

8/19/2015

86-R-15

A RESOLUTION

Authorizing the City Manager to Enter into a Sublease Agreement with SEG Café, LLC for Certain Property Located at 1826 Central Street

WHEREAS, the City of Evanston ("City") leases certain real property at Central Street and Green Bay Road in Evanston, Illinois from Union Pacific Railroad Company under a lease dated July 24, 1996 for a period of twenty years, unless sooner terminated; and

WHEREAS, the leased property consists of Union Pacific Railroad Company's passenger station, the lower level of the passenger station, and the exterior façade of the building, including the roof, but not including the platform areas, stairway, or ramp; and

WHEREAS, the City subleases certain property commonly known as 1826 Central Street, Evanston, Illinois, which is described on Exhibit 1 attached hereto (the "Subject Premises"), to SEG Café, LLC ("SEG") under a Sublease Agreement that terminates on September 15, 2015; and

WHEREAS, the City and SEG desire to extend and continue their current sublease agreement for the remainder of the City's lease agreement with Union Pacific Railroad Company up to and including July 23, 2016; and

WHEREAS, the City Council finds it to be in the best interest of the City to extend the sublease for the Subject Premises to SEG, and to negotiate and execute a sublease agreement with SEG,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COUNTY OF COOK, STATE OF ILLINOIS:

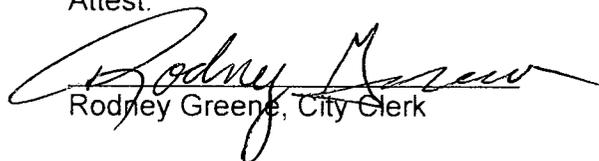
SECTION 1: That the City Manager is hereby authorized and directed to sign and execute, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston, a sublease by and between the City and SEG Café, LLC. The sublease shall be for a period commencing September 16, 2015 and ending on July 23, 2016, and shall be in substantial conformity with the sublease marked as Exhibit 1 ("Sublease") attached hereto and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the leases as may be determined to be in the best interests of the City.

SECTION 3: That this Resolution 86-R-15 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: September 15, 2015

EXHIBIT 1
SUBLEASE BETWEEN CITY OF EVANSTON
AND SEG CAFÉ, LLC

SUBLEASE

This Sublease is dated September 16, 2015 and is between the City of Evanston, an Illinois Municipal Corporation (Sublessor) as Sublessor, and SEG Café, LLC, ("Sublessee") as Sublessee.

The City is presently leasing certain property at Central Street and Green Bay in Evanston, Illinois from Union Pacific Railroad Company ("UPRC"), lessor, under a lease ("the Prime Lease") dated July 24, 1996, for a term of twenty (20) years unless sooner terminated. A copy of the Prime Lease is attached hereto as Exhibit A.

The subject property of the aforesaid Prime Lease is located at 1826 Central Street, Evanston, Illinois, and consists of UPRC's passenger station, the lower level of the passenger station and the exterior facade of the building, including the roof, but not including the platform areas, stairway, or ramp.

The property Subleased hereunder ("the Premises") is that portion of the interior of the passenger waiting area, designated in Exhibit A, excluding the roof and exterior facade.

Sublessor and Sublessee are desirous of entering into an agreement whereby Sublessor would sublease to Sublessee the Premises for Sublessee to operate a coffee shop.

NOW, therefore, in consideration of the above recitations and the mutual promises and agreements contained in this Sublease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublessor and Sublessee agree as follows:

This Sublease is made upon the following express covenants and agreements, each of which is made an express condition hereof:

RENT AND TERMS

1. This Sublease is for a period commencing on September 16, 2015 and ending on July 23, 2016.
 - a. The monthly rent shall be seven hundred sixty dollars (\$760.00).
 - b. Rent is due in full in advance on the fifteenth (15) day of each month by check payable to the City of Evanston and hand-delivered or mailed to: City of Evanston, Office of Facilities Management, 2100 Ridge Avenue, Evanston, Illinois 60201.
 - c. A twenty-five dollar (\$25.00) late fee must accompany payments made after the twentieth (20) day of the month.
 - d. If this Sublease terminates or expires with respect to all or any part of the Subleased Premises prior to the end of a Sublease year, then the Base Rent shall be prorated to reflect such termination or expiration of the partial Sublease year.

- e. As used in this Sublease, "Rent" shall mean the Base Monthly Rent and all other amounts provided for in this Sublease to be paid by Sublessee, all of which shall constitute rental in consideration for this Sublease and leasing of the Subleased Premises. The Rent shall be paid at the times and in the amounts provided for herein in legal tender of the United States of America to Sublessor. The Rent shall be paid without notice, demand, abatement, deduction, or offset, except as may be expressly set forth in this Sublease.

PURPOSE

2. The Premises shall be used exclusively for a coffee shop. Sublessee agrees to handle only such articles as are appropriate to this type of business, occupancy, or use.

TAXES

3. Sublessor is an Illinois Municipal Corporation, and, as such, is tax-exempt. The obligations imposed upon Sublessee in this paragraph with respect to taxes are in place in the event that Sublessee's for-profit enterprise gives rise to taxes associated with the granting of this Sublease. Sublessee shall pay all real estate taxes or other charges applicable to or assessed against the Sublessee, the Premises, the business conducted thereon by Sublessee, and the improvements placed thereon for each year of the term of this Sublease even though such taxes or charges may not become due and payable until after the expiration or termination of this Sublease. The general taxes for the year in which the term of this Sublease shall commence shall be prorated from January 1 to the date on which the term of this Sublease commences. If Sublessee shall terminate this Sublease during the term hereof for any reason, Sublessee shall pay the general taxes for the full year in which the Sublease is so terminated. Final tax payments will be computed on the basis of the most recent tax bill.

If any such taxes or charges have been paid by Sublessor, Sublessee agrees to reimburse Sublessor within twenty (20) days after presentation of a bill therefor. In default of such reimbursements, all sums so paid by Sublessor shall be deemed an addition to rent and recoverable as such.

SPECIAL ASSESSMENTS

4. In the event the premises or any part thereof shall be subject to any special assessment or special tax for public improvement in the amount of \$300.00 or more, the rental herein reserved and stipulated to be paid by Sublessee shall be increased by ten percent (10%) per annum of the amount of such special assessment or special tax. If said special assessment or special tax for public improvement shall be less than \$300.00, Sublessee agrees to reimburse Sublessor the total cost of such assessment within twenty (20) days after presentation of a bill therefor. In default of such reimbursement, all sums so paid by Sublessor shall be deemed an addition to rent and recoverable as such.

ADVERTISING SIGN RESTRICTIONS

5. Sublessee shall not post, paint, or place, or permit others to post, paint, or place on the Premises, any advertisement or sign not related directly to Sublessee's business. No signs shall be erected or placed in or about said Subleased Premises by the Sublessee without the Sublessor's consent and Sublessee's compliance with the City's Sign Ordinance.

LAWS AND PREMISES CARE

6. Sublessee shall maintain and use the Premises and buildings and structures thereon in accordance with the requirements of local ordinances, state, and federal laws. Sublessee agrees to not commit or allow waste of the Premises.

Sublessee shall bear all cost and expense arising from compliance with said ordinances, laws, rules or regulations, and shall indemnify and save harmless Sublessor from all liability, including without limitation, fines, forfeitures and penalties arising in connection with the failure by Sublessee to comply with such ordinances, laws, rules, or regulations.

RELOCATION OF UTILITIES FACILITIES

7. Sublessee accepts the Premises subject to rights of any party, including Sublessor, in and to any existing conduits, sewers, water lines, gas lines, power lines, drainage facilities, telephone, telegraph, or their wires, and poles and utilities or facilities of any kind whatsoever, whether or not of record. Should it at any time become necessary to relocate any of same because of this Sublease, Sublessee shall bear and pay that cost.

ROADWAY ACCESS

8. Sublessee accepts the Premises subject to rights of any party, including Sublessor, in and to any existing roadways, easements, permits or licenses. Sublessee agrees to provide to Sublessor, and other tenants, grantees, and permittees or Sublessor, access over and through Premises on these existing roadways should Sublessor deem such access necessary. Sublessee further agrees that Sublessor shall not be responsible for the care or maintenance of said roadways.

SUBLESSOR'S TITLE

9. Sublessor covenants and agrees that upon Sublessee paying the Rent any other charges due and payable and observing and performing all the terms, covenants, and conditions, on Sublessee's part to be observed and performed, Sublessee may peacefully and quietly enjoy the Premises hereby demised, subject, nevertheless, to the terms and conditions of this Sublease and to any mortgages and deeds of trust hereinbefore mentioned. The aforesaid obligations of Sublessor are subject to the Prime Lease.

INDEMNIFICATION

10. Sublessee accepts this Sublease of the Premises with knowledge of the existence of railroad tracks upon or in the vicinity of the Premises and of all the risks of damage or injury which might or could occur to properties or persons upon or in the vicinity of the Premises from or in connection with the operation of railway equipment, or from or in connection with the operation, use, maintenance or improvement of said tracks. It is therefore agreed, as one of the material considerations of the Sublease and without which this Sublease would not be granted, that Sublessee assumes such risks and agrees to indemnify and hold harmless Sublessor from and against any and all liability and expenses whatsoever, (to the extent permitted by law), for bodily injury or death, including without limitation, injury or death to agents, employees, servants, invitees of the Sublessor or Sublessee, and or loss or damage of the property of the Sublessor or Sublessee, Union Pacific Railroad, their agents, employees, servants or invitees, and to the person or property of any other person or corporation, however arising, directly or indirectly out of the occupancy of, presence on, or use of said Subleased Premises or any structures thereon (including their construction, maintenance, repair, reconstruction or removal) by Sublessee, its employees, agents, or invitees.

Notice to or knowledge by the Sublessor of any act or omission by the Sublessee which is or might be a breach by the Sublessee of any of the terms or conditions of this Sublease to be performed by the Sublessee, and the acquiescence by the Sublessor in or to such act or omission, shall neither be considered to relieve the Sublessee of any obligation assumed by it under this paragraph nor be considered to be a waiver or release by the Sublessor of any rights granted to it under this paragraph.

INSURANCE

11. Sublessee agrees to add the City of Evanston and Union Pacific Railroad as additional insured on Sublessee's Commercial General Liability Policy with a minimum of one million dollars in limits. Sublessee also agrees to show satisfactory evidence of property insurance for the Subleased property. Within ten days after the execution of the Sublease, Sublessee shall provide Sublessor in writing with the name, address, and telephone number of Sublessee's contact with her insurance company. Sublessee shall promptly notify Sublessor in writing of any changes to this information.

Sublessee agrees to insure property for replacement cost with agreed amount endorsement. The City is to receive 30 days' advance notice of cancellation or modification of the policy.

NO SUBROGATION

12. Sublessee agrees to have all insurance policies issued to or for or upon Sublessee's account, covering any injuries to persons or any loss or damage to property, so written that the insured shall have no claim or recourse of any kind whatsoever against Sublessor or the Premises.

NO LIENS

13. Sublessee shall not suffer or permit any lien of mechanics or material men to be placed against the Subleased Premises or any part thereof, whether created by act of Sublessee, operation of law or otherwise. In the case of such attachment, Sublessee shall immediately pay same in full.

HOLD OVER

14. It is further agreed that in case Sublessee, with Sublessors consent, holds possession of the Premises beyond the term of this Sublease, such action shall have the effect of extending the term of this Sublease on a month-to-month basis, subject in all aspects to all of the terms, conditions, covenants, and agreements of this Sublease, including all rights of termination provided for herein.

BREACH

15. If Sublessee defaults in any of its undertakings or obligations hereunder, then such event or action shall be deemed to constitute a breach of this Sublease. In the event of a monetary default, Sublessee shall have ten (10) days to cure. In the case of an event or action not curable in thirty (30) days, if substantial progress toward cure is not had, this Sublease shall cease and terminate, at the Sublessor's option. Provided, however, Sublessor may grant Sublessee less than the aforesaid notice or cure periods in the event that Sublessee's action or non-action, in Sublessee's sole judgment, creates a public safety or public health hazard, or in the event Prime Lessor for any reason directs notice/cure period(s) of less than those aforesaid or granted by Sublessor.

TERMINATION

16. Either party may at any time terminate this Sublease by giving eighty (80) days written notice of its intention to do so.
 - a. Upon the termination of this Sublease by any manner, means, or contingency whatsoever, Sublessee shall, without further notice or demand, deliver possession of the Premises to Sublessor in good condition as when entered upon and broom-clean condition. Sublessee hereby agrees to remove all buildings, structures, foundations, footings, materials, signs, debris, or any other articles, structures or facilities owned by Sublessee as permitted to be placed on the Premises before the termination of this Sublease. Upon any such termination if rent shall have been paid in advance, Sublessor shall refund to Sublessee the unearned portion therefor of the period extending beyond such date of termination provided the Premises has been cleaned by Sublessee in a manner satisfactory to Sublessor, normal wear and tear excepted.
 - b. If Sublessee shall fail to so remove such property, such failure shall constitute an abandonment of such property and title thereto shall pass to Sublessor immediately, if Sublessor so elects, without any cost either by set-off, credit allowance or otherwise.

Sublessor may retain, tear down, remove or sell such property or any part thereof, without any liability for damage therefor in any respect whatsoever and Sublessee shall promptly pay Sublessor for any and all expenses incurred by Sublessor in tearing down, removing, or selling such property.

RE-ENTRY

17. If Sublessee shall breach or default in any of the terms of this Sublease or if this Sublease shall expire or terminate in any manner; it shall be lawful for Sublessor then or at any time thereafter to re-enter the Premises and take possession thereof, with or without process of law, and to use any reasonable or necessary force for regaining possession. However, Sublessee shall have the right to remove certain of Sublessee's property as herein provided.

WAIVER OF REMEDIES

18. No waiver of any default of Sublessee shall be implied from omission by Sublessor to take any action on account of such default. No express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No receipt of money by Sublessor from Sublessee (1) after any default by Sublessee, (2) after the termination of this Sublease, (3) after the service of any notice or demand or after the commencement of any suit, or (4) after final judgment for possession of the premises, shall waive such default or reinstate, continue, or extend the term of this Sublease, or affect in any way such notice or suit, as the case may be.

The erection of improvements in or on the Premises shall not constitute a waiver or affect in any way the right of either party to terminate this Sublease.

NO ASSIGNMENT

19. Sublessee shall not assign or sublet this sublease without the prior written consent of Sublessor's City council.

RIGHTS ARE CUMULATIVE

20. All rights and remedies of Sublessor shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

NOTICES

21. All notices, demands, elections and other instruments required or permitted to be given or made by either party upon the other by the terms of this Sublease or any statute shall be in writing. They shall be deemed to have been sufficiently served if sent by certified or registered mail with proper postage prepaid to Sublessor or Sublessee at the respective addressee shown below. Such notices, demands, elections, and other instruments shall be

considered as delivered to recipient on the second business day after deposit in the U.S. Mail.

Notices to:

Sublessor: City of Evanston
2100 Ridge Ave.
Evanston, IL 60201

Sublessee: SEG Café LLC
2617 Hurd Ave.
Evanston, IL 60201

ENTIRE AGREEMENT:

22. All the representations and obligations of Sublessor are contained herein. No modification, waiver, or amendment of this Sublease or any of its terms, shall be binding upon Sublessor unless it is in writing and signed by a duly authorized Officer of the Sublessor.

RENTAL REVIEW

23. Sublessor reserves the right to review and revise the rent applicable to this Sublease upon (1) any change in usage of the Premises (2) any extension of the Sublease term beyond the five-year term provided for above. In the event of extension beyond the five-year term provided for, Sublessor may, in addition to the renegotiation of any or all provisions hereof, renegotiate the rent. In such event, Sublessee must, upon Sublessor's written request, furnish Sublessor with accurate statements of gross receipts for each month of operation since inception of this Sublease.

RAIL SERVICE

24. Sublessor makes no warranties or representation, expressed or implied, as to continued rail service to the Premises.

JOINT OBLIGATION

25. In the event that Sublessee embraces two or more individuals and/or corporations, the covenants and agreements herein contained shall be the joint and several obligations of each of such persons or corporations.

MAINTENANCE AND UTILITIES

26. Sublessee has examined and knows the condition of the Premises and shall enter upon and take the same in their condition at the commencement of the term of this Sublease. Sublessee will at its own cost and expense make any necessary alterations required;

however, no alteration shall be made without the consent of Prime Lessor and Sublessor. All plans and specifications for modification of the coffee shop proposed herein must be submitted for Prime Lessors and Sublessor's approval before start of any work on the Premises. Sublessor will not install, supply or maintain utilities to the said Premises.

SNOW

27. Sublessee agrees it will not dump any snow on adjoining land nor adversely alter in any way the drainage of either the Premises or adjoining land.

LITTER

28. At the close of Sublessee's daily operation, Sublessee shall inspect Prime Lessor's adjoining waiting rooms and remove therefrom and dispose of any debris (coffee cups, napkins, orts, etc.) resulting from Sublessee's operations. Sublessee shall pay for its own scavenger service.

LIQUOR

29. No liquor or alcoholic beverages shall be sold or served on the Subleased Premises and Sublessee shall diligently attempt to prevent and discourage the presence or consumption of any liquor or alcoholic beverages within said Subleased Premises.

STANDARDS OF SERVICE

30. All operations and services of the Sublessee in the Subleased Premises shall be carried out and performed in a first-class manner and in keeping with the highest standards. If, in the judgment of Sublessor, the Sublessee is not so conducting its operations or services in said Subleased Premises or meeting such standards, Sublessee shall promptly change and comply with this requirement upon receipt of written notice from Sublessor.

HOURS

31. Sublessor's hours and days of operation shall be 5:30 a.m. to 2:30 p.m., Monday through Saturday, and for a maximum of five (5) nights per month, on either a Thursday, Friday or Saturday night 5:30 p.m. to 11:00 p.m.

UTILITIES

32. The rental herein stated includes the furnishing of heat and water with the distinct understanding that the Sublessor shall not be liable for any damages on account of failure to furnish same due to any failure in its facilities for supplying same. All electricity used on the Premises shall be metered in the name of the Sublessee and paid for by Sublessee.

PRIME LEASE

33. Sublessee acknowledges receipt of a copy of the Prime Lease, executed on July 24, 1996. Said Prime Lease is incorporated herein and made a part hereof. Sublessee acknowledges that this Sublease is subject to, and governed by, the Prime Lease, including in particular, but not limited to, paragraph 4 (Use by Lessor and Public) paragraph 9 (Pollution), 10 (Environmental Contamination), II (Relocations of Wires). In said paragraphs, "Lessee" shall be read as "Sublessee".

FUNDS AVAILABLE

34. Sublessee acknowledges that, as an inducement to Sublessor to grant this Sublease, Sublessee has represented that it has, and will have, sufficient financial resources to meet its obligations hereunder.

UPRC APPROVAL

35. Sublessee acknowledges that UPRC must approve this Sublease. This Sublease is null and void if UPRC fails to grant such approval. In the event such approval is denied, withheld, or not granted, Sublessee shall have no recourse whatsoever against Sublessor for any reason.

VENUE

36. In the event of litigation between Sublessee and Sublessor, venue shall be within Cook County, Illinois, the laws of Illinois shall apply, and the parties waive trial by jury.

IN WITNESS WHEREOF, the Parties have caused this Sublease to be duly executed as of the last date written below.

City of Evanston

By: _____
Name: Wally Bobkiewicz
Title: City Manager
Date: _____

SEG Café, LLC
By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
LEASE BETWEEN UNION PACIFIC RAILROAD COMPANY
AND CITY OF EVANSTON

U. P. R. R. Co.

Agreement

186825

LEASE NO.

FILE NO. 220-85

LEASE AGREEMENT

LESSOR: Union Pacific
Railroad Company
1416 Dodge Street
Omaha, NE 68179-1100

LESSEE: City of Evanston
2100 Ridge Avenue
Evanston, IL 60201-2798

On this 24th day of July, 1976, THE CITY OF EVANSTON (hereinafter called "Lessee") hereby offers and agrees to lease from the UNION PACIFIC RAILROAD COMPANY (hereinafter called "Lessor") the passenger station (hereinafter called "Premises") of Lessor, situated on Central Street in the CITY OF EVANSTON State of Illinois shown outlined on "Exhibit A", attached hereto and made a part hereof. In addition to the area outlined on "Exhibit A", the Premises also include the lower level of the passenger station, and the exterior facade of the building including the roof, but does not include the platform areas stairway or ramps. The term of this Lease Agreement shall be twenty (20) years, unless sooner terminated as provided herein. The Lease is to commence on the day and year first above written.

This Lease is made upon the following express covenants and agreements, each of which is made an express condition hereof:

COVENANT

1. Lessee covenants and agrees to pay Lessor as rent for the premises the sum of One Dollar and No/100 (\$1.00) per year and other valuable considerations.

PURPOSE OF
LEASE

2. The Lessee desires (a) to maintain the existing architectural appearance of the passenger station on the said premises, (b) to control and maintain access to the said station, and (c) to develop commercial endeavors in the station which will serve the Lessor's commuters. Accordingly, the Lessor has granted the Lessee this lease. However, the said Premises will continue to be used and occupied primarily as a railroad commuter station facility. The Lessor reserves unto itself, its successors and assigns, and

licensees the right to use said Premises in the general conduct of its railroad business including endeavors to convenience its commuters and the public.

**EXCLUSIVE
USE BY LESSOR**

3. Lessor reserves for its exclusive use and occupancy that portion of the passenger station shaded and labeled as the ticket office on the attached "Exhibit A".

**USE BY LESSOR
AND PUBLIC**

4. Lessor reserves for lawful use by Lessor and the public, including but not limited to Lessor's customers, the said Premises (except such part of said premises as are with Lessor's consent hereafter sublet by Lessee). Lessee shall not interfere with or infringe upon Lessor's or the public's lawful use of the said Premises so reserved. Lessor reserves the right to regulate and control the people who enter said Premises, and their conduct, and reserves the right to enter upon said premises at any time, and to eject therefrom any disorderly person or persons.

**ROADWAYS
ACCESS**

5. Lessee accepts the Premises subject to rights of roadways, easements, permits, or licenses. Lessee agrees to provide to Lessor, and the public, access over and through Premises on these existing roadways and easements should such access be deemed necessary by Lessor. Lessee further agrees that Lessor shall not be responsible for the care or maintenance (including snow removal) of said roadways.

RELOCATION

6. Lessor reserves the right to maintain or relocate its existing facilities, or to construct and thereafter maintain new facilities, in the vicinity of the Premises with no liability for damages to Lessee's interests or property resulting from such activities. Lessor agrees, however, that no changes shall be made without consultation with Lessee.

SIGNS

7. Lessor reserves the right to post, paint, or place, or to have posted, painted or placed on the Premises, informational signs relative to the operations of the Lessor on the Premises, including, but not limited to, those designed to enhance the accessibility of said facilities and services to the elderly and handicapped. Lessor

agrees, however, that no such signs shall be posted, painted, or placed without Lessee's consent. Advertising signs will not be posted in the Premises.

**COMPLIANCE
(LEGAL AND
INSURANCE)**

8. Lessee shall not use or permit upon the Premises anything that will invalidate any policies of insurance now or hereafter carried on the Premises or any building or structure thereon. Lessee shall maintain and use the Premises and buildings and structures thereon in accordance with the requirements of all local ordinances, state and federal laws in effect during the term of this lease.

POLLUTION

9. Lessee further agrees to comply with all ordinances, laws, rules, and regulations enacted by any governmental body or agency relating to the control, abatement or emission of air and water contaminants and/or disposal of refuse, solid wastes or liquid wastes. Lessee shall bear all cost and expense arising from compliance with said ordinances, laws, rules, or regulations and shall indemnify and save harmless Lessor from all liability, including without limitation, fines, forfeitures, and penalties arising in connection with the failure by Lessee to comply with such ordinances, laws, rules or regulations.

**ENVIRONMENTAL
CONTAMINATION**

10. Lessee recognizes and assumes responsibility for environmental liability or responsibility imposed under applicable environmental laws, regulations or any other similar requirements relating to any contamination of the Premises or groundwater thereunder or discharge or release to adjacent property arising from or in any respect aggravated or altered by any operations or activities by, or any equipment or facilities used by or permitted on the Premises by Lessee (the foregoing hereinafter referred to as "Lessee operations"). Lessee, therefore, agrees to indemnify and hold harmless Lessor, its officers, agents and employees from any and all liability, fines, penalties, claims, demands, loss or lawsuits brought by any third party or governmental agency under any theory of law against Lessor seeking to hold Lessor liable for any investigation, response or cleanup costs, penalties or damages, whether personal, property or environmental, for any contamination of any property or groundwater thereunder or discharge or release to adjacent property arising out of or in any

respect aggravated or altered by Lessee operations. Lessee agrees that the above indemnity extends to any liability resulting from or arising out of Lessee's implementation of any investigation, response or cleanup plan approved by the United States Environmental Protection Agency or companion state agency. Lessee further agrees to undertake, at its own expense, any investigation, response or cleanup of any contamination of the premises and groundwater thereunder arising from or in any respect aggravated or altered by any Lessee operations and to promptly notify Lessor of any event, notice, claim, demand or litigation which involves or alleges contamination of the premises, the groundwater thereunder or a discharge or release therefrom to adjacent property.

**RELOCATIONS
OF WIRES**

11. Lessee accepts the Premises subject to rights of any party, including Lessor, in and to any existing telephone, telegraph or other wires, and poles and facilities of any kind whatsoever, whether or not of record. Should the Lessee at any time require the relocation of any of same, Lessee shall bear and pay the cost of so doing.

**QUIET ENJOYMENT
AND LESSOR'S
TITLE**

12. Lessor makes no covenant for quiet enjoyment of the premises. Lessee assumes any damages Lessee may sustain as a result of, or in connection with, any want or failure at any time of Lessor's title to the Premises.

NO SUBROGATION

13. Lessee agrees all insurance policies, if any, issued to it, or for or upon Lessee's account, covering any injuries to persons or any loss or damage to property so written that the insurer shall have no claim or recourse of any kind whatsoever against Lessor, Metra, or the Premises unless said injuries, loss or damage are the result of the sole negligence by the Lessor, Metra or Lessor's representatives.

LIABILITY

14. As a material consideration for entering into this Lease and without which the Lessor would not enter into same, the Lessee covenants and agrees to indemnify, save harmless and protect the Lessor and the Commuter Rail Division of the Regional Railway Authority ("METRA") from and against any and all loss, damage, claim, demand, fine, lawsuit and/or liability, and any and

all costs, expenses and legal fees in connection therewith by reason of injuries to or death of persons and/or loss of or damage to property and/or violation of any law, ordinance or regulation arising or growing out of or connected with this Lease, the Premises, and/or any act or omission of (i) the Lessee, its employees or agents, and/or (ii) any other person performing any work or service for or on behalf of the Lessee on or about said Premises or arising out of their presence on said Premises.

LIENS

15. Lessee agrees not to suffer or permit any lien of mechanics or material men to be placed against the Premises or any part thereof and, in case of any such lien attaching, immediately to pay off and remove same. It is further agreed by the parties hereto that Lessee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Lessee, operation of law or otherwise, to attach to or to be placed upon Lessor's title or interest in the Premises, and any and all liens and encumbrances created or suffered by Lessee or its tenants shall attach to Lessee's interest only.

EMINENT DOMAIN

16. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purpose, this lease shall, as to the part so taken, terminate as of the date when taken or required for such use or purpose. The entire amount of damages or compensation payable or paid for the part taken and then for remainder, if any, shall be paid to and retained by Lessor as its own property without apportionment. Lessee hereby assigns to Lessor any claim which Lessee would have to such damages. Lessee shall look to said authority solely for any compensation or damages on account of Lessee's cost and expense of removing Lessee's personal property from the Premises and for the cost and expense of moving any building or other structure placed upon the Premises by Lessee and which Lessee would have the right to remove as a Lessee of the Premises.

**CAUSE FOR
BREACH**

17. If Lessee defaults in any of Lessee's undertakings or obligations in this lease, then such event or action shall be deemed to constitute a breach of this lease and if such default remains uncured for thirty (30) days after notice in writing, this lease shall cease and terminate, at Lessor's option.

TERMINATION

18. Either party may at any time terminate this lease by giving ninety (90) days' written notice of its intention to do so.

**SURRENDER OF
PREMISES**

19. Upon the termination of this lease by any manner, means, or contingency whatsoever, Lessee shall, without further notice or demand, deliver possession of the Premises to Lessor in as good condition as when entered upon, ordinary wear and tear accepted.

REENTRY

20. If Lessee shall breach or default in any of the terms of this lease and if such breach or default is not cured or if this lease shall expire or terminate in any manner, it shall be lawful for Lessor, then or at any time thereafter, to reenter the Premises and take possession thereof, with or without process of the law, and to use any reasonable or necessary force for regaining possession; provided however, the Lessee shall have the right to remove certain of Lessee's properties as hereinabove provided.

**WAIVER OF
REMEDIES**

21. (a) No waiver of any default of Lessee shall be implied from omission by Lessor to take any action on account of such default. No express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No receipt of money by Lessor from Lessee (i) after any default by Lessee, (ii) after the termination of this lease, (iii) after the service of any notice or demand or after the commencement of any suit, or (iv) after final judgement for possession of the Premises, shall waive such default or reinstate, continue or extend the term of this lease or affect in any way any such notice or suit, as the case may be.

(b) The erection of buildings or improvements on the Premises shall not constitute a waiver or affect in any way the right of either party to terminate this lease.

SUBLETTING

22. Any rentals or other revenues generated by the subletting by Lessee of any portion of the Premises shall belong solely to the Lessee.

IMPROVEMENTS

23. Prior to any improvements being made to the premises, Lessee shall submit to Lessor's Director-Real Estate of plans and specifications for improvements on any portion of the Premises. ("Improvements" shall include, but not necessarily be limited to, replacement or repair of roof, floors, heating plant, plumbing, or walls; but shall not include such items of maintenance as window washing, cleaning, sweeping, or normal services ordinarily provided by a janitor.)

CUMULATIVE RIGHTS

24. All rights and remedies of Lessor shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

NOTICES

25. All notices, demands, elections, and other instruments required or permitted to be given or made by either party upon the other by the terms of this lease or any statute, shall be in writing. They shall be deemed to have been sufficiently served, if sent by certified or registered mail, with proper postage prepaid to Lessor or Lessee at the respective address first above shown. Such notices, demands, elections and other instruments shall be considered as delivered to recipient on the first business day after deposit in the U.S. Mail.

ENTIRE AGREEMENT

26. All of the representations and obligations of Lessor are contained herein. No modifications, waivers or amendments of this lease, or any of its terms, shall be binding upon Lessor unless it is in writing and signed by a duly authorized Officer of the Lessor.

RAIL SERVICE

27. Lessor makes no warranties or representations, expressed or implied as to continued rail service to the Premises.

HOURS OPEN TO PUBLIC

28. Lessee shall control the hours during which the Premises shall be open to the public.

ACCEPTANCE

29. Lessee has examined and knows the condition of the Premises and shall enter upon and take the same in their condition at the commencement of the term of this lease.

MAINTENANCE

30. Lessee agrees to provide all cleaning and janitorial service and supplies, including toilet paper and hand soap, to keep Premises in a clean and neat condition satisfactory to the Lessor's Director-Real Estate. Only those areas as defined as the "Premises" will be governed by this section.

During the term of this Agreement, Lessee shall maintain and repair said passenger station and all fixtures and appurtenances thereof, and shall keep all of the same, and any area used in the future for commercial development, in a good state of repair, appearance and order (including, but not limited to, regular cleaning of floors, windows, painting, plumbing fixtures and the providing of scavenger service), corresponding to standards that apply to public buildings and facilities, except Lessee shall not be responsible for repairing or replacing any structural parts of the depot building resulting from ordinary wear and tear (such as support walls, structural members, columns, floors, roof, heating plant and foundation). Lessee shall be responsible for notifying the Lessor, in writing, of the need for improvements or repairs which are to be the responsibility of the Lessor. For the purpose of determining what items shall be the responsibility of Lessee or Lessor, hereunder it is hereby agreed that any single item costing more than \$2,500 to repair or replace, shall be the responsibility of the Lessor and all other single items costing \$2,500 or less to repair or replace, shall be the responsibility of the Lessee.

RIGHT TO INSPECT

31. Lessor, its agents, employees and authorized contractors shall have the right to enter the Premises or any part thereof, at all reasonable hours, for the purpose of inspecting the Premises to determine if Lessee is complying with all terms and conditions of this lease and/or to determine through inspection and/or testing if any hazardous condition, pollution or contamination is present or threatened. Lessee agrees to cooperate with Lessor in any such inspection and to provide at Lessor's request any and all permits, reports, journals, bills, shipping papers or records of any kind, paper or electronic, relating to any materials used, stored, heated, disposed of or sold on or transported from the Premises.

**BUILDING
INSURANCE**

32. Lessee further agrees to obtain, at Lessee's own cost and expense, fire, wind storm and extended coverage insurance in the amount of full insurable value of the passenger station to be determined from insurance agent/appraiser and approved by Lessor. Said insurance shall run in favor of Lessee and shall be endorsed to assume the contractual obligations of Lessee as set forth in this subject lease. A duplicate copy of such insurance policy or a certificate of insurance and signed copy of report showing established insurable value, shall be furnished to the Lessor and must show on the insurance policy or the certificate of insurance that the Lessor will be properly notified within a thirty (30) day written notice of any modification or cancellation of such policy. Lessee may self-insure against the risks referred to above.

UTILITIES

33. Lessee will pay all the utility costs incurred by the operation of the Premises.

**SALE OR
ASSIGNMENT**

34. Any sale, assignment, transfer, or underletting of this lease by Lessee without the previous written consent of Lessor shall be void. Such written consent shall not be unreasonably withheld and it is the intent of the parties hereto that portions of the Premises will be sublet for commuter convenience service. No act of Lessor, including acceptance of money by Lessor from any other party, shall constitute a waiver of this provision.

REHABILITATION

35. In the event funds become available from either a public agency or other sources for the rehabilitation of railway stations, the Lessor agrees that it will cooperate with Lessee or other parties in the applications for such funds, provided there is no cost or expense to Lessor of any kind in the acquisition of these funds and provided such rehabilitation in no way adversely affects Lessor's interests in the Passenger Station or adversely affects its commuter railway operation.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

WITNESS:

R L Whitcomb
(For Lessor)

UNION PACIFIC RAILROAD COMPANY

W K Brown
By:

WITNESS:

Hester Davis
(For Lessee)

CITY OF EVANSTON

[Signature]
By:

