

# UNOFFICIAL COPY

AMENDMENT TO  
REAL ESTATE  
MORTGAGE  
COOK COUNTY



Doc#: 0508227006  
Eugene "Gene" Moore Fee: \$36.00  
Cook County Recorder of Deeds  
Date: 03/23/2005 09:54 AM Pg: 1 of 7

This document prepared by  
and after recording mail to:

Adam W. Smith  
Husch & Eppenberger, LLC  
1200 Main Street  
Suite 1700  
Kansas City, Missouri 64105

(The Above Space For Recorder's Use Only)

## Amendment to Mortgage

(including Security Agreement, Assignment of Rents and Leases, and Fixture Filing)

Dated as of February 28, 2005.

This Amendment to Mortgage (this "Amendment") has been executed by PORK CHOP LIMITED PARTNERSHIP, an Illinois limited partnership ("Mortgagor"), as mortgagor, in favor of GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation ("Mortgagee"), with its office at 401 Merritt Seven, Second Floor, Norwalk, Connecticut 06851, acting as Agent for itself and the other Lenders.

### RECITALS:

The following Recitals are a material part of this Amendment:

A. Mortgagor, Bulkmatic Transport Company, an Illinois corporation, Butler and Company, Inc., an Alabama corporation (collectively the "Borrowers"), the other Credit Parties signatory thereto, Mortgagee, for itself, as Lender, and as Agent for the Lenders, LaSalle Bank National Association, for itself, as Lender and as Revolving Credit Agent for the Lenders ("Revolving Credit Agent"), and the other Lenders signatory thereto entered into that certain Credit Agreement dated as of March 30, 2001 (as amended from time to time, the "Original Credit Agreement").

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B. Pursuant to the Original Credit Agreement, Mortgagee and Lenders agreed to make certain Loans to Borrowers from time to time in the aggregate principal amount of up to \$55,000,000.00 (collectively, the "Loans").

C. The Loans are evidenced, secured and supported by, among other things, that certain Mortgage (including Security Agreement, Assignment of Rents and Leases, and Fixture Filing) executed by Mortgagor in favor of Mortgagee, dated as of March 30, 2001 and recorded on April 2, 2001 in the Real Property Records of Cook County, Illinois as Document Number 0010260629 (the "Mortgage"), encumbering certain real property commonly known as 2351 State Street, Chicago Heights, Illinois, and legally described in **Exhibit A** attached hereto and other Collateral described in the Mortgage (collectively, the "Premises").

D. Simultaneously with the execution and delivery hereof, Borrowers, the other Credit Parties signatory thereto, Mortgagee, as a Lender, and as Agent for the Lenders, Revolving Credit Agent, as a Lender and as agent for the Lenders, Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services Inc., as Lender and as Syndication Agent for the Lenders and the Lenders signatory thereto are executing and delivering that certain Amended and Restated Credit Agreement (the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meaning assigned to them in the Credit Agreement), which Credit Agreement, among other things, (1) amends the Commitment Termination Date, and (2) permits the incurrence of certain Second Lien Obligations by the Borrowers in favor of the Second Lien Secured Parties.

E. In connection with the execution of the Credit Agreement, (1) Mortgagee consents to the imposition of certain mortgage liens, other liens, charges and encumbrances on the Premises in favor of the Second Lien Secured Parties, and (2) all parties hereto desire to make certain modifications to the Mortgage.

## AGREEMENTS:

NOW THEREFORE, in consideration of the sum of \$10.00, and other good and valuable consideration paid by Mortgagor to Mortgagee, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Mortgagee hereby agree as follows:

1. **CONSENT TO SECOND LIENS.** Subject to the subordination provisions contained therein and the terms and conditions of the Intercreditor Agreement, Mortgagee hereby consents to the imposition of those Liens on the Premises in favor of the Second Lien Secured Parties pursuant to the Second Lien Loan Documents.

2. **AMENDMENTS TO MORTGAGE.** The Mortgage is hereby amended as follows:

a. The words "as amended from time to time" in the seventh line of the first paragraph of the Mortgage are hereby deleted in their entirety and replaced with the words "as amended by that certain Amended and Restated Credit Agreement dated February 28, 2005, and as further amended, restated, extended or otherwise modified from time to time."

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b. Section 1(e) of the Mortgage is hereby deleted in its entirety and replaced with the following:

(e) "Notes" shall collectively mean (i) the Revolving Notes dated as of February 28, 2005 from Borrowers to Lenders in the aggregate maximum principal amount of \$12,000,000, and (ii) the Term Notes dated as of February 28, 2005 from Borrowers to Lenders in the aggregate maximum principal amount of \$42,000,000, together with all renewals of, extensions of, modifications of, refinancing of, consolidations of, and substitutions for the Notes. The interest rate on the Notes is set forth in the Notes and Credit Agreement. NOTICE: Under no circumstances shall the interest rate on this Mortgage be more than the maximum rate allowed by applicable law. NOTICE: THE NOTES MAY CONTAIN A VARIABLE INTEREST RATE.

c. The number "\$55,000,000" in the last sentence of Section 3 of the Mortgage is hereby deleted in its entirety and replaced with the number "\$60,000,000."

d. Section 4(a)(v) of the Mortgage is hereby deleted in its entirety and replaced with the following:

(v) Neither the Premises, nor any part thereof (A) contains one or more facilities that are subject to reporting under Section 312 of the Federal Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11022); (B) is the site of one or more underground storage tanks for which notification is required under 42 U.S.C. 679912; or (C) is listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) in accordance with Section 116 of CERCLA (42 U.S.C. 9616).

3. **NO WAIVER.** The execution of this Amendment and any documents related hereto shall not be deemed to be a waiver of any event of default or unmatured event of default under the Mortgage, whether or not known to Mortgagee and whether or not existing on the date of this Amendment.

4. **REMAINING TERMS UNALTERED.** Except as modified herein, all terms and conditions contained in the Mortgage shall remain unmodified and in full force and effect. Mortgagor and Mortgagee hereby acknowledge that no party is, as of the date hereof, aware of any default in the performance of any of the terms and conditions of the Mortgage.

5. **COUNTERPARTS.** This Amendment may be executed in any number of counterparts, including facsimile transmitted counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**[Remainder of Page Intentionally Blank]**

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IN WITNESS WHEREOF Mortgagor has signed and delivered this Amendment as of the date indicated above.

PORK CHOP LIMITED PARTNERSHIP, an Illinois limited partnership

By: Bulkmatic Transport Company, its General Partner

By: [Signature]
Name: FRED J. FANNING
Title: SA VP - Finance

Addresses for Notices:

2001 N. Cline Avenue
Griffith, Indiana 46319
Attention: A.Y. "Butch" Bingham, Jr.

STATE OF TN )
COUNTY OF LAKE )SS.

I, Amy Villarreal, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Fred J. Fanning, Serial Vice President, Finance of Bulkmatic Transport Company, an Illinois corporation, general partner of Pork Chop Limited Partnership, an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21st day of February, 2005.

[Signature]
Notary Public
I am a resident of LAKE County, TN
My Commission Expires: 3-24-2011



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## EXHIBIT A

### Legal Description

#### PARCEL 1:

All of the northwest  $\frac{1}{4}$  of Section 27, Township 35 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois;

#### LESS AND EXCEPT THEREFROM:

(I) The West 50 feet of said Northwest  $\frac{1}{4}$ ;

(II) The south 867.66 feet of said Northwest  $\frac{1}{4}$ ;

(III) The following tract and any portion of said northwest  $\frac{1}{4}$  lying north of the following tract:

A strip of land 200 feet in width lying immediately south of and adjoining the south right of way line of the Elgin, Joliet and Eastern Railroad Company as now located and extending in an easterly and westerly direction across the west  $\frac{1}{2}$  of Section 27, all being in Township 35 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

(IV) The following tract:

Beginning at a point on the east line of the northwest  $\frac{1}{4}$  of Section 27, which point is 867.66 feet north of the south line of said northwest  $\frac{1}{4}$ ; thence north, along the east line, to a line 200 feet south of and parallel with the south right of way line of the Elgin, Joliet and Eastern Railway Company; thence westward, along said line, for a distance of 653.14 feet; thence southeastwardly, along a straight line, to a point 753.14 feet south of the south right of way line of the Elgin, Joliet and Eastern Railway Company and 100 feet west of the east line of the northwest  $\frac{1}{4}$  of Section 27; thence south, along a line 100 feet west of and parallel with the east line, to a point which is 867.66 feet north of the south line of the northwest  $\frac{1}{4}$  of Section 27; thence east to a point of beginning, all being in Township 35 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

#### PARCEL 2:

A strip of land 200 feet in width lying immediately south of and adjoining the south right of way line of the Elgin, Joliet and Eastern Railroad Company as now located and extending in an easterly and westerly direction across the west  $\frac{1}{2}$  of Section 27 (except the west 50 feet thereof) all being in Township 35 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

#### PARCEL 3:

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Beginning at a point on the east line of the northwest  $\frac{1}{4}$  of Section 27, which point is 867.66 feet north of the south line of said northwest  $\frac{1}{4}$ ; thence north, along said east line, to a line 200 feet south of and parallel with the south right of way line of the Elgin, Joliet and Eastern Railway Company; thence westward, along said line, for a distance of 653.14 feet; thence southeastwardly, along a straight line, to a point 753.14 feet south of the south right of way line of the Elgin, Joliet and Eastern Railway Company and 100 feet west of the east line of the northwest  $\frac{1}{4}$  of Section 27; thence south, along a line 100 feet west of and parallel with the east line, to a point which is 867.66 feet north of the south line of the northwest  $\frac{1}{4}$  of Section 27; thence east to the point of beginning, all being in Township 35 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Excluding from Parcels 1, 2 and 3 above all coal, oil, gas, minerals and mineral rights reserved to Grantors in the Deeds recorded September 8, 1992 as Document Numbers 92664057 and 92664058.

Commonly known as: 2351 State Street, Chicago Heights, Illinois

pin # 32-27-100-004  
32-27-100-005