

# UNOFFICIAL COPY



0621231073

Doc#: 0621231073 Fee: \$62.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/31/2006 02:41 PM Pg: 1 of 20

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
TO:

Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Attention: \_\_\_\_\_

JEVIC TRANSPORTATION, INC., as mortgagor

To

THE CIT GROUP/BUSINESS CREDIT, INC., as mortgagee

OPEN-END MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING,  
AND ASSIGNMENT OF LEASES AND RENTS

Dated: As of July 28, 2006  
Location: 2900 West 166<sup>th</sup> Street  
Markham, Illinois  
County: Cook  
Property Identification Numbers: \_\_\_\_\_

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Jones Day  
North Point  
901 Lakeside Ave.  
Cleveland, Ohio 44114  
ATTENTION: \_\_\_\_\_

# UNOFFICIAL COPY

## OPEN-END MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING, AND ASSIGNMENT OF LEASES AND RENTS

THIS OPEN-END MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING, AND ASSIGNMENT OF LEASES AND RENTS (as the same may from time to time be amended, restated or otherwise modified, this "Mortgage") is made as of July 28, 2006, by JEVIC TRANSPORTATION, INC., a New Jersey corporation ("Mortgagor"), whose address is 600-700 Creek Rd., Delanco, New Jersey 08075, in favor of THE CIT GROUP/BUSINESS CREDIT, INC., a New York corporation, its successors and assigns, as agent for the benefit of the Secured Creditors under and as defined in the Financing Agreement (hereinafter defined) ("Mortgagee"), with a mailing address of 900 Ashwood Parkway, Suite 610, Atlanta, Georgia 30338.

### RECITALS:

A. Mortgagor and Mortgagee are parties to that certain Financing Agreement, dated as of the date hereof (as the same may from time to time be amended, restated, supplemented or otherwise modified, the "Financing Agreement"), pursuant to which the Lenders will, among other things, grant to the Mortgagor the Revolving Line of Credit and the Term Loan and other extensions of credit pursuant to the Financing Agreement;

B. Mortgagor understands that the Mortgagee is willing to grant such financial accommodations to the Mortgagor, only upon certain terms and conditions, one of which is that Mortgagor execute and deliver this Mortgage and this Mortgage is being executed and delivered in consideration of each financial accommodation, granted to the Mortgagor by the Mortgagee and for other valuable consideration.

C. All capitalized terms used herein which are not otherwise defined shall have the meaning given to them in the Financing Agreement.

### STATEMENT OF AGREEMENT

NOW, THEREFORE, Mortgagor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, agrees as follows:

1. Granting Clause. As security for the Secured Indebtedness (as hereinafter defined), Mortgagor mortgages, transfers, assigns, pledges, grants, bargains, sells, conveys, aliens, releases and confirms unto Mortgagee all that certain lot or parcel of ground located at 2900 West 166<sup>th</sup> Street, Markham, Illinois, as more fully described in Exhibit A attached hereto (collectively, the "Premises"), together with all present and future:

(a) buildings and improvements erected thereon, and alterations, additions and improvements thereto and all cash and non-cash proceeds thereof (collectively, the "Improvements");

# UNOFFICIAL COPY

(b) easements, rights of way, streets, alleys, passage ways, water, water courses, mineral and oil and gas rights, rights, liberties, privileges, hereditaments and the appurtenances belonging or in any way appertaining thereto (collectively, the "Appurtenances");

(c) reversions, remainders, rents, income, proceeds, issues, profits, fees, payments, grants, franchises, rights, concessions and operating privileges derived from or received in connection with all purposes for which the Premises and Improvements might be employed and all cash and non-cash proceeds thereof (collectively, the "Rents");

(d) building materials, machinery, apparatus, equipment, fittings, furniture, fixtures and articles of personal property located on, about, under or in the Premises or the Improvements, without regard to whether the same may be affixed to the Premises or Improvement, and used or usable in connection with any present or future operation of the Improvements, including but not limited, to all heating, electrical, air conditioning, ventilating, lighting, laundry, incinerating and power equipment, computers, computer equipment and all other property incidental thereto, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, communications apparatus, appliances, furnishings, carpeting, cabinets, partitions, ducts and compressors and all parts and accessories therefor and all substitutions and replacements thereof, and the cash and non-cash proceeds of all of the foregoing, including but not limited to the proceeds of any policy or policies of insurance thereon (collectively, the "Building Equipment");

(e) awards, decrees, condemnation or other proceeds and settlements made to or for the benefit of Mortgagor by reason of any damage to, destruction of or taking of the Premises or any part thereof or any Improvements or any Building Equipment, whether such award shall be made by reason of the exercise of the right of eminent domain or otherwise, or by any public or private authority, tribunal, corporation or other entity or by any natural person and all cash and non-cash proceeds thereof (collectively, the "Awards"); and

(f) contracts, licenses, permits, approvals, registration, product and manufacturer warranties, guarantees and service agreements, including all manuals, policies, instructions and other documents in connection with the same in favor of Mortgagor or by and between Mortgagor and any and all boards, agencies, departments, governmental or other parties of any kind, relating, directly or indirectly to the Premises, Building Equipment, Improvements, Appurtenances, Rents or Awards and all cash and non-cash proceeds thereof (collectively, the "Licenses").

Mortgagee, its successors and assigns shall have and hold the Premises with the Improvements, Appurtenances, Rents, Building Equipment, Awards, Licenses and all other property hereby mortgaged, with all appurtenances thereto forever. All of the property of whatever kind described in or covered by this Mortgage may be hereinafter referred to collectively as the "Mortgaged Property".

2. Defeasance. Mortgagee agrees that if Mortgagor shall promptly pay or cause to be paid to Mortgagee all of the amounts due and payable pursuant to the Financing Agreement, and shall have performed or caused to be performed all the other terms, conditions, agreements and provisions contained in the Loan Documents up to the date of such payment and

# UNOFFICIAL COPY

performance thereof, all without fraud or delay or deduction or abatement of anything or for any reason, then this Mortgage and the estate hereby granted shall cease, terminate and become void.

3. Obligations Secured. This Mortgage secures the full and timely payment and performance of:

(a) any and all Obligations under the Loan Documents and all Future Advances (as hereinafter defined) up to a maximum principal amount of indebtedness outstanding at any one time equal to \$101,200,000.00 plus all accrued and unpaid interest thereon; and

(b) any and all (i) obligations, costs or expenses assumed or incurred by Mortgagee in connection with any of the Secured Indebtedness; (ii) advances Mortgagee may make or become obligated to make for the protection of the security hereby given, including, without limitation unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, maintenance charges, insurance premiums and costs incurred for the protection of the Mortgaged Property or the lien of this Mortgage; and all expenses incurred by Mortgagee by reason of an Event of Default (as hereinafter defined) by Mortgagor hereunder; and (iii) all advances Mortgagee may make to pay toward all or part of the cost of completing any erection, construction, alteration or repair of any part of the Mortgaged Property.

All of the obligations, indebtedness and undertakings described in this Section 3 may be referred to collectively as the "Secured Indebtedness".

4. Future Advances. As used herein, the term "Future Advances" shall mean (a) any and all future loans, extensions of credit or other financial accommodations to or for the credit of Mortgagor or to third parties upon the surety, guaranty endorsement or other accommodations of Mortgagor, regardless of the amount, the purpose for which such debt may be created and whether any reference is made to this Mortgage therein; and (b) any and all future obligations, indebtedness and/or liabilities of Mortgagor to Mortgagee hereafter incurred, due or owing under the provisions of any of the Loan Documents.

5. Warranty of Title. Mortgagor represents that (a) Mortgagor lawfully holds indefeasible fee simple title to the Mortgaged Property, free of any liens, claims, encumbrances and/or restrictions, except for Permitted Liens (as hereinafter defined); (b) this Mortgage creates a valid and enforceable first priority lien against and security interest in the Mortgaged Property subject only to the aforesaid title exceptions (if any); and (c) Mortgagee, subject to Mortgagor's right of possession prior to an Event of Default, shall quietly enjoy and possess the Mortgaged Property. Mortgagor covenants to preserve such title and the validity and priority of the lien and security interest hereof and shall forever warrant and defend the same unto Mortgagee against the claims of all persons and parties whatsoever. As used herein, the term "Permitted Liens" shall mean (i) Permitted Tax Liens; and (ii) those items set forth on Exhibit B attached hereto.

6. Security Agreement. This Mortgage constitutes a security agreement under the Uniform Commercial Code as adopted and existing from time to time in the State of Illinois (the "Code"). Mortgagor grants to Mortgagee a security interest in and lien upon all that property included within the term "Mortgaged Property" which might otherwise be deemed personal under the Code, together with all cash and non-cash proceeds of such personal property. Upon

# UNOFFICIAL COPY

filing this Mortgage in the appropriate offices, this Mortgage shall also be effective as a financing statement filed in such offices with respect to such personal property. This Mortgage also constitutes a "fixture filing" under the Code, covering any of Mortgagor's property now owned or hereafter acquired which is or becomes a "fixture" to the Mortgaged Property. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in the preambles of this Mortgage. Mortgagor is a corporation organized under the laws of the State of New Jersey and its organizational number is 0100140960.

7. Intentionally deleted.

8. Intentionally deleted.

9. Maintenance of Mortgaged Property. Mortgagor (a) shall maintain the Mortgaged Property in its current condition, except for normal wear and tear; (b) shall not remove from the Premises or Improvements, any Building Equipment or any other property of any nature covered by the lien or security interest granted by this Mortgage, unless such Building Equipment is obsolete or is replaced with comparable Building Equipment of equal or greater value reasonably acceptable to Mortgagee; (c) shall not make, install or permit to be made or installed any alterations, additions or improvements of any nature to or in the Mortgaged Property that negatively affect the value of the Mortgaged Property or are structural in nature without obtaining the prior written consent of Mortgagee and without obtaining insurance thereon; and (d) shall not commit or suffer any waste of the Mortgaged Property or make any change in the use thereof which will in any way increase the risk of fire or other hazard or that may impair the security of this Mortgage.

10. Maintenance and Preservation of Easements. Mortgagor will do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances, rights of way and other interests and rights in favor of, or constituting any portion of the Mortgaged Property.

11. Mechanics' Liens. If a mechanic's lien is filed against the Premises, Mortgagor shall promptly notify Mortgagee and, at Mortgagee's request, shall deliver to Mortgagee, either of the following, at Mortgagor's option, (a) a cash deposit or (b) an indemnity bond satisfactory to Mortgagee issued by a surety satisfactory to Mortgagee, in the amount claimed by any such lien, together with an additional sum necessary to pay all costs, interest and penalties that may be payable in connection therewith. Without Mortgagee's prior written consent, Mortgagor shall not allow any lien, encumbrance, or other interest in the Property to be perfected against the Property, other than Permitted Liens, unless Mortgagor is then diligently contesting same and has, as to the lien, encumbrance or interest being contested, complied with (a) or (b) of the preceding sentence.

12. Condemnation. Mortgagor shall notify Mortgagee promptly upon receiving any notice of commencement of any proceedings for the condemnation or other taking of any or all of the Mortgaged Property and shall permit Mortgagee to participate in such proceedings and to receive all proceeds payable to Mortgagor as an award or in settlement, up to the amount of the Secured Indebtedness. Mortgagor hereby appoints Mortgagee attorney-in-fact for Mortgagor (which appointment, being coupled with an interest, shall be irrevocable) (a) to collect and

# UNOFFICIAL COPY

receive any such awards, damages, payments and compensation from the authorities making the same, (b) to give receipts and acquittances therefor, and (c) to institute, appear in and prosecute any proceeding therefor in the event Mortgagor fails to take such action. All sums collected by or paid to Mortgagee, net of any costs, including attorneys fees, incurred by Mortgagee in collecting the same shall be paid or applied as set forth in the Financing Agreement.

13. Leases. Mortgagor shall not lease or permit anyone else to lease, any portion of the Mortgaged Property without the prior written consent of Mortgagee. Mortgagee shall not in any way assume or will be deemed to have assumed any of the obligations as landlord under any leases. Mortgagor shall perform (or cause to be performed) every material obligation of the lessor and shall reasonably enforce every material obligation of the lessee in every lease or any tenancy with respect to the Mortgaged Property. Mortgagor shall not materially modify, alter, waive or cancel any lease or any part thereof nor assign any such lease or any such rents. Mortgagor shall deliver or cause to be delivered to Mortgagee, assignments of all leases of the Mortgaged Property, together with subordination and/or attornment agreements and estoppel letters or certificates from any or all tenants of the Mortgaged Property, to the extent obtainable using commercially reasonable efforts, all such assignments, agreements, estoppel letters and certificates to be in such form as Mortgagee may require. Unless otherwise directed by Mortgagee, all leases of the Mortgaged Property made after the date hereof shall specifically provide that such leases are subordinate to this Mortgage; that the tenant attorns to Mortgagee, such attornment to be effective upon Mortgagee's acquisition of title to the Mortgaged Property; that the tenant agrees to execute such further evidences of attornment as Mortgagee may from time to time request; and that the attornment of the tenant shall not be terminated by foreclosure.

Mortgagor shall furnish to Mortgagee from time to time as reasonably requested by Mortgagee a complete list of all agreements of sale and leases for the Mortgaged Property, or any portion thereof, in such detail as may be requested by Mortgagee. Mortgagor shall deliver to Mortgagee certified copies of all agreements of sale and leases, together with copies of correspondence and memoranda between Mortgagor and tenants or any successors thereunder setting forth the contractual arrangements between them.

14. Assignment of Rents. Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee all of the leases, rents and revenues of the Mortgaged Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Mortgaged Property, regardless to whom the rents and revenues of the Mortgaged Property are payable. Although this Agreement is a present assignment, Mortgagee shall not exercise any of the rights or powers herein conferred upon it until an Event of Default shall have occurred. Mortgagor hereby authorizes Mortgagee or Mortgagee's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Mortgaged Property to pay such rents to Mortgagee or Mortgagee's agents. Upon the occurrence of an Event of Default, and without the necessity of Mortgagee entering upon and taking and maintaining full control of the Mortgaged Property in person, by agent or by a court appointed receiver, Mortgagee shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 14 as the same become due and payable (including but not limited to rents then due and unpaid). Under no circumstances shall Mortgagee have any duty to produce Rents from the Mortgaged Property. Regardless of whether Mortgagee, in person or by agent, takes actual possession of the Premises and Improvements,

# UNOFFICIAL COPY

unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be: (a) a "mortgagee in possession" for any purpose, or (b) responsible for performing any of the obligations of lessor under any lease, or (c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Mortgaged Property, or any negligence in the management, upkeep, repair or control of the Mortgaged Property, or (d) liable in any manner for the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any part of it. This Section 14 may be supplemented by a separate assignment of leases and rents agreement entered into by and between Mortgagee and Mortgagor, which instrument shall set forth more fully Mortgagee's rights with respect to the leases, rents and revenue of the Property.

15. Right to Remedy. In the event Mortgagor shall fail to perform any of its obligations hereunder or under any of the other Loan Documents, including, without limitation, fail to (a) pay any taxes, water and sewer rents, assessments, charges, claims, costs, expenses or fees required to be paid under the terms of this Mortgage, (b) maintain insurance as required herein, or (c) make all necessary repairs to the Mortgaged Property as required herein, Mortgagee may advance sums on behalf of Mortgagor to remedy such failure, including, without limitation, payment of any taxes, water and sewer rents, assessments, charges, claims, costs, expenses, fees, insurance premiums and repairs without prejudice to the right of enforcement of the Loan Documents. Mortgagor shall immediately reimburse Mortgagee for any sums advanced by Mortgagee on Mortgagor's behalf.

16. Sums Advanced by Mortgagee. Any sums advanced by Mortgagee for the payment of any repairs, insurance premiums, taxes, water and sewer rents, assessments, charges, claims, costs, expenses, fees and any other sums advanced by Mortgagee in any way connected with the Mortgaged Property or any of the Loan Documents shall be added to and become a part of the Secured Indebtedness, and repayment thereof, together with interest thereon, unless collection from Mortgagor of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate that may be collected from Mortgagor as provided under Section 2 of the Financing Agreement, may be enforced by Mortgagee against Mortgagor at any time.

17. Stamps and Taxes. If at any time any Governmental Authority shall require internal revenue stamps on all or any part of the Loan Documents or the Secured Indebtedness, Mortgagor shall pay for same upon demand. If Mortgagor fails to make such payment within 15 days after demand for same, Mortgagee may pay for such stamps. If at anytime any law or ordinance imposes a tax on Mortgagee with respect to the Mortgaged Property, the value of Mortgagor's equity therein, the amount of the indebtedness secured hereby or this Mortgage, Mortgagee shall have the right at its election, from time to time, to give Mortgagor 15 days written notice to pay the Secured Indebtedness, whereupon the Secured Indebtedness shall become immediately due, payable and collectible at the expiration of such period of 15 days, without further notice or demand. However, if prior thereto, lawfully and without violation of usury laws, Mortgagor has paid any such tax in full as the same became due and payable, such notice shall be deemed to have been rescinded with respect to any right of Mortgagee hereunder arising by reason of the tax so paid.

# UNOFFICIAL COPY

18. Remedies. Upon the occurrence of an Event of Default, Mortgagee may forthwith and without demand exercise any one or more of the following rights and remedies in addition to any of the rights or remedies provided herein or in any other Loan Documents or such rights and remedies otherwise available to Mortgagee at law or in equity, without further stay, any law, usage or custom to the contrary notwithstanding:

(a) Take possession of the Mortgaged Property and exercise with respect thereto all rights of a mortgagee-in-possession.

(b) Collect all proceeds from agreements of sale with respect to the Mortgaged Property and revoke Mortgagor's license to collect all rentals from the Mortgaged Property and, after deducting all costs of collection and administration expenses, apply the net proceeds or rentals to the payment of taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, maintenance, repair or restoration of the Mortgaged Property, or on account and in reduction of the principal, interest or both of the Secured Indebtedness, in such order and amounts as Mortgagee, in Mortgagee's sole discretion, may elect.

(c) Institute any appropriate action or proceeding to foreclose this Mortgage and may proceed therein or judgment and execution for all sums secured by this Mortgage.

(d) Sell the Mortgaged Property according to law at one or more sales as an entirety or in parcels, if applicable, and at such time and place upon such terms and conditions and after such notices thereof as may be required by applicable law; provided, that, in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Agreement shall continue as a lien and security interest on the remaining portion of the Mortgaged Property.

(e) Exercise each and every right available to it as a secured party under the Uniform Commercial Code as enacted in the State of Illinois.

(f) Exercise each and every right granted to it hereunder, under any of the other Loan Documents at law or in equity.

(g) Exercise any and all rights and remedies of Mortgagor under the Licenses, without any interference or objection from Mortgagor.

(h) As it deems necessary, effect new Licenses, cancel or surrender existing Licenses, alter or amend the terms of and renew existing Licenses and make concessions to any third party in connection therewith.

(i) Have a receiver appointed to enter into possession of the Mortgaged Property to collect the earnings, revenues, rents, issues, profits and income derived therefrom and apply the same as the court may direct. Mortgagee shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Mortgagor or any other person who may be legally or equitably liable to pay the Secured Indebtedness and Mortgagor and each such person shall be deemed to have waived such proof and to have consented to the appointment of such receiver.



# UNOFFICIAL COPY

(j) Complete construction of pending improvements upon the Mortgaged Property or cause repairs to be made to or otherwise alter any present or existing improvements thereon.

19. Remedies Cumulative. All rights and remedies hereby granted or otherwise available to Mortgagee shall be cumulative and concurrent; may be pursued singly, successively or together at Mortgagee's sole option; and may be exercised from time to time and as often as occasion hereof shall occur until the Secured Indebtedness is paid in full. Mortgagee may resort to any security it holds in such order and manner as Mortgagee sees fit and may sell at any foreclosure sale in this Mortgage the Premises, Improvements and Building Equipment in one parcel or in such parcels as Mortgagee in its sole discretion elects so to do and such foreclosure sale shall pass title to sell such property.

20. No Release. No extension in indulgence granted to Mortgagor, no alternation, change or modification hereof or of any other Loan Document consented or agreed to by Mortgagee and no other act or omission of Mortgagee, including the taking of additional security or the release of any security, shall constitute a release of the lien and obligation of this Mortgage or be interposed as a defense against the enforcement of this Mortgage, except for an act of Mortgagee that constitutes an express, effective release and satisfaction of the Secured Indebtedness.

21. Modification. This Mortgage may not be changed orally or by any course of dealing between Mortgagor and Mortgagee, but only by an agreement in writing duly executed on behalf of the party against whom enforcement of any waiver, change, modification or discharge is sought.

22. Further Assurances. Mortgagor shall provide Mortgagee from time to time on request by Mortgagee with such mortgages, agreements, financing statements and additional instruments, documents or information as Mortgagee may in its discretion deem necessary or advisable to protect, perfect and/or maintain the liens and security interests in the Mortgaged Property. Mortgagor hereby authorizes and appoints Mortgagee as Mortgagor's attorney-in-fact which appointment, being coupled with an interest, is irrevocable, with full power of subscription, execute on Mortgagor's behalf and file at Mortgagor's expense such mortgages, financing statements and amendments thereto, in those public offices deemed necessary or appropriate by Mortgagee to establish, maintain and protect a continuously perfected lien and security interest in the Mortgaged Property.

23. Communications and Notices. Except as otherwise herein provided, any notice or other communication herein required or permitted to be given shall be in writing and shall be delivered in the manner set forth in Section 12.6 of the Financing Agreement.

24. Waivers. In connection with any proceedings under the Loan Documents, including without limitation any action by Mortgagee in repletion, foreclosure or other court process or in connection with any other action related to the Loan Documents or the transactions contemplated hereunder, Mortgagor waives:

- (a) all errors, defects and imperfections in such proceedings;

# UNOFFICIAL COPY

(b) all benefits under any present or future laws exempting any property, real or personal, or any part of any proceeds thereof from attachment, levy or sale under execution, or providing for any stay of execution to be issued on any judgment recovered under any of the Loan Documents or in any replevin or foreclosure proceeding, or otherwise providing for any valuation, appraisal or exemption;

(c) presentment for payment, demand, notice of demand, notice of non-payment, protest and notice of protest of any of the Loan Documents, including the Mortgage Note; and

(d) any requirement for bonds, security or sureties required by statute, court rule or otherwise.

25. Construction. The use of the words "Mortgagor" or "Mortgagee" shall be deemed to include the successors and assigns of the party or parties. If there shall be more than one Mortgagor or party constituting the Mortgagor, the obligation of each shall be joint and several. The use of any gender shall include all genders. The singular number shall include the plural, or the plural the singular, as the context may require. Wherever in this Mortgage the Mortgagee's consent or approval is required or permitted, such consent or approval shall be at the Permitted Discretion of Mortgagee unless an Event of Default has occurred and is continuing, in which event such consent and approval shall be at the sole and absolute discretion of Mortgagee.

26. Invalid Provisions Disregarded. If any term or provision of this Mortgage or the application thereof to any particular circumstances shall to any extent be invalid or unenforceable, the remainder of this Mortgage or the application of such terms or the provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Mortgage shall be valid and be enforced to the fullest extent permitted by law.

27. Applicable Law. This Mortgage shall be governed by and construed in accordance with the internal substantive laws of the State of Illinois, without giving effect to conflicts of law principles thereof.

28. Captions. The captions appearing in this Mortgage are inserted solely for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.

29. No Beneficiaries. The rights and remedies of this Mortgage shall not inure to the benefit of any third party other than the successors or assigns of Mortgagee.

30. Priority of Mortgage Lien. Mortgagee, at Mortgagee's option, is authorized and empowered to do all things provided to be done by a mortgagee under Illinois law, and any present or future amendments or supplements thereto, as in effect from time to time, for the protection of Mortgagee's interest in the Mortgaged Property.

31. Open-End Mortgage. This Mortgage constitutes an "Open-End Mortgage" under the applicable laws of the State of Illinois and secures obligations that include future and/or revolving advances made pursuant to the Financing Agreement. The total amount of the

# UNOFFICIAL COPY

principal indebtedness that may be secured by this Agreement may increase or decrease from time to time, but the total unpaid principal balance so secured at any one time shall not exceed \$101,200,000.00 plus interest thereon, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien of this Mortgage, expenses incurred by Mortgagee or the existing and future holders of the notes made by any Mortgagor by reason of any default by Mortgagor under the terms of this Mortgage, with interest on any such advances and disbursements, together with all other sums secured hereby.

32. WAIVER OF TRIAL BY JURY. MORTGAGOR AND MORTGAGEE HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE, OR THE TRANSACTIONS CONTEMPLATED HEREUNDER OR THEREUNDER.

33. Inconsistencies. In the event of any inconsistency between this Mortgage and the Financing Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Mortgaged Property, otherwise the provisions of the Financing Agreement shall be controlling.

34. State of Illinois Provisions.

(a) Principles of Construction. In the event of any inconsistencies between the other terms and provisions of this Mortgage and this Section 34, the terms and provisions of this Section 34 shall govern and control.

(b) Business Loan. Mortgagor represents and warrants that the amounts secured by this Mortgage will be used for the purposes specified in Paragraph 815 I.L.C.S. 205/4(1)(c), and that the Obligations secured hereby constitute a "business loan" within the purview of said paragraph and that the Loan is "a loan secured by a mortgage on real estate" within the purview and operation of Section 815 I.L.C.S 205./4(1)(c).

(c) Waiver of Statutory Rights. Mortgagor hereby waives, to the extent now or hereafter permitted by law, all statutory rights of redemption of this Mortgage pursuant to the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15 1101 et seq. ("IMFL"), on behalf of itself and all those taking by, through or under Mortgagor.

(d) Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision of this Mortgage shall be inconsistent with any provision of IMFL, the provisions of IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with IMFL. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon any Event of Default by Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under IMFL in the absence of said provision Mortgagee shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under IMFL, whether incurred before or after any decree or judgment of

# UNOFFICIAL COPY

foreclosure, and whether or not encumbered in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by judgment of foreclosure.

(e) Waiver of Redemption Rights. Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the IMFL) or residential real estate (as defined in Section 15-1219 of the IMFL). Mortgagor hereby voluntarily and knowingly waives, to the full extent it may lawfully do so, any and all statutory rights of redemption as allowed under Section 15-1601 of the IMFL.

(f) Usury. All agreements between Mortgagor and Mortgagee (including, without limitation, those contained in this Mortgage, the Note or any other Document) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing the indebtedness, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, then ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, Mortgagee or any Lender shall receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured by this Mortgage (whether or not then due and payable) and not to the payment of interest.

(g) Recovery of Expenses on Foreclosure. All expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure

(h) Compliance with Illinois Collateral Protection Act. Mortgagor hereby acknowledges that the following notice by Mortgagee is required by and given in full compliance with the Illinois Collateral Protection Act, 815 ILCS 180/15: Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property. This insurance may, but need not, protect Mortgagor's interest. The coverage that Mortgagee

# UNOFFICIAL COPY

purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the cost of that insurance, including interest and any other charges Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The cost of the insurance may be added to Mortgagor's total outstanding balance or obligation. The cost of insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

(i) Additional Remedies. In addition to any other remedies set forth herein or otherwise available to Mortgagee, if Mortgagee commences any suit to foreclose this Mortgage, Mortgagee shall have the right to apply to the court in which such proceedings are pending for entry of an order placing Mortgagee in possession of the Property. If an order is entered placing Mortgagee in possession of the Property, Mortgagee may thereupon enter upon and take immediate possession of the Property, expel and remove any persons, goods or chattels occupying or upon the Property, receive all rents, and issue receipts therefor, manage, control and operate the Property, including, but not limited to, the making of all repairs and replacements deemed necessary by Mortgagee and the leasing of the Property or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees, costs, fees and expenses incurred in the protection, care, maintenance, management and operation of the Property, apply the remaining net income, if any, to the Obligations. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice of entry of the order placing Mortgagee in possession in accordance with this Mortgage. If Mortgagor shall remain in physical possession of the Property after entry of an order placing Mortgagee in possession, Mortgagor's possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or to any other person authorized by Mortgagee, after entry of such order, a monthly rental for the Property, or the part thereof so occupied by Mortgagor to be applied as provided above and to be paid in advance on the first day of each calendar month, and, upon failure to do so, Mortgagor may be dispossessed by the usual summary proceedings. If Mortgagor shall so remain in possession of all or of any part of the Property, said monthly rental shall be in amounts established by Mortgagee in its discretion; and if Mortgagee commences judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of itself, its successors and permitted assigns, and each and every person which Mortgagor may legally bind which acquires any interest in or title to the mortgaged Property subsequent to the date of this Mortgage: (A) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension and, to the extent permitted by law, redemption from sale under any order or decree of foreclosure of this Mortgage; and (B) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is hereby authorized immediately to execute and deliver to any purchaser at any sale a deed and/or assignment conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

*[Signatures On Following Page]*

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be duly executed as of the day and year first above written.

MORTGAGOR:

JEVIC TRANSPORTATION, INC.

By: 

Name: David Gorman

Title: President & CEO

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

State of New Jersey )

: ss:

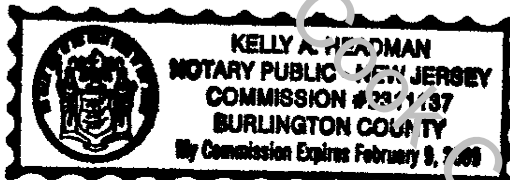
County of Burlington )

I, Kelly A. Headman a Notary Public in and for said County and State, do hereby certify that David Gorman personally known to me to be the same person(s) whose name(s) is (are) subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act, for the purposes therein set forth.

Given under my hand and official seal, this 19<sup>th</sup> day of July, 2006

My commission expires: 2.9.09

Kelly A. Headman  
Notary Public



# UNOFFICIAL COPY

EXHIBIT "A"  
TO  
OPEN-END MORTGAGE

DESCRIPTION OF PREMISES

Real property in the City of Markham, County of Cook, State of Illinois, described as follows:

That part of the East half of the Southwest quarter of Section 24, Township 36 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois, bounded and described as follows:

Beginning at the point of intersection of the West line of the East half of the Southwest quarter of said Section 24 with the North line of the South 662.43 feet of said East half of the Southwest quarter;

Thence North 00 degrees 00 minutes 27 seconds East on the West line of said East half of the Southwest quarter, a distance of 1093.23 feet to a point 788.10 feet South of the North line of the Southwest quarter of said Section 24,

Thence North 90 degrees 00 minutes 00 seconds East, a distance of 1172.67 feet to a point on the West line of Berkshire Manor, being a Subdivision of part of the East half of the Southwest quarter of Section 24, Township 36 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois;

Thence South 00 degrees 00 minutes 00 seconds East on the West line of Lots 116 to 102 and part of Lot 101 in said Berkshire Manor, a distance of 895.85 feet to the Southwest corner of said Lot 116 in said Berkshire Manor;

Thence North 90 degrees 00 minutes 00 seconds East on the South line of said Lot 116, a distance of 116.50 feet to the Southeast corner of said Lot 116, said point being 32.00 feet West of the East line of said Southwest quarter of Section 24;

Thence South 00 degrees 00 minutes 00 seconds East on a line 33.00 feet West of and parallel to the East line of said Southwest quarter of Section 24, said line being common with the East line of Lot 18 in Markham Park Industrial Subdivision, being a Subdivision of part of the Southwest quarter of the Southwest quarter of Section 24 and part of the East half of the Southwest quarter of Section 24 all in Township 36 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois, a distance of 887.00 feet to the Southeast corner of said Lot 18;

Thence South 86 degrees 12 minutes 00 seconds West on the South line of Lots 16, 17 and 18 in said Markham Park Industrial Subdivision, a distance of 300.66 feet to the Southwest corner of said Lot 16;



# UNOFFICIAL COPY

Thence North 00 degrees 00 minutes 00 seconds East on the West line of said Lot 16, a distance of 312.77 feet to a point on a line 370.00 feet North of and parallel to the South line of the Southwest quarter of said Section 24;

Thence South 89 degrees 57 minutes 45 seconds West on the last described line, a distance of 342.34 feet to a point on the Westerly line of Lot 13 in said Markham Park Industrial Subdivision;

Thence Northwesterly on a curved line (being the Westerly line of said Lot 13), convexed to the Northeast having a radius of 1348.50 feet, an arch length of 81.13 feet, a chord length of 81.12 feet and a chord bearing of North 09 degrees 32 minutes 49 seconds West to a point on a line, said line being the Easterly prolongation of the North line of Lots 9 to 12 in said Markham Park Industrial Subdivision;

Thence South 89 degrees 57 minutes 45 seconds West on the last described line, a distance of 469.57 feet to the Northwest corner of said Lot 9, said point being on the East line of the West 164.40 feet of the East half of the Southwest quarter of said Section 24;

Thence North 00 degrees 01 minutes 27 seconds East on the last described line a distance of 212.43 feet to a point on the North line of the South 662.43 feet of the East half of the Southwest quarter of said Section 24; thence South 89 degrees 57 minutes 45 seconds West on the last described line, a distance of 164.40 feet to the point of beginning, in Cook County, Illinois. Containing 41.825 Acres more or less.

# UNOFFICIAL COPY

EXHIBIT "B"  
TO  
OPEN-END MORTGAGE

PERMITTED LIENS

1. Taxes for the year(s) 2005 (final), 2006 and subsequent years, not yet due and payable.  
First estimated installment tax for the year 2005 in the amount of \$65,046.56.  
Taxes for the year(s) 2005 (final) and 2006 are not yet ascertainable or payable.  
Tax Identification Number: 28-24-310-019-0000  
Volume Number 0033
2. Taxes for the year(s) 2005 (Final), 2006 and subsequent years, not yet due and payable.  
First estimated installment tax for the year 2005 in the amount of \$64,428.64 is paid.  
Taxes for the year(s) 2005 (final) and 2006 are not yet ascertainable or payable.  
Tax Identification Number: 28-24-310-020-000  
Volume Number 0033
3. Taxes for the year(s) 2005 (Final), 2006 and subsequent years, not yet due and payable.  
First estimated installment tax for the year 2005 in the amount of \$3,921.77 is paid.  
Taxes for the year(s) 2005 (final) and 2006 are not yet ascertainable or payable.  
Tax Identification Number: 28-24-310-013-000  
Volume Number 0033
4. Taxes for the year(s) 2005 (Final), 2006 and subsequent years, not yet due and payable.  
First estimated installment tax for the year 2005 in the amount of \$3,457.14 is paid.  
Taxes for the year(s) 2005 (final) and 2006 are not yet ascertainable or payable.  
Tax Identification Number: 28-24-310-012-000  
Volume Number 0033
5. Taxes for the year(s) 2005 (Final), 2006 and subsequent years, not yet due and payable.  
First estimated installment tax for the year 2005 in the amount of \$3,428.23 is paid.

**UNOFFICIAL COPY**

Taxes for the year(s) 2005 (final) and 2006 are not yet ascertainable or payable.

Tax Identification Number: 28-24-310-011-000

Volume Number 0033

6. Taxes for the year(s) 2005 (Final), 2006 and subsequent years, not yet due and payable.

First estimated installment tax for the year 2005 in the amount of \$876.91 is paid.

Taxes for the year(s) 2005 (final) and 2006 are not yet ascertainable or payable.

Tax Identification Number: 28-24-310-014-000

Volume Number: 0033

7. Electric and Telephone Line Right on Corporate Property recorded September 21, 1967 as document 20266877, in favor of Commonwealth Edison Company and Illinois Bell Telephone Company, their successors and assigns, jointly and severally, the right, permission and authority to construct, maintain, relocate and renew equipment consisting of poles, pole structures, push poles, anchors, buys, stubs, conduits, wires, cables and other necessary electrical facilities upon along, over and under the property and to transmit and distribute by means of said equipment electricity to be used for heat, light, power, telephone and other purposes and also to trim from time to time such trees, bushes and saplings as may be reasonably required incident to the grant herein given, together with the right of ingress to and egress from said property.

(Affects the North 5 feet of the land)

(Affects PIN 28-24-310-019)

8. Easement for the purpose of installing and maintaining all equipment necessary for the purpose of serving the land and other property with telephone and electric service, together with the right to overhand aerial service wires over any part of the land and also with right of access thereto as granted to the Illinois Bell Telephone Company and the Commonwealth Edison Company, and their respective successors and assigns, as shown on the Plat of Berkshire Manor recorded December 30, 1959 as document 17746714.

(Affects the North 7.5 feet of the West 15 feet of the East 44 feet of vacated lot 72 in Berkshire Manor as vacated by Plat recorded April 13, 1971 as document 21446938)

(Affects the East 7.5 feet of vacated Lots 74 to 89 in Berkshire Manor as vacated by Plat recorded April 13, 1971 as document 21446938)

(Affects PIN 28-24-310-019)

# UNOFFICIAL COPY

9. Easement recorded as document 17995342, in favor of Commonwealth Edison Company and Illinois Bell Telephone Company, their successors and assigns, jointly and severally, the right, permission and authority to construct, maintain, relocate and renew equipment consisting of poles, pole structures, push poles, anchors, guys, stubs, conduits, wires, cables and other necessary electrical facilities upon, along, over and under the property and to transmit and distribute by means of said equipment electricity to be used for heat, light, power, telephone and other purposes and also to trim from time to time such trees, bushes and saplings as may be reasonably required incident to the grant herein given, together with the right of ingress to and egress from said property.

(Affects the East 25 feet of the North 10 feet of the South 518 feet)

(Affects PIN 28-24-410-019)

Property of Cook County Clerk's Office