

**LEASE AGREEMENT  
BETWEEN JEFFERSON PARTNERS L.P. AND CITY OF RAPID CITY**

Lease made as of the \_\_\_\_ day of \_\_\_\_\_, 2007, between the City of Rapid City (City), Lessor, and Jefferson Partners L.P. (Lessee).

For and in consideration of the mutual covenants herein contained, the City hereby leases to Lessee and Lessee hires and takes from the City the property hereinafter described as the demised premises subject to the terms, conditions, and stipulations herein provided.

**I.**

**DEMISED PREMISES**

The demised premises leased to the Lessee shall consist of approximately one thousand eighty-nine square feet (1,089) of area within the Milo Barber Transportation Center terminal, the same being located upon portions of the following described real property:

Lots 17-32, Block 64, Original Townsite to the  
City of Rapid City, Pennington County South Dakota.

Additionally, Lessee shall have access to and use of common areas and facilities, subject to such limitations as the Lessor shall deem appropriate for the common good of all tenants. Such access and use and the restrictions thereon shall be reasonable, consistent with the purpose of the terminal, and the interests of the other tenants, and consistent with the nature of the Lessee's business. The term common areas shall include, but not be limited to, the lobby, public restrooms, employee facilities, and loading areas.

The purpose of said terminal is to provide a central terminal for ground transportation carriers for the benefit of such carriers, their patrons, and the general public. It is intended that use of space in said terminal shall be limited to the usual and customary functions of common carriers and such other related uses as the City shall determine to be appropriate.

**II.**

**USE**

Lessee shall use the demised premises, including the common areas, for the purposes of its business as a bus transportation system, and such other activities commonly and customarily associated therewith. Lessee specifically agrees not to engage in any food, beverage, or amusement operation on the demised premises, including the common areas.

**III.**

**RENT**

Lessee shall pay to the City on or before the 1<sup>st</sup> day of each month the sum of One Thousand One Hundred Dollars (\$1,100) which shall include basic rent, utilities and costs of maintenance to the premises.

#### **IV.**

#### **AGREEMENT TO OCCUPY**

As part of the consideration for the execution of this lease, Lessee agrees to occupy the demised premises and to conduct its business therefrom insofar as may, in good faith, be practical with the intent of making all of its services available to the public at said terminal.

#### **V.**

#### **DEFAULT: LIQUIDATED DAMAGES**

If the basic rent or any portion thereof due under the terms of this lease is not paid when due and shall remain unpaid for a period of fifteen (15) days after notice thereof in writing, or if Lessee shall fail to perform promptly any other covenant, term, or condition required by this lease to be performed by Lessee, and such failure shall continue for a period of fifteen (15) days after notice thereof in writing specifying the nature of such failure, Lessee shall be in default.

Because of the nature of the property leased hereunder, the involvement of common carriers, and the public purpose to be served by this lease, the parties hereby agree that this lease and each of the terms thereof shall be specifically enforceable. Additionally, however, the parties agree that if specific enforcement of this lease cannot be invoked to provide an adequate remedy, then and in that event only, the following liquidated damages provisions shall apply:

The amount of money damages sufficient to remedy a breach of this lease being difficult or impossible to determine, the parties hereby agree that said damages shall be liquidated in an amount equal to the amount of basic rent which would otherwise become due and payable under the unexpired term of this lease plus an amount equal to the reasonable costs incurred in enforcing this lease.

No waiver of any breach or breaches of any provision of this lease shall be construed to be a waiver of any preceding or succeeding breach of such provision or any other provision hereof.

#### **VI.**

#### **TIME OF THE ESSENCE**

Time is of the essence of each and every provision hereof.

#### **VII.**

#### **TERM**

The term of this lease shall be for five (5) years commencing January 1, 2008. Should Lessee as a result of hardship or other unforeseen circumstances choose to terminate this lease before the running of the five (5) year period, Lessee shall notify Lessor in writing ninety (90) days in advance of such desired termination of lease. Upon such proper notice and the agreement of the City of Rapid City to terminate said lease, said lease shall be terminated.

**VIII.**

**OCCUPANCY AND ACCEPTANCE**

By entering into and occupying the demised premises, Lessee shall be deemed to have acknowledged that the demised premises are in good order and repair and that the demised premises have been constructed substantially in accord with approved plans and specifications therefor.

**IX.**

**SIGNS**

Lessee shall not erect, place, or maintain any signs upon the demised premises or elsewhere upon the terminal site without the express written consent of the Building Manager and the Public Works Director.

**X.**

**INSTALLATION AND MAINTENANCE OF FIXTURES**

Lessee shall furnish and install upon the demised premises all trade fixtures, light fixtures, floor coverings, equipment, and furnishings as shall be proper for the conduct of the business. Such items to be furnished and installed shall not include such items as are shown on the architectural plans for the terminal.

Items to be furnished and installed by Lessee shall be installed as expeditiously as reasonably possible, shall be of first quality and commensurate in appearance and in keeping with the demised premises, and shall be maintained in good order and repair by Lessee, at its expense, during the term of this lease.

**XI.**

**ALTERATIONS, CHANGES, ADDITIONS**

No structural changes, alterations, or additions shall be made by Lessee to the demised premises without the express written consent of the City. Any such structural changes, alterations, or additions to or on the demised premises made with such consent shall remain for the benefit of and become the property of the City unless otherwise provided in such written consent.

**XII.**

**DEFECTS: DEFECTIVE CONDITIONS: WIND: ACTS OF THIRD PARTIES**

The City of Rapid City shall not be liable to Lessee for any damage or injury to Lessee or Lessee's property occasioned by any defect of plumbing, heating, air cooling, air conditioning equipment and ducts, electrical wiring or installation thereof, gas pipes, steam pipes, or from broken steps, or from the backing of any sewer pipe, or from the bursting, leaking, or running of any tank, tub, washstand, toilet, or waste pipe, drain, or any other pipe or tank in, on, or about the demised premises, or from the escape of steam or hot water from any boiler or radiator, or for any such damage or injury occasioned by water being on or coming through the roof, stairs, walks, or any other place on or near the demised premises unless the City neglects or fails to make necessary repairs required of it to be made under the terms of this lease after receipt of

written notice thereof from Lessee, or for any such damage or injury done or occasioned by the falling of any fixture, plaster, or stucco, or for any such damage or injury caused by wind or by the act, omission, or negligence of co-tenants or of other persons, occupants of the same building or of adjacent buildings or contiguous property.

All claims against the City for any damage or injury as provided in the preceding paragraph of this section are hereby expressly waived by Lessee, except those claims occasioned by the City's neglect or failure to make repairs for which the City is responsible under this lease, after due written notice thereof by Lessee.

For the purposes of this section, Lessee shall include Lessee, its agents, licensees, permittees, assigns, guests, and bailors.

### **XIII.**

#### **REPAIRS**

The City shall repair any damage to the demised premises occasioned by termites, dry rot, or fungus, and keep and maintain the roof and exterior walls of the demised premises in good repair at all times, and will further keep and maintain all underground plumbing in good order and repair, but not including the repair of plumbing stopped up by reason of foreign matter introduced into the plumbing fixtures. There shall be no obligation on the part of the City to make any of the repairs required in this section unless and until Lessee gives to the City at least ten (10) days written notice, advising the City of the necessity of the repair or repairs, and the City shall not be liable to Lessee for any loss or damage caused by the failure of the City to make any repairs required of it hereunder unless the City, on receipt of such notice, shall fail to proceed with due diligence to make such repair or repairs. The phrase "exterior walls" as herein used shall not be so construed as to require the City to make repairs to the interior surfaces thereof. Except as provided herein, Lessee shall not call on the City to make any improvements or repairs whatsoever in or on the demised premises.

Lessee shall, at its own expense, keep and maintain all of the demised premises, including but not limited to walls, floors, doors, counters, and other fixtures, in good order, condition, and repair, and in compliance with all laws and regulations applicable thereto, during the entire term of this lease, except for those repairs required of the City to be made and as provided in the first paragraph of this section.

### **XIV.**

#### **MAINTENANCE**

The City shall maintain and repair all common areas, including cleaning, snow and ice removal, cost and expenses of planting, replanting, and replacing flowers and landscaping, water and sewage charges, maintenance, repair and replacement of utility systems, lighting, heating and air conditioning, premiums for liability and fire insurance covering the City's property and liability interest, management expense, supplies for the common areas, operation of public toilets, and other similar direct costs.

### **XV.**

#### **LIABILITY AND INDEMNITY**

The Lessee agrees to defend, indemnify and save harmless the City from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising out of or in

connection with the conduct or management of the business conducted by the Lessee. City shall not be liable and the Lessee waives all claims for damages to person(s) or property sustained by the Lessee, its agents, servants, invitees, and customers resulting from the condition of the building in which the leased premises are situated or resulting from any accident in or about said building or said leased premises.

## **XVI.**

### **INSURANCE**

Lessee shall purchase and maintain at a minimum the following insurance during the term of this agreement:

A. Worker's Compensation coverage as required by law, including Employer's Liability Insurance of not less than:

Bodily Injury by Accident	\$100,000.00 Each Accident
Bodily Injury by Disease	\$100,000.00 Each Employee
Bodily Injury by Disease	\$500,000.00 Policy Limit

B. Commercial General Liability Insurance with a Combined Single Limits of Liability of not less than:

General Aggregate	\$2,000,000.00
Products and Completed Operations Aggregate	\$1,000,000.00
Personal Injury Each Person	\$1,000,000.00
Advertising Injury Each Person Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

C. Commercial Automobile Liability Insurance for all owned vehicles, autos, hired and non-owned vehicles, automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000.00).

D. Commercial Umbrella Insurance providing excess liability over primary coverage of Employer's Liability Commercial General Liability, and Commercial Automobile Liability limits of not less than One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate.

E. Additional insurance regulations. Each Insurance policy shall include the following conditions by endorsement to the policy:

- (i) Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to City by certified mail to: City Finance Officer, 300 Sixth Street, Rapid City, South Dakota, 57701, or to such address as the City may designate in writing. The Lessee shall also notify City in a like manner within ten (10) days of receipt, of any notices of expiration, cancellation, non-renewal payment of premiums or assessments for any deductibles which all are the sole responsibility and risk of the Lessee.

(ii) Companies issuing the insurance policy or policies shall have no recourse against the City for payment of premiums or assessments for any deductibles that are the sole responsibility and risk of the Lessee.

(iii) The Term "City" shall include all elected officials, boards, commissions, divisions, departments, and officers of the City and individual members and employees thereof in their official capacities, and while acting on behalf of the City.

(iv) The City shall be endorsed to the required policy or policies as an additional insured to the Lessee's Commercial General Liability Policy.

(v) Lessee and City each waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for the loss of or damage to such waiving party or its property of others under its control, where such loss or damage is insured against under any property insurance policy in force at the time of such loss or damage. Lessee and City shall give noticed to their respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the lease.

F. The lessee agrees that it shall, during the full term of this lease and at its own expense, kept its contents, non-structural improvements and personal property located on the leased premises fully insured against loss or damage by fire or casualty, commonly covered by standard property/fire and extended coverage insurance. The Lessee does hereby release and waive on behalf of itself and its insurer by subrogation or otherwise, all claims against the Lessor on account of any fire or other casualty whether or not such fire or other casualty shall have resulted in whole or n part from the negligence of the Lessor.

## **XVII.**

### **NON-ASSIGNABLE**

The interest of Lessee under this lease shall not be assignable without the express written consent of the City, which consent shall not be unreasonably withheld. Because of the nature of the terminal and the purposes for which it was constructed and is being used, the parties specifically agree that refusal by the City to approve an assignment other than to a similar enterprise shall not be deemed unreasonable. Approval of any assignment shall not be construed to permit the use of the demised premises for any purpose not permitted under this lease.

## **XVIII.**

### **SURRENDER OF PREMISES**

Lessee shall, at the termination of this lease, vacate the demised premises in as good a condition as they were at the time of entry thereon by Lessee, except for reasonable use and wear thereof, acts of God, or damage by casualty beyond the control of Lessee, and on vacating shall leave the demised premises free and clear of all rubbish and debris.

**XIX.**

**NO LEASES ON MORE FAVORABLE TERMS**

The City agrees that it will not lease other portions of the terminal to other Lessees in substantial competition with Lessee, upon rental terms more favorable than those contained in this lease.

City further agrees that it will not permit persons not Lessees in the terminal to make use of the terminal or its facilities in substantial competition with Lessee.

**XX.**

**INDEMNIFICATION OF LESSOR**

Lessee shall serve a written notice on the City at least ten (10) days prior to permitting any work involving repairs, improvements, construction, and the like to be commenced in or on the demised premises.

Lessee shall indemnify the City and the premises herein demised and all improvements placed thereon against all claims, liens, claims of lien, demands, charges, encumbrances, or litigation arising directly or indirectly out of or by reason of any work or activity of Lessee on the demised premises, and shall work with or within thirty (30) days after the filing of any lien for record fully pay and satisfy the same, and shall reimburse the City for all loss, damage, and expense, including reasonable attorney's fees, which it may suffer or be put to by reason of any such claim of lien, demands, charges, encumbrances or litigation.

Lessee shall indemnify the City and the demised premises against any cost, liability, or expense arising out of any claims of any person or persons whatsoever by reason of the use or misuse of the demised premises, parking area, or common facilities by Lessee or any person or persons holding under Lessee, shall indemnify the City against any penalty, damage, or charge incurred or imposed by reason of any violation of law or ordinance by Lessee or any person or persons holding under Lessee, against any costs, damage, or expense arising out of the death of or injury to any person or persons holding under Lessee.

**XXI.**

**LESSOR'S RIGHT OF INSPECTION**

The City shall have access to the demised premises, and each part thereof, during Lessee's regular business hours for the purpose of inspecting the same, making repairs, and posting notices which the City may deem to be for the protection of the City or the demised premises.

**XXII.**

**EXPENSES OF ENFORCEMENT**

Should either party incur any expense in enforcing the provisions of this lease, the party in default shall pay to the other all expenses so incurred, including reasonable attorney's fees.

### **XXIII.**

#### **NOTICES**

All notices or demands of any kind which the City may be required or may desire to serve on Lessee under the terms of this lease may be served on Lessee by leaving a copy of such demand or notice, or by mailing a copy thereof by first class mail to Lessee at the demised premises or at such other address or addresses as may from time to time be designated by Lessee in writing to the City. All notices and demands from Lessee to the City may be similarly served on the City at 300 Sixth Street, Rapid City, South Dakota, or at such other address as the City may in writing designate to Lessee.

### **XXIV.**

#### **NEAT APPEARANCE**

Lessee shall maintain its leased area in a neat and businesslike appearance. No parcels, packages, bundles, baggage, or other items of cargo received, stored, or held for shipment shall be stored or kept in a place visible from any area commonly and customarily open to the public.

### **XXV.**

#### **PARKING**

Lessor shall maintain suitable parking for all individuals desiring to utilize the terminal in any lawful pursuit.

### **XXVI.**

#### **SAVINGS CLAUSE**

Should any portion or provision of this lease be deemed unenforceable by a Court of competent jurisdiction, the remainder of this lease shall remain in full force and effect.

### **XXVII.**

#### **CHOICE OF LAW**

This Lease shall be governed by the laws of South Dakota and venue for any action regarding this Lease shall be in the Seventh Judicial Circuit, Pennington County, South Dakota.



