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**THIS DOCUMENT PREPARED BY:**

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**AFTER RECORDING RETURN TO:**

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601 South Figueroa Street  
Thirtieth Floor  
Los Angeles, California 90017-5735  
Attn: Matthew S. Meza, Esq.



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Cook County Recorder of Deeds  
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**MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS AND FIXTURE FILING  
(Plant 2)  
by**

**CHICAGO TITLE LAND TRUST COMPANY,  
a corporation of the State of Illinois, not personally but as  
Trustee under Trust Agreement dated April 26, 1994  
and known as Trust Number 1099363**

**to and for the benefit of**

**LASALLE BANK NATIONAL ASSOCIATION,  
in its capacity as collateral agent**

Common Address of Property: 400 South Franklin Street  
Chicago, Illinois

Parcel Identification Numbers: 17-09-403-001-0000 and  
17-09-403-002-0000

8174 PFS DREF 20F9

25  
2

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## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

**THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING** ("Mortgage") is made on September 27, 2004 to be effective as of the 29<sup>th</sup> day of September, 2004, by **CHICAGO TITLE LAND TRUST COMPANY**, not personally but solely as Trustee under a Trust Agreement dated April 26, 1994 (the "Trust Agreement") and known as Trust No. 1099363, whose mailing address is c/o Macquarie District Energy, Inc., 600 Fifth Avenue, 21<sup>st</sup> Floor, New York, NY 10020 ("Mortgagor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, in its capacity as collateral agent for the Secured Parties (as defined below), their successors and assigns (collectively, "Mortgagee").

### RECITALS:

(A) Pursuant to the terms and conditions of a Note Purchase Agreement of even date herewith (as amended, restated or replaced from time to time "Note Purchase Agreement") among Macquarie District Energy, Inc., a Delaware corporation ("MDE"), and the financial institutions party thereto (collectively, "Initial Purchasers"), Initial Purchasers have agreed to loan to MDE the principal amount of One Hundred Twenty Million and 00/100 Dollars (\$120,000,000.00) ("Loan"). The Loan shall be evidenced by one or more certain Promissory Notes (as amended, restated or replaced from time to time, individually, a "Note," and collectively, the "Notes") made by MDE payable to holders from time to time of the Notes in the principal amount of the Loan and due on December 31, 2023 ("Maturity Date"), except as may be accelerated pursuant to the terms hereof or of the Note, the Note Purchase Agreement or any other Financing Document (as defined in the Note Purchase Agreement).

(B) Pursuant to the terms of that certain revolving credit agreement of even date herewith (the "Working Capital Credit Agreement") between MDE and LaSalle Bank National Association ("Additional Senior Lender"), in its individual capacity, Additional Senior Lender has agreed to make available to MDE a \$20,000,000 working capital facility (the "Working Capital Facility"), pursuant to which the Additional Senior Lender may extend credit to the MDE for working capital and other purposes from time to time (the obligations of MDE under the Working Capital Credit Agreement and the note issued thereunder, the "Additional Indebtedness"). The Loan and the Additional Indebtedness are referred to as the "Secured Obligations". The Agent and the holders from time to time of the Notes and the note or notes issued to evidence the Working Capital Facility are referred to as the "Secured Parties". The Note Purchase Agreement, the Financing Documents, the Working Capital Credit Agreement and the Loan Documents (as defined in the Working Capital Credit Agreement) are referred to as the "Financing Agreements").

(C) A condition precedent to Initial Purchasers' extension of the Loan to MDE and the additional Senior Lender's extension of the Working Capital Facility to MDE, is the execution and delivery by Mortgagor of this Mortgage.

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(D) Mortgagor is the present owner of the real property commonly known as 400 South Franklin Street, Chicago, Illinois, and legally described in Exhibit A attached hereto, and Beneficiary is the present owner of the personal property located thereon.

(E) In connection with the Secured Obligations, MDE, Mortgagor and/or Exelon Thermal Technologies, Inc., an Illinois corporation, the sole beneficiary of, and the sole holder of the power of direction under, the Trust Agreement ("**Beneficiary**"), executed and delivered, or will execute and deliver, to Mortgagee certain agreements, documents, instruments and certificates, including, without limitation, the following documents:

1. The Notes;
2. The Note Purchase Agreement;
3. This Mortgage;
4. An Assignment of Leases and Rents of even date herewith from Mortgagor joined in by Beneficiary (the "Assignment of Leases and Rents");
5. A Guaranty and Security Agreement of even date herewith from Beneficiary (the "Guaranty");
6. The Working Capital Credit Agreement; and
7. The Agency, Disbursement and Control Agreement dated of even date herewith (the "Agency, Disbursement and Control Agreement").

Said agreements, documents, instruments and certificates, constitute a portion of the Financing Agreements.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

**THE REAL ESTATE** located in the State of Illinois and legally described on Exhibit A attached hereto and made a part hereof ("Real Estate");

**TOGETHER WITH** all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including without limitation, any chilled water facilities and equipment located thereon and including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to

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any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf ("Improvements");

**TOGETHER WITH** all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

**TOGETHER WITH** all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in the Code hereinafter defined), security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by Mortgagor thereon, to be applied against the Indebtedness (hereinafter defined); provided, however, that Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

**TOGETHER WITH** all interest of Mortgagor in all leases now or hereafter on the Premises, whether written or oral ("Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Leases,

**TOGETHER WITH** all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

**TO HAVE AND TO HOLD** the Premises, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right of possession of the Premises after the occurrence of any Event of Default; Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

**FOR THE PURPOSE OF SECURING:** any and all indebtedness, liabilities, and other obligations of MDE (including, but not limited to, all such obligations in respect of principal, interest (including post-petition interest), fees, indemnities, costs and other expenses, whether due after acceleration or otherwise and whether incurred before or after a bankruptcy of MDE), of whatever nature and however evidenced, owed to the Secured Parties under or pursuant to the Note Purchase Agreement, the Working Capital Credit Agreement and each other Financing Agreement, in each case, direct or indirect, primary or secondary, fixed or contingent, now or hereafter arising out of or relating to any such document (collectively, "Indebtedness").

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## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** Mortgagor represents, warrants and covenants that (a) Mortgagor is the holder of: (i) the fee simple title to the portion of the Premises described on Exhibit A as "Parcel 1-1"; and (ii) an easement interest in the portion of the Premises described on Exhibit A as "Parcel 1-2", each free and clear of all liens and encumbrances, except those liens and encumbrances in favor of Mortgagee and those certain title exceptions set forth in the title insurance policy in favor of Mortgagee that insures the priority of this Mortgage ("Permitted Exceptions"); and (b) Mortgagor has legal power and authority to mortgage and convey each such interest in the Premises.

2. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage or any of the other Financing Agreements, Mortgagor shall pay such tax in the manner required by any such law. Mortgagor further agrees to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

3. **Lease Assignment.** Mortgagor acknowledges that, concurrently herewith, Mortgagor has executed and delivered to Mortgagee, as additional security for the repayment of the Secured Obligations, an Assignment of Rents and Leases ("Assignment") pursuant to which Mortgagor has assigned to Mortgagee interest in the leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Mortgagor agrees to abide by all of the provisions of the Assignment.

4. **Effect of Extensions of Time and Other Charges.** If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note or the Additional Indebtedness is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release or change.

5. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (b) the imposition upon Mortgagee of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then Mortgagor, upon demand by Mortgagee, shall pay such Taxes or charges, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee it is or may be unlawful to require

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Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may declare all of the Indebtedness to be immediately due and payable.

6. **Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.** If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 2 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Note Purchase Agreement) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, the Additional Indebtedness, this Mortgage, any of the other Financing Agreements or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, the Additional Indebtedness, this Mortgage, any of the other Financing Agreements or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Paragraph 6 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional Indebtedness evidenced by the Note and the Additional Indebtedness and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Secured Obligations, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

7. **Intentionally Deleted.**

8. **Events of Default; Acceleration.** If one or more of the following events (an "Event of Default") shall occur:



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a. If any of the representations, warranties and covenants made by or on behalf of Mortgagor herein shall prove untrue as of the date made or deemed to have been made;

b. If Mortgagor (or Beneficiary pursuant to the Joinder attached hereto) shall fail to duly perform and observe any term, provision, condition or agreement herein and such failure is not cured or waived within the applicable grace and notice periods, if any, set forth in the Note Purchase Agreement or the Working Capital Credit Agreement; or

c. The occurrence of any event, condition or circumstance that constitutes an Event of Default under the Note Purchase Agreement, the Working Capital Credit Agreement or any other Financing Agreement

then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice, the Secured Obligations to be immediately due and payable, whether or not such default be thereafter remedied by the Mortgagor or anyone and the Mortgagee may immediately proceed to foreclose this Mortgage and/or to exercise any right, power or remedy provided by this Mortgage or any other Financing Agreement or by law or in equity conferred, all without presentment, demand, notice of broken conditions or other notice whatsoever. If an Event of Default occurs, in addition to the rights and remedies set forth herein, Mortgagee shall have all the rights and remedies set forth in the Note Purchase Agreement, the Working Capital Credit Agreement and the other Financing Agreements.

## 9. Foreclosure; Expense of Litigation.

a. When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Financing Agreements in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

b. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of

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the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's and Beneficiary's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

10. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Mortgagee may determine in its sole and absolute discretion.

11. **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

12. **Mortgagee's Right of Possession in Case of Default.** At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Premises. Mortgagee, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including

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actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

- a. cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- b. elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- c. extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- d. make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;
- e. insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof; and
- f. receive all of such avails, rents, issues and profits.

13. **Application of Income Received by Mortgagee** Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

- a. to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;
- b. to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and
- c. to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

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## 14. Compliance with Illinois Mortgage Foreclosure Law.

a. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

b. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 11 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

c. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 6, 9 or 20 of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

15. **Rights Cumulative.** Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Financing Agreements or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

16. **Release Upon Payment and Discharge of Mortgagor's Obligations.** Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.

17. **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

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To Mortgagee: LaSalle Bank National Association  
 Collateral Agent  
 135 S. LaSalle Street, Suite 1960  
 Chicago, IL 60603  
 Attn: Wayne M. Evans, CCTS  
 Telephone: 312-904-2442  
 Facsimile: 312-904-2236

With a copy to: Milbank, Tweed, Hadley & McCloy LLP  
 601 South Figueroa Street  
 Thirtieth Floor  
 Los Angeles, California 90017-5735  
 Attn: Matthew S. Meza, Esq.

To Mortgagor: Chicago Title Land Trust Company  
 C/o Macquarie District Energy, Inc.  
 600 Fifth Avenue, 21<sup>st</sup> Floor  
 New York, NY 10020  
 Attn: Wendy Adams  
 Telephone: 212-548-6525  
 Facsimile: 212-399-8930

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

18. **Waiver of Rights.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

a. The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15 - 1601 or other applicable law or replacement statutes;

b. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or

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otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

c. If the Mortgagor is a trustee, Mortgagor represents that the provisions of this paragraph (including the waiver of reinstatement and redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

Notwithstanding anything in this section to the Contrary, Mortgagor does not waive any notice and grace periods, if any, set forth in the Note Purchase Agreement or the Working Capital Credit Agreement.

19. **Contests.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Liens shall constitute an Event of Default hereunder, if, but only if:

a. Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;

b. Mortgagor shall either pay under protest or deposit with Mortgagee the full amount (herein called "Lien Amount") of such Contested Lien, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

c. Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

d. Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional

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Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

20. **Intentionally Deleted.**

21. **Statement of Indebtedness.** Mortgagor, within seven days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

22. **Further Instruments.** Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Financing Agreements.

23. **Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Secured Obligations and interest thereon; this Mortgage secures any and all other amounts which may become due under the Secured Obligations or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

24. **Intentionally Deleted.**

25. **Subordination of Property Manager's Lien.** Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

26. **Intentionally Deleted.**

27. **Insurance.** Unless Mortgagor has provided Mortgagee evidence of the insurance coverages required under the Note Purchase Agreement, Mortgagee may purchase insurance at

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Mortgagor's expense to cover Mortgagee's interest in the Premises. The insurance may, but need not, protect Mortgagor's interest. The coverages that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchased insurance for the Premises, Mortgagor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

28. **Restrictions on Transfer.** The provisions of Section 9.4 of the Note Purchase Agreement, which relate to restrictions on transfer, are hereby incorporated herein as if they were set forth in their entirety herein.

29. **Miscellaneous.**

a. **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Secured Obligations.

b. **Invalidity of Provisions; Governing Law.** In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

c. **Municipal Requirements.** Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

d. **Rights of Tenants.** Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in



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the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

e. **Option of Mortgagee to Subordinate.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

f. **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

g. **Relationship of Mortgagee and Mortgagor.** Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor, Beneficiary or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Financing Agreements, or otherwise. The relationship of Mortgagor and Beneficiary and Mortgagee hereunder is solely that of debtor/creditor.

h. **Time of the Essence.** Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Financing Agreements and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Financing Agreements.

i. **No Merger.** The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if Mortgagee acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

j. **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to Two Hundred Forty Million and 00/100 Dollars (\$240,000,000); provided, however, in no event shall Mortgagee be obligated to advance funds except as set forth in the Note Purchase Agreement and the Working Capital Credit Agreement.

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k. **Consent to Jurisdiction** TO INDUCE MORTGAGEE TO ACCEPT THE NOTE AND THE ADDITIONAL INDEBTEDNESS, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

l. **Waiver of Jury Trial**. MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

m. **Complete Agreement**. This Mortgage, the Note and the other Financing Agreements constitute the complete agreement between the parties with respect to the subject matter hereof and the Financing Agreements may not be modified, altered or amended except by an agreement in writing signed by both Mortgagor and Mortgagee.

n. **Remedies Against Other Collateral**. Mortgagor hereby acknowledges that certain Financing Agreements other than this Mortgage create liens on collateral located in counties or states other than the counties and state in which the Premises are located. Mortgagor further acknowledges that this Mortgage and the other Financing Agreements are cross-defaulted and the Secured Obligations secured hereby are also secured by the other Financing Agreements. Mortgagor agrees that Mortgagee may proceed, at the same or at different times, to foreclose any or all liens against such collateral (or sell such collateral under power of sale) by any proceedings appropriate in the county and state where such collateral lies, and that no event of enforcement taking place in any county or state pursuant to any of the Financing Agreements shall preclude or bar enforcement in any other county or state. Any foreclosure or other appropriate remedy brought in any county or state in which collateral is located may be brought and

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prosecuted as to any part of such collateral without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other part of the collateral for the Secured Obligations.

o. **Exculpation**. The exculpation provisions of paragraph 16.6 of the Note Purchase Agreement are hereby incorporated herein by reference.

p. **Priority**. The terms and conditions set forth herein, the security interest granted hereby and the remedies provided herein shall be subject, in all respects, to the terms of the Agency, Control and Disbursement Agreement.

30. **Intentionally Deleted**.

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THIS MORTGAGE is executed by CHICAGO TITLE LAND TRUST COMPANY (herein sometimes called "Trust Company"), not personally but as Trustee under its Trust No. 1099363 dated April 26, 1994, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee; and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any liability on the Trust Company as Trustee as aforesaid or on the Trust Company personally to pay the Note or any interest that may accrue thereon or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security hereunder and that so far as the Trust Company as Trustee as aforesaid and its successors and the Trust Company personally are concerned, Mortgagee and the holder or holders of the Note and the owner or owners of the indebtedness accruing hereunder shall look solely to any one or more of (a) the Premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Notes provided, or (b) action to enforce the personal liability of any obligor, **guarantor** or co-maker, or (c) enforcement of any other security or collateral securing the Loan.

IN WITNESS WHEREOF, Chicago Title Land Trust Company, not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Vice Presidents and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, all as of the day, month and year first above written.



CHICAGO TITLE LAND TRUST COMPANY,  
not personally but solely as Trustee as aforesaid

By: *Shela Dargatz*  
Its: ASST. VICE PRESIDENT

ATTEST: Attestation not required  
pursuant to corporate by-laws.



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## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

[Franklin & Van Buren (Plant 2)]

PARCEL 1-1:

THE SOUTH 98.78 FEET OF THE FOLLOWING DESCRIBED PARCELS OF LAND TAKEN AS A TRACT:

THE SOUTHERLY  $\frac{1}{2}$  OF LOT 48, ALL OF LOTS 49, 50, 53, AND 54, THE STRIP FORMERLY ALLEY, BETWEEN LOT 50 AND LOTS 53 AND 54, AND THE WEST  $\frac{1}{2}$  OF THE STRIP, FORMERLY ALLEY, BETWEEN LOT 50 AND LOTS 51 AND 52, ALL IN RUSSELL'S SUBDIVISION OF BLOCK 90 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16 TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO THE EAST  $\frac{1}{2}$  OF THAT PART OF SAID VACATED ALLEY LYING NORTH OF THE SOUTH LINE, EXTENDED WESTWARD, OF LOT 52 AFORESAID, AND SOUTH OF THE NORTH LINE, EXTENDED EASTWARD, OF SAID LOT 50, ALL IN SAID RUSSELL'S SUBDIVISION OF BLOCK 90 IN SCHOOL SECTION ADDITION TO CHICAGO.

ALSO:

THE SOUTHERLY  $\frac{1}{2}$  OF LOT 47, THE NORTHERLY  $\frac{1}{2}$  OF LOT 48, ALL OF LOTS 51 AND 52, AND ALL OF LOTS 75 TO 81, BOTH INCLUSIVE, ALL IN RUSSELL'S SUBDIVISION OF BLOCK 90 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN;

ALSO

LOTS 1 TO 10, BOTH INCLUSIVE, IN WADSWORTH'S RESUBDIVISION OF LOTS 82, 83, 44, 45, 46 AND THE NORTH  $\frac{1}{2}$  OF LOT 47 IN RUSSELL'S SUBDIVISION OF BLOCK 90 AFORESAID;

ALSO

ALL OF THE VACATED ALLEYS ADJOINING SAID LOTS AND PARTS OF LOTS IN SAID RUSSELL'S SUBDIVISION AND IN SAID WADSWORTH'S RESUBDIVISION, AND LYING NORTH OF THE NORTH LINE, AND SAID NORTH LINE EXTENDED EASTWARDLY, OF LOT 50 IN RUSSELL'S SUBDIVISION AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

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PARCEL 1-2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE DECLARATION OF EASEMENTS AND COVENANTS DATED MAY 10, 2001 AND RECORDED MAY 14, 2001 AS DOCUMENT 0010403495 FROM FRANKLIN VAN BUREN, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY TO THE CHICAGO TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 26, 1994 AND KNOWN AS TRUST NUMBER 1099363 FOR THE PURPOSE OF ACCESS; CHILLED WATER PIPES AND CABLES; WATER, SEWER AND TELEPHONE; OVERHANG AND CAISSONS, AS SET FORTH THEREIN, OVER THOSE PORTIONS OF THE LAND DESCRIBED IN EXHIBITS C, D, E AND F ATTACHED THERETO.

PIN: 17-09-403-001-0000 and  
17-09-403-002-0000

Address: 400 South Franklin Street  
Chicago, Illinois

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## JOINDER BY BENEFICIARY

The undersigned beneficiary ("Beneficiary") hereby joins in the execution of this Mortgage, Assignment of Rents and Leases and Fixture Filing (the "Mortgage") for the purpose of joining herein, making the assignments, grants of security interests, transfers and conveyances hereunder, and making, undertaking and agreeing to the covenants, agreements, obligations, representations and warranties herein, all in accordance with and subject to the following (capitalized terms used herein and not otherwise defined have the meanings given them in the Mortgage):

A. Beneficiary and its agents hereby grant to the Mortgagee, as security for the secured obligations, a security interest in all of the Property which constitute fixtures under the Uniform Commercial Code of the State of Illinois and also all of said Property which constitutes personal property not constituting a part of the Land. Beneficiary hereby assigns to Mortgagee, as security for the secured obligations, all rights, powers, privileges and beneficial interest and power of direction in, to and under the Trust Agreement governing Mortgagor and any successor trust holding legal title to the Real Estate, subject to and in accordance with the Guaranty and Security Agreement of even date herewith from Beneficiary to Mortgagee.

B. The Beneficiary and its agents hereby assign to the Mortgagee, as security for the secured obligations, all of the rents, issues and profits and all of the leases, lettings, and other agreements for the use and occupancy of the Premises, now or hereafter made, as more fully described in, and subject to and in accordance with Section 3 of the Mortgage.

C. The Beneficiary hereby covenants and agrees to be bound by, and to be deemed to have entered into and made, all of Mortgagor's covenants, agreements, obligations, representations and warranties under the Mortgage (which shall constitute covenants, agreements, obligations, representations and warranties of the Beneficiary notwithstanding the exculpation provisions of Section 29(o)), including without limitation the waiver of the right of redemption pursuant to Section 18 thereof, with the same force and effect as if they were fully set forth herein verbatim.

Executed and delivered in Chicago, Illinois as of this 28th day of JULY, 2004.

**MDE THERMAL TECHNOLOGIES, INC.**, an Illinois corporation

By: \_\_\_\_\_

Name: MURRAY BLEACH  
Its: AUTHORIZED SIGNATORY

By: \_\_\_\_\_

Name: MICHAEL DORRELL  
Its: AUTHORIZED SIGNATORY



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STATE OF NEW YORK )  
 ) SS.  
COUNTY OF QUEENS )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that MURRAY BLEACH, AUTHORIZED SIGNATORY of MDE Thermal Technologies, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such \_\_\_\_\_ he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28<sup>th</sup> day of July, 2004.

(SEAL)

RACHELLE HONORÉ-MOORER  
Notary Public, State of New York  
No. 01HO6064137  
Qualified in Queens County  
Commission Expires: September 17, 2005

Rachelle Honoré-Moorer  
Notary Public

My Commission expires: \_\_\_\_\_

STATE OF NEW YORK )  
 ) SS.  
COUNTY OF QUEENS )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that MICHAEL DORRELL, AUTHORIZED SIGNATORY of MDE Thermal Technologies, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such \_\_\_\_\_ he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28<sup>th</sup> day of July, 2004.

(SEAL)

RACHELLE HONORÉ-MOORER  
Notary Public, State of New York  
No. 01HO6064137  
Qualified in Queens County  
Commission Expires: September 17, 2005

Rachelle Honoré-Moorer  
Notary Public

My Commission expires: \_\_\_\_\_