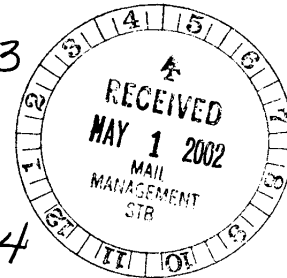


Before the
SURFACE TRANSPORTATION BOARD

ORIGINAL

205293
Finance Docket No. 34145
BULKMATIC RAILROAD CORPORATION
--ACQUISITION EXEMPTION--
BULKMATIC TRANSPORT COMPANY



205294
Finance Docket No. 34179
BULKMATIC RAILROAD CORPORATION
--OPERATION EXEMPTION--
BULKMATIC TRANSPORT COMPANY

SUPPLEMENT TO
PETITION TO REJECT NOTICE AND/OR
TO REVOKE APPLICATION OF CLASS EXEMPTION

ENTERED
Office of the Secretary

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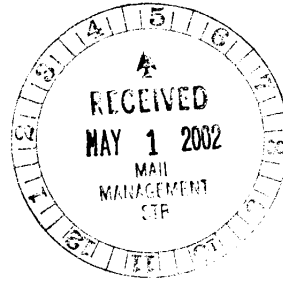
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GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for Joseph C. Szabo

Due Date: May 1, 2002

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34145
BULKMATIC RAILROAD CORPORATION
--ACQUISITION EXEMPTION--
BULKMATIC TRANSPORT COMPANY

Finance Docket No. 34179
BULKMATIC RAILROAD CORPORATION
--OPERATION EXEMPTION--
BULKMATIC TRANSPORT COMPANY

SUPPLEMENT TO
PETITION TO REJECT NOTICE AND/OR
TO REVOKE APPLICATION OF CLASS EXEMPTION

Preliminary Statement

Joseph C. Szabo,^{1/} for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), submits this Supplement to his March 4, 2002 petition to the Surface Transportation Board (Board).

This supplement is occasioned by several developments. The first is to update the March 4 petition in light of discovery, and commencement of operations on April 2, 2002;^{2/} the second is to update the petition in light of the Board's recent decision in

^{1/} Illinois Legislative Director for United Transportation Union, with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

^{2/} 49 CFR §1121.2; See: UTU-IL Pet., 3/4/02, p.2.

Finance Docket No. 34081, Effingham Railroad Company--Operation Exemption--Line Owned by Total Quality Warehouse (served April 10, 2002) (Effingham II), inasmuch as Effingham II purports a restatement of the prior series of "Effingham" rulings, particularly the decision on reconsideration in No. 41986, et al., Effingham Railroad Company--Petition for a Declaratory Order--Construction at Effingham, IL (served September 18, 1998) (not printed). (Effingham I)--the principal citation relied upon in the instant two notices of exemption, and in various replies to UTU-IL.^{3/}

Under the two notices, Bulkmatic Railroad Corporation (BMRC) proposes to acquire and operate 16 tracks subleased from its parent, Bulkmatic Transport Company (BTC).^{4/} which tracks are located wholly within the Bulkmatic Distribution Center at Chicago Heights, IL. The BMRC sublease from BTC embraces the BTC lease of the industrial site, and the 16 tracks.

The March 4, 2002 UTU-IL petition, supplemented herein, asks the Board to reject the two notices of exemption, filed December 21, 2001 and February 27, 2002, in F.D. No. 34145 and F.D. No.

3/ F.D. No. 34145, Notice, 12/21/01, pp. 2-4 and Reply, 12/27/01; F.D. No. 34179, Notice, 2/27/02, pp. 2-4 and Reply, 3/5/02; F.D. Nos. 34145 & 34179, Reply in Opposition, 3/15/02, pp. 7-9.

4/ The notice and exemption for acquisition of the trackage are the subject of F.D. No. 34145, whereas the notice and exemption for operation of the trackage are embraced in F.D. No. 34179. BMRC suggests that F.D. No. 34179 might be dismissed or withdrawn as duplicative of the operating exemption in F.D. No. 34145, contending that acquisition of a line imposes a residual obligation to operate a line, such that mere acquisition confers authority to operate that line. (Reply in Opposition, 3/15/02, pp. 2-4). There is no basis for BMRC's argument that "acquire" under 49 U.S.C. 10901 means "acquire and operate," without more, and BMRC has not sought to dismiss its F.D. No. 34179 Notice.

34179, respectively, and/or that the Board revoke the two exemptions noticed thereby.

Course of Proceedings

The BMRC proposed manner of operation has changed somewhat during the course of the proceedings. By notices filed December 21, 2001, in F.D. No. 34145 and 34146, BMRC, a noncarrier, sought to acquire by sublease, and Chicago Heights Switching Company (CHSS), also a noncarrier, sought to operate, approximately 3.9 miles of trackage, comprising 16 tracks, situated within the Bulkmatic Distribution Center, at Chicago Heights, IL. BTC is lessee of the tracks and operates the Bulkmatic Distribution Center. The trackage connects with Union Pacific Railroad Company (UP) and Elgin, Joliet & Eastern Railway Company (EJ&E). Also by notice filed December 21, 2001, in F.D. No. 34147, Paula J. Mudge-Gibson and Don L. Gibson, sought to continue in control of CHSS, upon CHSS becoming a carrier, inasmuch as they own and control Central Illinois Railroad Company (CIRY).^{5/} The three notices were published January 15, 2001.^{6/} The UTU-IL petition for stay of the exemptions in F.D. Nos. 34145 and 34146 was denied on December 27, 2002. Board Chairman Morgan stated that the notice

^{5/} See: F.D. No. 33960, The Central Illinois Railroad Company--Lease and Operation Exemption--Lines of The Burlington Northern and Santa Fe Railway Company at Chicago, Cook County, IL, 65 Fed. Reg. 76003 (Dec. 5, 2000); F.D. No. 34035, The Central Illinois Railroad Company--Acquisition and Operation Exemption--Rail Lines of Union Pacific Railroad Company and Canadian Pacific Rail System at Elk Grove Village, Cook and DuPage Counties, IL, 66 Fed. Reg. 23083 (May 7, 2001).

^{6/} 67 Fed. reg. 2010-11. The notice in F.D. No. 34146 is captioned Chicago Heights Switching Company--Operation Exemption--Bulkmatic Railroad Corporation; the notice in F.D. No. 34147 is captioned Paula J. Mudge-Gibson and Don L. Gibson--Continuance in Control Exemption--Chicago Heights Switching Company.

map and description of the involved trackage described the transaction adequately. The Chairman added that whether the trackage is excepted under §10906 is a complex fact-bound issue requiring considerable analysis.

Plans were changed. The transfer of operation to CHSS was not consummated. Instead, by notice filed February 27, 2002, in F.D. No. 34179,^{7/} BMRC seeks to itself operate the 16 tracks in lieu of CHSS. UTU-IL on March 4, 2002, as part of its petition to reject/revoke, renewed its earlier petition for stay, this time addressed to the substitute BMRC operation. Board Chairman Morgan on March 5, 2002, denied the UTU-IL request for stay, giving the same reasons as in her December 27, 2001 stay denial for the then-projected CHSS operation.

March 4, 2002 Petition

The March 4, 2002 UTU-IL petition to reject/revoke was filed prior to experience under BMRC operation, and prior to receipt of discovery materials. The verified statement of Dennis G. Martz, UTU's General Chairman for this former Chicago & Eastern Illinois Railroad Company (C&EI) and Chicago Heights Terminal Transfer Railroad Company (CHTT) territory, dated March 3, 2002, was based upon UP operations, and projected BMRC operation. (UTU-IL Pet., 3/4/02, Appendix 2).

May 1, 2002 Supplement

On April 2, 2002, BMRC commenced operation on the 16 tracks. Appendix 1 to the UTU-IL March 4, 2002 petition, setting forth BTC background material taken from the BTC website, needs no

^{7/} The notice was published March 14, 2002. 67 Fed. Reg. 11547-48.

change and is incorporated herein. The Martz verified statement to the March 4, 2002 filing (Appendix 2) is supplemented by Appendix 3 to this Supplement to Petition. (UTU-IL Supp. Pet., 5/1/02, Appendix 3). Appendix 2 and the earlier Martz verified statement of December 26, 2001, are incorporated herein.

The various discovery materials, some of which are referenced in Appendix 3, are as follows:

Exhibit No. 1--Operating Agreement Between BMRC and CHSS (January 1, 2002).

Exhibit No. 2--Industrial Building Lease Between Pork Chop Limited Partnership and BTC (June 5, 1997).

Exhibit No. 3--Sublease Between BTC and BMRC (January 1, 2002).

Exhibit No. 4--Locomotive Lease Agreement Between BMRC and CHSS (March 27, 2002).

Exhibit No. 5--Agreement Between BTC and BMRC (January 1, 2002).

The present manner of rail service to the BTC trackage at Chicago Heights, IL is set forth in the supplemental verified statement of Dennis G. Martz, attached as Appendix 3, which should be read together with his earlier verified statements of December 26, 2001 and March 2, 2002. Mr. Martz is the Yard Foreman who works the assignment serving the BTC facilities, and also is General Chairman for UTU on the affected property and operations.

ARGUMENT

I. EFFINGHAM AND ITS RESTATEMENT DO NOT SERVE TO ALTER THE AGENCY AND JUDICIAL MEANING OF "EXCEPTED" YARD TRACKAGE.

There is no dispute that the 16 tracks are excepted industrial, spur, side, team, or switching tracks. They are all situated within the Bulkmatic Distribution Center. The UP sketch map is of record. (Martz, Appendix 3, Atta. A).

BMRC in its December 21, 2001 and February 27, 2002 notices, contends that although the acquisition and operation of the 16 tracks in the Bulkmatic Distribution Center ordinarily would be "excepted" from Board jurisdiction, in accordance with 49 U.S.C. 10906, the transaction nevertheless has become regulated, and the tracks have become "line of railroad," with BMRC a common carrier. BMRC reasons that BMRC's operation over the BTC trackage is an initial railroad operation for BMRC, constituting BMRC's entire line, and with BMRC's purpose being to serve BTC as new shipper for BMRC, in substitution for excepted UP switching. BMRC also makes reference to such "tenant-use" test as "controlling." F.D. No. 34145, Notice, 2-4; F.D. No. 34179, Notice, 2-5. BMRC places virtually exclusive reliance upon the Board's decision denying reconsideration in Docket No. 41986, et al., Petition for Declaratory Order-Construction at Effingham, IL (served September 18, 1998) (not printed) (Effingham I), rev. den. United Transp. Union v. Surface Transp. Bd., 183 F.3d 606 (7th Cir. 1999).

Although the two BMRC notices to acquire and operate BTC trackage are in no way comparable with the facts in Effingham I, nevertheless, due to the reliance by BMRC upon the supposedly new

departure made by Effingham I from long-maintained precedents distinguishing "excepted" track from "line" of railroad, along with the Board's restatement of Effingham I in F.D. No. 34081, Effingham Railroad Company--Operation Exemption--Line Owned by Total Quality Warehouse (served April 10, 2002) (Effingham II), UTU-IL deems some discussion of the unreported Effingham I and Effingham II may be helpful. Effingham II is set forth in Appendix 4.

In Effingham I, a newly-formed noncarrier, Effingham Railroad Company (ERRC), proposed to operate a shipper-owned 206-foot spur track, extending between connection with ConRail trackage and the shipper's warehouse located in an industrial park. ConRail previously had operated over the spur from ConRail's track to the warehouse. The ERRC's proposed operation over the spur was to be part of a larger plan, consisting of several phases, for track construction and service to a number of shippers in the industrial park. Both ERRC and UTU-IL, although on opposite sides concerning the industrial park project, nevertheless in their filings were in agreement that ERRC's operation over the 206-foot spur track would be "excepted" from STB authority pursuant to 49 U.S.C. 10906.^{8/}

The Board in Effingham I indicated otherwise, and found that because the spur track operation would be ERRC's initial railroad operation, the track segment became ERRC's entire line of railroad, rather than an excepted spur. Accordingly, a "spur" for

^{8/} ERRC and UTU-IL relied upon a number of citations. A comparable noncarrier proposed operation over municipally owned excepted track recently had been dismissed for lack of jurisdiction. F.D. No. 32853, Illinois Western Railroad Company--Change in Operator Exemption--The City of Greenville, IL (served January 30, 1996).

ConRail, became "line of railroad" for ERRC. The Board cited Chicago Rail Link, L.L.C.-Lease & Oper.-Union Pacific RR Co., 2 S.T.B. 534 (1997).

It is now apparent, from a number of recent filings, that some view Effingham as a scheme for establishing new rail carriers which would take excepted yard work away from employees of existing rail carriers, in somewhat the same manner as the 1985 noncarrier acquisition class exemption has achieved for transfer of lines of railroad.

The STB in its restatement of Effingham I, in F.D. No. 34081, Effingham Railroad Company--Operation Exemption--Line Owned by Total Quality Warehouse (served April 10, 2002) (not printed) (Effingham II), traced each of the three proceedings embraced in Effingham I, and placed major emphasis on whether a given operation crossed the boundary of the industrial park to effect interchange with other railroads. If the ERRC operation crossed the industrial park boundary, as in initial notice involving ConRail, the STB found ERRC's operation was the proper subject of a notice of exemption; on the other hand, operations over new trackage located entirely within the industrial park are excepted. (Appendix 4, p. 2).

The Effingham I and Effingham II proceedings were not rulemaking, and must be confined to their particular factual settings. Effingham I involved a notice for only 206 feet of operations, but it constituted part of a major construction and operation program for an industrial park. There is nothing in Effingham I to suggest that ERRC and the warehouse shipper, Agracel, were other than independent and unrelated entities, dealing with each other at

arms-length.^{9/} The "use" of trackage by a given entity is not conclusive in determining whether the trackage is "excepted" or "line" of railroad. The true relationships between the parties are important, for corporate manipulation cannot be allowed to obscure the real world. Further, Effingham II says the Board concluded in Effingham I that it was ERRC's notice for operation which crossed the boundary of the industrial park to connect with other carriers that made the initial (Conrail) 206-foot notice proper; thus, the Board has made a refinement of its earlier ruling to impose the boundary-crossing condition for the notice. (Appendix 4, p.2):

The September 12, 1997 decision, the October 22, 1997 notice, and the December 30, 1997 notice were upheld in Effingham Railroad Company-Petition for Declaratory Order-Construction at Effingham, IL, STB Docket No. 41986, et al. (STB served Sept. 18, 1998) (September 18, 1998 decision), aff'd sub nom. United Transp. Union v. Surface Transp. Bd., 183 F.3d 606 (7th Cir. 1999). In the September 18, 1998 decision, slip. op. at 5, we concluded that ERRC's notices involving operations over track crossing the boundaries of the industrial park to establish connections with other railroads (Conrail in the initial notice and ICR in the second notice) were proper subjects of notices of exemption, whereas its other operations over new trackage entirely within the boundaries of the industrial part are properly exempt by statute, as siding, spur, or industrial trackage.

The Board's Chairman, in denying a stay, said "whether track is excepted under section 10906 is a complex, fact bound issue that must be resolved in light of precedents that require considerable analysis." (Stay Decision, 12/27/01, 2; Stay Decision, 3/5/02, 2). The Board decision in Effingham I, even as modified or restated in Effingham II, is not controlling precedent, and the

^{9/} The reviewing court commented upon the lack of affiliation between ERRC and another shipper. United Transp. Union v. Surface Transp. Bd., 183 F.3d 606, 614 (7th Cir. 1999).

October 18, 1998 decision was not even important enough to have been reported. In essence, Effingham I was an obscure case which recently has been seized upon by various interests to break collective bargaining agreements with organized labor, and to deprive organized employees of their railroad employment, by turning excepted track into line of railroad. The precedent value is limited although, of course, the industrial park boundary rule would appear helpful to UTU-IL in the instant proceeding.

II. BOTH NOTICES SHOULD BE REJECTED, OR BOTH
EXEMPTIONS REVOKED, BECAUSE THE BOARD CANNOT
AUTHORIZE OR EXEMPT THE TRANSACTIONS PURSUANT
TO THE CLASS EXEMPTION OR 49 U.S.C. § 10901.

The UTU-IL March 4, 2004 Petition has the above-captioned heading, followed by text addressed to the request for rejection or revocation on the ground the trackage is excepted under the provisions of 49 U.S.C. 10906, such that the Board cannot authorize (or exempt) the acquisition or operation of such trackage.

The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

This supplement will not repeat that portion of the March 4, 2002 UTU-IL petition under this heading which is addressed to the Board's lack of authority, and which urges the notices of exemption be rejected, and/or the exemptions revoked, due to the Board's lack of authority. Our earlier arguments are incorporated herein: (UTU-IL Pet., 3/4/02, pp. 5-9).

However, certain additional material pertaining to rejection/~~tion~~ revocation has been made available since March 4, 2002,

through discovery and subsequent events, which support rejection/revocation for lack of agency authority.

1. Sham Transaction. This is a sham transaction between BMRC and BTC. BTC has established BMRC. BMRC has subleased the premises from BTC, under the same lease terms as for the prime leasehold by BTC, and which include 3.9 miles of trackage. (UTU-IL Ex. 2; UTU-IL Ex.3).

BMRC has agreed with BTC to receive rail cars from UP and move such rail cars to locations where BTC directs for the purpose of transloading, packaging, etc. (UTU-IL Ex.5).

UP, until April 2, 2002, performed car movement or switching for BTC within the Bulkmatic Distribution Center. Some such services prior to April 2, 2002 also were performed by BTC using a Pettibone vehicle and, beginning about February 10, 2002, by using a locomotive labeled "Bulkmatic." (Martz, Appendix 3, p. 4).

The Board should conclude that BMRC and BTC are not truly independent of each other, as in the usual shipper/carrier relationship.

BMRC will not have its own rail employees; BMRC has an agreement with CHSS for CHSS to operate the BMRC locomotive, with personnel to be furnished by CHSS, and for CHSS to operate and maintain the trackage, in the name of, and in behalf of, BMRC. (UTU-IL Ex. 1). BMRC is not a bona fide carrier.

BMRC does not hold itself out to provide service to shippers other than BTC. (UTU-IL Ex. 5, Ex. A)). Thus, BMRC is not a common carrier, but is dedicated to BTC.

2. Tenant-Use Test. This is not a situation where two railroads are using, or have used, the same track, but for differ-

ent purposes, unlike the landlord and tenant parties to trackage rights agreements involved in Brotherhood of Locomotive Engineers v. U.S., 101 F.3d 718 (D.C. Cir. 1996). Rather, UP delivers cars to BTC at specified tracks within the Bulkmatic Distribution Center and, until April 2, 2002, also performed car switching and transfer of cars between various BTC locations. BTC now has established BMRC to do the same intra-plant work, but BTC does not interchange cars with UP on other than BTC tracks in the Bulkmatic Distribution Center. Accordingly, the so-called "tenant use" is inapplicable, because BMRC is doing the very same intra-plant work formerly performed by UP. There has been no change in the "use" of the trackage. The "use" of the tracks under UP operation was excepted industrial, spur, team, switching or side tracks; and the "use" of the tracks under BMRC is exactly the same.

Moreover, the "use" test for trackage, rather than the character of the tracks, has never been a conclusive test. When the former ICC relied on "use" to claim an obvious spur to be line of railroad, the reviewing court remanded the matter. Illinois Commerce Com'n v. United States, 779 F.2d 1270 (7th Cir. 1985). Upon remand, the ICC recognized its error in adopting "use" as too expansive in determining "line of railroad." If applied literally, the Board admitted it would never find a track to be excepted. CNW--Aband. Exemp.--in McHenry County, IL, 3 I.C.C.2d 366, 368 (1987).

The "purpose and effect" qualification to the "use test" was made by Justice Brandeis in Texas & Pac. Ry. v. Gulf, Etc., Ry., 270 U.S. 266, 278-27 (1926). Where the use of tracks would ordinarily except the tracks from agency authority as spur, industri-

al, switching, team, or side track, the tracks could nevertheless be found "line of railroad" if the "purpose and effect" of the new trackage extends substantially the line of the carrier into territory not theretofore served by the carrier.

The "purpose and effect" qualification does not help BMRC to establish that BTC's tracks change from excepted under UP switching to line of railroad under BMRC switching.

3. Industrial Park Limits. The April 10, 2002 restatement of Effingham I made by Effingham II, precludes BTC trackage from constituting line of railroad for BMRC's notice of exemption. (Appendix 4, p. 2). BMRC's notice does not embrace operation crossing the boundary for interchange with UP at a point outside the limits of the Bulkmatic Distribution Center. Interchange between BMRC and UP takes place inside the industrial park on tracks 875 and 876. (Martz, Appendix 3, pp. 2, 3).

4. Individual Petition or Application. If the two notices are not rejected as outside § 10901, because of doubts as to track classification, the class exemption should be revoked in this instance, and the transactions made subject to a petition for exemption or an application.

III. THE EXEMPTIONS SHOULD BE REVOKED
AS NECESSARY TO CARRY OUT THE
RAIL TRANSPORTATION POLICY.

The UTU-IL March 4, 2002 Petition bears the above-captioned hearing, followed by text addressed to the rail transportation policy (RTP). 49 U.S.C. 10101. If the two notices are not rejected, the exemptions should be revoked to carry out the RTP. See: 49 U.S.C. 10502(d).

The statutory standard is not the "public convenience and necessity" of 49 U.S.C. 10901; rather, the criteria of the RTP governs; that is, in an exemption proceeding, as here, the focus is on those elements of the RTP which are subsumed in § 10901, and not the "public convenience and necessity" itself. Village of Palestine v. ICC, 936 F.2d 1335 (D.C. Cir. 1991). cert. den. 502 U.S. 1030. See: Indiana R.Co.-Acq. & Oper.-Illinois Central R. co., 6 I.C.C.2d 969 and 1004, 1007 (1990).

This supplement will not repeat that portion of the March 4, 2002 petition under this heading, but incorporates the earlier material. (UTU-IL Pet., 3/4/02, pp. 9-11). However, certain pertinent material has become available from discovery, and certain events have transpired, along with supplemental Martz evidence.

1. Sound Transportation. The RTP is directed to a sound rail transportation system and sound economic conditions in transportation. § 10101(4), (5). The policy of the former ICC was to deny carrier status for plant-owned carriers such as BMRC. Considerable preference was accorded shippers who were able to establish carrier status for their plant operations. The preferences involved division of rates, favored treatment for car-hire and demurrage, among other evils. The ICC's absolute prohibition was modified due to court decisions. Industrial Railways Case, 29 I.C.C. 212 (1919). Tap Line Cases, 234 U.S. 1 (1914). But there is a definite policy to discourage arrangements such as those proposed by BTC in forming BMRC. Industrial Railways Case, 32 I.C.C. 129 (1944); Second Industrial Railways Case, 34 I.C.C. 596 (1915).

See: Sharfman, I.L., The Interstate Commerce Commission, Vol. 2, Industrial Railroads, pp. 142-75 (1931).

The relationships between BTC, BMRC, and UP constitute unsound transportation.

Local Custom & Practice. There are many industries in the Chicago Heights, IL area. A number of them have their own trackmobiles or locomotives on their premises, to move cars between various spots within their facilities, but they are not franchised as rail carriers to serve themselves and, of course, they do not serve other shippers. (Martz, Appendix 3, p.5).

The UP Yard Foreman listed some of these plants having rail operations without STB authority, and which do not serve others, as: Sugar Steel Corp. (former Thrall Car Plant #2, Chicago Heights Steel, Owens-Illinois, Vesuvius, Rhodia, Chicago Heights Railcar, Rohm & Hass, IMCO Recycling, Illiana, Mobile Locomotive, Meridian, and Transload Services. None of these are "rail carriers" and do not serve the public outside their own plant. (Martz, Appendix 3, p. 5).

The provision of service by BMRC for BPT, as a franchised carrier with authority to perform service for itself and for others, and with an ability to secure trackage rights over other carrier lines of railroad, is highly unsound.

Continued UP Involvement. The establishment of BMRC as a franchised rail carrier is additionally unsound in light of UP's continued involvement in the ownership and/or control of the Bulkmatic Distribution Center. To be sure, there is the Pork Chop Limited Partnership, in which BTC is a General Partner. (UTU Ex. 2). But UP continues to have an important interest in the industr-

ial property and, insofar as the public may be aware, signs on the property indicate UP is the entity to contact. (Martz, Appendix 3, pp. 5-6).

2. Efficiency. The promotion of efficient transportation is perhaps the most important element of the RTP. § 10101(3), (9). Railroad efficiency would be set back under BMRC operations. Here, there would be serious inefficiencies of manpower, locomotives, operations, and office work.

BMRC would not have a dedicated work force, but would rely upon its agent CHSS to furnish manpower. The agreement between BMRC and CHSS calls for part-time work. CHSS would operate four hours on Monday thru Thursday, and 8 hours on Friday, a total of 24 hours per week, and BMRC would make payments to CHSS on that basis. (UTU-IL Ex. 1, App. 2). This is highly inefficient. The standard UP yard crew is assigned for 8-hour shifts. (Martz, Appendix 3, p.5).

The utilization of locomotives would be highly inefficient. The BMRC locomotive would be utilized only 24 hours per week. In contrast, many UP locomotives are utilized for two or three shifts during a 24-hour period. (Martz, Appendix 3, p.5).

When UP crews performed switching work in the Bulkmatic facility, as well as delivery and receipt of cars for BTC on tracks 875 and 876, the UP crews would have the additional switching in mind when making up the car sequence for delivery to BTC. (Martz, Appendix 3, pp. 3-4). This efficiency is now lost because of separate BMRC switching. Whereas the BMRC crews operate 24 hours per week, the UP crews have lost between 10 and 12 hours per

week. (Martz, Appendix 3, pp. 6-7). Presently, operation is grossly inefficient.

The addition of another carrier, BMRC, to the routing of traffic, along with an extra interchange, record-keeping, and operational coordination problems, will compound the inefficiencies which would stem from franchising BMRC. (Martz, Appendix 2, p.4).

3. Federal Regulation. A goal of the RTP is to minimize federal regulation. § 10101(2). Here, BTC and BMRC, despite current unregulated and excepted switching service provided by UP, desire to come under regulation. This involves proceedings, as here, before the STB, as well as further safety regulation by Federal Railroad Administration (FRA). Of course, UTU-IL suggests the purpose of such "regulation" is to break collective bargaining contracts with employee organizations. However, the STB is mandated to pursue deregulation wherever feasible, and not to provide a "regulation" gimmick for impermissible purposes.

4. Entry. A goal of the RTP is to reduce regulatory barriers to entry into and exit from the industry. § 10101(7). BTC and BMRC are free to conduct operations--certainly within the industrial park or over excepted trackage--without entry or exit permission from the Board. Since (at least at this time) BMRC proposes to handle only BTC business (UTU-IL Ex.5, App. C) the filing of a notice of exemption for entry, or a required filing for discontinuance/abandonment for exit, is a waste of resources and contrary to the Congressional intent behind the RTP.

5. Energy Conservation. A goal of the RTP is to encourage and promote energy conservation. § 10101(14). The inefficient

utilization of locomotive equipment by BMRC--only 24 hours per week--would result in poor fuel usage.

6. Wages, Safety, and Working Conditions. A goal of the RTP is to encourage fair wages and safe and suitable working conditions in the railroad industry. § 10101(11). BMRC operation would be contrary to these objectives. BMRC would contract with CHSS for part time work, in contrast with the full-time work by UP's crews. (Martz, Appendix 3, p.5; UTU-IL Ex. 1, Appendix 2). The STB should not encourage the substitution of part-time work for full-time work.

The UP operations in the involved area are subject to full compliance with FRA safety standards. BMRC's limited operation in merely serving the Bulkmatic Distribution Center would be subject to a lesser safety standard, with respect to both equipment and personnel.

The loss of work since April 2, 2002, when BMRC commenced operations, has been about 10 to 12 hours per week per crew. (Martz, Appendix 3, p.7). UTU-IL fears that the BMRC proposal is part of a plan to extend BMRC's scope beyond BTC's distribution facility to reach other industries in the area. (Martz, Appendix 3, p.5). The adverse effect upon UP employees would be severe if BMRC or CHSS is accorded common carrier status, or if BMRC and/or CHSS commence to serve other shipper or carrier facilities in the involved area. UTU-IL projects the loss of two crew assignments (6 persons) which, by the exercise of seniority, would result in the displacement of some 40 other switchmen and 20 engineers. (Martz, Appendix 3, p.7).

CONCLUSION

The Board should reject the notices of exemption, and/or
revoke the exemptions.

Respectfully submitted,


GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

May 1, 2002

Attorney for Joseph C. Szabo

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall

APPENDIX 3

F.D. No. 34145
F.D. No. 34179

SUPPLEMENTAL
VERIFIED STATEMENT
OF DENNIS G. MARTZ

My name is Dennis G. Martz. I am the same person of same name that submitted a verified statement, dated March 2, 2002, in support of the UTU-IL petition to reject/revoke and for stay, filed March 4, 2002. Previously, I submitted a verified statement, dated December 26, 2001, in support of a stay of the exemption.

Bulkmatic Railroad Corporation (BMRC) commenced operation on Tuesday, April 2, 2002. I have had the opportunity to observe some of its operations at the Bulkmatic Distribution Center, particularly when the facility is being served by Union Pacific Railroad Company (UP). BMRC is an affiliate of Bulkmatic Transport Company (BTC). BTC commenced operations at the Bulkmatic Distribution Center within the past several years. Previously, Marias Industries occupied the property, and the UP crews served that company. I am usually the foreman of the UP crew engaged in the operation, and I continue to hold the position of General Chairman for United Transportation Union (UTU). In the latter capacity, I have discussed the operations of BMRC with UP management personnel.

I have had the opportunity to review the materials furnished April 4, 2002, by BMRC and BTC; and I have read the BMRC Opposition, filed earlier on March 15, 2002. The five BMRC/BTC materials have been identified in the UTU-IL supplement as Operating Agreement Between BMRC and Chicago Heights Switching Company (CHSS) (Ex. 1); Lease Between Pork Chop Ltd. and BTC (Ex. 2); Sublease

Between BTC and BMRC (Ex. 3); Locomotive Lease Between BMRC and CHSS (Ex. 4); and Contract Between BTC and BMRC (Ex. 5).

1. The tracks listed on Appendix 1-A of the Notice in F.D. No. 34179, i.e., Nos. 73 thru 88, were regularly worked by UP crews until April 2, 2002. Actually, these 16 tracks are denominated Nos. 873 thru 888, and we received our instructions from BTC and from UP, by these 800-series numbers. Since April 2, 2002, we deliver and receive cars from BMRC on Tracks 875 and 876, which are situated inside the Bulkmatic Distribution Center. Because BMRC's placement of cars on Tracks 875 and 876 cannot be accomplished without resort to movement over a short segment of UP track 868, known as "UP Tail Track," UP and BTC have entered into an arrangement for BMRC's use of the segment. It is my understanding that BMRC's trackage right on the UP track has not been filed with the Surface Transportation Board.

The total length of the Bulkmatic Distribution yard trackage remains the 3.9 miles listed in the BMRC's F.D. No. 34179 Notice, Appendix 1-A. This trackage is not "line of rail" or "main track" by any stretch of the imagination. The tracks are of light rail, as commonly found in yards and sidings. There are no mileposts or communication systems. These tracks are spur, switching, industrial, side-tracks, and team tracks. The "packaging lines" mentioned in the operating agreement between BMRC and Chicago Heights Switching Company (CHSS), UTU-IL Ex. 1, p.2, are tracks 879 and 880. BTC uses these tracks for unloading bulk materials and packaging the contents into bags or containers for reshipment. The inbound commodities for the Bulkmatic Distribution Center may be liquid or solid, and are handled in covered hopper, tank, or box

cars. Of course, the 3.9 miles of tracks are not 3.9 miles of "right of way," for most of these tracks are closely parallel to one another on the same "right of way," as shown on the diagram to the F.D. No. 34179 Notice, Appendix 1-B. I point out that the diagram to F.D. No. 34145, Notice, Appendix 1-B, is grossly incorrect.

2. I include as Attachment A to this supplemental verified statement the UP sketch outline map of the involved area furnished to UP personnel. I believe this to be a superior diagram than those set forth in the two BMRC filings. F.D. No. 34145, Notice, App. 1-B; F.D. No. 34179, Notice, 1-B. However, the track numbers shown on Attachment A are not current, and there are two additional tracks not listed on Attachment A. Tracks on Attachment A shown as 877, 878, 879, 880, 881, 882, 883, 884, 885, and 886 have been redesignated as Nos. 879, 880, 881, 882, 883, 884, 885, 886, 887, and 888, respectively. Former Track No. 876 is now 878, and track 877 (not shown on Attachment A) extends from Former Track 875 parallel with Former Track 875. Former Track 875 is now numbered 876. Tracks 875 and 876 extend northward and make connection with EJ&E tracks. Track 875 is a track between Tracks 874 and 876.

When UP crews performed switching work in the Bulkomatic Distribution facility, as well as delivery and receipt of cars for BTC on Tracks 875 and 876, the crews would have the order of such additional switching in mind when making up the car sequence for delivery to BTC, and many times even before departure from our Yard Office, known as the "White House," located near the Ford

facilities. The combination of delivery and switching promoted efficiency.

3. UP service to BTC is provided six days per week with deliveries, and cars normally are pulled three days per week. Until April 2, 2002, UP crews exclusively served the BTC trackage. A three-man engine crew (foreman, switchman, and engineer) performed the switching. The locomotive employed was of low power, usually between 1300 and 1600 HP. The Elgin, Joliet & Eastern Railway Company (EJ&E) delivers and receives cars at certain tracks, but the spotting and pulling of cars from the BTC facilities was performed solely by UP crews.

4. BTC in the past has maintained a small Pettibone vehicle which plant personnel utilized as a trackmobile to move rail cars between various locations (different warehouse positions or from a siding) when the UP crew was unavailable. However, on or about February 10, 2002, a 1200 HP locomotive unit, with "Bulkmatic" displayed, has performed this function.

This Bulkmatic locomotive unit on March 27, 2002 was leased by BMRC to CHSS without charge (other than a nominal \$100/yr. payment). UTU-IL Ex. 4, p. 6.

The agreement between BMRC and CHSS anticipates a two-person CHSS crew will provide service 4 hours daily on Monday, Tuesday, Wednesday, and Thursday, and 8 hours on Friday. UTU-IL Ex. 1, App. 2, pp. 2-3. As I understand the BMRC filing, CHSS will perform operations in the name of BMRC and on behalf of BMRC. CHSS will confine its operations to serve BTC, as I understand the agreements. Indeed, as mentioned in my March 2, 2002 verified state-

ment, BMRC acknowledged in its Notice that BMRC might contract with CHSS for the latter to be its agent.

5. I consider the BMRC/CHSS proposal to be highly inefficient, and wasteful of employee resources. The use of a crew and locomotive for only 4 hours during a 24-hour period is grossly inefficient. This is part-time work for employees, and represents a very poor utilization of equipment. The standard UP yard crew is assigned for an 8-hour shift, and many of our locomotives are active for two or three shifts within a 24-hour period.

6. The BMRC/CHSS proposal is so patently unsound that I fear the operation must have the aim of extending its scope beyond BTC's distribution facility to reach other industries in the area. There are many industries in our area that have their own locomotives or trackmobiles on their premises, to move cars between various spots within their facilities, but they are not franchised as rail carriers to serve themselves and, of course, they do not serve other shippers. Such plant railroads in the our vicinity include Sugar Steel Corp. (former Thrall Car Plant #2 shown in my Attachment A), Chicago Heights Steel, Owens-Illinois, Vesuvius, Rhodia, Chicago Heights Railcar, Rohm & Haas, IMCO Recycling, Illiana, Mobile Locomotive, Meridian, and Transload Services. None of these are "rail carriers" and do not serve the public outside their own plant.

7. I have read the industrial building lease agreement between Pork Chop Limited Partnership (Pork Chop) and BTC (UTU-IL Ex. 2). BTC is a General Partner of Pork-Chop, and the same BTC official is the signatory for both Pork Chop and BTC. This industrial land property is subject to UP ownership and control, and

was developed by UP or its affiliate Chicago Heights Terminal Transfer Railroad Company (CHTT). The industrial site is advertised to the public as Union Pacific-Bulkmatic property. For example, there is a large sign at the entrance to the Bulkmatic Distribution Center, facing State Street, which states:

BULKMATIC
Union Pacific Railroad
Bulk Terminal Facility
2351 State Street/Chicago Heights, Ill 60411
Cell: 708-758-0730 FAX: 708-758-2025
UP and EJ&E Railroads Quality Driven

The sign on the southeast corner of State Street bears a sign facing northwest which reads:

BULKMATIC
Building #1
OFFICE/WAREHOUSE/SCALE
2351 State Street/Chicago Heights, IL 60411
708-758-0730 FAX: 708-758-2025
UP/EJ&E Railroads Quality Driven

8. The assumption by BMRC of BTC switching work handled by UP until April 2, 2002, has resulted in an adverse impact upon UP employees. We have not incurred the loss of 4 hours work on Monday thru Thursday, and 8 hours on Friday--the time contracted for by BTC with CHSS--due to greater UP efficiency. This efficiency, plus UP's combination of switching with delivery and pulling, resulted in considerably less time spent on the BTC property than the 24 hours per week contemplated by BMRC and CHSS. Moreover, the transfer of car sequence functions from UP to BMRC undoubtedly has served to increase the time spent switching the BTC facilities.

Although UP crews may not have lost 24 hours/week of work owing to the BMRC assumption of its own switching, there nevertheless have been losses for UP crews. The period since April 2 is still too brief to fully quantify the losses with precision, but I

estimate that the UP crews have lost between 10 and 12 hours per week. I anticipate this adverse effect will become more severe if BMRC or CHSS is accorded common carrier status by the Surface Transportation Board, or if BMRC and/or CHSS commence to serve other shipper or carrier facilities in the involved area. Indeed, as indicated in my verified statements dated December 26, 2001 (F.D. No. 34145), and March 3, 2002 (F.D. No. 34179), which I incorporate and reaffirm, I anticipate the loss of two crew assignments (6 persons), which by the exercise of seniority would result in the displacement of some 40 other switchmen and 20 engineers.

I have been advised that UP and UTU may not be able to prevent BTC from performing its own intra-plant switching through its BMRC affiliate. However, BMRC needs no authority or exemption from the STB to do this work; and other neighboring industries perform switching without a STB franchise.

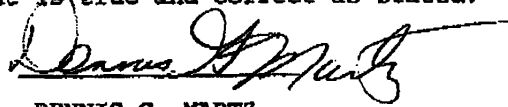
I ask that the BMRC notices of exemption be rejected or revoked.

Apr. 24 2002 12:34PM P2

VERIFICATION

STATE OF ILLINOIS)
COUNTY OF COOK)

Under the penalties of perjury, I affirm that the foregoing
supplemental verified statement is true and correct as stated.



DENNIS G. MARTZ

Dated at
Chicago Heights, IL
April 30, 2002

32075
EB

SERVICE DATE - APRIL 10, 2002

APPENDIX 4
Page 1 of 2

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34081

EFFINGHAM RAILROAD COMPANY
—OPERATION EXEMPTION—
LINE OWNED BY TOTAL QUALITY WAREHOUSE

Decided: April 8, 2002

On August 6, 2001, Effingham Railroad Company (ERRC), a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.31 to operate over approximately 3,661 feet of track to be constructed for and acquired by Total Quality Warehouse (TQW). The track will be in an existing industrial park in Effingham, IL, and the purpose of the proposed operation by ERRC is to provide a more efficient interchange with the Canadian National Railway Company/Illinois Central Railroad Company (CNR/ICR). Notice of the exemption was served and published in the Federal Register on September 4, 2001 (66 FR 46306) (September 4, 2001 notice).

Concurrently with the filing of its notice of exemption, ERRC moved to dismiss the notice for lack of jurisdiction. We have considered the notice and the motion and conclude that the notice should be dismissed and the exemption vacated.

BACKGROUND

ERRC has been serving the industrial park at Effingham, since its inception, pursuant to a series of Board decisions and notices. Beginning with Effingham Railroad Company—Petition for Declaratory Order—Construction at Effingham, IL, STB Docket No. 41986 (STB served Sept. 12, 1997) (September 12, 1997 decision), we determined that ERRC needed Board authority to implement its plan to serve the new industrial park at Effingham.¹ For the initial phase of the plan, ERRC, then a noncarrier, filed a notice to operate under the class exemption for noncarriers at 49 CFR 1150.31 in Effingham Railroad Company—Operation Exemption—Line Owned by Agracel Corporation, STB Finance Docket No. 33468 (STB served Oct. 22, 1997) (October 22, 1997 notice). In accordance with the October 22, 1997 notice, ERRC became a carrier and the substitute operator for Consolidated Rail Corporation (Conrail) over approximately 206.05 feet of track, owned by the Agracel Corporation, which connected with a Conrail line and served a facility in Effingham. After becoming a carrier, ERRC extended its operations over an additional 400 feet of track constructed entirely within the industrial park. ERRC did not seek Board authority for this phase of its plan because it considered this extension of its operations to be statutorily exempt. ERRC again extended its operations in Effingham Railroad Company—Operation Exemption—Line Owned by Total Quality Warehouse, STB

¹ ERRC characterized the operation it would perform as a switching service within an industrial park. We looked, however, at the larger purpose and effect of the proposal, which was to serve a new rail shipper (or shippers), in territory not previously served, on what would be ERRC's entire line of railroad.

STB Finance Docket No. 34081

Finance Docket No. 33528 (STB served Dec. 30, 1997) (December 30, 1997 notice). This extension involved 9,201 feet of track that left the boundaries of the industrial park to connect TQW's facility with CNR/ICR.

The September 12, 1997 decision, the October 22, 1997 notice, and the December 30, 1997 notice were upheld in Effingham Railroad Company-Petition for Declaratory Order-Construction at Effingham, IL, STB Docket No. 41986 et al. (STB served Sept. 18, 1998) (September 18, 1998 decision), aff'd sub nom. United Transp. Union v. Surface Transp. Bd., 183 F.3d 606 (7th Cir. 1999). In the September 18, 1998 decision, slip op. at 5, we concluded that ERRC's notices involving operations over track crossing the boundaries of the industrial park to establish connections with other railroads (Conrail in the initial notice and ICR in the second notice) were proper subjects of notices of exemption, whereas its other operations over new trackage entirely within the boundaries of the industrial park are properly exempt by statute, as siding, spur, or industrial trackage.

DISCUSSION AND CONCLUSIONS

Relying on the guidance in the September 12, 1997 decision, ERRC has moved to dismiss the September 4, 2001 notice arguing that its operation over this additional track does not allow it to serve any new markets or provide any new services. Instead, it asserts that the additional track is designed to improve an existing interchange, and is to be operated solely for the convenience of the existing carriers, for the benefit of existing shippers. We agree. Because the new operation does not constitute an extension of service to new territory or connection with a new carrier, it is not a proper subject of a notice of exemption. Accordingly, the notice of exemption should be dismissed, and because the exemption has already become effective, it will be vacated.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion to dismiss the notice of exemption is granted.
2. The exemption is vacated.
3. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

32075
EB

SERVICE DATE - APRIL 10, 2002

APPENDIX 4
Page 1 of 2

SURFACE TRANSPORTATION BOARD

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This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion to dismiss the notice of exemption is granted.
2. The exemption is vacated.
3. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

THIS AGREEMENT CONTAINS AN AUTOMATIC RENEWAL PROVISION

OPERATING AGREEMENT

THIS AGREEMENT, made and entered into as of the 1st day of January, 2002, between BULKMATIC RAILROAD CORPORATION (BMRC); AND CHICAGO HEIGHTS SWITCHING COMPANY (CHSC).

WITNESSETH:

WHEREAS, BMRC has acquired by sublease from Bulkmatic Transport Company (BTC) approximately 3.9 miles of right-of-way and trackage located at Bulkmatic Distribution Center, Chicago Heights, Illinois, more particularly described in Appendix 1-A and depicted on Appendix 1-B attached hereto ("the Chicago Heights trackage"); and

WHEREAS, CHSC desires to operate and maintain the Chicago Heights trackage for the provision of rail service in the name of, and in behalf of, BMRC; and

WHEREAS, BMRC is agreeable to such operation and maintenance upon the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein the parties hereto agree as follows:

ARTICLE ONE

**GRANT OF RIGHT TO OPERATE AND
MAINTAIN THE CHICAGO HEIGHTS TRACKAGE**

Subject to the terms and conditions herein provided, (i) BMRC hereby grants to CHSC the right to operate its trains, locomotives, cars, and equipment with its own crews over the Chicago Heights trackage for the purpose of providing rail service to shippers and receivers located on such

lines and to transport shipments by rail over such lines, and to maintain the Chicago Heights trackage, and (ii) CHSC agrees to operate and maintain the Chicago Heights trackage. BMRC reserves the right to operate trains, locomotives, cars, and equipment on an as-needed basis, using leased locomotive 1282 or a substitute, using its own personnel. BMRC reserves the right to perform its own switching of the packaging lines at Chicago Heights facility.

ARTICLE TWO

TERM; TERMINATION

Section 2.01 Term. Subject to earlier termination as provided herein, the term of this Agreement shall be one year from the date of this Agreement shown above; provided, however, that this Agreement will be renewed automatically for additional one year periods unless, no later than 60 days before its expiration, either BMRC or CHSC provides written notice to the other party of its intent not to renew this agreement. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon not less than 6 months notice.

Section 2.02 Termination For Default. Either party may terminate this Agreement by written notice if the other party fails to perform any obligation required of it hereunder and fails to remedy such default within thirty (30) days after receipt of written notice of such default.

Section 2.03 Termination for Bankruptcy, Etc. Either party may immediately terminate this Agreement by written notice if the other party enters into or is placed in bankruptcy or receivership or is nationalized, become insolvent, or makes an assignment for the benefit of its creditors.

ARTICLE THREE

SCOPE OF OPERATIONS AND MAINTENANCE AND COMPENSATION THEREFORE

The scope of operations and maintenance and the agreed compensation therefore are contained in Appendix 2 attached hereto. The parties may amend Appendix 2 from time to time by executing an amended scope of operations and maintenance and compensation.

ARTICLE FOUR

GOVERNMENT APPROVAL, ETC.

CHSC at its own expense shall obtain any and all governmental approvals, authorizations, permits, licenses, and exemptions that may be required for its operation and maintenance of the Chicago Heights trackage.

ARTICLE FIVE

INSURANCE

CHSC shall be required to obtain and keep in force a commercial general form of insurance policy covering CHSC's operation and maintenance of the Chicago Heights trackage, including public liability, personal injury, property damage, FELA, bill of lading, foreign rolling stock and contractual liability with per occurrence and aggregate limits of not less than \$5 million. BMRC and BTC shall be named as additional insureds in such policy. Upon reasonable request, CHSC shall make such policy available for inspection and review by BMRC.

ARTICLE SIX

MANAGEMENT AND OPERATIONS

CHSC shall comply with the provisions of the Federal Safety Appliance Act, as amended, and all other federal, state, and local laws, regulations and rules respecting (i) the operations and

maintenance of the Chicago Heights trackage, (ii) the operation, condition, inspection and safety of CHSC's trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Chicago Heights trackage and the UP RR Tail Track connecting the Chicago Heights facility to the Union Pacific Railroad, (iii) the employment of workers by CHSC relating to the operation and maintenance of the Chicago Heights trackage, and (iv) air, water, noise, solid waste and other pollution and relating to the storage, transport, release or disposal of hazardous materials, substance or waste. CHSC will keep the Chicago Heights trackage clean and free of debris. CHSC shall not dispose of any wastes of any kind, whether hazardous or not, on the Chicago Heights trackage or the premises of BMRC. At any time during the term of this Agreement, BMRC shall have the right to inspect the Chicago Heights trackage and CHSC's equipment being operated on the Chicago Heights trackage to ensure compliance with this Agreement.

ARTICLE SEVEN

LIABILITY AND INDEMNITY

Section 7.01 CHSC Liability and Indemnity. CHSC will be responsible for and will indemnify and hold harmless BMRC and BTC and their respective officers, agents, employees and affiliates, from and against any and all liabilities, losses, damages, claims, suits, judgments, fines, penalties, costs, and expenses (including without limitation attorneys' fees) (collectively "Losses") which arise out of or result from the failure of CHSC to comply with any of its obligations under this Agreement, or which are caused directly or indirectly by any acts or omissions of CHSC and/or its agents, employees, contractors, or representatives; provided, however, that CHSC's obligation to indemnify and hold harmless BMRC and BTC shall not apply to the extent that any such Losses were caused by the negligence or wrongful acts or omissions of BMRC or BTC.

Section 7.02 BMRC Liability and Indemnity. BMRC will be responsible for and will indemnify and hold harmless CHSC and its officers, agents, employees, and affiliates, from and against any and all Losses which arise out of or result from the failure of BMRC to comply with any of its obligations under this Agreement, or which are caused directly or indirectly by any acts or omissions of BMRC or BTC and/or their respective agents, employees, contractors (other than CHSC) or representatives; provided, however, that BMRC's obligation to indemnify and hold harmless CHSC shall not apply to the extent that any such Losses were caused by the negligence or wrongful acts or omissions of CHSC.

ARTICLE EIGHT

ENVIRONMENTAL CONDITIONS

BMRC shall indemnify CHSC for any and all Losses resulting from environmental conditions existing on the Chicago Heights trackage as of the commencement of operations by CHSC. CHSC shall indemnify BMRC for any and all Losses resulting from environmental conditions occurring or arising on the Chicago Heights trackage during the term of this Agreement except to the extent caused by the act or omission of BMRC or BTC.

ARTICLE NINE

THIRD PARTY CLAIMS RELATING TO OWNERSHIP OPERATION

CHSC shall indemnify BMRC for any and all third party claims relating to operation or maintenance of the Chicago Heights trackage except claims based on acts or omissions of BMRC. CHSC shall not cause any lien, claim, or encumbrance to be placed against the Chicago Heights trackage. If any such lien, claim or encumbrance shall be filed or placed against the Chicago Heights trackage or any part thereof, CHSC agrees to discharge the same within 30 days after CHSC has

notice thereof. If CHSC fails to do so, BMRC or BTC shall have the right (but not the obligation) to pay or discharge any such liens, claims or encumbrances without inquiry as to their validity and any amount so paid, including interest, fees, charges, and expenses, shall be paid by CHSC to BMRC or BTC, as applicable.

ARTICLE TEN

FINANCIAL STATEMENTS

If BMRC shall so request, CHSC shall be required on a quarterly basis to provide statements reflecting its financial condition, such as a balance sheet and profit-loss statement.

ARTICLE ELEVEN

REAL PROPERTY TAXATION

CHSC agrees to file Illinois Department of Revenue Railroad Property Tax Forms (including but not limited to PTAX 500 through 513 and 520A through 523, and 537), listing the Bulkmatic Chicago Heights facility as "railroad operating property" as defined in the applicable Illinois statutes. BRMC shall pay the resulting property taxes or immediately fully reimburse CHSC if CHSC pays such taxes.

ARTICLE TWELVE

MISCELLANEOUS

Section 12.01 Any notices, requests, or other communications hereunder shall be in writing and shall be deemed to have been duly given when made upon a party by personal service at any place where they may be found or by mailing such notices, requests, or communications by certified mail, postage prepaid and return receipt requested, or by nationally recognized courier, or by transmitting such notice by facsimile, in each case to the following addresses or facsimile numbers, as the case may be:

- (a) If to BMRC: BULKOMATIC RAILROAD CORPORATION
c/o Bulkomatic Transport Company
2001 North Cline Avenue
Griffith, IN 46319
Facsimile: 219-972-7655
Attention: President

With a required copy to:

John R. Obiala
Vedder, Price, Kaufman & Kammholz
222 North LaSalle Street
Chicago, IL 60601-1003
Facsimile: 312-609-5005

- (B) If to CHSC: CHICAGO HEIGHTS SWITCHING COMPANY
Rural Route #1
Granville, IL 61326
Facsimile: (815) 339-6400
Attention: President

Either party may provide changes in the above addresses to the other party by a notice given to the other party in this Section 12.01.

Section 12.02 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

Section 12.03. Severability. If any provision in this Agreement shall for any reason be determined to be invalid or unenforceable, the balance of such provision and the remaining provisions of this Agreement shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable provision had not been a part hereof.

Section 12.04. Independent Contractors. Nothing herein contained shall be deemed to establish or otherwise create a relationship of principal and agent between the parties. Each party is an independent contractor and shall not be deemed an agent of the other party for any purpose whatsoever. Neither party, nor any of his agents or employees shall have any right or authority to

assume or create any obligation of any kind, whether express or implied, on behalf of the other party. Neither party shall make warranties or representations on behalf of the other party, except such as may be expressly approved in writing by the other party.

Section 12.05 Assignment. Neither party may assign the rights or obligations of such party under this Agreement without prior written consent of the other party. Any assignment in violation of this Agreement shall be void.

Section 12.06 Amendment of Agreement. This Agreement may be amended only upon the written approval of both parties to this Agreement or their permitted assigns, if applicable.

Section 12.07 Waiver. Any failure on the part of either party to enforce at any time, or for any period of time, any of the provisions of this Agreement shall not be deemed or construed to be a waiver of such provisions or of the right of such party thereafter to enforce each and every such provision.

Section 12.08 Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original copy hereof without production of the other counterparts, but all such counterparts constitute only one and the same agreement.

Section 12.09 Binding Effect. This Agreement has been duly authorized, executed and delivered by both parties and is the legal and binding obligation of the parties enforceable in accordance with its terms. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

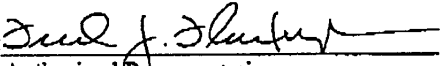
Section 12.10 Entire Contract. This Agreement contains the entire agreement between the parties hereto with respect to subject matter herein. This Agreement supersedes all prior negotiations, agreements, and oral or written understandings and agreements and may be amended

or supplemented only be a written instrument signed by both parties hereto. All representations, warranties, and covenants shall survive consummation or the transactions contemplated herein.

Section 12.11 Titles. The title of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

BULKMATIC RAILROAD CORPORATION

By: 
Authorized Representative

CHICAGO HEIGHTS SWITCHING COMPANY

By: 
Authorized Representative

Mar-27-2002 03:38pm From-T MCFARLAND

312 201 9695

T-395 P.011/025 F-393

Feb-26-2002 04:03pm From-T MCFARLAND

312 201 9695

T-247 P.009/013 F-164

Appendix 1-A

**TRACKAGE AT BULKMATIC DISTRIBUTION CENTER
CHICAGO HEIGHTS, IL**

	North to South	East to West
Track Number:	88 1635 ft to P.S.	73 1331 ft to P.S.
	87 1521 ft to P.S.	
	86 1508 ft to P.S.	74 1150 ft to Road
	85 1402 ft to P.S.	75 1221 ft to P.S.
	84 1399 ft to P.S.	76 Runaround 940 ft to P.S. to P.S.
	83 1374 ft to P.S.	77 960 ft to P.S.
	82 1239 ft to P.S.	78 1040 ft to P.S.
	81 1221 ft to P.S.	
	80 1343 ft to P.S.	
	79 1321 ft to P.S.	

TOTAL TRACKAGE - 20,605 feet equals 3.9 miles

Mar-27-2002 03:39pm From-T MCFARLAND

312 201 8695

T-395 P.012/025 F-393

Feb-26-2002 04:03pm From-T MCFARLAND

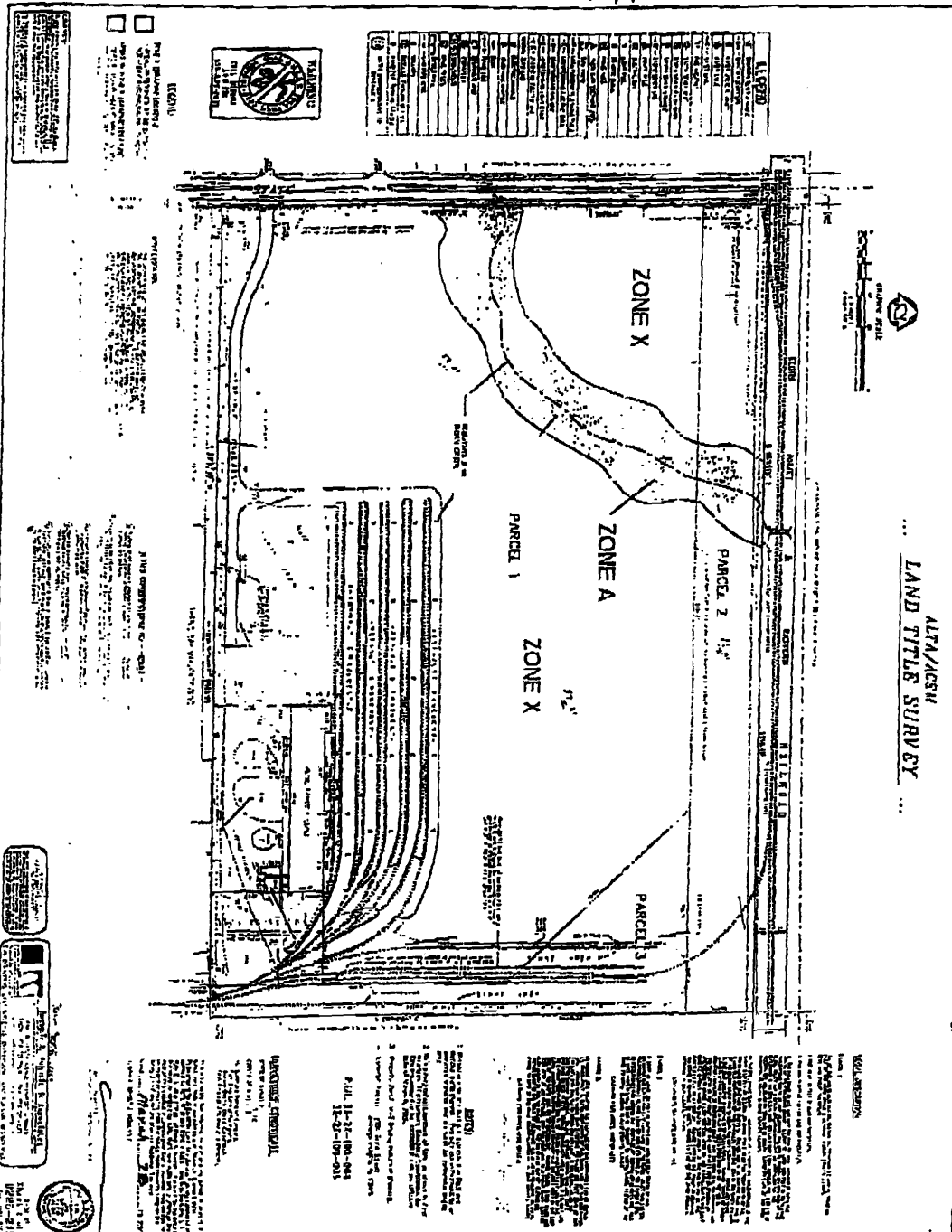
312 201 8806

T-247 P.010/013 F-184

002

WILLIAM NASH LTD

APPENDIX 1-B



Mar-27-2002 03:39pm From-T MCFARLAND

312 201 9695

T-395 P.013/025 F-393

Feb-26-2002 04:03pm From-T MCFARLAND

312 201 9885

T-247 P.011/013 F-184

APPENDIX 2

SCOPE OF WORK, COMPENSATION AND BILLING PROCEDURE

BULKMATIC RAILROAD CORPORATION (BMRC) and CHICAGO HEIGHTS SWITCHING COMPANY (CHSC) hereby agree to the following scope of work, compensation and billing procedure in accordance with Article Three of the Operating and Maintenance Agreement between them made and entered into as of March 27, 2002.

1. SCOPE OF WORK

A. Operation

CHSC will furnish a properly trained and qualified locomotive engineer and railroad switchman (collectively, operating crew) to provide railroad switching service as agent of BMRC and in the name of BMRC at the Bulkmatic Distribution Center, Chicago Heights, Illinois (work site). It is expected that the operating crew will work four hours per day four days per week (Monday through Thursday) and eight hours per day one day per week (Friday). If such railroad switching service does not occupy that number of hours of operation on any day, the operating crew shall utilize the remaining hours of any such day doing one or more of the following activities: (1) hand check track gauge within all tracks and turnouts; (2) clean and lubricate moving parts of all switches; (3) hand check bolts within switch and track areas; (4) perform other railroad-related projects as needed. At the reasonable request of BMRC from time to time, the operating crew will work a greater number of hours per day than the numbers identified

above.

BMRC will furnish a locomotive capable of performing the railroad switching service identified above. BMRC will maintain that locomotive in such manner that it is in condition adequate to perform the rail switching service identified above. CHSC will provide for use by the operating crew (1) a contractor vehicle with small tools and a generator; and (2) a set of hand radios.

B. Maintenance

The operating crew will perform light track maintenance and daily inspection of the trackage at the work site. CHSC will provide sufficient properly trained and qualified maintenance personnel to perform other maintenance activity, as needed (collectively, maintenance crew). The number of persons in a maintenance crew will vary depending on the maintenance work to be done. However, in most cases, a maintenance crew will consist of four persons. CHSC will provide equipment and tools as required for maintenance activity.

In order for BMRC to be able to monitor maintenance work adequately, CHSC shall present to BMRC for pre-approval an adequate description of any maintenance work for which CHSC has estimated that the cost for material and labor will amount to \$1,500 or more. Such maintenance work shall be performed only if approved by BMRC.

2. COMPENSATION

A. Operation

The operating crew shall be compensated at the rate of \$47.77 per hour per

Mar-27-2002 03:40pm From-T MCFARLAND

312 201 9695

T-395 P.015/025 F-393

Feb-26-2002 04:04pm From-T MCFARLAND

312 201 9695

T-247 P.013/013 F-164

person based on the 4-hour and 8-hour work days identified under the Scope of Work.

The operating crew shall be compensated at the rate of \$32.13 per hour (or fraction thereof) per person for additional hours per day when reasonably requested by BMRC to work such additional hours. Based on the 4-hour and 8-hour work days identified under the Scope of Work, the estimated compensation for operation would be \$119,235.60 per year. The operating crew shall be compensated at the rate of \$38.64 per hour (or fraction thereof) per person for hours worked in excess of 40 hours per week.

B. Maintenance

Maintenance work performed by the maintenance crew shall be charged for at a rate of \$32.11 per hour (or fraction thereof) per person for the maintenance crew, plus the actual cost of materials, and rental cost for any equipment, as needed. Based on the cost of maintenance in the year prior to the year of this Agreement, the estimated compensation for maintenance would be \$43,500.00.

3. BILLING

CHSC will submit invoices to BMRC twice per month, on the 1st and 15th day of each month, detailing amounts due for operation and for maintenance, shown separately, and the basis for such amounts.

BMRC will submit payment of such invoices promptly, but in no event later than 15 days after receipt thereof.

INDUSTRIAL BUILDING LEASE

THIS INDUSTRIAL BUILDING LEASE is made as of June 5, 1997 ("Lease"), by and between PORK CHOP LIMITED PARTNERSHIP, an Illinois limited partnership ("Lessor"), and BULKMATIC TRANSPORT COMPANY, an Illinois corporation ("Lessee").

WITNESSETH:

Lessor, in consideration of the rents herein reserved and the covenants herein set forth to be performed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Lessor, the premises hereinafter described upon the terms and conditions herein set forth.

1. Description of Leased Premises. The leased premises shall consist of approximately 98.446 acres of real estate located in the City of Chicago Heights, Cook County, Illinois, legally described in attached Exhibit A, and any and all improvements thereon from time to time existing or constructed and any and all easements and appurtenances thereto excluding approximately Forty Thousand (40,000) square feet in an industrial warehouse building located on the Premises and commonly known as 2351 State Street, Chicago Heights, Illinois for so long as such portion of such warehouse is leased by Lessor to Terminal Lift Services (the "Premises"). Upon termination of such Lease to Terminal Lift Services, such portion of such warehouse shall automatically be included in the Premises and subject to the terms of this Lease.

2. Term. The term of this Lease shall commence on June 5, 1997 (the "Commencement Date") and shall end on May 31, 1998 (the "Term"), unless this Lease is sooner terminated as herein set forth. Notwithstanding the foregoing, this Lease shall automatically renew for Terms of one year each, unless Lessee shall give written notice to Lessor of its election to terminate this Lease at least ninety (90) days prior to the end of the Term or extended Term of this Lease. This Lease shall not automatically renew at the end of the Term or any extended Term if Lessee is then in default of a material provision of this Lease.

3. Rent.

(a) Lessee shall pay to Lessor, commencing on April 30, 1997 and continuing on the last day of each month thereafter during the term of this Lease, without deduction or setoff, one-twelfth of the annual base rent determined in accordance with the provisions of this paragraph 3. In the event this Lease

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commences on a day other than the first day of a month or terminates on a day other than the last day of a month, base rent shall be pro-rated according to the number of days in the month this Lease was in effect. Base rent and all other charges due under this Lease shall be deemed to be rent and shall be payable and recoverable as provided in this Lease. Lessee's obligation to pay rent shall be independent of any other covenant of this Lease and shall survive the expiration or earlier termination of this lease.

(b) The annual base rent payable from the commencement date of this Lease and continuing through May 31, 1998 shall be equal to the Lessor's actual or reasonably projected payments of principal and interest with respect to the Premises plus ten percent (10%) of such amount.

(c) The annual base rent for any extended Term of this Lease shall be redetermined on the first day of each extended Term hereof using the formula set forth in subparagraph 3(b).

4. Condition of Premises. Lessee acknowledges that it has examined and knows the condition of the Premises, that it has received the same in good order and repair, that no representations as to the condition and repair thereof have been made by Lessor. Lessee agrees that upon termination of the Lease, in any way, it will yield up the Premises to Lessor in good condition and repair.

5. Use. The Premises may be used as an office, warehouse, transloading, tank cleaning and shipping facility and for any other lawful business purpose subject to the terms, provisions and conditions of this Lease. Lessee shall comply with all present and future laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting the Premises or the use thereof, whether or not any such laws, ordinances or regulations, whether now existing or hereafter enacted, involve a change of policy on the part of the governmental body enacting the same. Lessee shall not permit any unlawful occupation, business or trade to be conducted on the Premises or any use to be made thereof contrary to any law, ordinance or regulation.

6. Insurance. Lessee, at its own cost and expense, at all times during the term of this Lease, shall provide and keep in full force and effect the following insurance:

(a) Fire and Casualty. An "all-risk" casualty insurance policy with a replacement cost endorsement covering the Premises to its full replacement value;

(b) Liability. A comprehensive general liability insurance policy with a combined single limit of liability of not less than Three Million and No/100 Dollars (\$3,000,000);

(c) Boiler and Machinery. If applicable, a broad form boiler and machinery insurance policy with a replacement cost endorsement covering all equipment and machinery on the Premises customarily covered by such insurance to its full replacement value; and

(d) Flood. A flood insurance policy, in accordance with the provisions of the Flood Disaster Protection Act of 1973, as amended, if the area in which any improvements on the Premises are located is designated as "flood prone" or as a "flood risk area", as defined in said Act, in an amount of not less than the full replacement value of such improvements.

(e) Builders Risk. During construction, insurance against loss to the Premises on an "all risk" perils "builders risk," monthly reporting or nonreporting "completed value" form.

All policies of insurance required to be obtained and maintained under this Lease shall (i) be in a form and with companies acceptable to the Lessor, (ii) contain a waiver by the insurer of its right of subrogation, if any, against Lessor, (iii) shall contain an endorsement which, in substance, provides that no act of negligence on the part of the insured or any occupant of the Premises, and no occupancy or use of the Premises for any purpose more hazardous than that permitted by the terms of such policy, will affect the validity or enforceability of such insurance, (iv) on any liability risk policy name Lessor as an additional insured as its interests may appear and, on all other policies, shall have an endorsement in favor of and entitling the Lessor alone to collect any and all of the proceeds payable under such insurance. All such policies of insurance shall also require written notice from the insurer to the Lessor at least twenty (20) days prior to the expiration, cancellation or termination of any such policies. All policies of insurance, required to be maintained by Lessee under this Lease, together with evidence that the premiums therefor covering a period of not less than one (1) year have been paid, shall be deposited with Lessor, and, not less than thirty (30) days prior to the expiration of any such policy, Lessee shall deposit an appropriate renewal or replacement policy and evidence of the premium payment therefor as aforesaid. In the event Lessor, in its reasonable discretion, determines that any insurance provided by Lessee does not comply with the insurance requirements set forth herein, then Lessor shall notify Lessee of such non-compliance. If Lessee fails to cure such non-compliance within ten (10) days after notice for Lessor from Lessor may, at its own discretion, procure and substitute for any and all of the policies of insurance deposited as aforesaid such other policy or policies of insurance, in such amount and carried with such company as it may determine, and the cost therefor shall be repaid to Lessor by Lessee upon demand. Lessee shall furnish to Lessor upon request, without cost to Lessor, estimates or appraisals of insurable value, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building or buildings and improvements on the Premises.

Lessee shall not carry separate insurance concurrent in kind or form, and contributing in the event of any loss, with any insurance required hereunder.

7. Real Estate Taxes, Utilities and Other Services.

(a) Lessee shall pay all charges for water, sewer, electric, telephone and other utility service furnished to the Premises during the term of this Lease, and Lessee shall pay all taxes and assessments of every kind and nature, special or otherwise levied upon or with respect to the Premises. It is the intention of the parties that this shall be a net Lease with Lessee responsible for all costs relating to the Premises. Lessor shall have no obligation to provide any services to the Premises, and Lessor shall not be liable, by abatement of rent or otherwise, in the event Lessee is not able to operate its business in the Premises as a result of Lessee's failure to obtain utility or other service at the Premises.

(b) During the term of this Lease, Lessee shall pay when due and before the imposition of any penalty all real estate taxes, assessments (general or special), sewer rents, rates and charges, transit taxes, taxes based upon the receipt of rent, and any other federal, state or local government charge, general, special, ordinary or extraordinary (but not including income or franchise taxes or any other taxes imposed upon or measured by the Lessor's income unless the same shall be imposed in lieu of real estate taxes or other ad valorem taxes) and also including any professional fees and other charges incurred to reduce such taxes, which may be levied against the Premises and which are payable during any calendar year falling, in whole or in part, within the term of this Lease (such taxes and other charges hereinafter referred to as "Taxes"). In the event the term of this Lease includes only a portion of a calendar year, the Taxes shall be prorated for that portion of the calendar year falling within the term of this Lease.

8. Maintenance and Repair. Lessee, at its own cost and expense, at all times during the term of this Lease, shall keep the Premises and the improvements thereon in good order and repair (loss by fire or other casualty excepted) and in compliance with all laws and ordinances making all repairs, interior and exterior and structural and nonstructural, that may become necessary, and shall keep the Premises in a clean and healthful condition. Lessor, at its own cost and expense, shall keep the roof, structural walls and foundation of the improvements on the Premises in good order and repair and otherwise shall have no obligation to make any repairs or alterations to the Premises or to the improvements thereon or to provide any janitorial or maintenance service of any kind or nature.

9. Indemnity and Waiver.

(a) Lessee shall protect, indemnify and save Lessor, its partners, officers, employees and agents and their respective heirs, representatives and assignees, forever harmless from and against any and all liability, loss, damage, expense (including reasonable attorneys' fees), causes of action, suits, claims, demands or judgments of any nature whatsoever arising out of or relating to injury to persons or property on or about the Premises or in any manner growing out of or connected with Lessee's use or occupation of the Premises or the condition thereof.

(b) Lessee waives any and all claims it may have against Lessor for damage or injury to persons or property sustained by Lessee or any person claiming by, through or under Lessee resulting from any part of the Premises or any improvements or equipment located thereon being out of repair, from any accident on or about the Premises or, directly or indirectly from any act or neglect of any person (including Lessor to the extent permitted by law). All property belonging to Lessee or any officer, agent, employee, customer, or guest of Lessee that is in or on any part of the Premises shall be there at the risk of the Lessee or such other person only and Lessor shall not be liable for damage thereto for any reason whatsoever or for the theft or misappropriation thereof.

10. Liens. Lessee shall not permit the Premises to become subject to any mechanics', laborers' or materialmen's or other lien on account of labor, services or material furnished to Lessee, or claimed to have been furnished to Lessee, in connection with Lessee's operations or work of any character performed or claimed to have been performed on the Premises for or at the direction or sufferance of Lessee. In case of the filing of any such lien, Lessee will cause same to be discharged within thirty (30) days. Lessee may, however, contest in good faith and with reasonable diligence, the validity of any such lien or claimed lien, provided Lessee shall give reasonable security to Lessor as may be demanded by Lessor to prevent any sale or foreclosure of the Premises by reason of any such lien, Lessee shall immediately pay or otherwise satisfy any judgment or decree rendered, with all proper costs, charges and interest and shall at its own expense cause such lien to be released and any judgment satisfied, of record.

11. Alterations. All alterations or additions to the Premises made by Lessee shall be made at Lessee's sole cost and expense and in compliance with all of the terms of this Lease. Any alterations or additions so made shall become the property of Lessor upon termination of the Lease and remain for the benefit of Lessor without compensation or reimbursements to Lessee; provided, however, that Lessee shall, if so requested by Lessor upon termination of this Lease, be obligated to restore any portion of the Premises to the condition existing prior to any alteration or addition.

12. Subordination. This Lease and the rights of Lessee hereunder shall be and are hereby expressly made subject and subordinate to all ground or underlying leases and to the lien of any mortgages or deeds of trust now or hereafter existing against the Premises, and all renewals, modifications and extensions thereof and to all advances made or hereafter to be made on the security thereof. Such subordination shall be self-operating provided; however, that Lessee shall execute and deliver, upon the request of the Lessor, any and all instruments reasonably required by Lessor subordinating the Lease to any such ground Lease, underlying Lease, mortgage or deed of trust. Lessor is hereby irrevocably appointed and authorized as agent and attorney-in-fact of Lessee to execute all such subordination instruments in the event Lessee fails to execute said instruments within ten (10) days of any notice from Lessor requesting such execution.

13. Damage or Destruction.

(a) In the event the improvements located on the Premises shall be destroyed or damaged by fire or other casualty, Lessor shall have ninety (90) days following the date of damage or destruction within which to either elect to terminate this Lease, which termination shall be effective as of the date of damage or destruction, or, in its sole discretion, to declare its intent to repair the Premises. In the event Lessor does not elect to terminate the Lease, Lessee, regardless of cost, shall proceed with reasonable diligence to complete the necessary repairs and restore the Premises to substantially the same condition as that existing prior to the date of damage or destruction. Lessor, for the purpose of restoring the Premises, shall make available to Lessee the net insurance proceeds received by Lessor under any policy or policies covering the Premises.

(b) Notwithstanding any other provision of this Lease, if (i) the Premises are damaged or destroyed by fire or other casualty during the last two years of the term of this Lease and (ii) the repair or reconstruction would require more than one hundred eighty (180) days from the date of fire or other casualty, then Lessor may elect within sixty (60) days after such fire or other casualty, by written notice to lessee, not to have the Premises repaired or reconstructed and to terminate the Lease. If Lessor so elects to terminate the Lease, it shall pay to Lessee that amount, if any, of the insurance proceeds which has been specifically paid for the improvements made to the Premises by Lessee and Lessor shall retain the balance of such insurance proceeds.

14. Condemnation.

(a) If the whole of the Premises shall be taken or condemned for a public or quasi-public use or purpose by any competent authority, or if a portion of the Premises shall be so taken such that as a result thereof the balance cannot be used

for the purposes expressed herein, then in either of such events this Lease shall terminate upon delivery of possession to the condemning authority.

(b) If only a part of the Premises shall be so taken or condemned, and as a result thereof the balance of the Premises can be used for the purposes as expressed herein, this Lease shall not terminate and Lessor shall proceed to make a complete architectural unit of the remainder of the improvements on the Premises; provided, however, that Lessor shall not be required to expend therefore an amount greater than the award received from the condemning authority. There shall be an equitable abatement in rent following such partial taking or condemnation.

(c) Any award, compensation or damages made in connection with such condemnation shall be paid to and be the sole property of Lessor; provided that if Lessee has made permanent improvements to the Premises, Lessee shall be entitled to make a claim against the condemning authority for the fair and reasonable value of such improvements as are surrendered. Lessee shall continue to perform all of the covenants and provisions of this Lease, including the payment of rent, until Lessee is required to make delivery of possession to the condemning authority.

15. Access and Use by Lessor. Lessor shall have free access to the Premises upon reasonable notice to Lessee for purposes of examining or exhibiting same and shall have the right to place and maintain on the Premises at all times notice or notices of "For Sale" or "For Rent."

16. Sublease and Assignment. Lessee may assign this Lease or sublease all or any portion of the Premises upon prior written notice to Lessor. Assignment of this Lease or subletting all or any portion of the Premises shall not operate to relieve Lessee from any covenant or obligation hereunder.

17. Environmental. Lessee shall not bring, keep, discharge or release, or permit to be brought, kept, discharged or released, in, on, about or from the Premises any Hazardous Materials (as hereinafter defined) except to the extent such Hazardous Materials are necessary in the operation of Lessee's business, consistent with permitted uses under this Lease and approved in writing by Lessor, and, then, any Hazardous Materials shall be used, kept, stored and disposed of in strict accordance with all applicable federal, state and local laws, ordinances and regulations. Without limiting Lessee's obligations under Section 9 of this Lease, Lessee shall be liable for and shall defend, hold harmless and indemnify Lessor from and against any loss, cost, damage, expense (including reasonable attorneys' fees) or liability, or claims therefor, suffered by the Lessor due to the generation, treatment, storage, disposal or presence of any Hazardous Materials on, under, at or from the Premises, and Lessee shall be liable for compliance (and for all costs associated therewith) with any directive or order by any governmental agency or entity relating to the presence of any such Hazardous Materials on, under or at the Premises. The term Hazardous Materials shall

mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas useable for fuel; pesticide regulated under the Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. Section 136. et seq., asbestos and asbestos containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy of 1983; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. 1910.1200 et seq.; industrial process and pollution control wastes whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; and other materials and substances designated as hazardous or toxic under applicable federal, state or local laws, ordinances or regulations.

18. Lease Expiration. Lessee will, at the termination of this Lease by lapse of time or otherwise, yield up immediate possession to Lessor, and failing so to do, will pay to Lessor One Hundred Fifty Percent (150%) of the amount of all forms of rent then applicable for each month or portion thereof after the termination of this Lease and also will pay all costs sustained by Lessor on account thereof; but the provisions of this clause shall not be held as a waiver by Lessor of any right of re-entry as herein set forth nor shall the receipt of said rent or any part thereof, or any other act in apparent affirmance of tenancy, operate as an extension of the term of this Lease. Any such occupancy by Lessee shall be only as a holdover tenant at sufferance.

19. Default. Any one or more of the following events shall be considered an event of default as that term is used in this Section:

(a) Lessee's default in any payment of rent, or any payment required to be made by Lessee hereunder, when due and as provided herein and such default is not remedied within five (5) days after notice thereof to Lessee;

(b) Lessee's default in keeping, observing or performing any of the other covenants or agreements contained herein and such default is not remedied within thirty (30) days after notice thereof to Lessee;

(c) Lessee being late more than three (3) times in any twelve (12) month period in the payment of rent or other charges required to be paid hereunder or repeatedly failing to keep, observe or perform any other covenant or agreement contained herein whether or not Lessee shall have timely cured any such payment or other default after notice from Lessor to Lessee;

(d) Lessee abandoning the Premises or vacating same for a period of sixty (60) days or more during the term hereof;

(e) The Premises are levied upon by any revenue officer or similar officer; or

(f) Lessee suffers the appointment of a receiver, makes a general assignment for the benefit of creditor, becomes insolvent or is adjudged a bankrupt.

Upon the occurrence of any one or more of such events of default, Lessor may at its election terminate this Lease or terminate Lessee's right to possession only without terminating the Lease. Upon termination of the Lease, or upon any termination of the Lessee's right to possession without termination of the Lease, Lessee shall surrender possession and vacate the Premises immediately and deliver possession thereof to Lessor, and hereby grants to Lessor the full and free right, without demand or notice of any kind to Lessee, to enter into and upon the Premises as Lessor's former estate and to expel or remove Lessee and any others who may be occupying or within the Premises without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom and without relinquishing Lessor's rights to rent or any other right given to Lessor hereunder or by operation of law. Upon termination of the Lease, Lessor shall be entitled to recover as damages all rent and other sums due and payable by Lessee on the date of termination, plus (i) an amount equal to the value of the rent and other sums provided herein to be paid by Lessee for the residue of the stated term hereof and (ii) the cost of performing any other covenants to be performed by Lessee. If Lessor elects to terminate Lessee's right to possession only without terminating the Lease, Lessor may, at Lessor's option, enter into the Premises, remove Lessee's signs and other evidences of tenancy, and take and hold possession thereof as hereinabove provided, without such entry and possession terminating the Lease or releasing Lessee, in whole or in part, from Lessee's obligations to pay the rent hereunder for the full term or from any other of its obligations under this Lease. Lessor may relet all or any part of the Premises for such rent and upon such terms as shall be satisfactory to Lessor (including the right to relet the Premises as a part of a larger area, and the right to change the character or use made of the Premises). For the purpose of such reletting, Lessor may decorate or make any repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient. If Lessor does not relet the Premises, Lessee shall pay to Lessor on demand damages equal to the amount of the rent, and other sums provided herein to be paid by Lessor for the remainder of the Lease term. If the Premises are relet and a sufficient sum shall not be realized from such reletting after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting and the collection of the rent accruing therefrom (including, but not by way of limitation, attorneys' fees and brokers' commissions), to satisfy the rent and other charges herein provided to be paid

for the remainder of the Lease term, Lessee shall pay to Lessor on demand any deficiency and Lessee agrees that Lessor may file suit to recover any sums falling due under the terms of this Section from time to time. If Lessee shall default under subsection (b) hereof and if such default cannot with due diligence be cured within said period of ten (1) days after notice in writing shall have been given to Lessee, and if Lessee promptly commences to eliminate the cause of such default, then Lessor shall not have the right to declare said term ended by reason of such default or to repossess without terminating the Lease so long as Lessee is proceeding diligently and with reasonable dispatch to take all steps and do all work required to cure such default, and does so cure such default, provided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of Lessor to declare the said term ended or to repossess without terminating the Lease and to enforce all of its rights and remedies hereunder for any other default not timely cured.

No remedy herein or otherwise conferred upon or reserved to Lessor shall be considered to exclude or suspend any other remedy but the same 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, and every power and remedy given by this Lease to Lessor may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

20. Lessor's Option to Cure. If Lessee shall default in the performance of any covenant required to be performed by it by virtue of any provision in this Lease, Lessor may (but shall not be obligated to) perform the same for the account and at the expense of Lessee immediately after first giving notice to Lessee of its intention to do so. If Lessor at any time is compelled to pay, or elects to pay, any sum of money, or do any act which will require the payment of any sum of money, by reason of the failure of Lessee to comply with any provision hereof, or, if Lessor is compelled to incur any expense, including reasonable attorneys' fees and costs of litigation, in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of Lessee hereunder, the sum or sums so paid by Lessor, together with all interest, penalties, costs and damages, shall be deemed to be an additional rent and shall be immediately due from Lessee to Lessor upon notice from Lessor to Lessee stating the amount so due.

21. Late Charge and Attorneys' Fees. Any amount not paid when due shall bear interest at the rate of four (4) percentage points over the prime or base rate in effect, from time to time, announced as such prime or base rate at the First National Bank of Chicago or the maximum rate permitted by law, whichever is less. Lessee shall pay and discharge all reasonable costs, attorneys' fees and expenses that may be incurred by Lessor in enforcing the covenants and agreements of this Lease.

22. Waiver. No waiver by Lessor of any breach by Lessee of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any

subsequent breach of the same or of any other obligation, agreement or covenant, nor shall any delay or forbearance by Lessor to seek a remedy for any breach by Lessee be deemed a waiver by Lessor of its rights and remedies with respect to such breach or any subsequent breach. The acceptance by Lessor of any payment of rent or other charges hereunder after the termination by Lessor of this Lease or of Lessee's right to possession hereunder shall not, in the absence of agreement in writing to the contrary by Lessor, be deemed to restore this Lease or Lessee's right to possession hereunder, as the case may be, but shall be construed as a payment on account and not in satisfaction of damages due from Lessee to Lessor.

23. Option to Purchase.

(a) From and after the Commencement Date, Lessor hereby grants to Lessee the exclusive option to purchase the Premises during the term or any extended term of this Lease. The purchase price shall be mutually agreed upon at the time Lessee exercises its purchase option. To exercise its purchase option, Lessee must (a) give written notice of its election to do so not later than one hundred eighty (180) days before the anticipated closing date, (b) pay to Lessor in cash the sum of \$10,000.00 to be applied to the purchase price of the Premises or retained by Lessor upon Lessee's default according to this paragraph, and (c) not be in material default of this Lease on the date of such notice. If Lessee exercises its purchase option, and provided Lessee is not then in material default of this Lease, then on a date which is not less than 180 days or more than 210 days after the date of Lessee's notice of exercise of the option, Lessee shall pay to Lessor in cash (a portion of which may be the proceeds of a loan) the purchase price for the Premises, and Lessor will convey the Premises to Lessor by general warranty deed containing no exceptions except ad valorem taxes for the year of such conveyance (which will be prorated as of the date of such conveyance), public utility easements, building and zoning codes and ordinances affecting the Premises and any other covenants, conditions and restrictions of record that do not adversely affect the use of the Premises by Lessee for Lessee's intended purposes in Lessee's sole discretion. Rent due under this Lease with respect to the Premises will be paid current at the time of closing of Lessee's purchase of the Premises.

(b) Closing of the purchase of the Premises will take place in the City of Chicago, Illinois, at the title company issuing the title insurance therefor in the amount of the Purchase Price subject only to the permitted exceptions described above to be furnished by Lessor to Lessee in connection with such sale. This Lease will continue until the closing, and the exercise of its option will not relieve Lessee of any of its obligations, covenants, or agreements under this Lease. Upon the closing, this Lease will end provided that any prepaid rents are credited against the purchase price. If the then-existing term of this Lease expires while the closing of the purchase of the Premises is pending, this Lease will be extended from day to day at the then-existing rent and daily additional rental until closing has occurred. Lessor and Lessee

agree to cooperate in order to assure the closing of any sale and purchase of the Premises prior to the expiration of this Lease. Failure on the part of Lessee to tender the agreed consideration for the Premises will not constitute a default under this Lease, but will entitle Lessor to retain the \$10,000.00 tendered by Lessee as liquidated damages for Lessee's failure to perform. The terms of this paragraph will bind and benefit Lessor and Lessee and their respective successors and assigns.

24. **Lessee's Right of Refusal.** In addition to its option to purchase, Lessee shall have the right of first refusal to purchase the Premises as set forth herein. If, at any time during the term or any extended term of this Lease prior to Lessee's exercise of its option to purchase, Lessor shall receive a bona fide offer from a third person for the purchase of the Premises, which offer Lessor shall desire to accept, Lessor shall promptly deliver to Lessee a copy of such offer, and Lessee may, within 15 days thereafter, elect (a) to exercise Lessee's option to purchase as set forth in Paragraph 23, or (b) to purchase the Premises on the same terms as those set forth in such offer, excepting that Lessee shall be credited, against the purchase price to be paid by the Lessee, with a sum equal to the amount of any brokerage commission, if any, which Lessor shall save by a sale to Lessee. If Lessor shall receive an offer for the purchase of the Premises, which is not consummated by delivering a deed to the offeror, Lessee's right of first refusal shall remain applicable to subsequent offers. If Lessor shall sell the Premises after a failure of Lessee to exercise its right of first refusal, such sale shall be subject to this Lease, and the right of first refusal shall continue and shall be applicable to subsequent sales of the Premises. If the Premises shall be conveyed to the Lessee under this right of first refusal, any prepaid rent shall be apportioned and applied on account of the purchase price.

25. **Notices.** Any notice or designation provided for herein shall be in writing and shall be given either by personal service, by private courier or sent by United States certified or registered mail, return receipt requested with all postage and fees prepaid, addressed as follows:

If to Lessor:

Pork Chop Limited Partnership
2001 N. Cline Avenue
Griffith, Indiana 46319
Attn: General Partner

If to Lessee:

Bulkmatic Transport Company
2001 N. Cline Avenue
Griffith, Indiana 46319
Attn: President

Any notice given by mail shall be deemed delivered on the date mailed if given in accordance with this Section. The person and places to which notices are to be mailed may be changed from time to time by either party upon written notice to the other.

26. **Nature of Covenants, Binding Effect.** All of the covenants, agreements, conditions and undertakings in this Lease shall extend and inure to and be binding upon the parties hereto and their permitted successors and assigns, the same as if they were in every case specifically named, and shall be construed as covenants running with the land.

27. **Captions.** The captions of the Sections of this Lease are for convenience only and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

28. **Applicable Law.** This Lease shall be construed and enforced in accordance with the laws of Illinois.

29. **Interpretation.** If any provision of this Lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Lease and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. The table of contents, captions, headings and titles, if any, in this Lease are solely for convenience of reference and shall not affect its interpretation. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. The word "person" as used in this Lease shall mean a natural person or persons, a partnership, a corporation or any other form of business or legal association or entity.

30. **Liability of Lessor.** Lessee shall have recourse to Lessor's estate and interest in the Premises for the satisfaction of any judgment (or other judicial process) in the event of any default by Lessor under this Lease and Lessee shall have no right or claim against any other property or assets of Lessor.

31. **Complete Agreement.** This Lease constitutes the complete and exclusive agreement between the parties and all previous agreements with respect to the subject matter contained herein, whether written or oral, are superseded by this Lease.

IN WITNESS WHEREOF, the parties hereto have signed this Lease as of the date first above written.

LESSOR:

PORK CHOP LIMITED PARTNERSHIP

By: Bulkmatic Transport Company
Its: General Partner

By:

Its:

LESSEE:

BULKMATIC TRANSPORT COMPANY

By:

Its:

SUBLEASE

THIS SUBLEASE (this "Sublease") is made and entered into as of the 1st day of January, 2002, by and between BULKMATIC TRANSPORT COMPANY, an Illinois corporation (hereinafter called "Sublessor"), and BULKMATIC RAILROAD CORPORATION, a Delaware corporation (hereinafter called "Sublessee");

WITNESSETH:

WHEREAS, by that certain Industrial Building Lease dated as of June 5, 1997, a copy of which is attached hereto as Exhibit A and by this reference made a part hereof (hereinafter called the "Prime Lease"), Pork Chop Limited Partnership, an Illinois limited partnership (hereinafter, together with its successors and assigns, called "Lessor"), leased to Sublessor approximately 98.446 acres of real estate in the City of Chicago Heights, Cook County, Illinois, legally described in the Prime Lease (the "Premises"), and the improvements thereon with the exception of approximately Forty Thousand (40,000) square feet in an industrial warehouse building located on the Premises and commonly known as 2351 State Street, Chicago Heights, Illinois for so long as such portion of such warehouse is leased by Lessor to Terminal Lift Services (the "Improvements"); the Premises and the Improvements collectively referred to hereinafter as the "Premises");

WHEREAS, the initial term of the Prime Lease commenced on June 5, 1997 and ended on May 31, 1998 (the "Term"), and, pursuant to the Prime Lease, is automatically renewed for Terms of one year each, unless Sublessor gives notice of termination to Lessor as provided in the Prime Lease;

WHEREAS, Sublessor has not provided notice of termination and the Prime Lease is currently in full force and effect for the Term commencing June 1, 2001 and ending May 31, 2002, with automatic renewal as aforesaid;

WHEREAS, Sublessee desires to sublease from Sublessor, and Sublessor desires to sublease to Sublessee, the Premises upon the terms and subject to the conditions and provisions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Sublessor and Sublessee hereby agree as follows:

1. ***Demise; Use.*** Sublessor hereby leases to Sublessee and Sublessee hereby leases from Sublessor the Premises for the term and the rental and upon such other terms and conditions as are hereinafter set forth, to be used and occupied by Sublessee solely for the purposes permitted under the Prime Lease and for no other purpose.
2. ***Term.*** The initial term of this Sublease shall commence (the "Commencement Date") on the date upon which Sublessor delivers possession of the Premises to Sublessee and, unless sooner terminated pursuant to the provisions hereof, shall end on May 31, 2002. Notwithstanding the foregoing, this Sublease shall automatically renew for Terms of one (1) year each, unless Sublessee shall give written notice to Sublessor of its election to

terminate this Sublease at least one hundred twenty (120) days prior to the end of the Term or extended Term of this Sublease.

3. ***Rent.***

- (a) Beginning on the Commencement Date, and continuing through and including the term of this Sublease, Sublessee shall, as directed by Sublessor, pay all rent and any additional rent either to Sublessor or directly to Lessor in the manner and subject to the terms and conditions of the Prime Lease.
- (b) Sublessee shall also pay to Sublessor or directly to Lessor as directed by Sublessor all other amounts required to be paid by Sublessor under the Prime Lease which are attributable to the Premises or attributable to Sublessee, its agents, employees, customers or invitees.
- (c) All past due installments of rent or additional rent shall bear interest from the date due until paid at the rate and on the terms and conditions set forth in the Prime Lease.

4. ***Condition of Premises and Construction of Improvements.*** Sublessee's taking possession of the Premises shall be conclusive evidence as against Sublessee that the Premises were in good order and satisfactory condition when Sublessee took possession. No promise of Sublessor to alter, remodel or improve the Premises, except as may be expressly provided herein, and no representation respecting the condition of the Premises have been made by Sublessor to Sublessee. Upon the expiration of the term hereof, or upon any earlier termination of the term hereof or of Sublessee's right to possession, Sublessee shall surrender the Premises in at least as good condition as of the date hereof, ordinary wear and tear excepted.

5. ***The Prime Lease.***

- (a) This Sublease and all rights of Sublessee hereunder with respect to the Premises are subject to and shall, unless otherwise provided in this Sublease, be governed by the terms, conditions and provisions of the Prime Lease. Sublessee hereby assumes and agrees to perform faithfully and be bound by, with respect to the Premises, all of Sublessor's obligations, covenants, agreements and liabilities under the Prime Lease and all terms, conditions, provisions and restrictions contained therein.
- (b) Without limitation of the foregoing:
 - (i) Sublessee shall not make any changes, alterations or additions in or to the Premises except as otherwise expressly provided herein;
 - (ii) If Sublessee desires to take any other action and the Prime Lease would require that Sublessor obtain the consent of Lessor before undertaking any action of the same kind, Sublessee shall not undertake the same without the prior written consent of Sublessor. Sublessor may condition its

consent on the consent of Lessor being obtained and may require Sublessee to contact Lessor directly for such consent;

- (iii) All rights given to Lessor and its agents and representatives by the Prime Lease to enter the premises covered by the Prime Lease shall inure to the benefit of Sublessor and their respective agents and representatives with respect to the Premises;
 - (iv) Sublessor shall also have all other rights, and all privileges, options, reservations and remedies, granted or allowed to, or held by, Lessor under the Prime Lease;
 - (v) Sublessee shall maintain insurance of the kinds and in the amounts required to be maintained by Sublessor under the Prime Lease. All policies of liability insurance shall name as additional insureds the Lessor and Sublessor and their respective officers, directors or partners, as the case may be, and the respective agents and employees of each of them; and
 - (vi) Sublessee shall not do anything or suffer or permit anything to be done which could result in a default under the Prime Lease or permit the Prime Lease to be cancelled or terminated.
- (c) Notwithstanding anything contained herein or in the Prime Lease which may appear to be to the contrary, Sublessor and Sublessee hereby agree as follows:
- (i) Sublessee shall not, without the prior written consent of Sublessor, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Sublease or any interest of Sublessee in this Sublease, by operation of law or otherwise, or permit the use of the Premises or any part thereof by any persons other than Sublessee and Sublessee's employees, or sublet the Premises or any part thereof; and
 - (ii) In the event of any conflict between the terms, conditions and provisions of the Prime Lease and of this Sublease, the terms, conditions and provisions of this Sublease shall, in all instances, govern and control.
- (d) It is expressly understood and agreed that Sublessor does not assume and shall not have any of the obligations or liabilities of Lessor under the Prime Lease and that Sublessor is not making the representations or warranties, if any, made by Lessor in the Prime Lease. With respect to work, services, repairs and restoration or the performance of other obligations required of Lessor under the Prime Lease, Sublessor's sole obligation with respect thereto shall be to request the same, upon written request from Sublessee, and to use reasonable efforts to obtain the same from Lessor. Sublessor shall not be liable in damages, nor shall rent abate hereunder, for or on account of any failure by Lessor to perform the obligations and duties imposed on it under the Prime Lease.

- (e) Nothing contained in this Sublease shall be construed to create privity of estate or contract between Sublessee and Lessor, except the agreements of Sublessee in Sections 10 and 11 hereof in favor of Lessor, and then only to the extent of the same.
6. ***Default by Sublessee.***
- (a) Upon the happening of any of the events considered an "event of default" under the Prime Lease, Sublessee shall be deemed to be in default hereunder, and Sublessor may exercise, without limitation of any other rights and remedies available to it hereunder or at law or in equity, any and all rights and remedies of Lessor set forth in the Prime Lease in the event of a default by Sublessor thereunder.
- (b) In the event Sublessee fails or refuses to make any payment or perform any covenant or agreement to be performed hereunder by Sublessee, Sublessor may make such payment or undertake to perform such covenant or agreement (but shall not have any obligation to Sublessee to do so) and Sublessee shall reimburse Sublessor therefor, together with all interest, costs, expenses and attorney's fees incurred by Sublessor at the rate and upon the terms and conditions governing amounts not paid when due under the Prime Lease.
7. ***Nonwaiver.*** Failure of Sublessor to declare any default or delay in taking any action in connection therewith shall not waive such default. No receipt of moneys by Sublessor from Sublessee after the termination in any way of the Term or of Sublessee's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the term or affect any notice given to Sublessee or any suit commenced or judgment entered prior to receipt of such moneys.
8. ***Cumulative Rights and Remedies.*** All rights and remedies of Sublessor under this Sublease shall be cumulative and none shall exclude any other rights or remedies allowed by law.
9. ***Waiver of Claims and Indemnity.***
- (a) Sublessee hereby releases and waives any and all claims against Lessor and Sublessor and each of their respective officers, directors, partners, agents and employees for injury or damage to person, property or business sustained in or about the Premises by Sublessee other than by reason of gross negligence or willful misconduct and except in any case which would render this release and waiver void under law.
- (b) Sublessee agrees to indemnify, defend and hold harmless Lessor and its beneficiaries, Sublessor and the managing agent of the Premises, if any, and each of their respective officers, directors, partners, agents and employees, from and against any and all claims, demands, costs and expenses of every kind and nature, including attorneys' fees and litigation expenses, arising from Sublessee's occupancy of the Premises, Sublessee's construction of any leasehold

improvements in the Premises or from any breach or default on the part of Sublessee in the performance of any agreement or covenant of Sublessee to be performed or performed under this Sublease or pursuant to the terms of this Sublease, or from any act or neglect of Sublessee or its agents, officers, employees, guests, servants, invitees or customers in or about the Premises. In case any such proceeding is brought against any of said indemnified parties, Sublessee covenants, if requested by Sublessor, to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Sublessor.

10. ***Waiver of Subrogation.*** Anything in this Sublease to the contrary notwithstanding, Sublessor and Sublessee each hereby waive any and all rights of recovery, claims, actions or causes of action against the other and the officers, directors, partners, agents and employees of each of them, and Sublessee hereby waives any and all rights of recovery, claims, actions or causes of action against Lessor and its agents and employees for any loss or damage that may occur to the Premises covered by the Prime Lease, or any improvements thereto, or any personal property of any person therein, by reason of fire, the elements or any other cause insured against under valid and collectible fire and extended coverage insurance policies, regardless of cause or origin, including negligence, except in any case which would render this waiver void under law, to the extent that such loss or damage is actually recovered under said insurance policies.
11. ***Successors and Assigns.*** This Sublease shall be binding upon and inure to the benefit of the successors and assigns of Sublessor and Sublessee and the provisions of Subsection 6(e) and Sections 10 and 11 hereof shall inure to the benefit of the successors and assigns of Lessor.
12. ***Entire Agreement.*** This Sublease contains all the terms, covenants, conditions and agreements between Sublessor and Sublessee relating in any manner to the rental, use and occupancy of the Premises. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect. The terms, covenants and conditions of this Sublease cannot be altered, changed, modified or added to except by a written instrument signed by Sublessor and Sublessee.
13. ***Notices.***
 - (a) In the event any notice from the Lessor or otherwise relating to the Prime Lease is delivered to the Premises or is otherwise received by Sublessee, Sublessee shall, as soon thereafter as is reasonably possible, deliver such notice to Sublessor.
 - (b) Notices and demands required or permitted to be given by either party to the other with respect hereto shall be given in the manner provided in the Prime Lease, addressed as follows:

if to Sublessor: Bulkmatic Transport Company
2001 N. Cline Avenue
Griffith, Indiana 46319
Attn: President

if to Sublessee: Bulkmatic Railroad Company
c/o Bulkmatic Transport Company
2001 N. Cline Avenue
Griffith, Indiana 46319
Attn: President

Either party may change its address for receipt of notices by giving notice to the other party.

14. **Authority of Sublessee, etc.** Sublessee represents and warrants to Sublessor that this Sublease has been duly authorized, executed and delivered by and on behalf of Sublessee and constitutes the valid, enforceable and binding agreement of Sublessee and of each party constituting Sublessee, each of whom shall be jointly and severally liable hereunder in accordance with the terms hereof.
15. **Consent of Lessor.** By Lessor's execution of this Sublease as set forth below, Lessor does hereby acknowledge the receipt and adequacy of Sublessor's notice of the Sublease of the Premises to Sublessee as required by Section 16 of the Prime Lease.

IN WITNESS WHEREOF, Sublessor and Sublessee have executed this Sublease as of the date aforesaid.

SUBLESSOR:

BULKMATIC TRANSPORT COMPANY, an
Illinois corporation

ATTEST:

By: Heena Blythe
Its: _____

By: Paul J. Shanker
Its: Vice Pres. & Finance

SUBLESSEE:

BULKMATIC RAILROAD CORPORATION,
a Delaware corporation

ATTEST:

By: Cheryl L. Stach
Its: _____

By: Paul J. Shanker
Its: President

EXHIBIT A

[See Prime Lease Attached]

LOCOMOTIVE LEASE AGREEMENT

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease"), entered into as of this 27 day of March, 2002, between Bulkmatric Railroad Corporation ("Lessor") and Chicago Heights Switching Company ("Lessee").

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. LEASE AND LEASED PROPERTY

Lessee hereby leases from Lessor the locomotive ("Locomotive"), together with the parts, accessories, attachments and devices, if any, now or hereafter affixed hereto, as described in Schedule "A" attached to and made part hereof.

2. TERM

Subject to earlier termination as provided herein, the term of this Lease shall be one year from the date of this Agreement; provided, however, that this Lease shall be renewed automatically for additional one-year periods unless, no later than 60 days before its expiration, either Lessor or Lessee provides written notice to the other party of its intent not to renew this Lease. Upon termination of the Lease, Lessee shall effect prompt delivery of the Locomotive to Lessor at the Premises (as hereinafter defined). Notwithstanding the foregoing, this Lease shall terminate immediately upon the termination of the Operating Agreement between the parties dated January 1, 2002 (the "Operating Agreement").

3. RENTAL

A. The rental payable shall be the sum identified in Schedule "A" payable in advance annual installments. Unless prior written authorization is obtained from Lessor, Lessee shall operate the Locomotive in service solely on the tracks and facilities of the Bulkmatric Railroad Corporation in Chicago Heights, Illinois (the "Premises") in connection with the performance of services under the Operating Agreement.

B. All rentals shall be paid to Lessor at:

Bulkmatric Railroad Corporation
2001 South Cline Avenue
Griffith, Indiana 46319

or such other address as Lessor may direct in writing.

4. TAXES

Lessor shall pay all use, excise, ad valorem, stamp, documentary and similar taxes on or relating to this lease of the Locomotive, or the use, registration, rental maintenance, possession or operation thereof, and shall file any returns required therefor.

5. OWNERSHIP AND LESSOR'S INSPECTION

A. The Locomotive shall at all times remain the sole and exclusive property of the Lessor.

B. Upon reasonable notice to Lessee, Lessor or its agents shall have free access to the Locomotive at reasonable times for the purpose of inspections and, as further set forth in paragraph 8C hereof, for performing of switching operations when Lessee personnel are not present and available at the Premises.

C. No accessions, additions, alterations or improvements to the Locomotive of any nature shall be made without Lessor's consent, but if any are made, they immediately shall become part of the Locomotive and shall become Lessor's property.

D. This Lease is intended to be a true lease of the Locomotive and shall not be construed as creating a sale of the Locomotive to Lessee.

6. DELIVERY/RETURN

Lessee shall accept delivery of the Locomotive at the Premises. Upon expiration or other termination of this Lease, Lessee shall return the Locomotive to Lessor at the Premises in good order and condition, that being the same condition as the Locomotive was in at the commencement of this Lease, reasonable wear and tear excepted. Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the Locomotive to good order and condition.

7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER

A. i. Lessee hereby acknowledges that Lessee has had or will have the opportunity to inspect the Locomotive prior to accepting delivery of same, and that acceptance of delivery of the Locomotive by Lessee constitutes acknowledgement that it has been received in good condition and repair.

ii. Lessor shall be responsible for the non-consumables maintenance of the Locomotive during the term of this Lease. Lessor shall also be responsible for the consumables, including water, oil, diesel fuel, all locomotive fluids, sand, wheels, brake shoes, fuel, traction motor/generator brushes and all associated locomotive filters. The Lessor point of contact for maintenance shall be Bulkmaric Railroad Corporation in Griffith, Indiana, 219/972-7630.

B. Delivery to and acceptance of the Locomotive by Lessee shall constitute Lessor's acknowledgement that Lessee is satisfied that the Locomotive is suitable for Lessee's purpose and that LESSOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE. Lessor hereby disclaims all such representation and warranties.

8. USE AND MAINTENANCE

Lessee agrees that:

A. The Lessee's use and operation of the Locomotive shall be confined to the Premises, unless prior written authorization is obtained from Lessor.

B. Lessee shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities, whether required to be obtained in the name of the Lessor or Lessee.

C. The Locomotive shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee, provided that, when Lessee's personnel are not present and available at the Premises, and switching service is required, the Lessor's qualified employees are authorized to operate the Locomotive for this purpose.

D. Lessee shall comply with all federal, state, municipal and local laws, ordinances, rules and regulations relating to the lease, possession, insuring, use and operation of the Locomotive.

E. Lessee shall be solely responsible for the payment of any and all fines, penalties, or forfeitures (including without limitation the confiscation of the Locomotive) levied upon or arising out of the use, operation, maintenance or insuring of the Locomotive in violation of any law, ordinance, rule or regulation of any governmental authority.

F. Lessee shall keep and maintain any and all books and records and make any filings required by any governmental authority with respect to the possession, lease, use or operation of the Locomotive.

9. INSURANCE

A. Public liability insurance providing coverage in an amount not less than three million dollars (\$3,000,000) combined single limit per occurrence shall be provided by Lessee at Lessee's sole expense throughout the term of this Lease as to the Locomotive. The insurance policy or policies providing the foregoing coverage shall:

i. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in Illinois.

ii. name Lessor and Lessee as insured parties.

iii. protect the interests of Lessor and Lessee, including Lessee's authorized operators, with respect to liability for injuries to or the death of third persons and damage to or loss of use of property of third persons resulting from the ownership, maintenance, use or operation of the Locomotive.

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. Provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty (30) days prior thereto.

B. Lessee, at Lessee's sole expense, shall provide collision and comprehensive physical damage insurance on the Locomotive. The insurance policy or policies providing the foregoing coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value of the locomotives.
- iii. provide for losses to be payable to Lessor and Lessee as their respective interests may appear.

C. Lessee shall furnish Lessor with a certificate of insurance or other evidence of said insurance coverage.

D. If Lessee shall fail to obtain or maintain the insurance coverage required in this Lease, or shall fail to furnish Lessor with evidence thereof, Lessor at its option, may obtain such required insurance coverage, on behalf of Lessee and Lessee's expense.

10. INDEMNIFICATION

Each party will be responsible for and will indemnify and hold harmless the other party and that party's officers, agents, employees and affiliates, from and against any and all liability, loss, damages, claims, suits, judgments, costs and expenses (including without limitation attorneys' fees) resulting from or in connection with injury to or death of any persons whomsoever, or damage to or loss of any property whatsoever, caused directly or indirectly by any of its acts or omissions relating to the use or operation of the Locomotive; provided, however, that a party's obligation to indemnify and hold harmless the other party shall not apply to the extent that any such injury, death, damage or loss is contributed to or caused by the negligence or wrongful act(s) or omission(s) of such other party. Where such loss, damage, injury or death shall be caused by the acts or omissions of both parties, each party shall be responsible for and indemnify the other party in the proportion its act or omission contributes to said loss, damage, injury or death.

11. ASSIGNMENT. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVE. Lessor may assign its interest in this Lease and sell or grant a security interest in all or any part of the Locomotive without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this Lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respect to, the terms of this Lease.

12. DEFAULT

A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default"):

- i. Default in the payment when due of any installment of rental under or of any other obligation for the payment of money now or hereafter owed by Lessee to Lessor.
- ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee.

13. REMEDIES UPON DEFAULT

A. Upon the occurrence of any Event of Default or at any time hereafter, Lessor, in its sole discretion, may take any one or more of the following actions with respect to the locomotive:

- i. Terminate the Lease of this Locomotive by written notice to Lessee.
- ii. Whether or not the Lease is terminated, take possession of the Locomotive wherever found.
- iii. Use, hold, sell, lease or otherwise dispose of the Locomotive as Lessor in its sole discretion may decide.
- iv. Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof or to rescind the Lease of the Locomotive.
- v. Exercise any and all rights and remedies available to Lessor under any applicable law. In addition, Lessee shall be charged with and shall pay to Lessor all reasonable costs and expenses of Lessor incurred as a result of each Event of Default by Lessee.

B. None of the rights and remedies under or referred to in this paragraph 13 is intended to be exclusive, but each such right or remedy shall as to the Locomotive be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to Lessor at law or in equity. To the extent permitted by applicable law, LESSEE WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF THE LOCOMOTIVE BY LESSOR AS A RESULT OF ANY EVENT OF DEFAULT HEREUNDER BY LESSEE.

C. Without limitation of any rights of Lessor otherwise existing or otherwise available to Lessor, it is expressly covenanted and agreed by the parties hereto that in the event of any assignment by operation of law of this Lease or of any lease hereunder, or of a bankruptcy of Lessee within the meaning of the federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

14. RECORDATION OF LESSOR'S INTEREST

Lessee agrees to execute all recording documents requested by Lessor to show Lessor's interest in the locomotive. Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the locomotive without Lessee's signature.

15. MISCELLANEOUS

A. This Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois.

B. Neither this Lease nor any schedule shall be amended, and no provision hereof or of any Schedule shall be waived or varied unless by a writing signed by the parties.

C. No delay or omission by Lessor in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor of any Event of Default by Lessee shall not be construed as a waiver of any future occasion.

D. In case any provision (or portions thereof) in this Lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions (or portions thereof) hereby shall not in any way be affected or impaired thereby.

E. This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors and permitted assigns.

F. All notices permitted or required to be given pursuant to this Lease shall be given by Certified or Registered Mail, Return Receipt Requested to the parties at the following addresses or at such other addresses as each party may notify the other.

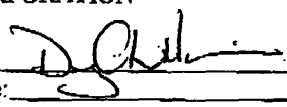
If to Lessor: Bulkmatic Railroad Corporation
2001 North Cline Avenue
Griffith, Indiana 46319

If to Lessee: Chicago Heights Switching Company
Rural Route #1
Granville, Illinois 61326

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first mentioned above.

LESSOR:

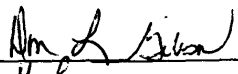
BULKMATIC RAILROAD
CORPORATION

By: 

Title: _____

LESSEE:

CHICAGO HEIGHTS SWITCHING
COMPANY

By: 

Title: W. L.

SCHEDULE "A"

Attached to and incorporated into the Lease dated 27 of March, 2002 by and between Bulkmatic Railroad Corporation (Lessor) and Chicago Heights Switching Company (Lessee).

Type and General Description of Locomotive Unit:

GM Model SN1200

Serial #: EMDSW120021600

LEASE RATE: \$100/yr

AGREEMENT

This Agreement, made and entered into as of the 1st day of January, 2002, by and between Bulkmatic Transport Company, an Illinois corporation ("BTC"), and Bulkmatic Railroad Corporation, a Delaware corporation ("BMRC").

WITNESSETH:

WHEREAS, BMRC has acquired by sublease from BMRC approximately 3.9 miles of right-of-way and trackage located at the Bulkmatic Distribution Center, Chicago Heights, Illinois (the "Premises"); and

WHEREAS, it is expected that BMRC will perform certain services for BTC at the Premises either directly or by contracting with third parties to perform such services; and

WHEREAS, BTC and BMRC wish to document the terms and conditions upon which BMRC will perform such services for BTC.

NOW, THEREFORE, in consideration of the premises and the covenants and conditions contained herein, the parties hereto hereby agree as follows:

1. Performance of Services. Subject to the terms and conditions herein, BMRC agrees to perform for BTC those services identified on Exhibit A hereto (the "Services") at the Premises, either directly or by contracting with one or more third parties to perform the Services.

2. Payment. BTC agrees to pay BRC for performing the Services, an amount equal to BMRC's Cost (as hereinafter defined) plus 10%. For purposes of this Agreement, "Cost" shall mean the cost of all labor, materials, overhead and out-of-pocket expenses incurred by BMRC in performing the Services, including the amount paid to any third party to perform Services.

3. Terms. BMRC will invoice BTC on a monthly basis for the Services. All invoices will be payable net 30 days.

4. Term of Agreement. Subject to earlier termination as provided herein, this Agreement shall continue from the date hereof until terminated by either part on not less than 60 days' prior written notice to the other party. Either party may terminate this Agreement immediately by written notice if the other party fails to perform any obligation required of it hereunder and fails to remedy such default within thirty (30) days after receipt of written notice of such default.

5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

6. Severability. If any provision in this Agreement shall for any reason be determined to be invalid or unenforceable, the balance of such provision and the remaining provisions of this Agreement shall nevertheless continue to be valid and enforceable as through the invalid or unenforceable provision had not been a part hereof.

7. Independent Contractors. Nothing herein shall be deemed to establish or otherwise create a relationship of principal and agent between the parties. Each party is an independent contractor and shall not be deemed an agent of the other party for any purpose whatsoever.

8. No Waiver. Any failure on the part of either party to enforce at any time, or for any period of time, any provision of this Agreement shall not be deemed or construed to be a waiver of such provisions or the right of such party thereafter to enforce each and every such provision.

9. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original copy without production of the other counterparts, but all such counterparts constitute only one and the same agreement.

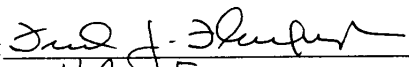
10. Binding Effect. This Agreement has been duly authorized, executed and delivered by both parties and is the legal and binding obligation of the parties enforceable in accordance with its terms. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

11. Entire Contract. This Agreement contains the entire agreement between the parties with respect to the subject matter contained herein. This Agreement supersedes all prior negotiations, agreements and oral or written understandings and agreements and may be amended or supplemented only by a written instrument signed by both parties hereto.

12. Headings. The title of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

BULKMATIC TRANSPORT COMPANY

By: 
Its V.P. Finance

BULKMATIC RAILROAD
CORPORATION

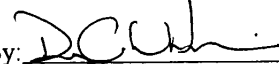
By: 
Its President

EXHIBIT A

Services

BMRC will receive railcars from the Union Pacific Railroad and spot and move such railcars to locations where BTC directs for the purpose of transloading, packaging, etc. BMRC will also perform such other services for BTC as mutually agreed.