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REAL ESTATE
MORTGAGE
COOK COUNTY

This document prepared by
and after recording mail to:

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Attn: Matthew W. Kim-Miller



Doc#: 0508227007
Eugene "Gene" Moore Fee: \$76.00
Cook County Recorder of Deeds
Date: 03/23/2005 09:54 AM Pg: 1 of 27

(The Above Space For Recorder's Use Only)

27

Mortgage

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

Dated as of February 25, 2005

This Mortgage (as modified from time to time, the "Mortgage") has been executed by PORK CHOP LIMITED PARTNERSHIP, an Illinois limited partnership ("Mortgagor"), as mortgagor, in favor of MORGAN STANLEY SENIOR FUNDING, INC. ("Mortgagee"), with its office at 1585 Broadway, New York, NY 10036, acting as Agent (as defined in the Loan Agreement defined below) for itself and the other "Lenders," as defined in that certain Loan Agreement, dated as of February 25, 2005 between Mortgagor, Butler and Company, Inc., Bulkmatic Transport Company, an Illinois corporation, the other Credit Parties signatory thereto, Mortgagee as Agent and Lender, and the other Lenders, as amended, restated extended or otherwise modified from time to time (the "Loan Agreement").

In consideration of Lenders' making loans and extensions of credit and/or considering making loans or extensions of credit to Mortgagor, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Mortgagor agrees as follows:

1. **DEFINITIONS.** As used in this Mortgage:

- (a) Unless otherwise defined herein, all capitalized terms used herein shall have the meanings set forth in the Loan Agreement.
- (b) "Borrowers" shall mean collectively, Mortgagor, Butler and Company, Inc., and Bulkmatic Transport Company.

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- (c) “Code” shall mean the Uniform Commercial Code in effect in the State of Illinois.
- (d) “Loan Documents” shall have the meaning set forth in the Loan Agreement and shall include this Mortgage and any other document or instrument previously, now or hereafter executed or delivered in connection herewith or therewith.
- (e) “Notes” shall collectively mean the Term Loan Notes dated as of February 25, 2005 from Borrowers to Lenders in the aggregate maximum principal amount of \$13,000,000, 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 Loan 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.
- (f) “Permitted Encumbrances” means (i) this Mortgage; (ii) any other lien in favor of Mortgagee; and (iii) liens for ad valorem taxes and special assessments not delinquent; and (iv) those items set forth on **Exhibit B** attached hereto.
- (g) “Obligations” shall mean all amounts due under the Notes and all loans, advances, debts, liabilities and obligations, for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by any Borrower to any Lender, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, arising under the Loan Agreement or any of the other Loan Documents. This term includes all principal, interest (including all interest which accrues after the commencement of any case or proceeding in bankruptcy after the insolvency of, or for the reorganization of any Borrower, whether or not allowed in such proceeding), Fees, Charges, expenses, attorneys’ fees and any other sum chargeable to any Borrower under the Loan Agreement or any of the other Loan Documents.

2. **GRANT OF LIEN.** Mortgagor hereby grants, bargains, sells, conveys, warrants and mortgages to Mortgagee and its successors and assigns forever, for the ratable benefit of the Lenders, under and subject to the terms and conditions hereinafter set forth, all of Mortgagor’s right, title and interest in and to the real property located in Cook County, State of Illinois described in **Exhibit A** and attached hereto and by this reference incorporated herein, all or part of which is commonly known as 2351 State Street, Chicago Heights, Illinois, including without limitation all improvements now and hereafter located thereon.

TOGETHER WITH THE FOLLOWING:

- (a) all rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to Mortgagor to collect and apply same; and
- (b) all right, title and interest of Mortgagor in and to all leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including without limitation all cash or security deposits, advance rentals, and deposits or payments of similar nature; and

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(c) all privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the said real estate and improvements; and

(d) all easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; and

(e) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and

(f) any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(g) all materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

(h) all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by Mortgagor and used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property owned by Mortgagor and placed by it on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Code), this Mortgage is deemed to be a security agreement under the Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as secured party; and

(i) all the estate, interest, right, title, other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which Mortgagor now has or may hereafter acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property,

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including without limitation any awards resulting from a change of grade of streets and awards for severance damages; the said real estate and improvements and the property and interests described in (a) through (i) above being collectively referred to herein as the "Premises".

TO HAVE AND TO HOLD the same unto Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth. Without limiting any other provision hereof, Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered except for Permitted Encumbrances, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

3. **LIABILITIES.** The Premises shall secure the payment and performance of all Obligations, and shall further secure:

(a) payment of all sums advanced by Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Loan Documents, or otherwise advanced by Mortgagee pursuant to the provisions hereof or thereof to protect the property hereby mortgaged and pledged; and

(b) performance of obligations under the Loan Documents or any instrument given to evidence or further secure the payment and performance of the Obligations; and

(c) performance of any other instrument given to evidence or further secure the payment and performance of any of the foregoing obligations.

(all of the foregoing in this Section 3 being collectively referred to as the "Liabilities").

THE TOTAL AMOUNT OF INDEBTEDNESS SECURED HEREBY SHALL NOT EXCEED \$20,000,000 OUTSTANDING AT ANY ONE TIME.

4. **REPRESENTATIONS.**

(a) Mortgagor hereby represents and warrants to Mortgagee that:

(i) Mortgagor and any Subsidiary are existing and in good standing under the laws of their state of formation, are duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the consolidated assets, condition or prospects of Mortgagor; the execution, delivery and performance of this Mortgage and all related documents and instruments are within Mortgagor's powers and have been authorized by all necessary corporate, partnership or joint venture action.

(ii) The execution, delivery and performance of this Mortgage and all related documents and instruments have received any and all necessary governmental approval, and do not and will not contravene or conflict with any provision of law or of the partnership or joint venture or similar agreement or charter of Mortgagor, or any agreement affecting Mortgagor or its property.

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(iii) Mortgagor has good, marketable, legal and equitable title to the Premises, subject only to Permitted Encumbrances, with the right and full power to mortgage, sell and convey the same; Mortgagor is the lawful owner of the Premises, free and clear of all liens, pledges, charges, mortgages, and claims other than any in favor of Mortgagee, except liens for current taxes not delinquent.

(iv) Mortgagor (and each general partner and joint venturer of Mortgagor) has filed or caused to be filed all federal, state, and local tax returns that are required to be filed, and has paid or has caused to be paid all of its taxes, including without limitation any taxes shown on such returns or on any assessment received by it to the extent that such taxes have become due.

(b) The request or application by Mortgagor for any Liability secured hereby shall be a representation and warranty by Mortgagor as of the date of such request or application that: (i) no default or Event of Default (as defined herein) has occurred or is continuing as of such date; and (ii) Mortgagor's representations and warranties herein are true and correct as of such date as though made on such date.

5. **COVENANTS OF MORTGAGOR.** Mortgagor agrees to comply with the following covenants so long as this Mortgage remains in effect:

(a) **Payment of Indebtedness.** Mortgagor shall pay and perform all Liabilities when due.

(b) **Insurance.** Mortgagor shall at all times provide, maintain and keep in force such insurance in such amounts and against such risks on or pertaining to the Premises as required in Section 5.4 of the Loan Agreement. Pursuant to Illinois law Mortgagee hereby states as follows:

“Unless you [Mortgagor] provide us [Mortgagee] with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.”

(c) **Payment of Taxes and Other Impositions.** Mortgagor agrees to pay or cause to be paid prior to delinquency all real property taxes and assessments, general and special, and all

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other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a lien upon the Premises, or any part thereof (all of such taxes, assessments and other governmental and non-governmental charges of the above-described or like nature are hereinafter referred to as "Impositions"). Mortgagor shall furnish Mortgagee upon request official receipts evidencing payment thereof. Mortgagor may before any delinquency occurs contest or object to the amount or validity of any Imposition as permitted by and in accordance with Section 5.2 of the Loan Agreement.

(d) **Tax and Insurance Escrow At Mortgagee's Option.** After an Event of Default, if requested by Mortgagee, in order to provide moneys for the payment of the Impositions and the premiums on the insurance policies, Mortgagor shall pay to Mortgagee on a monthly basis on such date(s) as Mortgagee shall require such amount as Mortgagee shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions and premiums, through substantially equal monthly payments by Mortgagor to Mortgagee, amounts sufficient to pay such next annual Impositions and insurance premiums. All such payments shall be held by Mortgagee in escrow, without interest unless required by law. Such amounts held in escrow shall be made available to Mortgagor for the payment of the Impositions and insurance premiums when due, or may be applied thereto directly by Mortgagee if it in its sole discretion so elects.

(e) **Maintenance, Repair, Alterations.** Mortgagor shall:

(i) keep the Premises, including without limitation any sidewalk, road, parking or landscaped area located thereon, in good condition, repair and order, and free of nuisance;

(ii) subject to clause (e)(v) of this Section, not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or governmental regulations) any improvements which are part of the Premises without the prior written consent of Mortgagee, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Mortgagor shall be permitted to perform alterations to the improvements which are a part of the Premises, from time to time, costing less than Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate, and provided that such alterations do not reduce the value of the Premises;

(iii) subject to (f) of this Section, promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;

(iv) subject to any right to contest set forth herein, pay when due all claims for labor performed and materials furnished to and for the Premises;

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(v) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;

(vi) not commit or permit any waste or deterioration of the Premises;

(vii) not commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation;

(viii) not initiate or acquiesce in any zoning change or reclassification of the Premises without the prior written consent of Mortgagee, which shall not be unreasonably withheld or delayed;

(ix) pay all utilities incurred for the Premises; and

(x) keep the Premises free and clear of all liens and encumbrances of every sort except Permitted Encumbrances.

(f) **Damage and Destruction.** If the Premises are damaged or destroyed in whole or in part, Mortgagor shall give notice to Mortgagee, and the insurance proceeds shall be applied, in accordance with Section 5.4 of the Loan Agreement.

(g) **Condemnation.**

(i) If the Premises or any part thereof or interest therein are taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Mortgagor receive any notice or other information regarding any such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.

(ii) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (all such, "Condemnation Awards") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Condemnation Awards as Mortgagee may require.

(iii) All Condemnation Awards shall be applied upon the Liabilities or applied to the repair and restoration of the Premises, as Mortgagee in its sole discretion shall elect. Notwithstanding the foregoing, if any of the improvements on the Premises are damaged by such condemnation to the extent of less than 50% of the fair market value of the Premises and Mortgagor is not then in default under this Mortgage, Mortgagee shall elect to permit Mortgagor to apply the Condemnation Awards to the repair or restoration of the Premises; provided such amount is adequate to repair the damage or Mortgagor deposits with Mortgagee the necessary funds to complete such repairs.

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(iv) If Mortgagee shall elect to permit Mortgagor to apply the Condemnation Awards to the repair and restoration of the Premises, Mortgagor hereby covenants promptly to repair and restore the same in such manner as Mortgagee may require; if the Condemnation Awards are not sufficient to pay for the full repair and restoration costs, Mortgagor shall pay such amounts out of its own funds. Mortgagee shall disburse the Condemnation Awards to Mortgagor for the costs incurred in repair and restoration in such manner as Mortgagee shall deem fit (provided that Mortgagee's standards shall not be more stringent than a prudent construction lender), and at all times the undisbursed balance of Condemnation Awards remaining in the hands of Mortgagee and amounts contributed by Mortgagor shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens except Permitted Encumbrances.

(h) **Inspection.** Upon reasonable advance notice to Mortgagor, Mortgagee and its agents are authorized to enter at any time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts Mortgagee is authorized to perform under the terms of this Mortgage or any of the other Loan Documents. Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and shall make such books and records and all supporting vouchers and data available for examination by Mortgagee and its agents at any time during normal business hours, and from time to time on request at the offices of Mortgagee, or at such other location as may be mutually agreed upon.

(i) **Financial Information.** Mortgagor shall provide to Mortgagee, at such times and in such form as Mortgagee shall from time to time require:

(i) a "rent roll" and other information concerning any and all leases, rentals and tenants of any or all of the Premises; and

(ii) copies of all assessments, bills and other information pertaining to any and all ad valorem and other taxes and Impositions on or pertaining to any or all of the Premises.

(j) **Appraisals and Environmental Reports.** Without limiting any other provision hereof or of any other Loan Document, Mortgagor agrees to provide, cooperate with, and pay for the full cost of any appraisal, environmental audit, report or study, or the like of or pertaining to the Premises or any portion thereof which Mortgagee in its sole discretion may require from time to time.

(k) **Title, Liens and Conveyances.** Except for Permitted Encumbrances, Mortgagor shall not create, suffer or permit to be created or filed against the Premises, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage without the express written consent of Mortgagee. Mortgagor may contest in good faith and by appropriate proceedings the validity of any such lien, charge or encumbrance, if, as preconditions: (i) Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts or form as Mortgagee shall require; and (ii) Mortgagor shall diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to do the

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foregoing or discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, by depositing in court a bond for the amount claimed, or otherwise giving security for such claim, or in such manner as is or may be prescribed by law, and any amounts expended by Mortgagee in so doing shall be payable by Mortgagor upon demand by Mortgagee, together with interest at the Default Rate from the date of demand to the date of payment, and shall be so much additional indebtedness secured by this Mortgage. If title to the Premises is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Premises shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

(l) **Stamp and Other Taxes.** If any documentary stamp, intangible, recording or other tax or fee becomes due in respect of the Liabilities or this Mortgage or the recording thereof, Mortgagor shall pay such amount in the manner required by law.

6. ASSIGNMENT OF RENTS AND LEASES.

(a) Without limiting the generality of any other provisions hereof, as additional security, Mortgagor hereby assigns to Mortgagee the rents, issues and profits of the Premises, and upon the occurrence of any Event of Default, Mortgagee may receive and collect said rents, issues and profits so long as such Event of Default shall exist and during the pendency of any foreclosure proceedings, but at all other times Mortgagor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due under and by virtue of any leases as they become due, but not more than thirty (30) days in advance. As of the date of this Mortgage, as additional security, Mortgagor also hereby assigns to Mortgagee any and all written and oral leases, whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, and the rents thereunder, covering the Premises or any portion thereof. The collection of rents by Mortgagee pursuant to this Section shall in no way waive the right of Mortgagee to foreclose this Mortgage in the event of any Event of Default. Notwithstanding the foregoing, until a notice in writing is sent to Mortgagor stating that an Event of Default or any event or condition that with notice or passage of time or both might become an Event of Default has occurred under the terms and conditions of this Mortgage (a "Notice"), Mortgagor may receive, collect and enjoy the lease payments, rents, income, and profits accruing from the Premises (the "Rents"). Mortgagee may, after service of a Notice, receive and collect the Rents as they become due. Mortgagee may thereafter continue to receive and collect all such Rents as long as such Event of Default shall exist and during the pendency of any foreclosure proceedings.

(b) Mortgagor hereby appoints Mortgagee its true and lawful attorney, which appointment is irrevocable and coupled with an interest, with full power of substitution and with full power for Mortgagee in its own name and capacity or in the name and capacity of Mortgagor, from and after the service of a Notice (with or without taking possession of the Premises), to demand, collect, receive, and give complete acquittance for any and all Rents, and at Mortgagee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Mortgagor or otherwise, that Mortgagor may deem necessary or desirable in order to collect or enforce the payment of the

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Rents. Lessees and tenants of the Premises are hereby expressly authorized and directed to pay any and all Rents due Mortgagor to Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such lessees and tenants, who are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made.

(c) From and after the service of a Notice, Mortgagee is hereby vested with full power to use all measures, legal and equitable, it may deem necessary or proper to enforce this assignment and to collect the Rents, including without limitation the right of Mortgagee or its designee to enter upon the Premises, or any part thereof, with or without process of law, take possession of all or any part of the Premises and all personal property, fixtures, documents, books, records, papers, and accounts of Mortgagor relating thereto, and exclude Mortgagor and its agents and servants wholly therefrom. Mortgagor hereby grants full power and authority to Mortgagee to exercise all rights, privileges, and powers herein granted at any and all times after service of a Notice, without further notice to Mortgagor, with full power to use and apply all of the Rents to the payment of the costs of managing and operating the Premises and of any Liabilities in such order as Mortgagee shall determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of Mortgagor as landlord or as lessor, and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the leases or otherwise. This assignment shall not place responsibility for the control, care, management, or repair of the Premises, or parts thereof, upon Mortgagee, nor shall it make Mortgagee liable for the performance of any of the terms and conditions of any of the leases, for any waste of the Premises by any lessee under any of the leases or any other person, for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss, injury, or death to any lessee, licensee, employee, or stranger. In the exercise of the powers herein granted to Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

(d) The assignment contained in this Section is given as collateral security and the execution and delivery hereof shall not in any way impair or diminish the obligations of Mortgagor, nor shall this assignment impose any obligation on Mortgagee to perform any provision of any contract pertaining to the Premises or any responsibility for the non-performance thereof by Mortgagor or any other person. The assignment under this Section is given as a primary pledge and assignment of the rights described herein and such assignment shall not be deemed secondary to the security interest and mortgage of Mortgagee in the Premises. Mortgagee shall have the right to exercise any rights under this Section before, together with, or after exercising any other rights under this Mortgage. Nothing herein shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty, or liability of Mortgagor under this assignment, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all costs (including without limitation attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, whether in or out of court, in original or appellate proceedings or in bankruptcy), liability, loss, or damage which Mortgagee may or might incur by reason of this assignment; and any and all such costs, liability, loss, or damage incurred by Mortgagee (whether successful or not), shall be Liabilities hereby secured, and Mortgagor shall reimburse Mortgagee therefor on demand, together with interest at the Default Rate from the date of demand to the date of payment.

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7. **EVENTS OF DEFAULT.** The occurrence of any of the following shall constitute an "Event of Default":

- (a) any event constituting an "Event of Default" under the Loan Agreement or any other Loan Document; or
- (b) failure of Mortgagor to comply with any term, obligation, covenant or condition contained herein within twenty (20) days after receipt of written notice specifying the nature of such default.

8. **DEFAULT REMEDIES.**

(a) **Default.** Notwithstanding any provision of any document or instrument evidencing or relating to any Liability: (i) upon the occurrence and during the continuance of any Event of Default specified in Section 7 (excepting only occurrences of an Event of Default specified in Section 8.1(g)-(i) of the Loan Agreement), Mortgagee at its option may declare the Liabilities immediately due and payable without further notice or demand of any kind; and (ii) upon the occurrence of an Event of Default specified in Section 8.1(g)-(i) of the Loan Agreement, the Liabilities shall be immediately and automatically due and payable without action of any kind on the part of Mortgagee. Upon the occurrence and during the continuance of any Event of Default, Mortgagee may exercise any rights and remedies under this Mortgage (including without limitation as set forth below in this Section), any Loan Document and any related document or instrument (including without limitation any pertaining to collateral), at law or in equity, and may also: (A) either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the Rents including without limitation those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Mortgage in such order as it may elect; and the entering upon and taking possession of the Premises, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of Rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in any of the other Loan Documents or by law upon occurrence of any Event of Default; or (B) commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or (C) exercise any or all of the remedies available to a secured party under the Code, and any notice of sale, disposition or other intended action by Mortgagee, sent to Mortgagor at its address specified herein, at least ten (10) days prior to such action, shall constitute reasonable notice to Mortgagor.

(b) **Foreclosure; Expense of Litigation.** When the Liabilities, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Liabilities or part thereof. In any suit to foreclose the lien

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hereof or enforce any other remedy of Mortgagee under this Mortgage or the Notes, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be reasonably paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees (including without limitation time charges of attorneys who may be employees of Mortgagee), appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be 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 assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including without limitation the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Loan Documents or the Premises, including without limitation probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be so much additional indebtedness secured by this Mortgage and immediately due and payable with interest thereon at a rate equal to the Default Rate. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

(c) **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including without limitation all such items as are mentioned in (b) of this Section; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Notes, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Notes; and fourth, any excess to Mortgagor, its successors or assigns, as their rights may appear.

(d) **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises, and Mortgagee or any holder of the Notes may be appointed as such receiver. Such receiver shall have power (i) to collect the Rents during the pendency of such foreclosure suit, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) power to extend or modify any then existing leases and to make new commercially reasonable leases, which extension, 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 indebtedness secured by this Mortgage and beyond the date of 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 Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any

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foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in its hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

(e) **Insurance After Foreclosure.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

(f) **Other Security, Etc.** Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. Failure by Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by Mortgagee of partial payments, shall not be deemed a waiver by Mortgagee of any default or of its right to exercise any such rights thereafter.

(g) **Not Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession.

(h) **Waiver of Certain Rights.** To the extent permitted by applicable law, Mortgagor agrees that it shall not and will not apply for or avail itself of any appraisalment, 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 Mortgage, but rather waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor hereby expressly waives any

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and all rights of redemption from sale or from or under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Premises are located.

(i) **Mortgagee's Use of Deposits.** With respect to any deposits made with or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage, if an Event of Default occurs and is continuing, Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the Liabilities in such order and manner as Mortgagee may elect. When the Liabilities have been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the prompt payment of the Liabilities and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor.

9. **RIGHTS OF MORTGAGEE.** If Mortgagor fails to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, which failure continues beyond any applicable notice and cure periods, Mortgagee in its own discretion, without obligation so to do and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation:

- (a) to enter upon and take possession of the Premises;
- (b) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair;
- (c) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of Mortgagee;
- (d) to pay any Impositions asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition;
- (e) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; and
- (f) in exercising such powers, to pay reasonably necessary expenses, including without limitation employment of and payment of reasonable compensation to inside and outside counsel or other necessary or desirable consultants, contractors, agents and other employees.

After an Event of Default, Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, at Mortgagee's election, to do and cause to be done all or any of the foregoing in the event Mortgagee shall be entitled to take any or all of the action provided for in this Section. Mortgagor shall immediately, upon demand therefor by Mortgagee, pay all reasonable costs and

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expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys, attorney's fees, legal costs and expenses, and time charges of attorneys who may be employees of Secured Party, in each and every case whether in or out of court, in original or appellate proceedings or in bankruptcy, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon at a rate equal to the Default Rate.

10. **ESTOPPEL LETTERS.** Mortgagor shall furnish from time to time within 15 days after Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

11. **DECLARATION OF SUBORDINATION TO LEASES.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

12. **REVOLVING CREDIT.** This Mortgage secures not only the existing indebtedness under the Notes, but also such future advances as are made within twenty (20) years from the date of this Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of the execution of this Mortgage and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage, as to third persons without actual notice thereof, shall be valid as to all such indebtedness and future advances from the time the Mortgage is filed of record in the Office of the Recorder of Deeds of the county where the Premises are located. The total amount of indebtedness that is secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed the principal amount of \$20,000,000, plus interest thereon and any disbursements made for the payment of taxes, special assessments, or insurance on the Premises, with interest on such disbursements as otherwise provided in this Mortgage.

13. **OBLIGATIONS UNCONDITIONAL: WAIVER OF DEFENSES.** Without limiting any other provision hereof, Mortgagor irrevocably agrees that no fact or circumstance whatsoever which might at law or in equity constitute a discharge or release of, or defense to the obligations of, a guarantor or surety shall limit or affect any obligations of Mortgagor under this Mortgage or any document or instrument executed in connection herewith. Without limiting the generality of the foregoing:

(a) Mortgagee may at any time and from time to time, without notice to Mortgagor, take any or all of the following actions without affecting or impairing the liability of Mortgagor on this Mortgage:

(i) renew or extend time of payment of the Liabilities;

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- (ii) accept, substitute, release or surrender any security for the Liabilities; and
- (iii) release any person primarily or secondarily liable on the Liabilities (including without limitation any endorser).

(b) No delay in enforcing payment of the Liabilities, nor any amendment, waiver, change, or modification of any terms of any instrument which evidences or is given in connection with the Liabilities, shall release Mortgagor from any obligation hereunder. The obligations of Mortgagor under this Mortgage are and shall be primary, continuing, unconditional and absolute (notwithstanding that at any time or from time to time all of the Liabilities may have been paid in full), irrespective of the value, genuineness, regularity, validity or enforceability of any documents or instruments respecting or evidencing the Liabilities. In order to hold Mortgagor liable or exercise rights or remedies hereunder, there shall be no obligation on the part of Mortgagee, at any time, to resort for payment to any other security for the Liabilities. Mortgagee shall have the right to enforce this Mortgage irrespective of whether or not other proceedings or steps are being taken against any other property securing the Liabilities or any other party primarily or secondarily liable on any of the Liabilities.

(c) Mortgagor irrevocably waives presentment, protest, demand, notice of dishonor or default, notice of acceptance of this Mortgage, notice of any loans made, extensions granted or other action taken in reliance hereon, and all demands and notices of any kind in connection with this Mortgage or the Liabilities.

(d) Mortgagor waives any claim or other right which Mortgagor might now have or hereafter acquire against any other person primarily or contingently liable on the Liabilities (including without limitation any maker or endorser) or that arises from the existence or performance of Mortgagor's obligations under this Mortgage, including without limitation any right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim or remedy of Mortgagee against any other collateral security for the Liabilities, which Mortgagee now has or hereafter acquires, however arising.

14. SECURITY AGREEMENT UNDER THE CODE. It is the intention of Mortgagor and Mortgagee that this Mortgage shall constitute a Security Agreement within the meaning of the Code, and a security interest is hereby granted by Mortgagor, as Debtor ("Debtor"), to Mortgagee, for its benefit and the ratable benefit of Lenders, as Secured Party ("Secured Party"), encumbering each and every type or item of personal property or fixtures (said personal property and fixtures are collectively referred to herein as "Secured Property") included in the Premises in which a security interest may be granted in compliance with the provisions of the Code. The names of the Debtor and the Secured Party; the identity or corporate structure of each; the record title owner of the Premises is the Mortgagor; the mailing address of the Secured Party from which information concerning the security interest granted by this Mortgage may be obtained is as set forth for Mortgagee, all on page 1 of this Mortgage. The principal place of business of the Debtor and the mailing address of Debtor is as set forth below; a statement indicating the types, or describing the items, of collateral is set forth hereinabove; and the description of the Premises is set forth on **Exhibit A**. Notwithstanding the filing of a financing statement covering any of the Premises in the records normally pertaining to personal property, all of the Secured Property, for all purposes and in all proceedings, legal or equitable, shall be regarded, at Mortgagee's

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option (to the extent permitted by law), as part of the Premises whether or not any such item is physically attached to the Premises or serial numbers are used for the better identification of certain items. The mention in any such financing statement of any of the Secured Property shall never be construed in any way as derogating from or impairing this declaration and hereby stated intention of Mortgagor and Mortgagee that such mention in the financing statement is hereby declared to be for the protection of Mortgagee and Lenders in the event any court shall at any time hold that notice of Mortgagee's priority of interest, to be effective against any third party, including the Federal government or any authority or agency thereof, must be filed in the Uniform Commercial Code records. Pursuant to the provisions of the Code, Mortgagor hereby authorizes Mortgagee, without the signature of Mortgagor, to file financing and continuation statements if Mortgagee shall determine, in its sole discretion, that such financing or continuation statements are necessary or advisable in order to preserve or perfect its security interest in the Secured Property covered by this Mortgage, and Mortgagor shall pay to Mortgagee, on demand, any expenses incurred by Mortgagee in connection with the preparation and filing of such statements that may be filed by Mortgagee.

15. **RELEASE OF LIEN.** If the principal and interest under the Notes shall be paid in full in accordance with the terms hereof, and if Mortgagor shall pay all other sums then payable hereunder and under the Loan Documents and comply with all other terms hereof, then the lien of this Mortgage and the estate and rights hereby created shall cease, terminate and become void in their entirety upon payment of all sums due hereunder, and thereupon Mortgagee, upon the written request of and at the expense of Mortgagor, shall execute and deliver to Mortgagor such instruments as shall be required to evidence of record the complete satisfaction of this Mortgage and the complete release of lien hereof.

16. **MISCELLANEOUS.**

(a) **Recitals.** The recitals hereto are hereby made a part of this Mortgage.

(b) **Time of Essence.** Time is of the essence of this Mortgage and of each and every provision hereof.

(c) **Subrogation.** To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay an outstanding lien, charge or prior encumbrance against the Premises, Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

(d) **Further Assurances.** Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired.

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(e) **No Defenses.** No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Liabilities.

(f) **Invalidity of Certain Provisions.** If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.

(g) **Illegality of Terms.** Nothing herein or in any other Loan Document contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively: (i) to require Mortgagor to pay interest at a rate greater than is lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate; or (ii) to require Mortgagor to make any payment or do any act contrary to law; and if any provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall be given a reasonable time to correct any such error.

(h) **Mortgagee's Right to Deal with Transferee.** In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from the covenants and/or undertakings hereunder, and without Mortgagee waiving its rights to accelerate the Liabilities as set forth herein.

(i) **Releases.** Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to this Mortgage or any other Loan Documents and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability of any person or entity personally obligated for any Liabilities, but shall extend the lien hereof as against the title of all parties having interest in said security which interest is subject to the indebtedness secured by this Mortgage.

(j) **Covenant to Run with the Land.** All the covenants hereof shall run with the land.

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(k) **Notices.** Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to this Mortgage, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the United States mail, registered or certified mail, return receipt requested, with proper postage prepaid, (b) upon transmission, when sent by telecopy or other similar facsimile transmission (with such telecopy or facsimile promptly confirmed by delivery of a copy by personal delivery or United States mail as otherwise provided in the Loan Agreement, (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or facsimile number indicated in this Mortgage or pursuant to the Loan Agreement or to such other address (or facsimile number) as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than Mortgagor or Mortgagee) designated in the Loan Agreement to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

(l) **Governing Law.** This Mortgage and the Liabilities arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such State, without regard to the principles thereof regarding conflicts of laws, and any applicable laws of the United States of America, except with respect to the provisions hereof which relate to the granting of a mortgage lien and realizing upon the security covered by this Mortgage which shall be governed by the laws of the State of Illinois, it being understood that, to the fullest extent permitted by the law of such State, the law of the State of New York shall govern the validity and enforceability of all Loan Documents, and the Liabilities arising hereunder. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Mortgage.

(m) **Other.** Unless the content requires otherwise, wherever used herein the singular shall include the plural and vice versa, and the use of one gender shall also denote the others. Captions herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof; references herein to Sections or provisions without reference to the document in which they are contained are references to this Mortgage. This Mortgage shall bind Mortgagor, its(his)(her) heirs, trustees (including without limitation successor and replacement trustees), executors, personal representatives, successors and assigns, and including without limitation each and every from time to time record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of Mortgagee, its successors and assigns, and each and every holder of any note or other document pertaining to any of the Liabilities, except that Mortgagor may not transfer or assign any of its(his)(her) rights or interest

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hereunder without the prior written consent of Mortgagee. Without limiting any other provision hereof, Mortgagor agrees to pay upon demand all expenses (including without limitation attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each case whether in or out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Mortgagee or any holder hereof in connection with the enforcement or preservation of its rights hereunder or under any document or instrument executed in connection herewith.

(n) **WAIVER OF JURY TRIAL, ETC.** MORTGAGOR HEREBY IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL SUITS, ACTIONS OR OTHER PROCEEDINGS WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION HEREWITH SHALL BE SUBJECT TO LITIGATION IN COURTS LOCATED IN NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED IN OR HAVING JURISDICTION OVER SUCH COUNTY, AND HEREBY IRREVOCABLY WAIVES ANY RIGHT, SHE(HE)(IT) MAY HAVE TO REQUEST OR DEMAND TRIAL BY JURY, TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT BY MORTGAGEE IN ACCORDANCE WITH THIS PARAGRAPH, OR TO CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(o) **Conflict of Terms.** If any provision contained in this Mortgage is in conflict with, or inconsistent with, any provision in the Loan Agreement, the provision contained in the Loan Agreement shall govern and control.

(p) **Intercreditor Agreement.** REFERENCE IS MADE TO THE INTERCREDITOR AGREEMENT DATED AS OF FEBRUARY 25, 2005 (AS AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "INTERCREDITOR AGREEMENT"), BETWEEN GENERAL ELECTRIC CAPITAL CORPORATION, AS FIRST LIEN AGENT (AS DEFINED THEREIN), AND MORGAN STANLEY SENIOR FUNDING, INC., AS SECOND LIEN AGENT (AS DEFINED THEREIN). ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, THE LIENS AND SECURITY INTERESTS GRANTED TO THE SECOND LIEN AGENT, FOR THE BENEFIT OF THE SECURED PARTIES, PURSUANT TO THIS MORTGAGE AND THE EXERCISE OF CERTAIN RIGHTS OR REMEDIES BY THE SECOND LIEN AGENT AND THE OTHER SECURED PARTIES HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT.

Mortgagor hereby RELEASES AND WAIVES all rights under and by virtue of the homestead exemption laws of the State of Illinois.

Mortgagee is hereby authorized by Mortgagor without notice to Mortgagor to fill in any blank spaces and dates and strike inapplicable terms herein or in any related document to conform to the terms of the transaction and/or understanding evidenced hereby, for which

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purpose Mortgagee shall be deemed to have been granted an irrevocable power of attorney coupled with an interest.

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IN WITNESS WHEREOF MORTGAGOR HAS SIGNED, SEALED AND DELIVERED THIS MORTGAGE AS OF THE DATE INDICATED ABOVE.

PORK CHOP LIMITED PARTNERSHIP

By: Bulkmatic Transport Company,
General Partner

By: *Fred J. Flaxmeyer*

Type Name FRED J. FLAXMEYER

Address for Notices:

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

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STATE OF Indiana SS.

COUNTY OF LAKE

I, Donna Cacubba, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Fred FIAXMAN SRUFINAC of Bulkmatic Transport Company, an Illinois corporation, 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/she signed, sealed and delivered said instrument as his/her own free and voluntary act, as the free and voluntary act of the corporation and as the free and voluntary act of Pork Chop Limited Partnership, an Illinois limited partnership, for the uses and purposes therein set forth.

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

Donna Cacubba
Notary Public

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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.

Address 2351 State Street
Chicago Heights, IL

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

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Exhibit B

Permitted Encumbrances

1. General Taxes for the years 2004, 2005 and subsequent years for Tax No. 32-27-100-004 Vol. No. 018 and Tax No. 32-27-100-005 Vol. No. 018.
2. Information and Disclosures in Environmental Disclosure document for transfer of real property recorded May 1, 1992 as Document 92297234.
3. Grant of Easement made by Chicago Heights Terminal Transfer Railroad Company, a corporation of Illinois to County of Cook Department of Highways, its successors and assigns recorded March 11, 1985 as Document 27469956, granting an easement and right of way for roadway purposes in, to, over, along, upon and across that part of a 200 foot wide tract of land lying in the northwest 1/4 of Section 27, located in Chicago Heights.
4. Permission created by grant from Chicago Heights Terminal Transfer Railroad Company, a corporation of Illinois to Chicago District Pipe Line Company, a corporation of Illinois recorded July 7, 1959 as document 17588993 to construct, maintain, operate and use a 36 inch natural gas pipe line over and across a strip of land 10 feet in width, as shown on the print attached thereto marked Exhibit "A" more particularly described as follows:

Immediately adjoining on the East to the East line of State Street in the West 1/2 of Section 27 aforesaid extending Northwardly from a line 1398.2 feet North of the South line of said Section to the South line of the Right of Way of Elgin, Joliet and Eastern Railway Company; and the covenants and conditions therein contained. Amendment to Grant dated September 24, 1959 as disclosed in Document recorded October 2, 1963 as 18930515. Said Grant was purportedly cancelled and superseded by the Grant recorded October 27, 1959 as Document 17695652.
5. Permission created by Grant from Chicago Heights Terminal Transfer Railroad Company, a corporation of Illinois, to Chicago District Pipe Line Company, a corporation of Illinois recorded October 27, 1959 as Document 17695652 to construct, maintain, operate and use a 36 inch natural gas pipe line within and upon the property of the Railroad Company at the following location:

A continuous strip of land 10 feet in width (A) lying immediately adjoining to the East of the East line of State Street (said line being the West Line of said Strip of Land) in the West 1/2 of Section 27 aforesaid and extending northwardly from line parallel with and 1398.2 feet north of the south line of said section to the south line of an existing switch track, said south line of said switch track being coincident with a line that is parallel with and approximately 15 feet south of the south line of the right of way of the Elgin, Joliet and Eastern Railway Company; (B) thence extending eastwardly lying immediately adjacent to the south of the south line of the said existing switch track (said line being the north line of said strip of land) to the intersection with the south line of the right of way of the

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Elgin, Joliet and Eastern Railway Company; and (C) thence continuing Easterly lying immediately adjoining to the south of the south line of the right of way of the Elgin, Joliet and Eastern Railway Company (said line being the north line of said strip of land) to the intersection of a line parallel with and 1395 feet east of the center line of State Street; and the covenants and conditions therein contained.

6. Spurs, switch tracks, and railroad rights of way as delineated on survey executed by Joseph A. Schudt and Associates Inc. dated February 14, 1997 order number 9225-215.
7. Easement in favor of Commonwealth Edison company and Illinois Bell Telephone Company, and/or their successors in interest, for pole lines, conduits and maintenance purposes granted by Document 92534172, and the terms and conditions thereof.
8. Terms and conditions of the covenant recorded November 23, 1994 as Document Number 94994499 between Maria's Industries, Inc. and Thom Creek Basin Sanitary District.
9. Grant of a License Agreement in favor of Seaway Bridge and Steel Corporation for construction, maintenance, operations and use of a natural gas pipeline recorded August 22, 1961 as Document Number 18254396.
10. Rights for gas pipeline as delineated on survey executed by Joseph A. Schudt and Associates dated February 14, 1997 order number 9225-215 with Certificate revised October 1, 1997.
11. Existing Sanitary sewer as delineated on survey executed by Joseph A. Schudt and Associates dated February 14, 1997 order number 9525-215 with Certificate revised October 1, 1997.
12. Rights to maintain fire hydrants and the water main which services said hydrants as located on the north side of Stone Road as delineated on survey executed by Joseph A. Schudt and Associates dated February 14, 1997 order number 9525-215 with Certificate revised October 1, 1997.
13. Financing Statement evidencing an indebtedness from Pork Chop Limited Partnership, Debtor, to General Electric Capital Corporation, Secured Party, filed on April 2, 2001 as Number 98583261, and amendment to Financing Statement filed on June 7, 2000 as Document 01U03138.
14. Mortgage (including Security Agreement, Assignment of Rents and Leases, and Fixture Filing) executed by Mortgagor in favor of General Electric Capital Corporation, 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, as amended by that certain Amendment to Mortgage, executed, delivered and recorded in conjunction with that certain Amended and Restated Credit Agreement, dated as of February 25, 2005 by and among General Electric Capital Corporation, Mortgagor and the other signatories party thereto.