

LEASE

Agreement No. _____

This Lease ("Lease") is made as of this ____ day of _____ 2012, by and between the CITY OF SANTA BARBARA, a body public and politic hereinafter referred to as "CITY", and NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act and operating as a District of Columbia corporation with offices at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002, hereinafter referred to as "AMTRAK".

The following are attached hereto as Exhibits and hereby made a part of this Lease as though fully set forth herein.

- EXHIBIT A – CITY City Parcels
- EXHIBIT B – Lease Area "Premises"
- EXHIBIT C – Amtrak Station Maintenance Standards
- EXHIBIT D – Bus Parking
- EXHIBIT E – Nondiscrimination Certificate

WITNESSETH:

WHEREAS, CITY owns the land and improvements at Santa Barbara Railroad Station in Santa Barbara, California including the railroad station building and surrounding property, hereinafter referred to as "CITY Parcels", described in Exhibit A, attached hereto and made a part of this Lease; and

WHEREAS, The Redevelopment Agency of the City of Santa Barbara ("Agency"), as the predecessor to the City, and AMTRAK entered into a Lease Agreement dated April 21, 1998 (the "Original Lease") with respect to the CITY Parcels. The Original Lease expired on April 21, 2008 and Agency and AMTRAK entered into a letter agreement dated March 24, 2008, pursuant to which AMTRAK remains in possession of the property on a month-to-month basis pending execution of this new lease agreement; and

WHEREAS, AMTRAK desires to continue to lease a portion of the CITY Parcels for the purposes of operating a passenger railroad station, which shall include the interior of the railroad station building, including but not limited to, the waiting rooms, restrooms, ticket offices, baggage room, crew lounge, and offices and immediately surrounding property hereinafter referred to as "Premises", described in Exhibit B, attached hereto and made a part of this Lease; and

WHEREAS, AMTRAK intends to use, operate and maintain certain equipment owned by CITY and located within the CITY Parcels and not within the Premises but used by AMTRAK for its operations including the railroad platform lighting and exterior station building lighting hereinafter referred to as "CITY Facilities", described in Exhibit C, attached hereto and made a part of this Lease; and

WHEREAS, CITY consents to AMTRAK's use of the CITY Facilities subject to compliance with the terms and conditions set forth herein.

WHEREAS, CITY is willing, under terms and conditions hereinafter set forth, to lease the Premises to AMTRAK.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree that:

I. BASIC LEASE TERMS

§ [101] Premises

a. Upon and subject to the terms, covenants and conditions hereof, CITY hereby leases and demises to AMTRAK, and AMTRAK hereby leases and takes from CITY, the Premises which is the real property and improvements described in the attached Exhibit B which is incorporated by this reference as though fully set forth herein and the CITY Facilities described in the attached Exhibit B which is incorporated by this reference as though fully set forth herein. It is mutually agreed that the leasing hereunder is upon and subject to the terms, covenants and conditions hereof, and that AMTRAK covenants, as a material part of the consideration of this Lease, to keep, perform and observe each and all of said terms, covenants and conditions by AMTRAK to be kept, performed or observed, and that this Lease is made upon the condition of such performance.

b. As used herein, the term "Premises" means the property located at 209 State Street including the interior of the passenger depot building (approximately 6,140 sq. ft.), the second floor area, the outdoor passenger waiting areas within the eaves of the Santa Barbara Railroad Station building and the platforms adjacent to the building. AMTRAK expressly understands and hereby acknowledges that the parking lots are not a part of the Premises.

§ [102] Term

a. The initial term of this Lease shall commence when the Ordinance becomes effective 30 days after approval of this Lease and adoption of the Ordinance by the City Council ("Commencement Date") and terminate on _____, 2022 ("Termination Date"), unless sooner terminated as provided herein or upon thirty (30) days written notice should AMTRAK relocate or terminate its rail passenger service to Santa Barbara..

b. AMTRAK shall have the right and option to extend the Lease on the same terms, conditions, limitations, and provisions contained in this Lease, for two five-year terms commencing on the expiration of the initial Lease term, provided that an Event of Default (as defined in Section 1101) does not exist at the time AMTRAK exercises such option. An event of default that is corrected without the requirement of a

notice of default or demand for correction by CITY shall not be considered an event of default for the purposes of this paragraph.

c. AMTRAK must give written notice of its intent to exercise its option to extend the term at least ninety (90) but not more than one hundred eighty (180) days prior to the expiration of the initial term.

§ [103] Condition of the Premises

Except as otherwise specifically provided in this Lease, the Premises shall be conveyed to AMTRAK in “as-is” condition. It shall be the sole responsibility of AMTRAK, at AMTRAK’s sole expense, to investigate and determine the conditions of the Premises, the condition of the existing improvements on the Premises and the suitability of such conditions for the business to be conducted by AMTRAK.

§ [104] Rent Payment

AMTRAK shall pay to CITY, without abatement, deduction or offset whatsoever in lawful money of the United States of America, at P.O. Box 1990, Santa Barbara, California 93102-1990, or to such other person or at such other place as CITY may from time to time designate by notice to AMTRAK, rent during the term of this Lease in accordance with the following Sections.

§ [105] Rental Terms

a. Base Rent. Beginning with the Commencement Date and continuing throughout the term of the Lease, AMTRAK shall pay to CITY Base Rent at the rate of ONE DOLLAR (\$1.00) per year, receipt of which is hereby acknowledged. In no event shall the Base Rent be adjusted below \$1.00. Base Rent for fractional years shall not be prorated.

b. Method of Payment. If any payment of Base Rent made by check, draft or money order is returned to CITY due to insufficient funds, or otherwise, more than once in any given five (5) year period, CITY shall have the right at any time thereafter, upon written notice to AMTRAK, to require AMTRAK to make all subsequent Base Rent payments by cashier’s or certified check.

II. USE, OPERATION AND MAINTENANCE OF THE PREMISES

§ [201] Use of the Premises

AMTRAK shall use the Premises exclusively and continuously for the purpose of conducting all operations related to its railroad passenger transportation business and for no other use. Any other use must be approved in advance by the City.

§ [202] Nondiscrimination

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises or the improvements to be constructed thereon, or any part thereof, and AMTRAK itself, or any person authorized to act under or through it, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of AMTRAK's, lessees, subtenants, sublessee or vendees of the Premises or any part thereof. In addition, AMTRAK agrees to comply with the Certificate of Non-discrimination, attached as Exhibit E and incorporated herein.

§ [203] Restrictions Upon Use

AMTRAK agrees that, in connection with the use and operation of the Premises, it will not:

- a. Use or permit the use of any advertising medium employing sound amplifying devices and or technology, including but not limited to, loudspeakers, phonographs, public address systems, sound amplifiers, radios or broadcasts within the Premises in such manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the Premises, except as needed to provide operational information to passengers and other persons using the Premises for the permitted uses; or
- b. Permit accumulations of garbage, trash, rubbish or any other refuse.

§ [204] Other Use Obligations

- a. No Improvements. AMTRAK agrees that no improvement shall be erected, placed upon, operated or maintained within the Premises, nor any business or activity conducted or carried on therein or therefrom, in violation of the terms of this Lease, or in violation of any regulation, order of law, statute, bylaw or ordinance of a governmental agency having jurisdiction over the Premises.
- b. Signs. All new (i.e., after the Commencement Date of this Lease) signs shall be installed, maintained and permitted in accordance with the Sign Regulations of the Santa Barbara Municipal Code and Historic Landmarks Commission. "Sign" shall have the meaning set forth in said Sign Regulations.
- c. Governmental Requirements. AMTRAK shall at all times comply with and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with any and all laws, statutes, ordinances, which are applicable to AMTRAK

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and its business operations in the Premises.

d. Lighting. The Premises shall be lighted for public safety and security purposes during hours of darkness.

§ [205] Operation

a. Parking.

1. Railway Service Passenger Parking. CITY shall provide parking for AMTRAK passengers at a maximum rate for each 24 hour period pursuant to the fees listed in the City of Santa Barbara's fee resolution. AMTRAK agrees to cooperate with City of Santa Barbara in establishing a mutually acceptable ticket stamp, voucher or validation program for parking in order to provide adequate, discounted parking for AMTRAK passengers

2. Public Parking Lot. City of Santa Barbara will operate and maintain the parking lot as a paid parking lot available to the general public, and Greyhound and AMTRAK passengers, subject to the City's approved fee resolution.

3. Handicap Parking. CITY shall provide handicap parking spaces near the Premises as required by law.

4. Railway Service Employee Parking. CITY shall designate, with signage as appropriate, a maximum of four (4) parking spaces as exclusive parking spaces for AMTRAK personnel. The location of the AMTRAK employee parking spaces shall be determined by the City in its discretion and shall be provided without charge.

5. Railway Service Bus Parking. The parties acknowledge and agree that CITY provides bus parking for up to two (2) AMTRAK buses on W. Montecito Street off of the CITY Parcel. The parties agree that the bus parking provided off the CITY Parcel is adequate for the needs of AMTRAK. The bus parking inside the Premises is restricted to one actively loading AMTRAK bus only. Exhibit D attached hereto identifies the locations of acceptable AMTRAK bus parking on the exterior and interior of the Premises. No AMTRAK bus parking is permitted in the interior passenger loading zones for longer than a maximum period of ten (10) minutes. AMTRAK buses must be actively loading passengers and are allowed to idle while parked in the interior Amtrak bus parking area within the Premises for a maximum of five (5) minutes in accordance with City Municipal Code Sections 10.48.90 and 10.48.95.

b. Concessions. CITY shall have the right to review and conditionally approve or deny any and all new concessions (food, beverage, etc.) which may be provided by AMTRAK, or a third party subcontractor to AMTRAK, on the Premises after the date of this Lease.

c. Hours of Operation. AMTRAK shall maintain business hours as is customary in the operation of its passenger rail service.

§ [206] CITY's Maintenance Obligations

a. CITY shall be responsible for the cost of major repairs and replacement of the building utility systems, building structure, foundation, roof, interior and exterior walls and flooring of the Premises. Such major repairs and replacements shall be the same as provided by the City of Santa Barbara at its other publicly-owned facilities. The responsibility for the cost of such repair and replacement does not include the cost to repair any damage to the Premises caused by the willful acts or misconduct of AMTRAK, its agents or customers. CITY is also responsible for areas outside of Premises including the parking lots, provided, however, the CITY Facilities used by AMTRAK shall be maintained, repaired and replaced by AMTRAK as provided in Section 207 herein.

b. Should repair, reconstruction or building of the Premises require CITY to close the Premises to public access, CITY agrees that such work shall be completed in a manner to accommodate the public use to the extent possible. CITY shall have no liability to AMTRAK for lost business caused by an interruption of access to the Premises.

c. If CITY fails to make repairs, replacements or rebuild as required herein, AMTRAK may notify CITY in writing of said failure. Should CITY fail to commence efforts to correct the situation within five (5) days thereafter and pursue such efforts diligently until completion, AMTRAK or its designee or agent, after written notice to CITY of AMTRAK's intent to undertake the repairs, may make the necessary correction and the cost thereof actually incurred by AMTRAK, including, but not limited to, the cost of labor, materials and equipment shall be paid by CITY within ten (10) days of receipt of a statement of said cost from AMTRAK.

§ [207] AMTRAK's Maintenance Obligations

a. Operational Maintenance. Except for CITY's obligations set forth in Section 206, AMTRAK shall be responsible for the cost of all other maintenance relating to normal wear and tear of AMTRAK operations on the Premises and the CITY Facilities. Such maintenance shall include, but not be limited to, maintenance of all Platform lighting fixtures, poles, conduit and wiring. AMTRAK shall repair damage to the Premises or to the CITY Facilities caused by AMTRAK or resulting from AMTRAK's normal use, repair and maintenance of the Premises or City Facilities including, but not limited to, restroom plumbing valves, toilets and fixtures, painting of threshold steps at entryways, painting of AMTRAK administrative office walls and stairs and other operational maintenance of a similar nature. All repairs shall be made in a good and workmanlike manner to the condition in which it existed prior to the damage.

b. Custodial Maintenance. AMTRAK shall be responsible for the cost of contracting directly for the provision of custodial services for the Premises

consistent with the Maintenance Standards as described in Exhibit C, attached hereto and made a part of this Lease.

1. AMTRAK shall be responsible for the cost of all necessary utility use and connections, including, but not limited to, electrical, gas and water utility connections and vents necessary for its operations on the Premises.

2. Except for CITY's obligations set forth in Section 206, AMTRAK shall initiate repairs and be responsible for the costs to repair all building systems necessitated by utility malfunction for which AMTRAK is responsible within twenty-four (24) hours of initial discovery and pursue the repairs diligently until completion, subject to the approval of the CITY.

3. AMTRAK shall be responsible for the cost of keeping and maintaining the Premises and CITY Facilities in a clean and sanitary condition in accordance with applicable public health laws. All garbage and recycling shall be placed in an approved trash and recycling enclosures designated by CITY.

§ [208] CITY's Right to Repair

If AMTRAK fails to maintain or make repairs or replacements as required herein, CITY may notify AMTRAK in writing of said failure. Should AMTRAK fail to commence efforts to correct the situation within five (5) days thereafter and pursue such efforts diligently until completion, CITY or its designee or agent, after written notice to AMTRAK of CITY's intent to undertake the repairs, may make the necessary correction and the cost thereof actually incurred by CITY, including, but not limited to, the cost of labor, materials and equipment shall be paid by AMTRAK within ten (10) days of receipt of a statement of said cost from CITY.

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III. LAWS, TAXES AND UTILITIES

§ [301] Compliance with Laws

AMTRAK agrees to comply with all applicable City, State, and federal laws, rules and regulations of any governmental entity that are applicable to AMTRAK and pertaining to AMTRAK's use of the Premises and City Facilities pursuant to this Lease.

§ [302] Tax Exempt

CITY understands and acknowledges that, notwithstanding any other provision of law, AMTRAK is exempt from any taxes or other fees imposed by any State, political subdivision of a State, or local taxing authority which are levied on AMTRAK, or any railroad subsidiary thereof, after September 30, 1982. Provided, however, that notwithstanding any provision of law, AMTRAK shall not be exempt from any taxes or other fees that it was required to pay as of September 10, 1982. Taxes and fees levied on AMTRAK or any railroad subsidiary thereof by States, political

subdivisions of States, or local taxing authorities with respect to periods AMTRAK was required to pay as of September 10, 1982 and assessed before April 1, 1997 shall be payable in proportion to the part of the relevant tax period which elapsed prior to such date. Notwithstanding the provision of section 1341 of Title 28, the United States district courts shall have original jurisdiction over any civil actions brought by Amtrak to enforce the exemption conferred hereunder. and may grant equitable or declaratory relief as requested by AMTRAK.

§ [303] Additional Rent.

Subject to Section 302 above, in order to satisfy the notice requirement of Section 107.6 of the California Revenue and Taxation Code, CITY hereby notifies AMTRAK that AMTRAK's leasehold interest in the Premises created by this Agreement may be subject to property taxation.

§ [304] Evidence of Non-payment

The certificate, advice, receipt or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such taxes, of nonpayment of such taxes shall be prima facie evidence that such taxes are due and unpaid or have not been paid at the time of the making or issuance of such certificate, advice, receipt or bill.

§ [305] CITY's Attorney-in-Fact

CITY appoints AMTRAK the attorney-in-fact of CITY for the purpose of making all payments to be made by AMTRAK pursuant to any of the provisions of this Lease to persons or entities other than CITY. AMTRAK shall provide CITY with satisfactory evidence of payment. In case any person or entity to whom any sum is directly payable by AMTRAK under any of the provisions of this Lease shall refuse to accept payment of such sum from AMTRAK, AMTRAK shall thereupon give written notice of such fact to CITY and shall pay such sum directly to CITY at the address specified in Section 1402 hereof, and CITY shall thereupon pay such sum to such person or entity.

§ [306] CITY's Right to Cure

Subject to Section 307 below, if AMTRAK, in violation of the provisions of this Lease, shall fail to pay and to discharge any taxes, CITY may (but shall not be obligated to) pay or discharge such taxes, and the amount paid by CITY and the amount of all costs, expenses, interest and penalties connected therewith actually incurred by CITY, including attorneys' fees, shall be deemed to be and shall be payable by AMTRAK as additional rent and shall be reimbursed to CITY by AMTRAK on demand.

§ [307] Permitted Contests

a. AMTRAK shall not be required to pay, discharge or remove any taxes (including penalties and interest) upon or against the Premises or any part thereof, so long as AMTRAK shall in good faith contest the same or the validity thereof by appropriate legal proceedings and shall give to CITY prompt notice in writing of such contest at least ten (10) days before any delinquency occurs, provided that said legal proceedings shall operate to prevent the collection of the taxes so contested, or the sale of the Premises or any part thereof, to satisfy the same, and provided, further, that AMTRAK shall, prior to the date such taxes are due and payable, have given such reasonable security as may be required from time to time in order to ensure the payment of such taxes to prevent any sale, foreclosure or forfeiture of the Premises or any part thereof, by reason of such nonpayment. Such security shall be not less than an amount required by the applicable taxing authority.

b. In the event of any such contest and the final determination thereof adversely to AMTRAK, AMTRAK shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by AMTRAK, and after such payment and discharge by AMTRAK, CITY will promptly return to AMTRAK such security as CITY shall have received in connection with such contest. Any such proceedings to contest the validity or amount of taxes or to recover back any taxes paid by AMTRAK shall be brought by AMTRAK, at AMTRAK's expense, in the name of AMTRAK.

§ [308] Services and Utilities

a. CITY's Utility Obligations.

1. Electrical - CITY is responsible for and shall pay for all electrical usage and service costs for the parking lots.

2. Public Telephone - CITY will contract directly for the installation of all public use pay telephones on the Premises.

b. AMTRAK's Utility Obligations.

1. Electrical - AMTRAK is responsible for and shall pay for all electrical usage, service and maintenance costs required for the Premises, including the Platform lighting, and the CITY Facilities.

2. Communication - AMTRAK is responsible for and shall pay for all telephone, facsimile, and other communication usage and services costs used for AMTRAK operations on the Premises.

3. Trash and Recycling – AMTRAK shall provide and maintain trash and recycling containers, and be responsible for and shall pay for all trash and recycling usage and services required for disposal of trash and recycling from the Premises.

4. Water - AMTRAK is responsible for and shall pay for all water usage and service costs for the Premises.

5. Sewer - AMTRAK is responsible for and shall pay for all sewer usage and service costs for the Premises.

Except for CITY's obligations set forth in Subsection (a) above, AMTRAK shall pay promptly as the same become due and payable all charges, costs, bills and expenses of and for gas, electricity, sewer, air conditioning, telephone, trash and all other services and utilities of whatever kind furnished or supplied to or used by AMTRAK or any other party in connection with the use, occupancy, maintenance or operation of the Premises or any part thereof. AMTRAK hereby expressly waives any and all claims against CITY for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by AMTRAK by reason of any defect, deficiency, failure or impairment of whatever kind or nature in any service or utility furnished or supplied to or used by AMTRAK or any other party in connection with the use, occupancy, maintenance or operation of the Premises, CITY Facilities or any part thereof. Such services and utilities shall include, without limitation, drainage, sewer system, wires leading to or inside the Premises, gas, electric, trash or telephone services.

IV. CONSTRUCTION AND LIENS

§ [401] Alterations and Improvements

AMTRAK shall have the right to make alterations and improvements to the Premises subject to the following:

a. AMTRAK shall obtain CITY's written approval prior to making any alterations or improvements to the Premises. AMTRAK acknowledges that the station depot building is listed on the National Register of Historic Places and that such listing may necessitate some conditions relative to any proposed alterations or improvements.

b. All alterations and improvements that are permanently affixed to the Premises shall become the property of the CITY and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this Lease.

c. AMTRAK's personal property and its fixtures, including machinery, equipment, and furnishings, shall remain the property of AMTRAK and may be removed by AMTRAK at any time during the term or upon the expiration or sooner termination of this Lease. AMTRAK shall repair any damage to the Premises or station caused by

AMTRAK's removal of its personal property, fixtures, or equipment, but Amtrak shall have no obligation to remove such items from the station at any time.

d. Because the station, including the Premises is listed on the National Register of Historic Places, any changes or alterations made in, on, or about the Premises shall be made with adherence to the existing architectural and historical character of the station and Premises and shall be made in compliance with the Secretary of the Interior's Standards for buildings included in the National Register of Historic Places, and in compliance with any laws, rules and regulations of any governmental entity that are applicable to Amtrak and the Premises, including but not limited to the California Environmental Quality Act ("CEQA").

e. Any alteration, addition, or improvement made by AMTRAK shall be diligently constructed in a good and workmanlike manner in conformity with all laws, rules, and regulations of any governmental entity that are applicable to AMTRAK and the Premises. Any alterations, addition, or improvement made in whatever manner or for whatever purpose by AMTRAK shall be made in conformity with the existing history, style and tradition of the Premises.

§ [402] General Construction Standards

a. All AMTRAK's construction, alteration or improvement work permitted herein by the City shall be accomplished expeditiously and diligently. AMTRAK shall take all necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. AMTRAK shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the area upon which such work is performed to a condition, which is equal to or better than the condition which existed prior to the beginning of such work. In addition, AMTRAK shall pay (or cause to be paid) all costs and expenses associated therewith. Dust, noise and other effects of such work shall be controlled using the best accepted methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area.

b. Any remodeling or reconstruction work undertaken on any existing building shall at all times be of first quality construction and architectural design and in accordance with plans approved by CITY. Any remodeling or reconstruction of any building shall conform to the original design concepts so that the exterior of all buildings, including, without limitation, the exterior elevations and color thereof, and all other improvements, will be architecturally and aesthetically compatible and harmonious with the other buildings and improvements in the surrounding area to create a uniform general plan for the Premises and the surrounding area, to the satisfaction of the City of Santa Barbara design review boards.

§ [403] Liens

AMTRAK shall keep the Premises and every part of the station free and clear of any mechanic's lien or materialmen's liens arising out of the construction of any

such alterations or improvements and further agrees to hold CITY harmless from any liability or liens resulting from AMTRAK's alterations or improvements.

V. OWNERSHIP OF IMPROVEMENTS

§ [501] Ownership During Term

Title to the Premises and CITY Facilities shall remain in CITY. All improvements to real property constructed on the Premises by AMTRAK as permitted or required by this Lease shall, during this Lease term, be and remain the property of AMTRAK, provided however, that AMTRAK shall have no right to waste, destroy, demolish or remove the improvements, and provided, further, that AMTRAK's rights and powers with respect to the improvements are subject to the terms and limitations of this Lease.

§[502] Ownership at Termination

a. At the expiration or sooner termination of this Lease term, CITY, at CITY's election, may demand the removal from the Premises, at AMTRAK's sole cost and expense, of all improvements, fixtures, equipment and/or personal property, as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least thirty (30) days before the expiration date. A demand to take effect on any other termination of this Lease shall be effectuated by notice given concurrently with notice of such termination or within ten (10) days after such termination.

b. In the event CITY does not demand the removal of all of AMTRAK's fixtures and personal property as stated in Subsection (a) above, then any fixtures or personal property not removed by AMTRAK within thirty (30) days of the termination of this Lease shall be deemed to be abandoned by AMTRAK and without compensation to AMTRAK, shall become the CITY's property, free and clear of all claims to or against them by AMTRAK or any third party.

c. Upon termination of this Lease, whether by expiration of the term or otherwise, all improvements not required to be removed by AMTRAK as hereinabove stated in Subsection (a) shall, without compensation to AMTRAK, remain CITY's property, free and clear of all claims to or against them by AMTRAK or any third party.

d. In the event AMTRAK fails to remove any fixtures, equipment, or personal property as demanded by CITY pursuant to Subsection (a), CITY after ten (10) days written notice to AMTRAK, and without waiving or releasing AMTRAK from any obligation of AMTRAK hereunder, may (but shall not be required to) place such property in storage for the account of and at the expense of AMTRAK in which event the provisions of this Lease shall be applicable.

VI. ASSIGNMENT AND SUBLETTING

§ [601] Assignment and Subletting

AMTRAK, its successors and assigns, shall not assign, either voluntarily or by operation of law, its interest in this Lease to all or any part of the Premises or allow any other person or entity (except AMTRAK's authorized representatives) to occupy or use all or any part of the Premises without the prior written consent of CITY, which consent may be withheld in the sole and absolute discretion of CITY. AMTRAK shall not have the right to sublease or sublet without the express written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned.

In giving its consent pursuant to the above paragraph, CITY shall, in addition to any other requirements or conditions, require compliance with the following:

a. Any proposed transferee shall have the qualifications and financial responsibility, as determined by CITY, necessary and adequate to fulfill the obligations undertaken in this Lease by AMTRAK. In addition, for the purposes of this provision, the following acts of AMTRAK are examples of and shall be considered assignments and shall require the prior written consent of CITY to be effective:

1. Partnership and L.L.C. Transfers. If AMTRAK is a partnership or a California limited liability company, a transfer of capital interest to a new partner or partners (or member or members) which computed alone or cumulatively with previous transfers would result or has resulted in the transfer of ownership of a more than twenty-five percent (25%) interest in the capital on profits of the partnership or limited liability company; provided that the following transfers shall not be considered in computing whether a cumulative total of more than twenty-five percent (25%) of the capital of the partnership or limited liability company has been transferred:

(i) Transfers to persons who are related by blood or marriage to the transferring partner or member or to a trust established for the benefit of the transferring partner or member or such persons;

(ii) Transfers resulting from the death of the partner or member whether such transfers are made pursuant to the will of the deceased partner or member an *inter vivos* or testamentary trust instrument or the laws of intestacy.

2. Corporations. The transfer of more than twenty-five percent (25%) of the voting stock in a corporation which is either itself AMTRAK, or is a general partner in a partnership which is AMTRAK; provided that the following transfers shall not be considered in computing whether a cumulative total of more than twenty-five percent (25%) of the voting stock has been transferred:

(i) Transfers to persons who are related by blood or marriage to the transferring shareholder or to a trust established for the benefit of the transferring shareholder or such persons;

(ii) Transfers resulting from the death of the shareholder whether such transfers are made pursuant to the will of the deceased shareholder an inter-vivos trust instrument or the laws of intestacy;

b. Any proposed transferee shall have expressly assumed, by instrument in writing, for itself and its successors and assignees, and expressly for the benefit of CITY, all of the obligations of AMTRAK under this Lease. Any proposed transferee shall have agreed to be subject to all of the conditions and restrictions to which AMTRAK is subject. However, the failure for any reason, of any transferee, or any successor in interest whatsoever to this Lease, to have assumed such obligations, shall not relieve or except such transferee or successor of or from such obligations, conditions or restrictions or deprive or limit CITY of or with respect to any rights or remedies or controls with respect to this Lease, the Premises or any required construction of improvements. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that transfer of this Lease, or any interest herein, however consummated or occurring, and whether voluntary or involuntary, shall not operate, legally or practically, to deprive or limit CITY of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and construction of improvements that CITY would have had, had there been no such transfer or change.

c. There has been submitted to CITY for review, and CITY has approved, all instruments and other legal documents involved in effecting transfer of the leasehold interest.

d. If this Lease is assigned by operation of law in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, CITY shall have a right of first refusal to purchase this Lease. If any trustee or debtor in possession (collectively "trustee") receives an acceptable offer to purchase this Lease, such trustee shall notify CITY in writing of the terms of such offer. If CITY within thirty (30) days after receipt of such notice, indicates in writing its agreement to purchase this Lease on the terms stated, the trustee shall sell and convey this Lease to CITY on the terms stated in the notice. If the CITY does not indicate its agreement within thirty (30) days, the trustee shall thereafter have the right to assign this Lease to the party making the offer on the terms of such offer. If such offeror does not purchase this Lease on such terms and conditions, CITY shall have a right of first refusal to purchase this Lease in the event of any later offer for the purchase of this Lease. If an offeror purchases this Lease in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, CITY shall have the option to purchase this Lease from such party for an amount equal to the amount such party paid for this Lease, at any time within one (1) year from the date of such offerors' purchase thereof.

e. No assignment of any interest in this Lease made with CITY's consent, shall be effective until there shall have been delivered to CITY an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes

due performance of the obligations on the assignor's part to be performed under this Lease to the end of the term hereof.

f. The consent by CITY to an assignment hereunder shall not in any way be construed to relieve AMTRAK from obtaining the express consent in writing of CITY to any further assignment.

g. Notwithstanding an assignment by AMTRAK hereunder to which CITY has consented, AMTRAK shall remain liable for all liabilities and obligations incurred by AMTRAK hereunder prior to the date of said assignment.

h. CITY, its successors and assigns, shall not assign, either voluntarily or by operation of law, its interest in this Lease without giving notice to AMTRAK at least sixty (60) days prior to the assignment.

§ [602] Successors and Assigns

The terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties hereto, if approved by CITY pursuant to Section 601. If the Lease is transferred to a party other than the U.S. government, not approved in advance, CITY may terminate Lease in its sole discretion.

§ [603] Release of CITY

In the event of a sale, assignment, transfer or conveyance by CITY of the Premises or its rights hereunder, the same shall operate to release CITY from any liability incurred following the effective date of such sale, assignment, transfer or conveyance upon any of the covenants or conditions, expressed or implied, herein contained in favor of AMTRAK, and in such event after such assignment, sale, transfer or conveyance, AMTRAK agrees to look solely to the responsibility of the successor in interest of CITY in and to the Premises or this Lease. Provided that CITY is not in default hereunder at the time, this Lease shall not be affected by any such sale, assignment, transfer or conveyance, and AMTRAK agrees to attorn to any such purchaser or assignee.

VII. INSURANCE AND INDEMNIFICATION

§ [701] Insurance Coverage Requirements

a. General Liability Insurance

AMTRAK shall at all times during the term thereof, maintain and keep in effect, comprehensive general liability insurance. The amount of such liability insurance shall be not less than \$2,000,000 for injury to one person, including death and disease, \$5,000,000 for

injuries arising out of any one accident and not less than \$1,000,000 for property damage.

AMTRAK shall, prior to commencement of this Lease, provide a Certificate of Insurance naming the City of Santa Barbara, its officers, agents and employees as additional insureds. The Certificate shall provide that coverage afforded will not be canceled and endeavor to provide at least thirty (30) days prior written notice to CITY. The amount or amounts of said policy or policies shall not be deemed a limitation of AMTRAK's agreement to indemnify and hold harmless CITY, and in the event CITY should become liable in an amount in excess of the amount of amounts of said policy or policies, then AMTRAK shall save CITY harmless from the whole thereof.

b. Automobile Liability Insurance

AMTRAK shall at all times during the term thereof, maintain and keep in effect, automobile liability insurance. The amount of such liability insurance shall be not less than \$2,000,000 for injury to one person, including death and disease, \$5,000,000 for injuries arising out of any one accident and not less than \$1,000,000 for property damage.

c. Workers' Compensation Insurance

AMTRAK shall at all times during the term thereof, maintain and keep in effect, workers' compensation insurance as required by Federal and California law with Statutory Limits; and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

d. Acceptance of the certificate of insurance by CITY shall not relieve or decrease the extent to which AMTRAK may be held responsible for payment of damages resulting from AMTRAK's services or operation pursuant to this Lease, nor shall it be deemed a waiver of CITY's rights to insurance coverage hereunder. Notwithstanding the foregoing AMTRAK may maintain the above insurance coverage through its self-insurance program. The self-insurance maintained by AMTRAK shall provide the coverage specified herein.

§ [702] Property Insurance Requirement

CITY shall at all times during the term thereof, maintain and keep in effect, property insurance. The amount of such property insurance shall be not less than the then replacement value of the Premises.

AMTRAK shall at all times during the term thereof, maintain and keep in effect, property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty or provision. The property insurance coverage maintained by AMTRAK shall name the City as Loss Payee as its interests may appear.

§ [703] General Insurance Policy Requirements

a. All insurance provided for in this Article VII (Section 701 et seq.) shall be effected under valid and enforceable policies in form and substance satisfactory to CITY issued by insurers satisfactory to CITY authorized to do business in the State of California. A certificate of each insurance policy shall be provided to the City of Santa Barbara on or before the Commencement Date and upon the renewal of each policy. AMTRAK may provide any insurance required hereunder by a blanket insurance policy covering the Premises and any other properties. Notwithstanding the foregoing, AMTRAK may maintain the above insurance coverage through its self-insurance program.

b. Insurance Revisions CITY shall retain the right at any time to review the coverage, form and amount of insurance required hereby. If, in the opinion of CITY, the insurance provisions in this Lease do not provide adequate protection for CITY and for members of the public using the Premises, CITY may require AMTRAK to obtain insurance sufficient in coverage, form and amount to provide adequate protection or provide self-insurance.

c. CITY's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance or self-insurance is required.

d. The procuring of such required policy or policies of insurance or self-insurance shall not be construed to limit AMTRAK's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease.

e. Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all rights of subrogation against the City.

Amtrak hereby grants to City a waiver of any right to subrogation which any insurer of AMTRAK may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.

f. The insurance coverage maintained by AMTRAK shall be primary insurance as respects the City, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, employees, and agents shall be excess of AMTRAK's insurance and shall not contribute with it.

§ [704] Hold Harmless and Indemnification

a. To the fullest extent permitted by law, AMTRAK shall defend, indemnify and hold CITY and its officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorneys' fees) which may be imposed upon, incurred by or asserted against CITY or its officers, agents and employees arising out of or in any way connected to AMTRAK's possession or use of the Premises or CITY Facilities.

b. In case any action or proceeding is brought against CITY or its respective officers, agents and employees by reason of any such claim, AMTRAK, upon written notice from the CITY, shall at AMTRAK's expense resist and defend such action or proceeding by counsel approved by CITY in writing.

c. To the fullest extent permitted by law, CITY shall defend, indemnify and hold AMTRAK and its officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorneys' fees) which may be imposed upon, incurred by or asserted against AMTRAK or its officers, agents and employees arising out of CITY's ownership of the CITY Parcels.

VIII. SURRENDER; HOLDING OVER

§ [801] Surrender of Premises

At the end of the term, or other sooner termination of this Lease, AMTRAK will surrender and deliver to CITY the possession of the Premises and CITY Facilities, in good order, condition and repair, free and clear of all occupancies, and free and clear of all liens and encumbrances other than those, if any, presently existing or created by CITY, without payment or allowance whatsoever by CITY. AMTRAK may, upon or prior to the termination of this Lease, remove, at AMTRAK's sole cost and expense, all movable furniture, trade fixtures and equipment belonging to AMTRAK, provided that upon any such removal, AMTRAK, at AMTRAK's sole cost and expense, shall repair all damage, of any kind or nature, caused by such removal. Property not so removed shall be deemed abandoned by AMTRAK, and title to the same shall thereupon immediately pass to CITY without payment or allowance whatsoever by CITY on account of such property. At CITY's sole discretion and upon CITY's written request, AMTRAK shall remove, at AMTRAK's sole cost and expense, any and all improvements constructed or installed by or at the expense of AMTRAK, and, at no cost and expense to CITY, AMTRAK shall repair or cause the repair of any damage resulting from such removal.

§ [802] Holding Over

If AMTRAK fails to surrender possession of the Premises following expiration or any sooner termination of this Lease, CITY in its sole discretion may elect that such holding over shall constitute renewal of this Lease on a month to month basis by providing notice of such election and renewal within seven (7) days after the

expiration or termination date. Without such notice, acceptance of rent by CITY following expiration or termination shall not constitute a renewal of this Lease and nothing contained in this Section 802 shall waive CITY's right of re-entry or any other right. Unless CITY elects the month to month renewal as provided above, AMTRAK shall be only a tenant at sufferance, whether or not CITY accepts any rent from AMTRAK while AMTRAK is holding over without CITY's written consent.

IX. DAMAGE OR DESTRUCTION

§ [901] CITY's Restoration of Premises

a. In the event of destruction, or substantial damage to the Premises during the term of this Lease which render the Premises unusable, CITY shall, in its sole discretion, have the option of:

1. Within one hundred eighty (180) days (or such longer period of time as determined by AMTRAK in its sole discretion) after such damage or destruction, subject to events of force majeure as described in Section 1200, replacing or rebuilding the Premises, in such manner and according to such plans and specifications which would restore the Premises to substantially the same condition as immediately before its destruction or substantial damage. In the event that CITY decides to rebuild the Premises, this Lease shall not terminate provided that CITY diligently pursues the replacement or rebuilding of the Premises. If CITY fails to proceed diligently and fails to replace or rebuild the Premises within the time period specified herein, AMTRAK may elect to terminate this Lease.

2. Declining to replace or rebuild, in which event this Lease shall terminate.

b. CITY shall notify AMTRAK within 30 days after such damage or destruction of CITY's decision to rebuild the Premises, or declining to rebuild.

c. In the event CITY elects to replace or rebuild the Premises, then for a period commencing on the date of destruction or substantial damage until the date of completion, AMTRAK shall have no performance obligations under this Lease; provided, however, during such time, AMTRAK shall repair and restore or replace the Premises as needed for its operations and use.

§ [902] Waiver of Civil Code Sections

AMTRAK waives the provisions of Civil Code §1932(2) and Civil Code §1933(4) with respect to any destruction of the Premises.

§ [903] Restoration Prohibited by Law

If existing law prohibits the restoration of the Premises to substantially the same design and functionality as existed immediately before destruction, either AMTRAK or the CITY may terminate this Lease immediately by giving notice to the other party.

X. EMINENT DOMAIN

§ [1001] Definition of Taking

The term “taking” as used herein means the exercise by any governmental or other permitted authority of the power of eminent domain or the exercise of any similar governmental power to take and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation.

§ [1002] Total Taking

In the case of a permanent taking (i.e., more than 60 days) of the CITY Parcels or the entire Premises, this Lease shall terminate as of the date on which such taking shall be effective. In case of a permanent taking of such substantial part of the Premises as shall result, in the good faith judgment of AMTRAK, in the Premises remaining after such taking (even if restoration were made) being economically unsuitable for the use being made of the Premises at the time of such taking, AMTRAK, at its option, may terminate this Lease by written notice given to CITY within sixty (60) days after such taking. Any taking of the Premises of the character referred to in this Section 1002, which results in the termination of this Lease is referred to as a “total taking.”

§ [1003] Partial Taking

In the event of a taking of a portion of the Premises which is not a total taking (a “partial taking”), then and in that event:

a. This Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such partial taking, without any abatement of Base Rent, Percentage Rent or any other payment payable hereunder; and

b. CITY will promptly commence and complete (subject to delay, hindrance or prevention by reason of any of the causes mentioned in Article XII [Section 1200 et seq.]) restoration of the Premises as nearly as possible to its condition and character immediately prior to such partial taking, except for any reduction in area caused thereby; provided that, in the case of a partial taking for temporary use, CITY shall not be required to effect such restoration until such partial taking is terminated. Such restoration shall be performed in a good and workmanlike manner.

§ [1004] Application of Awards

Awards and other payments on account of a taking (less costs, fees and expenses incurred by CITY, and AMTRAK in connection with the collection thereof) shall be applied as follows:

a. Net awards and payments received on account of taking, other than a taking of only the leasehold estate hereunder,

shall be held and applied to pay the cost of restoration of the Premises. The balance, if any, remaining after restoration shall be paid to CITY.

b. Net awards and payment received on account of a taking of only the leasehold estate created by this Lease shall be paid to AMTRAK, except that:

1. If any portion of any such award or payment is made by reason of any damage to or destruction of the Premises, and there exists in this Lease an obligation to restore said Premises, such portion shall be held and applied to pay the cost of restoration thereof; and

2. If any portion of any award or payment on account of a taking for temporary use relates to a period beyond the date of termination of this Lease term, such portion shall be paid to CITY; and

3. If, at any time such award becomes payable to AMTRAK, any Base Rent, Percentage Rent or other payments payable hereunder (including, without limitation, any tax payments) shall be due and unpaid, such award shall be first applied to the payment thereof.

c. With the exception of payments to AMTRAK for loss of business goodwill and AMTRAK improvements at cost less depreciation in accordance with the Internal Revenue Code, any award and payment received on account of a taking for temporary use or a total taking shall be paid to the CITY, including any and all payments for leasehold bonus value, fixtures and equipment not considered AMTRAK improvements and severance damages.

§ [1005] Notice of Taking

In case of a taking of all or any part of the Premises or the commencement of any proceeding or negotiations which might result in such taking, the party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other party. CITY and AMTRAK shall jointly prosecute their claims for an award in a single proceeding. CITY and AMTRAK shall not prosecute separate claims for an award, except that AMTRAK and any subtenant may prosecute separate claims for awards for moving expenses or on account of the taking of any removable fixtures or for the unamortized portion of any

leasehold improvements made by any subtenant but only to the extent that any such separate award shall not diminish the award made to CITY and AMTRAK in respect of their joint claim.

§ [1006] Disbursement of Awards on Partial Taking

All awards or other payments received on account of a partial taking shall be paid to the CITY.

XI. DEFAULT

§ [1101] Default by AMTRAK

a. Event of Default. If AMTRAK fails to:

1. Comply with any of its obligations under this Lease and such failure continues for thirty (30) days after notice from CITY of such failure (or for such longer period of time as may be required to cure such failure if AMTRAK is diligently pursuing such cure), or

2. Conduct any business operations on the Premises for seven (7) consecutive days which is not otherwise allowed or provided for hereunder, then in either such event, such failure shall constitute an "Event of Default."

b. Remedies Upon Default. Upon the occurrence of any such Event of Default, in addition to any and all other rights or remedies of CITY hereunder or by law or in equity, it shall be the right of CITY, at the option of CITY, upon notice to AMTRAK, to declare the term hereof ended and to terminate this Lease, in which event AMTRAK shall promptly surrender possession of the Premises to CITY, and pay to CITY all Base Rent, and all other payments due CITY hereunder to the date of such termination. If AMTRAK does not so promptly surrender the Premises, CITY shall have the immediate right to re-enter the Premises and take possession thereof including the right to refuse to permit and to deny the right of AMTRAK to remove any or all of AMTRAK's fixtures, equipment, improvements or personal property, notwithstanding any other provision of this Lease, located in, or upon the Premises, and take exclusive possession of same as a guarantee of payment for past due rents, without any obligation or liability to AMTRAK, and remove all persons therefrom, and AMTRAK shall have no further claim thereon or thereunder.

c. Remedies Not Exclusive. No right or remedy herein conferred upon or reserved to CITY or AMTRAK is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

d. Waiver of Rights of Redemption. AMTRAK hereby waives for itself

and all those claiming under it all rights which it may have under any present or future constitution, statute or rule of law to redeem the Premises after termination of AMTRAK's right of occupancy by order or judgment of any court or by any legal process.

§ [1102] Right of CITY to Perform

a. All covenants and agreements to be performed by AMTRAK under any of the terms of this Lease shall be performed by AMTRAK at AMTRAK's sole cost and expense and without any abatement of rent. Subject to any rights of AMTRAK to contest, if AMTRAK shall fail to pay any sum of money, other than Base Rent and Percentage Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for fifteen (15) days after notice thereof by CITY, CITY may, but shall not be obligated so to do, and without waiving or releasing AMTRAK from any obligations of AMTRAK, make any such payment or perform any such act on AMTRAK's part to be made or performed as in this Lease provided. All sums so paid by CITY and all necessary incidental costs and expenses, together with interest thereon at the rate charged by the Wall Street Journal Prime Bank Rate from the date of such payment by CITY shall be payable, as additional rent to CITY on demand, and AMTRAK covenants to pay any such sums, and CITY shall have, in addition to any other right or remedy of CITY, the same rights and remedies in the event of the nonpayment thereof by AMTRAK as in the case of default by AMTRAK in the payment of the rent.

b. If AMTRAK fails to maintain quality of character and operation in the manner specified in this Lease, then:

1. CITY shall notify AMTRAK in writing, specifying the complaint and, if possible, requesting means of cure.

2. If AMTRAK has not cured the condition specified in the complaint within thirty (30) days after receipt of notice, or if cure cannot be achieved within thirty (30) days and AMTRAK has not commenced cure and is not proceeding diligently, then:

(i) CITY may re-enter the Premises without terminating this Lease and, as AMTRAK's attorney-in-fact, cure the default for the account of AMTRAK; and

(ii) If sums of money are expended by CITY, AMTRAK agrees to repay such sums immediately upon demand and, if not paid, said sums shall bear interest at the rate charged by the Wall Street Journal Prime Bank Rate until paid. All said sums shall constitute additional rent due hereunder.

§ [1103] Default by CITY

In the event CITY fails to comply with any of its obligations under this Lease and such failure continues for thirty (30) days after notice from AMTRAK of such

failure (or for such longer period of time as may be required to cure such failure if CITY is diligently pursuing such cure), then in that event, AMTRAK shall have all rights and remedies provided by law. In the event CITY's failure to perform any of its obligations under this Lease creates an emergency affecting the safety of AMTRAK employees and customers and the failure continues for more than twenty-four (24) hours after notice from AMTRAK, AMTRAK may take any reasonable actions to cure such failure and otherwise provide for the safety of its employees and customers and the cost thereof actually incurred by AMTRAK, including, but not limited to, the cost of labor, materials and equipment shall be paid by CITY within ten (10) days of receipt of a statement of said cost from AMTRAK.

§ [1104] Abandonment - Title to Fixtures and Equipment

If AMTRAK shall abandon, subject to Section 1101, vacate or surrender said Premises or be dispossessed by process of law, or otherwise, any furniture, trade fixtures, business equipment or other personal property belonging to AMTRAK and left on the Premises shall, at the option of CITY, be deemed to be abandoned and title thereto shall thereupon pass to CITY without any payment or allowance whatever by CITY on account of such property; provided, however, CITY shall have given AMTRAK at least thirty (30) days prior notice to remove such property,. In such event such property may be retained by CITY as CITY's property or be disposed of, without accountability, in such manner as CITY elects.

§ [1105] No Recourse

AMTRAK, other than judicial award, agrees that it shall have no recourse with respect to any obligation of CITY under this Lease, or for any claim based upon this Lease, or otherwise, against any incorporator, shareholder, officer, director or attorney, past, present or future of CITY, or against any other person than CITY, and against CITY only to the extent of the value of the land and improvements, whether by virtue of any constitution, statute, rule of law, rule of equity, enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise, all such liability, by AMTRAK's execution and delivery hereof and as part of the consideration for CITY's obligations hereunder being expressly waived.

XII. § [1200] 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 war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restriction or priority; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or failures to act of any public or governmental CITY or entity (except acts or failures to act of CITY shall not excuse performance by CITY); or any other similar causes, without fault and beyond the reasonable control of the party claiming an extension of time to perform, performance of

such act shall be excused for the period of the delay, provided, however, that nothing in this Section 1200 shall excuse AMTRAK from the prompt payment of any Base Rent, Percentage Rent or other monetary charges required of AMTRAK, and provided, further, that the party delayed or prevented from the performance of any act as above described has notified the other of such delay or prevention within five (5) days of the inception thereof, and has thereafter kept said party regularly informed of the status of such delay or prevention.

XIII. § [1300] ENTRY BY CITY

a. CITY and its agents may enter and examine the Premises and City Facilities at all reasonable times in order to determine whether AMTRAK is in compliance with the provisions hereof or to make necessary repairs and adjustments. Except in an emergency situation, CITY shall give at least twenty four (24) hours advance notice of its intention to inspect. CITY will exercise this right of inspection in a way that will cause as little interference, inconvenience, and disturbance to AMTRAK's operation as possible. In the event of an emergency, CITY shall have the right to use any and all means which CITY may deem necessary or proper to open any doors in order to obtain entry to any portion of the Premises, and any entry to the Premises, or portions thereof obtained by CITY by any of said means or otherwise, shall not under any circumstances be construed or deemed to be forcible or unlawful entry into or detainer of, the Premises or an eviction, actual or constructive of AMTRAK from the Premises or any portions thereof.

b. Unless AMTRAK has exercised its option under Section 102, CITY and its authorized representatives reserve and shall have the right to enter upon the Premises within the last sixty (60) days of the term, to show said Premises to prospective purchasers, mortgagees or to post notices, including, without limitation, notices of non-responsibility, all of the foregoing without abatement of rent.

XIV. GENERAL

§ [1400] Estoppel Certificates

CITY or AMTRAK, as the case may be, shall execute, acknowledge and deliver to or for the benefit of the other or to or for the benefit of any Lender, at any time, from time to time, at the expense of the party requesting a certificate as herein below described, promptly upon request, its certificate certifying to the pertinent party's knowledge, belief and information (1) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (2) the dates, if any, to which all rents due hereunder have been paid, (3) whether there are then existing any charges, offsets or defenses against the enforcement by CITY or AMTRAK of any agreement, covenant or condition hereof on the part of the other party to be performed or observed (and, if so, specifying the same), and (4) whether there are then existing any defaults by AMTRAK and known by CITY in the performance or observance by AMTRAK of any agreement, covenant or condition hereof on the part of AMTRAK to be performed or observed and

City of Santa Barbara
AMTRAK Lease

whether any notice has been given to AMTRAK of any default which has not been cured (and, if so, specifying the same). Any such certificate may be relied upon by a prospective purchaser, mortgagee or trustee or beneficiary under a deed of trust of the Premises or the leasehold estate hereunder or any part thereof.

§ [1401] Waiver

a. No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by CITY or AMTRAK shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by CITY or AMTRAK, as the case may be. The receipt and acceptance by CITY of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default.

b. Failure by CITY or AMTRAK, as the case may be, to enforce any of the terms, covenants or conditions of this Lease for any length of time or from time to time shall not be deemed to waive or decrease the right of CITY to insist thereafter upon strict performance by AMTRAK.

§ [1402] Notices

If at any time after the execution of this Lease, it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered or certified United States mail, return receipt requested, postage prepaid and if intended for CITY shall be addressed to:

City Clerk
City of Santa Barbara
635 Anacapa Street
Santa Barbara, California 93102-1990

with a copy to:

City Administrator
City of Santa Barbara
P.O. Box 1990
Santa Barbara, California 93102-1990

and if intended for AMTRAK shall be addressed to:

Bruce Looloian

City of Santa Barbara
AMTRAK Lease

National Railroad Passenger Corporation
30th Street Station, 4th Floor South Tower
Philadelphia, PA 19104

and

Project Director
Real Estate Development
530 Water Street, 5th Floor
Oakland, CA 94607

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail.

§ [1403] Corporate Authority

If AMTRAK signs as a corporation, AMTRAK covenants that each of the persons executing this Lease on behalf of AMTRAK is a duly authorized and existing officer of the corporation, that AMTRAK has and, is qualified to do business in the State of California, that the corporation has full right and authority to enter into this Lease and that each, both or all of the persons signing on behalf of the corporation were authorized to do so.

§ [1404] No Light, Air or View Easement

AMTRAK covenants and agrees that no diminution of light, air or view by any structure which may hereafter be erected (whether or not by CITY) shall entitle AMTRAK to any reduction or abatement of Base Rent or other amount payable under this Lease, result in any liability of CITY to AMTRAK or in any other way affect this Lease or AMTRAK's obligations hereunder.

§ [1405] CITY's Covenant of Quiet Enjoyment

CITY hereby covenants to AMTRAK that CITY has good and marketable fee simple title to the Premises, free and clear of all claims, liens and encumbrances. Upon AMTRAK paying the Base Rent and other amounts payable hereunder and observing and performing all of the covenants, conditions and provisions on AMTRAK's part to be observed and performed hereunder, AMTRAK shall peaceably hold and quietly enjoy the Premises for the entire term hereof without hindrance, molestation or interruption by CITY or any party claiming through or under CITY.

§ [1406] No Joint Venture

It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between CITY and AMTRAK or

between CITY and any other party or cause CITY to be responsible in any way for the debts or obligations of AMTRAK or any other party.

§ [1407] Provisions Subject to Applicable Law

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law.

§ [1408] Miscellaneous

a. Each party hereby agrees to indemnify the other party from and against any real estate brokerage commissions or other such obligations incurred by the indemnifying party as the result of the negotiation or execution of this Lease.

b. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

c. Nothing in this Lease shall be construed to create any duty to, any standard of care with reference to or any liability to anyone not a party except as otherwise expressly provided herein.

d. The words "CITY" and "AMTRAK" as used herein shall include a corporation and include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one CITY and AMTRAK, the obligations hereunder imposed upon CITY and AMTRAK shall be joint and several.

e. The captions used herein are for convenience of reference only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions hereof.

f. Time is of the essence of each and all of the agreements, covenants and conditions of this Lease.

g. This Lease shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against CITY or AMTRAK.

h. This Lease constitutes the entire agreement between CITY and AMTRAK with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Lease may not be amended or modified in any

City of Santa Barbara
AMTRAK Lease

respect whatsoever except by an instrument in writing, approved by the City Council and signed by CITY and AMTRAK.

i. AMTRAK hereby represents, by executing this Lease, that AMTRAK has reviewed this Lease with an attorney of AMTRAK's choice or has had a reasonable opportunity to review this Lease with an attorney of AMTRAK's choice and (with knowledge of AMTRAK's right to do so) has elected against seeking such advice, before signing this Lease.

j. CITY hereby represents, by executing this Lease, that AMTRAK has been informed of AMTRAK's right to have this Lease reviewed by legal counsel of AMTRAK's choice and has been afforded a reasonable opportunity to seek such advice.

(signatures appear on following page)

DRAFT

City of Santa Barbara
AMTRAK Lease

IN WITNESS WHEREOF, CITY and AMTRAK have executed this Lease by proper persons thereunto duly authorized as of the date first hereinabove written.

CITY:

AMTRAK:

City of Santa Barbara
A Municipal Corporation

National Railroad Passenger
Corporation

James L. Armstrong
City Administrator

Bruce Looloian
Assistant Vice President of
Real Estate Development, AMTRAK

ATTEST:

City Clerk

APPROVED AS TO CONTENT:

Christine Andersen, Director of Public Works

APPROVED AS TO FORM:

Stephen P. Wiley
City Attorney

By _____
Sarah Knecht, Assistant City Attorney

BUSINESS TAX COMPLIANCE:

Certificate No. _____

By _____

APPROVED AS TO INSURANCE:

Mark Howard, Risk Manager

EXHIBIT A – CITY Parcels

DRAFT

EXHIBIT B - Lease Area “Premises”

DRAFT

EXHIBIT C – Amtrak Station Maintenance Standards

Scope of Janitorial Services for Amtrak Station

DRAFT

EXHIBIT D – Bus Parking

DRAFT

EXHIBIT E – Nondiscrimination Certificate
CONTRACTOR'S NONDISCRIMINATORY EMPLOYMENT
CERTIFICATE
Santa Barbara Municipal Code §9.126.020

A. Certificate Generally

Consistent with a policy of nondiscrimination in employment on contracts of the City of Santa Barbara and in furtherance of the provisions of Section 1735 and 1777.6 of the California Labor Code a "contractor's obligation for nondiscriminatory employment certificate" as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all bid specifications and contracts of the City for purchases, services, and the construction, repair, or improvement of public works.

B. Contents of Certificate

In performing the work of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. The Contractor will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. Such action shall include but not be limited to the following: 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

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3. The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City advising the said labor union or workers' representative of the Contractor's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the City, the Fair Employment Practices Commission, or any other appropriate CITY of the State designated by the City for the purposes of investigation to ascertain compliance with the Contractor's Obligation for Nondiscriminatory Employment provisions of this contract, or Fair Employment Practices statute.

5. A finding of willful violation of the nondiscriminatory employment practices article of this contract or of the Fair Employment Practices Act shall be regarded by the City as a basis for determining that as to future contracts for which the Contractor may submit bids, the Contractor is a "disqualified bidder" for being "nonresponsible".

The City shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

Upon receipt of any such written notice, the City shall notify the Contractor that unless he demonstrates to the satisfaction of the City within a stated period that the violation has been corrected, he shall be declared a "disqualified bidder" until such time as the Contractor can demonstrate that he has implemented remedial measures, satisfactory to the City, to eliminate the discriminatory employment practices which constituted the violation found by the Fair Employment Practices Commission.

6. Upon receipt from any person of a complaint of alleged discrimination under any City contract, the City Administrator shall ascertain whether probable cause for such complaint exists. If probable cause for the complaint is found, the Administrator shall request the City Council to hold a public hearing to determine the existence of a discriminatory practice in violation of this contract.

In addition to any other remedy or action provided by law or the terms of this contract, the Contractor agrees that, should the City Council determine after a public hearing duly noticed to the Contractor that the Contractor has not complied with the nondiscriminatory employment practices provisions of this contract or has willfully violated such provisions, the City may, without liability of any kind, terminate, cancel, or suspend this contract, in whole or in part. In addition, upon such determination the Contractor shall, as a penalty to the City, forfeit a penalty of \$25.00 for each calendar day, or portion thereof, for each person who was denied employment as a result of such

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noncompliance. Such moneys shall be recovered from the Contractor. The City may deduct any such penalties from any moneys due the Contractor from the City.

7. The Contractor certifies to the City that he has met or will meet the following standards for positive compliance, which shall be evaluated in each case by the City:

a. The Contractor shall notify all supervisors, foremen and other personnel officers in writing of the content of the nondiscrimination provision and their responsibilities under it.

b. The Contractor shall notify all sources of employee referrals (including unions, employment agencies, advertisements, Department of Employment) of the content of the nondiscrimination provision.

c. The Contractor shall file a basic compliance report as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also specify the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire.

d. The Contractor shall notify the City of opposition to the nondiscrimination provision by individuals, firms or organizations during the period of this contract.

8. Nothing contained in this Contractor's Obligation for Nondiscriminatory Employment Certificate shall be construed in any manner to prevent the City from pursuing any other remedies that may be available at law.

9. The Contractor certifies to the City that he will comply with the following requirements with regard to all subcontractors and suppliers:

a. In the performance of the work under this contract, the Contractor will include the provisions of the foregoing paragraphs (1) through (8) in all subcontracts and in any supply contract to be performed within the State of California, so that such provisions will be equally binding upon each subcontractor and each supplier.

b. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction by the City, the Contractor may request the City to enter into such litigation to protect the interests of the City.