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This document prepared by and after
Recording return to:

Ginsberg Jacobs LLC
300 South Wacker, Suite 2750
Chicago, Illinois 60606
Attention: Steven F. Ginsberg, Esq.

8345182 Howard D 1/12

AMENDED AND RESTATED LEASEHOLD MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS

THIS AMENDED AND RESTATED LEASEHOLD MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (this "Security Instrument") is made as of December 27, 2012 and effective as of November 12, 2012 (the "Effective Date"), by **BEITLER MILLENNIUM STATION LLC**, an Illinois limited liability company (the "Borrower"), for the benefit of **FIFTH THIRD BANK**, an Ohio banking corporation, its successors and assigns (the "Lender").

WITNESSETH:

The Borrower and the Lender entered into that certain loan arrangement wherein the Lender made a certain loan (the "Original Loan") to the Borrower pursuant to that certain Construction Loan Agreement dated May 12, 2006 (as amended, modified or restated from time to time, the "Loan Agreement"), and the Original Loan was evidenced by that certain Non-Revolving Note dated May 12, 2006, in the original principal amount of One Million Four Hundred Two Thousand and 0/100 Dollars (\$1,402,000.00) (the "Original Non-Revolving Note") which was converted on November 12, 2007 to a Term Note dated as of November 12, 2007 in the maximum principal amount of One Million Four Hundred Two Thousand and 0/100 Dollars (\$1,402,000.00) (as amended, modified and restated from time to time, the "Original Term Note"), and was secured by that certain Leasehold Mortgage and Assignment of Rents dated May 12, 2006, in favor of the Lender, which document was recorded with the Cook County, Illinois Recorder as Document No. 0613510111 (the "Original Mortgage") and that certain Assignment of Rents dated as of June 26, 2007, in favor of Lender, which document was recorded with the Cook County, Illinois Recorder of Deeds as Document No. 0711933214 (the "Original Assignment").

The Borrower and the Lender have agreed to amend and restate the Original Loan (hereinafter the amended and restated loan shall be referred to as the "Loan") in an amount not to exceed One Million Two Hundred Eighty-One Thousand Seven Hundred Seventy and 0/100 Dollars (\$1,281,770.00). The Loan is evidenced by that certain Amended and Restated Promissory Note dated as of even date herewith in the original principal amount of \$1,281,770.00 from Borrower to Lender (together with all renewals, amendments, modifications, increases and extensions thereof, the "Note"). The Loan is due and payable in full on November 12, 2015 (the "Maturity Date"). This Security Instrument encumbers certain real estate located in

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Cook County, Illinois legally described on **Exhibit A** attached hereto, and payment of the Note is secured by this Security Instrument, financing statements and other security documents (this Security Instrument, the Note, and all other documents evidencing or securing the Loan (as amended, modified, replaced or restated from time to time) are collectively hereinafter referred to as the "Loan Documents"). The Loan bears interest at a variable rate of interest of Libor adjusted upwards by two and one-quarter percent.

Now, therefore, in order to induce the Lender to amend and restate the Loan to the Borrower, the Borrower agrees as follows:

The Borrower is the ground lessee of certain real property located in Cook County, Illinois, more particularly described in Exhibit A attached hereto, by virtue of that certain Randolph Street Concourse Commercial Lease dated September 1, 2005 (as amended, modified and restated from time to time, the "Master Lease"), between the Borrower as ground lessee, and Commuter Rail Division of the Regional Transportation Authority as the ground lessor (the "Landlord") (the "Leasehold Estate"). This Mortgage encumbers the Leasehold Estate, and payment of the Loan and all other obligations of the Borrower are secured by this Mortgage and the other Loan Documents.

To secure (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, and all other indebtedness evidenced by or owing under the Note and any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Security Instrument by its terms secures, and (iii) the performance and observance of the covenants and agreements contained in this Security Instrument, the Loan Agreement, the Note and each of the other Loan Documents (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "Debt"), the Borrower does hereby GRANT, SELL, CONVEY, MORTGAGE and ASSIGN unto the Lender, its successors and assigns, and does hereby grant to Lender, its successors and assigns a security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, and VIII below, all of same being collectively referred to herein as the "Mortgaged Property".

GRANTING CLAUSE I:

THE Leasehold Estate located in Cook County, Illinois which is legally described on Exhibit A attached hereto and made a part hereof (the "Land");

GRANTING CLAUSE II:

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Borrower now or hereafter acquired in and to any of the foregoing, including without limitation those certain improvements to be constructed on the Land in accordance with the Loan Agreement (collectively, the "Improvements");

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GRANTING CLAUSE III:

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Borrower, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

GRANTING CLAUSE IV:

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Borrower and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by the Borrower and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Security Instrument.

GRANTING CLAUSE V:

TOGETHER WITH the following (the "Personal Property");

All personal property of every nature whatsoever now or hereafter owned by Borrower or used in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Borrower in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Borrower or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts,

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Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Illinois (as amended from time to time, the "Code");

The Leasehold Estate, including without limitation, (i) all Lessor Bankruptcy Rights (as hereinafter defined), and (ii) all Lease Damage Claims, this Mortgage constituting a present, irrevocable and unconditional assignment of the Lease Damage Claims which shall continue in effect until the Debt has been satisfied;

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or the Improvements or proceeds of any sale, option or contract to sell the Land or the Improvements or any portion thereof

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

All of the books and records pertaining to the foregoing;

GRANTING CLAUSE VI:

TOGETHER WITH all right, title and interest which the Borrower hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which the Borrower now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Borrower any statutory rights;

GRANTING CLAUSE VII:

TOGETHER WITH any and all Awards and Insurance Proceeds, as each are hereinafter respectively defined, or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Borrower hereby authorizes, directs and empowers the Lender, at its option, on the Borrower's behalf, or on behalf of the successors or assigns of the Borrower, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Mortgaged Property as provided in the Loan Agreement, to payment of the Debt, notwithstanding the fact that the same may not then be due and payable or that the Debt is otherwise adequately secured; and the Borrower agrees to execute and deliver from time to time such further instruments as may be requested by the Lender to confirm such assignment to the Lender of any such proceeds;

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GRANTING CLAUSE VIII:

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Borrower now has or hereafter may acquire of, in and to the Mortgaged Property, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Borrower or by anyone on behalf of the Borrower to the Lender;

TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto, unto the Lender and its successors and assigns, in trust, fee simple or leasehold (as applicable) forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of the Borrower under the Note and Loan Documents (as hereinafter defined) and all other Debt;

TO HAVE AND TO HOLD the Mortgaged Property, unto the Lender, and its successors and assigns, IN FEE SIMPLE forever; subject, however, to those encumbrances which the Lender has approved in the Loan Agreement or otherwise approved in writing (collectively, the "Permitted Encumbrances");

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, the Borrower shall be permitted to possess and use the Mortgaged Property;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if (i) the Borrower shall pay and perform in full when due the Debt and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan Documents required to be performed and observed by the Borrower, and (ii) the Lender shall have no further obligation to make any further disbursements of the Loan to or for the benefit of Borrower under the provisions of the Loan Agreement, then the Lender shall execute and deliver to the Borrower such instruments as may be reasonably requested by the Borrower which are sufficient to release this Security Instrument.

THE BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **Borrower's Covenants.**

- (a) Payment of Debt. The Borrower shall, prior to the expiration of any grace period: (i) pay the Debt when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Borrower as provided in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.
- (b) Repair/Maintenance. The Borrower shall (i) maintain, repair, restore, replace or rebuild any portion of the Mortgaged Property which may be damaged or destroyed in accordance with the requirements of the Loan Agreement; (ii) keep the Mortgaged Property in good condition and repair, free from waste; (iii) pay all

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operating costs and expenses of the Mortgaged Property when due; (iv) comply with all Applicable Laws (as defined in the Loan Agreement), observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Mortgaged Property or the use and occupancy thereof; (v) refrain from any action, and correct any condition known to the Borrower, which would materially increase the risk of fire or other hazard to the Mortgaged Property or any portion thereof; and (vi) cause the Mortgaged Property to be managed in a competent and professional manner.

- (c) Alteration of Mortgaged Property. Without the prior written consent of the Lender, the Borrower shall not cause, suffer or permit (i) any material alteration of the Mortgaged Property, except as required by any applicable legal requirement or as otherwise contemplated by the Loan Agreement; (ii) any change in the zoning classification or intended use or occupancy of the Mortgaged Property, including without limitation any change which would increase any fire or other hazard; (iii) any change in the identity of the Borrower or the person or entity responsible for managing the Mortgaged Property; or (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Mortgaged Property, except as required to operate the Mortgaged Property in the manner required hereunder.
- (d) Organizational Documents of Borrower. The Operating Agreement of the Borrower shall not, without the prior written consent of the Lender, be amended or modified if such amendment or modification could have a material adverse effect on the Borrower's ability to perform its obligations under any of the Loan Documents, nor shall any member or manager of the Borrower be released or discharged from its, his or her obligations under the Borrower's Operating Agreement, nor shall any member of the Borrower transfer, pledge or encumber in any way any interest in the Borrower or the right to receive income or proceeds from the Borrower. At all times prior to the repayment of the Loan, Beitler Properties LLC, an Illinois limited liability company shall be the sole managing member of the Borrower.
- (e) Continuing Existence; Merger; Disposition of Assets. Borrower shall not (i) permit itself to be dissolved or its existence terminated, (ii) change its capital structure, (iii) merge or consolidate with any entity, (iv) amend or change its Articles of Organization and Operating Agreement or (v) sell, lease, transfer or otherwise dispose of, or grant any person an option to acquire, or sell and leaseback, all or any substantial portion of its assets, whether now owned or hereafter acquired, except for bona fide sales of inventory in the ordinary course of business and dispositions of property which is obsolete and not used or useful in its business.
- (f) Compliance with Laws. The Borrower and any guarantor of the Loan ("Guarantor") shall comply in all material respects with all Applicable Laws (as

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defined in the Loan Agreement). Borrower and Guarantor shall obtain and maintain any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership of their respective properties and the advantageous conduct of its business and as may be required from time to time by applicable law.

- (g) **Insurance.** The Borrower shall obtain and maintain or cause to be obtained and maintained, in full force and effect at all times insurance with respect to Borrower and the Mortgaged Property as required pursuant to the Loan Agreement.

2. **Liens, Contest and Defense of Title.**

- (a) The Borrower shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder (except for Permitted Encumbrances), whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Security Instrument, including liens for labor or materials with respect to the Mortgaged Property (collectively, "Mechanic's Liens").
- (b) Notwithstanding paragraph (a) of this Section 2, the Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Security Instrument; and (ii) within ten (10) days after the Borrower has been notified of the filing of any such Mechanic's Liens, the Borrower shall have notified the Lender in writing of the Borrower's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Lender, insuring the Lender against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Borrower may deposit and keep on deposit with the Lender (or such depository as may be designated by the Lender) a sum of money sufficient, in the judgment of the Lender, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Lender in its sole discretion to protect the priority of this Security Instrument. In case the Borrower shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Lender may, at its option, apply any money and liquidate any securities then on deposit with the Lender (or other depository designated by the Lender) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into

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the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Lender's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Borrower shall forthwith, upon demand, deposit with the Lender (or other depository designated by the Lender) the sum which shall (in Lender's reasonable judgment, when added to the funds then on deposit with Lender) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Lender). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist) when the Lender has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Lender (or other depository) under this Section 2(b) shall be paid to the Borrower, provided that no Event of Default shall then exist.

- (c) If the lien and security interest of the Lender in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Borrower shall immediately notify the Lender and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

3. Security Agreement.

- (a) Grant of Security Interest. Borrower hereby grants to Lender a security interest in the Personal Property to secure the Debt. This Security Instrument constitutes a security agreement with respect to all Personal Property in which Lender is granted a security interest hereunder, and Lender shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.
- (b) Perfection. Borrower hereby consents to any instrument that may be requested by Lender to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Security Instrument or the interest of Lender in the Mortgaged Property, including without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Borrower shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Lender in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Borrower hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date

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hereof. Borrower hereby irrevocably constitutes and appoints Lender as the attorney-in-fact of Borrower, to file with the appropriate filing office any such instruments. In addition, Borrower hereby authorizes Lender to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Borrower.

- (c) **Place of Business.** Borrower maintains its chief executive office as set forth as the address of Borrower in Section 20 below, and Borrower will notify Lender in writing of any change in its place of business within five (5) days of such change.
- (d) **Fixture Filing.** This Security Instrument is intended to be a financing statement within the purview of Section 9-502(b) of the Code and will be recorded as a "fixture filing" in accordance with the Code.
- (e) **Representations and Warranties.** The Borrower represents and warrants that: (i) the Borrower is the record owner of the Mortgaged Property; (ii) the Borrower's chief executive office is located in the State of Illinois; (iii) the Borrower's state of organization is the State of Illinois; (iv) the Borrower's exact legal name is as set forth on Page 1 of this Security Instrument; (v) the Borrower's organizational identification number is 01607111, (vi) Borrower is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof, (vii) the Personal Property will not be removed from the Mortgaged Property without the consent of the Lender, and (viii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto.

4. **Restrictions on Transfer.**

- (a) The Borrower, without the prior written consent of the Lender, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":
 - (i) The Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of collateral ("Obsolete Collateral") no longer useful in connection with the operation of the Mortgaged Property, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;
 - (ii) All or any part of the managing member or manager interest, as the case may be, in a limited liability company Borrower or a limited liability company which is a general partner of a partnership Borrower; or
 - (iii) If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member,

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manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of the Borrower and/or owns a controlling interest in the Borrower or if Beitler Real Estate Services LLC shall no longer own at least fifty-one percent (51%) of the ownership interests in the Borrower or its managing member as applicable;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this section shall not apply (i) to liens securing the indebtedness, (ii) to the lien of current Taxes not in default, (iii) to any transfers of the Mortgaged Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, or (iv) to Leases permitted by the terms of the Loan Documents, if any.

- (b) In determining whether or not to make the Loan, the Lender evaluated the background and experience of the Borrower and its managing member in owning and operating property such as the Mortgaged Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Mortgaged Property which is the Lender's security for the Note. The Borrower and its managing member are well experienced in borrowing money and owning and operating property such as the Mortgaged Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Borrower recognizes that the Lender is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Borrower. The Borrower further recognizes that any secondary junior financing placed upon the Mortgaged Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Lender to take measures and incur expenses to protect its security; (iii) would detract from the value of the Mortgaged Property should the Lender come into possession thereof with the intention of selling same; and (iv) would impair the Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by the Lender would be necessary to clear the title to the Mortgaged Property. In accordance with the foregoing and for the purposes of (a) protecting the Lender's security, both of repayment and of value of the Mortgaged Property; (b) giving the Lender the full benefit of its bargain and contract with the Borrower; (c) allowing the Lender to raise the interest rate and collect assumption fees; and (d) keeping the Mortgaged Property free of subordinate financing liens, the Borrower

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agrees that if this section is deemed a restraint on alienation, that it is a reasonable one.

5. **Events of Default.** Any one or more of the following events shall constitute an “Event of Default” under this Security Instrument:

- (a) If the Borrower shall fail (i) to make any payment of principal or interest under the Note when due, or (ii) to make any other payment under the Loan Documents when due or, if no date is stated, within five (5) days after demand (or such shorter period as may be expressly provided for herein or therein); or
- (b) If a Prohibited Transfer shall occur; or
- (c) Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower contained in this Security Instrument and not specifically referred to elsewhere in this Section 5; or
- (d) If any Event of Default occurs under the Loan Agreement or any other Loan Document.

6. **Remedies.** Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Borrower from complying with the terms of this instrument), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

- (a) **Acceleration.** Lender may declare the outstanding principal balance of the Note and all unpaid indebtedness of Borrower hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind (and upon the occurrence of any Event of Default described in Section 11.1(e) of the Loan Agreement, such indebtedness shall automatically become due and payable without any action by Lender).
- (b) **Uniform Commercial Code.** Lender shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of the Code for reasonable notification shall be met by mailing written notice to Borrower at its address set forth in Section 20 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Lender elects. The Borrower hereby agrees that if the Lender demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its

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rights and remedies hereunder, the Borrower will promptly turn over and deliver possession thereof to the Lender, and the Borrower authorizes, to the extent the Borrower may now or hereafter lawfully grant such authority, the Lender, its employees and agents, and potential bidders or purchasers to enter upon the Mortgaged Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Lender may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Debt and shall be payable upon demand with interest at the Default Rate until paid to Lender.

- (c) Foreclosure. Lender may proceed to protect and enforce the rights of Lender hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Security Instrument. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Debt in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended (the "Foreclosure Laws") and all other expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Security Instrument, including the reasonable fees of any attorney employed by Lender in any litigation or proceedings affecting this Security Instrument, the Note, any of the other Loan Documents or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid to Lender.

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- (d) Appointment of Receiver. Lender shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Foreclosure Laws of all or any part of the Mortgaged Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect there to or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.
- (e) Taking Possession, Collecting Rents, Etc. Upon demand by Lender, Borrower shall surrender to Lender and Lender may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Foreclosure Laws, and Lender, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Foreclosure Laws may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Borrower relating thereto, and may exclude Borrower and any agents and servants thereof wholly therefrom and may, on behalf of Borrower, or in its own name as Lender and under the powers herein granted:
- (i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;
 - (ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;
 - (iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Security Instrument without Lender's prior written consent;

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- (iv) extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Debt, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;
- (v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;
- (vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of Taxes, Premiums and other charges applicable to the Mortgaged Property, or in reduction of the Debt in such order and manner as Lender shall select, in its sole discretion; and
- (vii) receive and collect the rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Borrower agrees to consent to a receiver if it is believed necessary or desirable by the Lender to enforce its rights under this subsection. The collection of rents, issues, profits or revenues of the Mortgaged Property by the Lender shall in no way waive the right of the Lender to foreclose this Security Instrument in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Lender hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Borrower promises to pay upon demand together with interest thereon at the Default Rate until paid to Lender. Lender shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Lender. Without taking

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possession of the Mortgaged Property, Lender may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate or as required by any Applicable Laws to register, maintain, repair, protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Debt payable upon demand with interest thereon at the Default Rate.

- (f) **Indemnity.** The Borrower hereby agrees to indemnify, defend, protect and hold harmless the Lender and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of the Lender seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property; provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Lender, its employees, officers or agents.

7. **Compliance with Foreclosure Laws.**

- (a) In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Foreclosure Laws, the provisions of the Foreclosure Laws shall take precedence over the inconsistent provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Foreclosure Laws.
- (b) If any provision of this Security Instrument shall grant to Lender any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Laws in the absence of said provision, Lender shall be vested with the rights granted in the Foreclosure Laws to the full extent permitted by law.
- (c) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Foreclosure Laws, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 6(c) or 9 of this Security Instrument, shall be added to the Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

8. **Waiver of Right to Redeem - Waiver of Appraisal, Valuation, Etc.**

Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, but hereby waives the benefit of such Moratorium Laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court

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having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Lender may determine in its sole discretion. Lender shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Lender so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Lender with the amount payable to Lender out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Debt, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Foreclosure Laws, or residential real estate, as defined in Section 5/15-1219 of the Foreclosure Laws. To the fullest extent permitted by law, Borrower, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Security Instrument, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Section 5/15-1601(b) of the Foreclosure Laws, and (ii) any and all rights of reinstatement.

9. **Costs and Expenses of Foreclosure.** In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Lender may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become so much additional Debt which Borrower agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid to Lender at the Default Rate.

10. **Protective Advances.**

- (a) Advances, disbursements and expenditures made by Lender for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Security Instrument, constitute "Protective Advances":
- (i) all advances by Lender in accordance with the terms of this Security Instrument to: (A) register, preserve or maintain, repair, restore or rebuild the Improvements upon the Mortgaged Property; (B) preserve the lien of this Security Instrument or the priority thereof; or (C) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Foreclosure Laws;

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- (ii) payments by Lender of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of Taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Security Instrument; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property, as referred to in Section 5/15-1505 of the Foreclosure Laws;
- (iii) advances by Lender in settlement or compromise of any claims asserted by claimants under any prior liens;
- (iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Security Instrument as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Foreclosure Laws; (B) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Security Instrument or arising from the interest of the Lender hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;
- (v) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Foreclosure Laws;
- (vi) advances of any amount required to make up a deficiency in deposits for installments of Taxes and assessments and Premiums as may be authorized by this Security Instrument;
- (vii) expenses properly deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Foreclosure Laws; and
- (viii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) Premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Foreclosure Laws; (B) repair or Restoration of damage or destruction in excess of available Insurance Proceeds or Awards; (C) payments required or deemed by Lender to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments

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creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; or (E) pursuant to any Lease or other agreement for occupancy of the Mortgaged Property.

- (b) All Protective Advances shall be so much additional Debt, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.
- (c) This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Foreclosure Laws.
- (d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Foreclosure Laws, apply to and be included in the:
 - (i) determination of the amount of Debt at any time;
 - (ii) indebtedness found due and owing to the Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
 - (iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Foreclosure Laws;
 - (iv) application of income in the hands of any receiver or mortgagee in possession; and
 - (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Foreclosure Laws.

11. **Application of Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 6(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 6(c) and Section 9 hereof; second, to all items, other than principal and interest evidenced by the Note, which under the terms hereof constitute Debt with interest thereon as herein provided; third, to all unpaid interest on the Note; fourth, to all unpaid principal on the Note; fifth, to whomsoever shall be lawfully entitled to the same.

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12. Rights Cumulative.

- (a) Each right, power and remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Lender.
- (b) By accepting payment of any sums secured by this Security Instrument after the due date thereof, by accepting performance of any of the Borrower's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Borrower which the Borrower was obligated but failed to perform or pay, the Lender shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Borrower's obligations under this Security Instrument, the Note, and all other Loan Documents. No waiver or modification of any of the terms of this Security Instrument shall be binding on the Lender unless set forth in writing signed by the Lender and any such waiver by the Lender of an Event of Default by the Borrower under this Security Instrument shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Lender holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.
- (c) No act or omission by the Lender shall release, discharge, modify, change or otherwise affect the liability of Borrower under the Note, this Security Instrument, or any of the other Loan Documents, or any other obligation of the Borrower, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Security Instrument or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by the Lender. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Lender in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Lender by this Security Instrument is not required to be given.

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13. Successors and Assigns; Assignment.

- (a) This Security Instrument and each and every provision hereof shall be binding upon the Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the Lender and its successors and assigns.
- (b) All of the covenants of this Security Instrument shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than the Borrower, the Lender may, without notice to the Borrower, deal with such successor or successors in interest of the Borrower with reference to this Security Instrument and the Debt in the same manner as with the Borrower without in any way releasing or discharging the Borrower from its obligations hereunder. The Borrower will give immediate written notice to the Lender of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 4 hereof.
- (c) The rights and obligations of Borrower under this Security Instrument may not be assigned and any purported assignment by Borrower shall be null and void. Lender shall have the right to sell, assign or transfer portions of its right, title and/or interest in and to this Security Instrument and the other Loan Documents (including the sale of participation interests therein), without the consent or approval of Borrower, and Borrower agrees to cooperate in all respects with Lender in connection therewith, including without limitation, the execution of all documents and instruments reasonably requested by Lender or such transferee provided that such documents and instruments do not materially adversely affect any of Borrower's duties or obligations under this Security Instrument and the other Loan Documents.

14. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents.

- (a) The Borrower will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Lender shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Lender all property mortgaged hereby or property intended so to be, whether now owned by the Borrower or hereafter acquired. Without limitation of the foregoing, the Borrower will assign to the Lender, upon request, as further security for the Debt, its interest in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments reasonably satisfactory to the Lender, but no such assignment shall be construed as a consent by the Lender to any agreement, contract, license or permit or to impose upon the Lender any obligations with respect thereto.

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- (b) From time to time, the Borrower will furnish, within ten (10) days after request from the Lender, a written and duly acknowledged statement of the amount due under the Note, this Security Instrument and the other Loan Documents and whether any alleged offsets or defenses exist against the Debt.
- (c) The Borrower and the Lender shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Security Instrument or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by the Lender or the Borrower, as the case may be, to correct such defect, error or omission.
15. **Subrogation.** If any part of the Debt is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then by advancing the monies to make such payment, the Lender shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.
16. **Governing Law.** The validity, enforcement and interpretation of this Security Instrument shall for all purposes be governed by and construed in accordance with the laws of the State of Illinois, without reference to the conflicts of law principles of that State, and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws.
17. **Business Loan.**
- (a) The Borrower declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the Loan is exempt from interest limitations pursuant to the provisions of 815 ILCS 205/4 and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.
- (b) All rights, remedies and powers provided by this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Security Instrument are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Security Instrument invalid or unenforceable under the provisions of any applicable law.
18. **Assignment of Leases and Other Agreements Affecting the Mortgaged Property.** In order to further secure payment of the Debt and the observance, performance and discharge of the Borrower's obligations under the Loan Documents, the Borrower hereby assigns to the Lender all of the Borrower's right, title, interest and estate in, to and under all of the Leases and in and to all of the Rents and Profits (defined as all rents, income, issues and profits

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arising from any Leases, or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter made affecting the Mortgaged Property or any portion thereof), as more particularly described in that certain Assignment of Leases and Rents dated as of even date herewith from Borrower to and for the benefit of Lender. Unless and until an Event of Default occurs, the Borrower shall be entitled to collect the Rents and Profits (except as otherwise provided in this Security Instrument) as and when they become due and payable. Neither these assignments nor Lender's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Security Instrument to any of the rights of any tenant or other party to any other agreement affecting the use, enjoyment or occupancy of the Mortgaged Property of all or any part of the Mortgaged Property, or to subject Lender to any liability to any such tenant for the performance of any obligations of Borrower under any such Lease or other agreement affecting the Mortgaged Property unless and until Lender agrees to such subordination or assumes such liability by an appropriate written instrument.

19. **Environmental Matters.** Concurrently herewith, Borrower and Guarantor shall execute and deliver an Environmental Indemnity Agreement in form satisfactory to Lender (the "Environmental Indemnity Agreement"). The performance of the covenants, undertakings and obligations of the indemnitors under the Environmental Indemnity Agreement shall be secured by this Security Instrument.

20. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth below in this Section or as such party may from time to time designate by written notice to the other parties. Either party by notice to the other in the manner provided herein may designate additional or different addresses for subsequent notices or communications:

To Lender:	Fifth Third Bank 222 South Riverside Plaza Chicago, Illinois 60606 Attention: Sara H. Clark
With copy to:	Ginsberg Jacobs LLC 300 South Wacker Drive, Suite 2750 Chicago, Illinois 60606 Attention: Steven F. Ginsberg, Esq.
To Borrower:	Beitler Millennium Station LLC 151 North Michigan Avenue Chicago, Illinois 60601 Attn: John Paul Beitler
With copy to:	Thompson Coburn LLP

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55 East Monroe Street, 37th Floor
Chicago, Illinois 60603
Attn: Michael C. Jurasek

21. **Releases.**

- (a) Upon payment in full of all sums due under the Note and this Security Instrument and the other of the Loan Documents, the Lender shall, upon the request of, and at the cost of, the Borrower, execute a proper release of this Security Instrument.
- (b) The Lender may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Security Instrument without in any manner affecting or impairing the lien or priority of this Security Instrument as to the remainder of the Mortgaged Property not so released.

22. **Indemnification by the Borrower.** The Borrower shall protect and indemnify the Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Lender or the members, partners, shareholders, directors, officers, agents or employees of the Lender by reason of (a) ownership of the Mortgaged Property or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident to, injury to or death of persons or loss of or damage to Mortgaged Property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of the Borrower or any Guarantor to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Security Instrument, the Note, any of the other Loan Documents, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower, or any Guarantor, or any other persons directly or indirectly liable for the payment of the Debt, (d) any failure on the part of the Borrower to perform or comply with (i) any other agreement executed by the Borrower or any guarantor of the Note, or (ii) any requirement of law, (e) payment of sums for the protection of the lien and security interest of the Lender in and to the Mortgaged Property, (f) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof for construction or maintenance or otherwise, or (g) any action brought against the Lender attacking the validity, priority or enforceability of this Security Instrument, the Note, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower, any Guarantor, or any other persons directly or indirectly liable for the payment of the Debt. Any amounts payable to the Lender under this paragraph shall bear interest at the Default Rate until paid to Lender and shall be secured by this Security Instrument. In the event any action, suit or proceeding is brought against the Lender or the members, partners, shareholders, directors, officers, agents or employees of the Lender by reason of any such occurrence, the Borrower, upon the request of the Lender and at Borrower's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Borrower and approved by the Lender. Such obligations under this paragraph shall survive the termination, satisfaction or release of this Security Instrument.

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23. **Miscellaneous.**
- (a) **Time is of the Essence.** Time is of the essence of this Security Instrument.
- (b) **Captions and Pronouns.** The captions and headings of the various Sections of this Security Instrument are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.
- (c) **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the Debt secured hereby exceed an amount equal to \$2,563,540.00; provided, however, in no event shall the Lender be obligated to advance funds in excess of the face amount of the Note.
- (d) **Lender Not a Joint Venturer or Partner of Borrower.** The Borrower and the Lender acknowledge and agree that in no event shall the Lender be deemed to be a partner or joint venturer with the Borrower. Without limitation of the foregoing, the Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Security Instrument or pursuant to any other instrument or document evidencing or securing any of the Debt, or otherwise.
- (e) **Replacement of the Note.** Upon notice to the Borrower of the loss, theft, destruction or mutilation of the Note, the Borrower will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.
- (f) **Waiver of Consequential Damages.** The Borrower covenants and agrees that in no event shall the Lender be liable for consequential damages, whatever the nature of a failure by the Lender to perform its obligation(s), if any, under the Loan Documents, and the Borrower hereby expressly waives all claims that it now or may hereafter have against the Lender for such consequential damages.
- (g) **After Acquired Mortgaged Property.** The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.
- (h) **Severability.** If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Security Instrument except that if such provision relates to the payment of any monetary sum, then the Lender may, at its option declare the Debt immediately due and payable.

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- (i) Interpretation of Agreement. Should any provision of this Security Instrument require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Security Instrument, including, without limitation, all Exhibits attached to this Security Instrument.
- (j) Joint and Several Obligations; Counterparts. If this Security Instrument is executed by more than one Borrower, (i) the obligations and liabilities of Borrower under this Security Instrument shall be joint and several and shall be binding upon and enforceable against each Borrower and their respective successors and assigns, and (ii) this Security Instrument may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Security Instrument.
- (k) Effect of Extensions and Amendments. If the payment of the Debt, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Lender, notwithstanding any such extension, variation or release.
- (l) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Mortgaged Property by the Lender pursuant to this Security Instrument.
- (m) No Merger. The parties hereto intend that the Security Instrument and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if the Lender acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in the fee simple title and this Security Instrument may be foreclosed as if owned by a stranger to the fee simple title.
- (n) Complete Agreement. This Security Instrument, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Borrower and the Lender.

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- (o) Further Assurances. Borrower shall execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further assurances and other agreements or instruments, and take or cause to be taken all such other actions, as shall be reasonably necessary from time to time to give full effect to the Loan Documents and the transactions contemplated hereby and thereby.

24. **JURISDICTION AND VENUE.** BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS SECURITY INSTRUMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS SECURITY INSTRUMENT. BORROWER WAIVES ANY CLAIM THAT COOK COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

25. **Waiver of Jury Trial.** BORROWER AND LENDER, BY ITS ACCEPTANCE HEREOF, HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS SECURITY INSTRUMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

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26. **Additional Waivers.** BORROWER EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY LENDER ON THIS SECURITY INSTRUMENT, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY LENDER.

27. **Compliance with Loan Agreement.** Borrower will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

28. **Provisions of Loan Agreement.** The proceeds of the Note are to be disbursed by the Lender in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Borrower covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Borrower for the enforceability of this Security Instrument, the Note and the other Loan Documents, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Security Instrument; provided, however, that the total Debt secured hereby shall not in any event exceed two hundred percent of the stated principal amount of the Note.

29. **Construction Loan.** The Note evidences a debt created by one or more disbursements made by Lender to Borrower to finance the cost of the construction of certain Improvements upon the Land in accordance with the provisions of the Loan Agreement, and this Security Instrument is a construction mortgage as such term is defined in Section 9-334(h) of the Code.

30. **Lender Acknowledgement.** Lender hereby acknowledges: (i) any rights granted by Borrower to Lender hereunder are specifically limited by the terms set forth in the Ground Lease; and (ii) Lender hereby agrees that nothing herein shall be deemed to grant to Lender any of Borrower's rights in that certain Management Agreement executed by and between Borrower and Metra.

31. **Specific Definitions Relating to Master Lease.** As used in this Mortgage, the following terms shall have the meaning as set forth hereinbelow:

- (a) "**365(h) Election**" shall mean the right of the Borrower to treat the Master Lease as terminated pursuant to Section 365(h)(1)(A)(i) of the Bankruptcy Code or retain the Borrower's rights under the Master Lease pursuant to Section 365(h)(1)(A)(ii) of the Bankruptcy Code and all such other rights, powers, and privileges granted to a lessee pursuant to Section 365(h) of the Bankruptcy Code,

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together with all such other similar rights, powers and privileges granted to a lessee under any other Debtor Relief Law.

- (b) “Bankruptcy Code” shall mean Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.
- (c) “Debtor Relief Laws” means the Bankruptcy Code or any other federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.
- (d) “Insolvency Proceeding” means (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to the Borrower or the Landlord, as applicable, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to the Borrower or the Landlord, as applicable, (c) any liquidation, dissolution, reorganization or winding up of the Borrower or the Landlord, as applicable, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Borrower or the Landlord, as applicable.
- (e) “Lease Damage Claims” means all of the Borrower’s claims and rights to payment of damages and other rights and remedies that may arise from (a) the Landlord’s failure to perform under the Master Lease, (b) rejection or disaffirmance of the Master Lease under any Debtor Relief Law or in connection with any Insolvency Proceeding involving the Landlord, (c) violation or breach by the Landlord under the Master Lease, or (d) the Landlord’s sale of the Property pursuant to Section 363 of the Bankruptcy Code or similar provisions of any other Debtor Relief Law and all damages and other sums payable with respect to or pursuant to any of the foregoing.
- (f) “Lessee Bankruptcy Rights” means all of the Borrower’s rights, remedies, powers, and privileges arising at any time under, in, or in connection with or related to any Insolvency Proceeding affecting the Landlord, including the Borrower’s right (a) to object to the Landlord’s sale of the Property under any Debtor Relief Law, including Bankruptcy Code Section 363, and (b) to make the 365(h) Election, and any other comparable right under any other Debtor Relief Laws and all claims, suits, actions, proceedings, rights, remedies and privileges related thereto or arising therefrom, including the Borrower right to claim any offset against rent and other charges and the right to file and prosecute any proofs of claim, complaints, motions, applications, objections, notices and any other document in any case relating to the Landlord under any Debtor Relief Laws, any and all adequate protection or other value received by or to which the Borrower is entitled to in connection with any sale of the “Property” in connection with any Insolvency Proceeding involving the Landlord.

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- (g) “Property” means the Land, the Improvements, the Personal Property and the Appurtenant Rights.

32. **Specific Representations, Warranties and Covenants Regarding Master Lease.** In addition to the Borrower’s representations, warranties and covenants elsewhere contained herein, and without limitation of same, the Borrower specifically represents, warrants, covenants and agrees as follows as to the Master Lease:

- (a) **Rent.** The Borrower will promptly pay, when due and payable, the rent and all other sums and charges mentioned in and made payable by the Borrower under the Master Lease.
- (b) **Compliance.** The Borrower will in all material respects promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by the Borrower as tenant under the Master Lease, within the periods provided in the Master Lease, and will do all things necessary to preserve and to keep unimpaired its rights under the Master Lease.
- (c) **Acquisition of Fee.** The Borrower shall not acquire the fee interest in the Land without the prior written approval of the Lender. In the event the Borrower acquires fee title to the Land, such interest shall be deemed to be subject to and covered by this Mortgage, and in confirmation thereof, the Borrower shall promptly execute, acknowledge and deliver such instruments, documents and agreements as may be reasonably required by the Lender to affirm, and perfect the Lender’s interest in such Property, including without limitation, a mortgage or deed of trust to confirm the Borrower’s right, title and interest in and to the fee title of the Borrower to the Land.
- (d) **Lessor’s Default.** The Borrower shall promptly notify the Lender in writing of any default by the Landlord in the performance or observance of any of the material terms, covenants or conditions on the part of the Landlord to be performed or observed under the Master Lease. Further, the Borrower, promptly upon learning that the Landlord has failed to perform the material terms and provisions under the Master Lease (including by reason of a rejection or disaffirmance or purported rejection or disaffirmance of such Master Lease pursuant to any Debtor Relief Law), shall notify the Lender of any such failure to perform.
- (e) **Borrower’s Default.** The Borrower shall (i) promptly notify the Lender in writing of the receipt by the Borrower of any written notice from the Landlord of any default by the Borrower in the performance or observance of any of the terms, covenants, or conditions on the part of the Borrower to be performed or observed under the Master Lease; (ii) promptly notify the Lender in writing of the receipt by the Borrower of any written notice from the Landlord of termination of the Master Lease pursuant to the provisions of the Master Lease, and (iii) promptly cause a copy of each such notice described above received by the Borrower from the Landlord under the Master Lease to be delivered to the Lender.

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- (f) Estoppel Certificates. After the date hereof, the Borrower will, within the time period for delivery of estoppels set forth in the Master Lease and subject to the limitations therein on the frequency of which they can be requested, after written demand from the Lender, use commercially reasonable efforts to obtain from the Landlord and deliver to the Lender an estoppel certificate in form and substance reasonably satisfactory to the Lender stating that the Master Lease is in full force and effect, is unmodified, that no notice of termination thereon has been served on the Borrower or the Landlord, as the case may be, stating the date to which the rent has been paid, stating whether there are any defaults thereunder and specifying the nature of such defaults.
- (g) Waiver, Modification of Amendment; No Subordination. The Borrower shall not consent to any waiver or modification, amendment or cancellation of any provision of the Master Lease without the prior written consent of the Lender. The Borrower shall not consent to the subordination of the Master Lease to any mortgage or deed of trust of the fee interest of the Landlord in the Land without the prior written consent of the Lender.
- (h) Cure of Default. The Borrower shall execute and deliver, on request of the Lender, such instruments as the Lender may reasonably request and deem useful or required to permit the Lender to cure any default under the Master Lease or permit the Lender to take such other action as the Lender reasonably considers desirable to cure or remedy the matter in default and preserve the interest of the Lender in the Property to the extent that the Borrower shall not be diligently pursuing such cure.
- (i) Authority to Act on Behalf of Borrower. During an Event of Default hereunder, the Borrower hereby authorizes the Lender to pay any and all rental payments or similar sums to be paid by the Borrower payment of which is then due under the Master Lease, with interest and penalties thereon as charged by the Landlord under the Master Lease; and to incur and pay all sums reasonably necessary to protect the Lender's rights hereunder and under the Master Lease. Such sums shall be included in the amount due and owing pursuant to the Loan Agreement and shall accrue interest at the rate provided for therein.
- (j) Present Possession of Leasehold. The interest of the tenant under the Master Lease is presently vested in the Borrower.
- (k) No Existing Default. To the best of the Borrower's knowledge, there is no existing default (or occurrence which with the lapse of time would constitute a default) or grounds for default under the provisions of the Master Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the Borrower or the Landlord thereof to be kept, performed and observed under the Master Lease.
- (l) Early Termination of Master Lease. If the Master Lease is for any reason whatsoever terminated prior to the natural expiration of its term, and if, pursuant

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to any provision of the Master Lease or otherwise, the Lender or its designee shall acquire the from Landlord thereunder, another lease of the Property, the Borrower shall have no right, title or interest in or to such other lease or the leasehold estate created thereby.

33. **Treatment of Master Lease in Bankruptcy of Landlord.**

- (a) **Rejection or Affirmation of Master Lease.** If the Landlord rejects the Master Lease pursuant to Section 365 of the Bankruptcy Code, then the Borrower shall not exercise a 365(h) Election in favor of terminating the Master Lease without the prior written consent of the Lender. To the extent permitted by law, the Borrower shall not suffer, permit or consent to the termination of any Master Lease pursuant to the Debtor Relief Law without the Lender's prior written consent. The Borrower acknowledges that because the Master Lease is a primary element of the Lender's security for the Debt secured hereunder, it is not anticipated that the Lender would consent to termination of any Master Lease. If the Borrower (or the Lender as assignee from the Borrower of any 365(h) Election) makes any 365(h) Election in violation of this Mortgage, then such 365(h) Election shall be void and of no force or effect.
- (b) **365(h) Election.** To the extent permitted by law, the Borrower hereby assigns to the Lender the 365(h) Election until the Debt secured hereunder have been satisfied in full. The Borrower acknowledges and agrees that the foregoing assignment of the 365(h) Election is one of the rights that the Lender, subject to the terms herein, may use at any time to protect and preserve the Lender's other rights and interests under this Mortgage. The Borrower further acknowledges that exercise of the 365(h) Election by the Borrower in favor of terminating the Master Lease without the Lender's prior consent would constitute waste prohibited by this Mortgage. Notwithstanding anything to the contrary in this Section 41, prior to an Event of Default, the Lender shall not exercise the 365(h) Election in favor of terminating the Master Lease without the Borrower's consent. The Borrower acknowledges and agrees that the 365(h) Election is in the nature of a remedy available to the Borrower under the Master Lease, and is not a property interest that the Borrower can separate from the Master Lease as to which it arises. Therefore, the Borrower agrees and acknowledges that exercise of the 365(h) Election in favor of preserving the right to possession under the Master Lease shall not be deemed to constitute the Lender's taking or sale of the Land (or any element thereof) and shall not entitle the Borrower to any credit against the Debt secured hereunder or otherwise impair the Lender's remedies.
- (c) **Lien on Occupancy Rights.** The Borrower acknowledges that if the 365(h) Election is exercised in favor of the Borrower's remaining in possession under the Master Lease, then the Borrower's resulting occupancy rights, as adjusted by the effect of Section 365 of the Bankruptcy Code, shall then be part of the Property and shall be subject to the lien of this Mortgage.

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- (d) Rejection of Lease by Lessor. If the Landlord rejects or disaffirms any Master Lease or purports or seeks to disaffirm such Master Lease pursuant to any Debtor Relief Law, then:
- (i) To the fullest extent not prohibited by applicable law, the Borrower shall remain in possession subject to any Leases of the Property demised under the Master Lease and shall perform all acts reasonably necessary for the Borrower to remain in such possession for the unexpired term of the Master Lease (including all renewals), whether the then existing terms and provisions of the Master Lease require such acts or otherwise; and
 - (ii) All the terms and provisions of this Mortgage and the lien created by this Mortgage shall remain in full force and effect and shall extend automatically to all of the Borrower's rights and remedies arising at any time under, or pursuant to, Section 365(h) of the Bankruptcy Code, including all of the Borrower's rights to remain in possession of the Property.
- (e) Setoff by Borrower. If pursuant to Section 365(h)(1)(B) of the Bankruptcy Code or any other similar Debtor Relief Law, the Borrower seeks to setoff against any rent under the Master Lease the amount of any Lease Damage Claim, then the Borrower shall notify the Lender of its intent to do so at least twenty (20) days before effecting such setoff. Such Notice shall set forth the amounts proposed to be so setoff and the basis for such setoff. If the Lender reasonably objects to all or any part of such setoff, then the Borrower shall not effect any setoff of the amounts to which the Lender reasonably objects. If the Lender approves such setoff, then the Borrower may affect such setoff as set forth in the Borrower's setoff notice. Neither the Lender's failure to object, nor any objection or other communication between the Lender and the Borrower that relates to such offset, shall constitute the Lender's approval of any such offset. The Borrower shall indemnify the Lender against any offset against the rent reserved in any Lease.
- (f) Landlord's Sale of Land. In connection with any Insolvency Proceeding of the Landlord, the Borrower, after receipt of notice that the Landlord intends to conduct a sale of the Property, shall promptly notify the Lender of such intention and, to the fullest extent not prohibited by applicable law, the Borrower shall timely file any and all objections, pleadings and notices contesting and objecting to the Landlord's intention to sell the Property, whether such sale is pursuant to Section 363 of the Bankruptcy Code or any other Debtor Relief Law.
- (g) Notice of Bankruptcy. The Borrower, upon learning of any Insolvency Proceeding of the Landlord, shall immediately notify the Lender of such Insolvency Proceeding, including using good faith efforts to provide all relevant information pertaining thereto, including jurisdiction, case number, and relevant case information. The Borrower, upon learning of any actions by the Landlord to sell, encumber or otherwise effect the Property, or terminate, reject or assign the Master Lease, shall promptly notify the Lender, including using commercially

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reasonable efforts to provide the Lender with copies of any and all notices and pleadings filed in connection with the foregoing.

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SIGNATURE PAGE FOLLOWS]**

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EXHIBIT A

LEGAL DESCRIPTION

THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1(H) OF THE CONDITIONS AND STIPULATIONS OF THE POLICY), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY, A MUNICIPAL CORPORATION, AS LESSOR, AND BEITLER MILLENNIUM STATION LLC, AS LESSEE, DATED SEPTEMBER 1, 2005 WHICH MEMORANDUM OF LEASE WAS RECORDED AS DOCUMENT 0606710187. AND RE-RECORDED MAY 5, 2007 AS DOCUMENT NUMBER 0613510110, WHICH LEASE DEMISES THE LAND FOR A TERM OF YEARS BEGINNING OCTOBER 1, 2005 AND ENDING SEPTEMBER 30, 2025.

THE LAND:

THAT PART OF THE RANDOLPH STREET COMMUTER STATION LOCATED IN THE AIR RIGHTS UNDER THE SURFACE OF THE PLAT OF MID-AMERICA, A RESUBDIVISION OF THE PRUDENTIAL AND ILLINOIS CENTRAL SUBDIVISION OF PART OF THE SOUTH ½ OF FRACTIONAL SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND LAND ADJACENT THERETO, AS SHOWN AND DESCRIBED ON THE PLAT OF SAID RESUBDIVISION RECORDED NOVEMBER 20, 1957 AS DOCUMENT 17069914, IN COOK COUNTY, ILLINOIS, AND FALLING IN THE PROPERTY DESCRIBED AS THE "PREMISES" DEPICTED ON EXHIBIT "A" OF THE AFOREMENTIONED LEASE AND DEPICTED ON THE EXHIBIT ATTACHED TO THE MEMORANDUM OF LEASE RECORDED AS DOCUMENT NUMBER 0606710187, AND RE-RECORDED MAY 15, 2006 AS DOCUMENT NUMBER 0613510110, THAT FALLS WITHIN THE PROPERTY DESCRIBED AS PARCEL A-A OF THE DEED DATED APRIL 30, 1987 AND RECORDED MAY 1, 1987 AS DOCUMENT 87233821 AND DEPICTED ON A PORTION OF "EXHIBIT A SECTION A SHEET A-1", AND ALSO THAT PART DESCRIBED IN THE DEED RECORDED MAY 13, 1993 AS DOCUMENT 93371155.

PINS: 17-10-500-013-0000

17-10-500-014-0000

17-10-500-033-0000

Address: corner of Randolph St & State Ave.
Chicago, Illinois