

**FLAGSTAFF RAILROAD PASSENGER STATION
FACILITY LEASE**

THIS FLAGSTAFF RAILROAD PASSENGER STATION FACILITY LEASE ("Lease") is entered into as of 8th day of November, 2004 by and between the City of Flagstaff, a municipal corporation of the State of Arizona, located at 211 W. Aspen Avenue, Flagstaff, Arizona, 86001, ("Lessor"), and the National Railroad Passenger Corporation, a corporation organized under the Federal Rail Passenger Service Act and operating as a District of Columbia corporation with offices 60 Massachusetts Avenue, N.E., Washington, D.C., 20002, ("Lessee").

Recitals

- A. Lessor is the owner in fee simple of the land and improvements comprising the Flagstaff Railroad Passenger Station and the Flagstaff Visitor's Center ("Visitor's Center") located at 1 East Route 66 in Flagstaff, Arizona ("Premises"). A floorplan of the building on the Premises is graphically described on the attached Exhibit "A".
- B. Lessee is in the business of providing national passenger rail service and desires to lease a portion of the Premises from Lessor for the sole purpose of providing such service in Flagstaff, Arizona.
- C. Accordingly, the Parties are entering into this Lease subject to the terms and conditions set forth below.

Agreement

1. Leased Premises; Parking.

Lessor leases to Lessee and Lessee leases from Lessor an interior area on the east side of the building on the Premises consisting of approximately twelve hundred (1200) square feet, which area currently comprises the Flagstaff Railroad Passenger Station as depicted on the attached Exhibit "A" ("Leased Premises"). In addition, Lessee shall be allowed to use the exterior platform area on the railway side of the Premises, and shall be allocated three reserved parking spaces in the parking lot located on the east side of the Premises at no additional costs.

2. Term and Renewals.

The term of this Lease shall be five (5) years, commencing on October 1, 2004 ("Commencement Date"), and ending on September 30, 2009, unless sooner terminated by Lessee upon sixty (60) days written notice to Lessor in the event that Lessee's rail passenger service in Flagstaff is relocated or otherwise ceases operation. Provided Lessee has not sooner terminated this Lease and is not in default upon the natural expiration of the initial term of this Lease, Lessee may renew the term of this Lease for two (2) consecutive renewal terms of five (5) years each by notifying Lessor in writing at least sixty (60) days prior to expiration of the then current term of the Lease. Any renewal lease shall be on the same terms and conditions contained in this Lease except there shall be no renewal allowed after the second renewal term has expired.

3. **Rent.**

On or before the Commencement Date and the anniversary of that date thereafter, Lessee shall pay to Lessor rent at the rate of SEVEN DOLLARS & FORTY CENTS (\$7.40) per square foot of the Leased Premises as shown on the attached Exhibit "A". This rental rate includes utility service charges for electricity, natural gas, sewer, water, and sanitation services, and shall be increased by three percent (3%) annually to reflect cost increases incurred by Lessor. TOTAL ANNUAL RENT for the first full year shall be EIGHT THOUSAND EIGHT HUNDRED EIGHTY DOLLARS (\$8,880.00), as shown on the attached Exhibit "B".

4. **Use of Leased Premises.**

Lessee shall use the Leased Premises only for the purpose of operating a passenger rail service station, with associated offices and other facilities provided for such purpose and for operations incidental thereto, including, but not limited to, business operations, ticketing, waiting area, mail, package and express service and related mechanical and engineering facilities ("Use").

5. **Compliance with Laws.**

Lessee acknowledges and agrees that it shall allow no trade or occupation to be conducted on the Leased Premises which is unlawful, or contrary to any applicable law. Lessee shall comply with all present and future Federal, State and local laws, statutes, ordinances, rules and regulations, applicable to Lessee in connection with Lessee's Use of the Leased Premises. However, Lessee shall not be required to make any physical changes to the Leased Premises. Throughout the term of this Lease, and of any renewal thereof, Lessor, at its sole cost, shall be responsible for compliance with all applicable provisions of the Americans with Disabilities Act of 1990 (Public Law No. 101-336) and with all applicable regulations thereunder as well as all future Federal, State and local laws, statutes, ordinances, rules and regulations regarding Lessor's ownership of the Premises and other obligations pursuant to this Lease.

6. **Hours of Operation; Visitor's Center.**

Lessee shall have the right to keep the Leased Premises open at all such times as it desires or is necessary for the operation of a passenger rail service station. Lessee acknowledges and agrees that the portion of the Premises comprising the west side of the building is occupied by the Visitor's Center as shown on attached Exhibit "A". Lessee further acknowledges and agrees that the Visitor's Center is intended to be separate and apart from the Leased Premises and may have hours of operation that differ from the passenger rail service station hours of operation. Currently, the Visitor's Center hours of operation are as follows: Regular Hours - 7:00 a.m. to 6:00 p.m. Summer Hours - 7:00 a.m. to 7:00 p.m. For security purposes, all public access to the Visitor's Center, including all access by Lessee, its subtenants, licensees, invitees and/or its rail service passengers, shall be unavailable after closing hours. Both the separate exterior entrance to the Visitor's Center and the interior wall between the Visitor's Center and the Leased Premises, shall remain locked until opening time next morning.

7. **Signs.**

Lessee and its subtenants and licensees shall, at their sole cost and expense, have the right to place signs on the Leased Premises after first obtaining approval of Lessor. Lessee, at its sole cost and expense and subject to Lessor's prior approval, shall be responsible for placing "reserved parking" signs at its three parking spaces located in the east side parking lot of the Premises. Lessee shall keep all signs on the Leased Premises and in its parking area in a good state of repair. Lessee agrees to indemnify, defend and hold harmless Lessor from any loss or damage resulting from Lessee's sole, gross negligence or willful misconduct in the erection, maintenance, existence, or removal of any signs placed by Lessee and its subtenants and licensees. Lessee shall not place or allow to be placed any sign on the Leased Premises, or in the parking area on the Premises, that is in violation of any applicable law, ordinance or rule of any government agency.

8. **Assignment; Subleasing; Licensing.**

Lessee shall have the right to assign this Lease, or to sublet or license the use of space within the Leased Premises, and to retain any revenue from such subleases and licenses, upon first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Lessor shall have the right to place reasonable conditions on its consent to any such assignments, subleases or licenses. For purposes of this paragraph, allowable subleases and licenses shall include, but not be limited to, agreements for: car rental services; news stands; gift/souvenir shops; food services; coin-operated vending machines; and telephones. Lessee shall have the right to automatically assign this Lease if such assignment is due to statute, regulation, legislation or a judicial decree.

9. **Lessor's Access.**

Lessor, its officers, employees or agents, may, at all reasonable times, enter and have access to the entire Leased Premises for inspection purposes provided that Lessor gives at least twenty-four (24) hours prior notice and is accompanied by a designated employee of Lessee.

10. **Indemnification.**

Lessee is a self-insurer and shall indemnify, defend and hold Lessor harmless against any claims for injury or damage to persons or property arising on the Leased Premises, or in Lessee's allocated parking spaces on the Premises, by reason of the sole, gross negligence or willful misconduct of Lessee, its agents, and employees. Lessee shall cause all contracts with subtenants, licensees or contractors pertaining to the Use of the Leased Premises to indemnify, defend and hold Lessor and Lessee harmless against any claims for injury or damage to persons or property arising on the Leased Premises or in Lessee's allocated parking spaces on the Premises.

Lessor shall indemnify, defend and hold Lessee harmless against any claims for injury or damage to persons or property arising on the Premises, by reason of the sole, gross negligence or willful misconduct of Lessor, its agents, employees, invitees, licensees, or contractors.

11. Utilities.

Lessor shall be responsible for all electricity, gas, water, sanitation charges, and any other utility expenses of the Leased Premises except for communications. Lessee shall be responsible for all installation, maintenance, or other costs associated with communications service or equipment on the Leased Premises owned or operated by Lessee, its subtenants or licensees.

12. Maintenance and Repair.

Lessor shall be responsible for the general maintenance and repair of the Premises. Lessee agrees to allow Lessor access to the Leased Premises at any reasonable hour in order for Lessor to make necessary repairs. Except as indicated below, Lessor shall be responsible for the following maintenance and repair of the Premises: all structural repairs; periodic window washing of all exterior windows; daily maintenance of all common areas and walls; snow removal from, and maintenance of, all driveways, sidewalks, landscaping, parking lots and common areas; and maintenance and repair of the plumbing, heating, ventilating, air conditioning and electrical systems on the Premises. Lessor agrees to provide janitorial service to all common areas on the Premises. Lessee shall be responsible for cleaning and routine maintenance of areas of the Leased Premises used solely by Lessee, its subtenants or licensees, such as behind counter areas. Lessor and Lessee acknowledge and agree that, pursuant to applicable railroad safety regulations, Lessee shall be solely responsible for all maintenance, such as trash pick-up, snow removal and repairs, in the exterior platform area on the railway side of the Premises located within twenty-five (25) feet of the railroad tracks. If either Lessor or Lessee ("Parties") fails to perform any of its responsibilities under this Section 12 after being given reasonable notice and opportunity to cure by the other Party, the other Party may perform said work and bill the non-performing Party for all reasonable costs associated with said work.

13. Notice.

Any notice from Lessor to Lessee relating to this Lease shall be deemed duly served if mailed to Lessee by registered or certified mail, return receipt requested, postage prepaid, at 30th Street Station, 4th Floor South, Philadelphia, PA 19104 (Attention: Real Estate Department) or at such other address as Lessee may from time to time advise in writing. Any notice from Lessee to Lessor relating to this Lease shall be deemed duly served if mailed to Lessor by registered or certified mail, return receipt requested, postage prepaid, at 211 W. Aspen Avenue, Flagstaff, Arizona, 86001 (Attention: Real Estate Manager) or at such other address as Lessor may from time to time advise in writing.

14. Quiet Enjoyment.

Lessor agrees that it shall not interfere with Lessee's quiet and peaceful enjoyment of the Leased Premises, or with that of Lessee's subtenants, licensees, patrons or invitees.

15. **Integration; Modification.**

Both Parties acknowledge and agree that they have not relied upon any statements, representations, agreements, or warranties, except as expressed herein, and that this Lease constitutes the Parties' entire agreement with respect to the matters addressed herein. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are hereby superseded and merged into this Lease. This Lease may be modified or amended only by written agreement signed by or for both Parties.

16. **Severability.**

In the event that a court of competent jurisdiction shall hold any part or provision of this Lease void or of no effect, the remaining provisions of this Lease shall remain in full force and effect, to the extent that the continued enforcement of such remaining provisions shall continue to reflect substantially the intent of the Parties.

17. **Waiver**

No failure to enforce any term or condition of this Lease shall imply or constitute a waiver of the right to insist upon performance of such term or condition, or any other provision hereof, nor shall any waiver by either Lessor or Lessee of any breach of any one or more terms or conditions of this Lease constitute a waiver of any succeeding or other breach hereunder.

18. **Successors and Assigns.**

This Lease shall be binding upon and inure to the benefit of the Parties, their respective successors and approved assigns.

19. **Governing Law.**

This Lease shall be governed, interpreted and enforced in accordance with the laws of the State of Arizona.

20. **Surrender.**

Upon the natural expiration or earlier termination of this Lease, Lessee shall remove all of Lessee's personal property from the Leased Premises. Lessee shall surrender to Lessor the Leased Premises and all alterations and additions made thereto, in the same condition as they were in at the commencement of this Lease, or as they were put in during the term of this Lease, reasonable wear and tear excepted. In the event of Lessee's failure to remove any of Lessee's personal property at Lessee's expense within sixty (60) days of expiration or termination hereof, Lessor may retain same under Lessor's control or sell at public sale, without notice, any or all of such property and either keep or apply the net proceeds of such sale to the payment of any sum due hereunder, or otherwise dispose of such property at Lessor's discretion.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first written above.

LESSOR: City of Flagstaff

By: Joseph R. Donaldson
Title: Mayor

LESSEE: National Railroad Passenger Corporation

By: Sally J. Bellet
Title: Sally J. Bellet, Esquire
Vice President
Real Estate Development

ATTEST:
Margie Brown
City Clerk

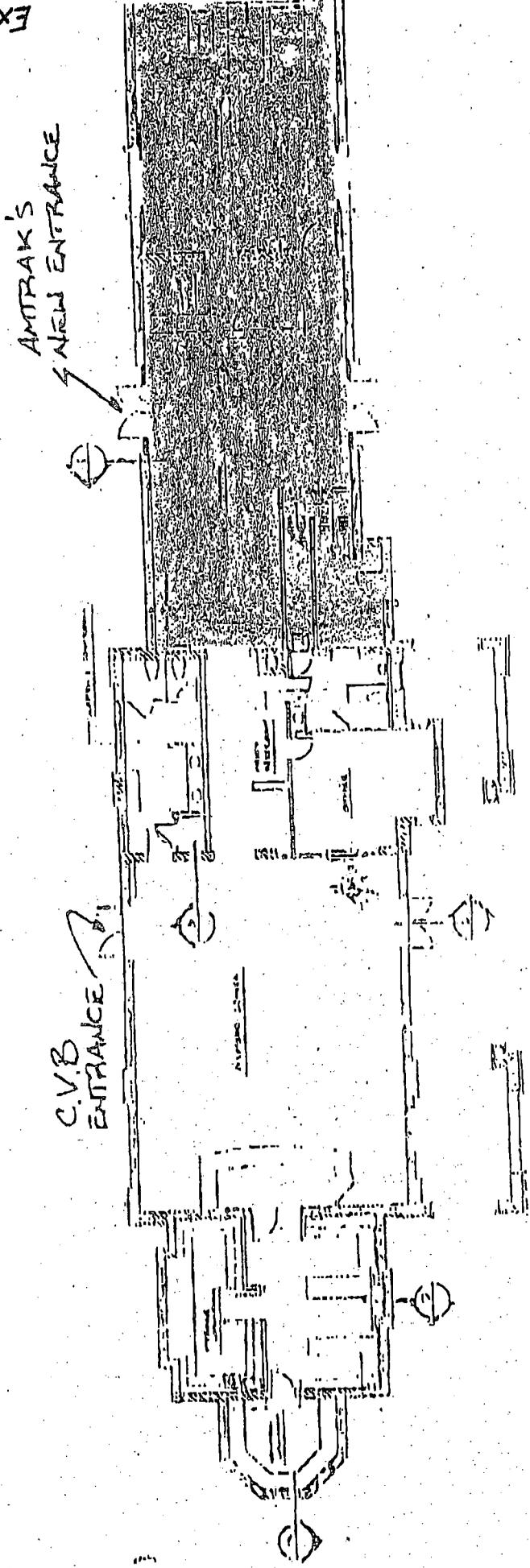
WITNESS:
Nancy A. Edwards

APPROVED AS TO FORM:
[Signature]
City Attorney



LEASED PREMISES

STATION
STAIRS
STATION



AMTRAK'S
NEW ENTRANCE

CVB
ENTRANCE

FINAL FLOOR PLAN
(5.18.93)

Exhibit A

EXHIBIT "A"

8.22.9

Flagstaff Passenger Station

Exhibit "B"

	Annual rent
Year 1	\$ 8,880.00
Year 2	\$ 9,146.40
Year 3	\$ 9,420.79
Year 4	\$ 9,703.42
Year 5	\$ 9,994.52
Year 6	\$ 10,294.35
Year 7	\$ 10,603.18
Year 8	\$ 10,921.28
Year 9	\$ 11,248.92
Year 10	\$ 11,586.39

Rent is for approximately 1200 square feet of building area and includes utilities, taxes, maintenance and allocated parking. A 3% annual escalation rate is applied to adjust for increases in operating and maintenance expenses.