drawer D, Fayetteville, NC 28302.

(5) *Change of Address.* Each party shall have the right, from time to time, to designate a different address by notice given in conformity with this Article.

(6) *Multiple Parties.* If more than one LESSOR or LESSEE is named in this Lease, service of any notice on any of the LESSEES or Cities shall be deemed service on all of the LESSEES or Cities, respectively.

(m) Brokers' Commissions. Each of the parties represents and warrants that there are no claims for brokers' commissions or finders' fees in connection with the execution of this Lease and each of the parties agrees to indemnify the other against all liabilities arising from any such claim.

(n) Non-collusion. As it pertains to this lease, no officer, agent, director, or employee of

LESSEE shall become an undertaker, or make any contract for his or her benefit, under such authority and such position, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another.

(c) Nondiscrimination. During the term of this Lease, the LESSOR and the LESSEE shall require any contract or subcontractor to comply with any and all state and federal laws, regulations, or Executive Orders of either the President of the United States or the United States Secretary of Labor, concerning equal employment opportunity and minority business enterprises.

18. EXECUTION AND INCORPORATION BY REFERENCE

(a) Counterparts. This Lease, consisting of 19 pages, plus Attachment A has been executed by the parties in several counterparts, each of which shall be deemed to be an original copy.

(b) Attachments. Attachments A are attached and hereby made a part of this Lease, and incorporated by reference as if fully set forth herein.

(c) Execution. This Lease has been executed at Fayetteville, N.C. on the day and year first above written.

LESSOR: CITY OF FAYETTEVILLE

By: [Signature]  
Title: \_\_\_\_\_

ATTEST:

[Signature: Janet C. Jones]  
JANET C. JONES, City Clerk

LESSEE: FAYETTEVILLE AREA CONVENTION  
AND VISITORS BUREAU, INC.

By: [Signature: David L. Ammons]  
Title: Chairman

ATTEST:



NORTH CAROLINA  
CUMBERLAND COUNTY

I, Angela C. Ashworth, a Notary Public of said County and State, do hereby certify that Gene S. Ammons personally came before me this day and acknowledged that he is the Chairman of the Board of Directors of Fayetteville Area Convention and Visitors Bureau, Inc., a corporation, and that by authority duly given and as the act of the corporation, he signed the foregoing instrument.

My commission expires:

Witness my hand and official seal, this the 25<sup>th</sup> day of January, 2008.

Angela C. Ashworth  
Notary Public

(N.P. Seal)



STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I, Jennifer K. Penfield, a Notary Public for said County and State, do hereby certify that JANET C. JONES personally appeared before me this day and acknowledged that she is the CITY CLERK for the CITY OF FAYETTEVILLE, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the CITY OF FAYETTEVILLE, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by JANET C. JONES as its CITY CLERK.

WITNESS my hand and official seal this the 31st day of January, ~~2000~~<sup>2001</sup>.

(Official Seal)

Jennifer K. Penfield  
NOTARY PUBLIC

My commission expires 6/28/02, 19  .

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Approved for Legal Sufficiency

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ROBERT C. COGSWELL, JR.  
City Attorney