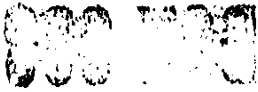


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[SPX4MORT2/CV8054/ILLINOIS/LWN]



Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, New York 10005  
Attention: Martin R. Levine, Esq.

Prepared by and after recording please return to:

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COOK COUNTY, ILLINOIS  
FILED FOR RECORD

1989 JUN 15 PM 1:03

Dated as of: May 30, 1989

277 Park Avenue  
New York, New York 10172

CHEMICAL BANK,  
as Agent,  
Mortgagee

and

SEALED POWER TECHNOLOGIES, L.P.,  
Grantor

between

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

619

72-88-425-21

383

Cook County, ILLINOIS  
Index Nos.: 09-17-100-040-0000  
09-17-100-041-0000

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[SPX-MORT2/TC-05-ILLINOIS/366/1MN]

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## ACKNOWLEDGMENT

EXHIBIT A -- Description of Land  
SCHEDULE I -- Permitted Encumbrances

Property of Cook County Clerk's Office

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING AND SECURITY AGREEMENT dated as of May 30, 1989 (this "Mortgage"), by SEALED POWER TECHNOLOGIES, L.P., a Delaware limited partnership (the "Grantor"), having an office at 2025 Sanford Street, Muskegon Heights, Michigan 49444, to CHEMICAL BANK, a New York banking corporation (the "Mortgagee"), having an office at 277 Park Avenue, New York, New York 10172, as Collateral Agent for the banks (the "Banks") party to that certain Credit Agreement dated as of the date hereof (the "Credit Agreement"), among the Grantor, the Banks and the Mortgagee, as agent for the Banks (the "Agent").

W I T N E S S E T H :

WHEREAS the foregoing parties to the Credit Agreement have agreed that the Banks will make Revolving Loans, Term Loans and Deferred Term Loans (capitalized terms used herein and not defined herein shall have those meanings ascribed to them in the Credit Agreement) to Grantor pursuant and subject to the provisions of the Credit Agreement, such Loans to be evidenced by Notes bearing interest at variable rates;

WHEREAS as an additional inducement to the Banks to make the Loans, and in consideration thereof, Grantor has agreed to grant, and the obligation of the Banks to make the Loans is conditioned upon the granting of, this Mortgage securing its obligations under the Credit Agreement and the other Loan Documents and certain other obligations specified herein and encumbering certain real property;

NOW, THEREFORE, in order to induce the Banks to make the Loans and in consideration thereof, and for the purpose of further securing the repayment of the Revolving Loans, Deferred Term Loans and the Term Loans and the performance of the obligations of Grantor under the Credit Agreement and the other Loan Documents and certain other obligations specified herein, the Grantor hereby agrees as follows:

TO SECURE:

(a) the due and punctual payment of (i) all principal of the Loans, in the aggregate principal amount of up to \$195,000,000 outstanding at any time, when and as due, whether at maturity, by acceleration,

upon one or more dates set for prepayment or otherwise, (ii) the due and punctual payment of all interest on the Loans, when and as due, and (iii) the due and punctual payment of all other monetary obligations of Grantor under the Credit Agreement and the other Loan Documents (including, without limitation, this Mortgage), whether for Fees, reimbursement of expenses, indemnification obligations or otherwise or under any Rate Protection Agreement with any Bank; it being understood and agreed that the terms of the Credit Agreement and each other Loan Document are hereby made a part of this Mortgage which also secures all other sums due or to become due thereunder and any renewals or extensions thereof so that this Mortgage shall stand as security for said Loans, and for any and all future and additional Loans and other advances made to Grantor by the Banks or any of them pursuant to the Credit Agreement or any other Loan Document, as the same may be amended from time to time, in such amount or amounts so that the aggregate principal balance, including all future and additional advances outstanding and unpaid at any one time shall not exceed \$195,000,000 in Revolving Loans, Term Loans and Deferred Term Loans, and the Banks are hereby given authority to make such future and additional advances to Grantor, all as provided for in the Credit Agreement, and secured as the original obligation herein, it being further understood and agreed that such limitation upon the total amount of principal shall not be considered as limiting the amounts secured hereby for accrued interest or for any other amount (all the foregoing, together with all other amounts secured thereby, including advances to protect the security of this Mortgage and all other Loan Documents are hereinafter collectively referred to as the "Indebtedness"); and

(b) the due and punctual performance of all covenants, agreements, obligations and liabilities of Grantor under or pursuant to the Credit Agreement, this Mortgage and the other Loan Documents (all the obligations referred to in this clause (b) and in the preceding clause (a) being referred to collectively as, the "Obligations").

(c) Notwithstanding anything to the contrary contained herein, this Mortgage is subordinate to the unpaid principal balance of the certain mortgage dated August 16, 1978, and recorded September 29, 1978, as document 24649714 made by La Salle National Bank, a

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national banking association, as trustee under the Trust Agreement dated May 1, 1978, and known as trust number 54286 to H. F. Philipsborn and Company, a corporation of Illinois, to secure a note for \$1,630,000 assigned to The Manufacturers Life Insurance Company, Toronto, Canada, by document 25052064 recorded July 16, 1979, as modified by the Modification Agreement recorded September 4, 1979, as document 25129691, as such unpaid principal balance may be reduced by prepayment, regular installments payments of principal, or otherwise.

Grantor hereby warrants, mortgages, gives, pledges, sets over, transfers, releases, remises, bargains, sells, alienates, conveys, confirms, assigns and grants a security interest (collectively, "Mortgages"), unto Mortgagee and its successors and assigns, with power of sale (to the extent permitted by applicable law), all estate, right, title and interest of Grantor, now owned or hereafter acquired, in and to the real property particularly described in Exhibit A attached hereto (hereinafter called the "Land") and the buildings, structures, facilities and improvements now or hereafter located thereon (hereinafter called the "Improvements");

TOGETHER WITH all right, title and interest of Grantor, now owned or hereafter acquired, in and to the following property, rights and interests (the Land and the Improvements together with such property, rights and interests being hereinafter collectively called the "Mortgaged Property"):

(a) all easements, rights-of-way, strips and gores within or adjoining the Land, tunnels, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, permits, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or appertaining to the Land and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land to the center line thereof, the air space and right to use said air space above the Land, all royalties and all rights appertaining to the use and enjoyment of said Land, including without limitation, all development, alley, vault, drainage, mineral, water, oil and gas rights;

(b) all and singular the tenements, hereditaments and appurtenances belonging or in any way appertaining to the Mortgaged Property, and the reversion or reversions, remainder or remainders, rents, issues, profits and revenue thereof; and also all the estate, right, title, interest, dower and right of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both in law and equity, of Grantor, of, in and to the Mortgaged Property and of, in and to every part and parcel thereof, with the appurtenances at any time belonging or in any way appertaining thereto;

(c) all of the machinery, apparatus, equipment, fittings and legal fixtures of every kind and nature whatsoever currently owned or hereafter acquired by Grantor, and all appurtenances and additions thereto and substitutions or replacements thereof, now or hereafter attached to, or intended to be attached to (though not attached thereto) the Land and Improvements or placed on any part thereof (except as otherwise provided in Section 6.02(h) of the Credit Agreement, said machinery, apparatus, equipment, fittings and legal fixtures of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof, are hereinafter collectively referred to as the "Equipment"), including, but without limiting the generality of the foregoing, all computers, product testing and analysis equipment, founding equipment, dies, casts, casting equipment, telegraph and telephone transmission lines and equipment, walls, fences, landings, tools, plumbing, ventilating, air conditioning and air-cooling apparatus, refrigerating, incinerating, and escalator, elevator, power, loading and unloading equipment and systems, sprinkler systems and other fire prevention and extinguishing apparatus and pipes, pumps, tanks, conduits, fittings, fixtures, and all other physical property held or acquired for the use or used upon or in connection with, any plants for the production of automotive piston rings, cylinder sleeves, automatic transmission rings, die cast parts, valve train products and transmission filters; it being understood and agreed that all Equipment is appropriated to the use of the Land and Improvements and, whether affixed or annexed or not, for the purposes of this Mortgage shall be deemed conclusively to be Land and Improvements and mortgaged hereby; and Grantor hereby agrees to execute and deliver, from time to time, such



further instruments (including security agreements), as may be requested by Mortgagee to confirm the lien of this Mortgage on the Equipment;

(d) all unearned premiums, accrued, accruing or to accrue, under insurance policies now or hereafter obtained by Grantor and Grantor's interest in and to all proceeds of the conversion and the interest payable thereon, voluntary or involuntary, of the Mortgaged Property, or any part thereof, into cash or liquidated claims, including, without limiting the generality of the foregoing, proceeds of casualty insurance, title insurance or any other insurance maintained on the Land and Improvements and the Equipment, and the right to collect and receive the same, and all awards and/or other compensation including the interest payable thereon and the right to collect and receive the same (in the alternative and collectively, "Awards"), heretofore and hereafter made to the present and all subsequent owners of the Land and Improvements and the Equipment by the United States, the State in which the Mortgaged Property is located or any political subdivision thereof or any agency, department, bureau, board, commission, or instrumentality of any of them, now existing or hereafter created (collectively, "Governmental Authority") for the taking by eminent domain, condemnation or otherwise, of all or any part of the Land and Improvements and Equipment or any easement or other right therein, including, without limiting the generality of the foregoing, Awards for any change or changes of grade or the widening of streets, roads or avenues affecting the Land and Improvements, to the extent of all amounts which may be secured by this Mortgage as of the date of receipt, notwithstanding the fact that the amount thereof may not then be due and payable, and to the extent of reasonable attorneys' fees, costs and disbursements, incurred by Mortgagee in connection with the collection of such Awards; and Grantor hereby assigns to Mortgagee (for the benefit of the Banks), and Mortgagee is hereby authorized to collect and receive, such Awards (subject to Grantor's right to be paid directly and apply certain Awards as expressly provided by this Mortgage or any other Loan Document), and to give proper receipts and acquittances therefor and, subject to the other provisions hereof or any other Loan Document, to apply the same toward the Indebtedness, notwithstanding the fact that the full amount thereof may not then be due and payable; Grantor hereby agrees, upon demand of Mortgagee, to make,

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execute and deliver, from time to time, such further instruments as may be reasonably requested by Mortgagee to confirm such assignment of said Awards to Mortgagee (for the benefit of the Banks), free and clear and discharged of any encumbrances of any kind or nature whatsoever;

(e) all right, title and interest of Grantor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Land and Improvements and the Equipment, hereafter acquired by or released to Grantor or constructed, assembled or placed by Grantor on the Land and Improvements, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Grantor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein;

(f) all leases and other agreements affecting the use or occupancy of the Land and Improvements now or hereafter entered into (the "Leases") and the right to receive and apply all the rents, issues, income, receipts, revenues, profits or any other income of any nature (the "Rents and Profits") of the Mortgaged Property, including but not limited to all bonuses and royalties accrued or to accrue under all oil, gas or mineral leases of the Land, unsevered crops and timber, and all permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Mortgaged Property; and

(g) all other property, assets and things of value of every kind and nature, tangible or intangible, absolute or contingent, legal or equitable, relating to the aforesaid which the Grantor may be possessed or entitled to;

TOGETHER with all proceeds, both cash and noncash, of the foregoing which may be sold or otherwise be disposed of;

TOGETHER with any and all monies now or hereafter on deposit for the payment of real estate taxes or special

assessments against the Land and Improvements or for the payment of premiums on policies of fire and other hazard insurance covering the Mortgaged Property.

TO HAVE AND TO HOLD the Mortgaged Property and the rights and privileges hereby Mortgaged or intended to be, unto Mortgagee, its successors and assigns for the uses and purposes herein set forth, for the benefit of the Banks, until the Indebtedness is fully and finally paid and the Obligations fully performed.

Grantor represents, warrants, covenants and agrees as follows:

1. Payment of Indebtedness. Grantor shall pay or cause to be paid the Indebtedness according to the terms and in the manner specified in the Credit Agreement and the other Loan Documents and shall perform or cause to be performed all the conditions, covenants and obligations (including the Obligations) hereunder and thereunder.

2. Warranty of Title. Grantor warrants and represents to Mortgagee that (a) Grantor is lawfully seized and possessed of the Mortgaged Property and has full and lawful right, power and authority to Mortgage the Mortgaged Property unto Mortgagee as provided herein, (b) Grantor has fee simple title to all Mortgaged Property in the nature of real property (including the Land and Improvements, other than Equipment) and good title to all other Mortgaged Property, and such title is marketable and is free and clear of all Liens whatsoever, subject to those permitted encumbrances (the "Permitted Encumbrances") set forth on Schedule I hereto, and Grantor will warrant and defend such title against the lawful claims of all persons whomsoever, and (c) this Mortgage constitutes a valid, subsisting and enforceable first lien mortgage on the Land and Improvements and a valid, subsisting and enforceable first security interest in and to the Mortgaged Property including but not limited to the Rents and Profits, subject only to the Permitted Encumbrances. Grantor covenants that it shall preserve such title and the validity, enforceability and priority of the lien hereof and shall forever warrant and defend the same to Mortgagee against the claims of all and every person or persons claiming or threatening to claim the same or any part thereof, and shall make, execute, acknowledge, and deliver all such further or other deeds, documents, instruments or assurances, and cause to be done all such further acts and things as may at any time hereafter be

desired or required by Mortgagee to fully protect the lien of this Mortgage.

3. Proper Care and Use. (a) Grantor shall:

(i) not abandon the Mortgaged Property;

(ii) maintain the Mortgaged Property and the abutting grounds, sidewalks, roads, parking and landscape areas in good repair, order and condition consistent with the reasonable and prudent practices of the business in which the Grantor is engaged;

(iii) promptly make all reasonably necessary repairs, renewals, replacements and additions to the Mortgaged Property;

(iv) not commit or suffer waste with respect to the Mortgaged Property;

(v) complete promptly and in a good and workmanlike manner any new improvements constructed on the Land;

(vi) not commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation which possibly could result in a material and adverse impact on the Mortgaged Property;

(vii) refrain from impairing or diminishing the value or integrity of the Mortgaged Property or the security value of this Mortgage;

(viii) not, except with the prior written consent of Mortgagee, remove, demolish or alter any of the Improvements or Equipment (except that Grantor may remove or demolish Equipment in the ordinary course of business, provided that such Equipment is promptly replaced with similar Equipment of a quality at least equal to that of the Equipment removed or demolished, unless a reasonable and prudent person engaged in the Grantor's business would consider such Equipment no longer necessary); and

(ix) not make, suffer or permit any nuisance to exist on any of the Mortgaged Property.

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(b) Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Mortgaged Property at all reasonable times upon reasonable notice. If an Event of Default shall have occurred and be continuing or in the event of any emergency Mortgagee and any persons authorized by Mortgagee may (without being obligated to do so) enter or cause entry to be made upon the Land and Improvements and repair and/or maintain the same as Mortgagee may reasonably deem necessary or advisable, and may (without being obligated to do so) make such expenditures and outlays of money as Mortgagee may deem reasonable appropriate for the preservation of the Mortgaged Property. All expenditures and outlays of money made by Mortgagee pursuant hereto shall be secured hereby and shall be payable on demand together with interest at the Alternate Base Rate plus 4% from the date of demand for payment thereof until paid.

4. Compliance. Grantor shall comply with any and all material obligations affecting the Mortgaged Property, including but not limited to all agreements, covenants, and restrictions of record. Grantor shall have the right, at Grantor's sole cost and expense, to contest the validity of any such obligations affecting the Mortgaged Property by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modifying or extending Grantor's covenant to comply therewith as provided in this Section 4, unless Grantor has given prior written notice to Mortgagee of Grantor's intent to contest and unless (i) the legal proceedings shall operate conclusively to prevent the sale or forfeiture of the Mortgaged Property, or any part thereof, for failure to comply with such obligations prior to the determination of such proceedings, and (ii) if during such contest a Lien or cloud of title shall exist with respect to any of the Mortgaged Property, at Mortgagee's option, Grantor shall, to the extent required by GAAP, set aside on its books adequate reserves or shall provide the Mortgagee with other security reasonably satisfactory to Mortgagee in an amount equal to 110% of the aforesaid Lien or cloud on title or, if the amount thereof is uncertain, in an amount reasonably satisfactory to Mortgagee, and (iii) Mortgagee shall not be subject either to civil or criminal liability for any failure by Grantor to comply with such obligations during the pendency of such contest.

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### 5. Requirements.

(a) Grantor, at Grantor's sole cost and expense, shall promptly comply with, or cause to be complied with, and conform to all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements pertaining to the Mortgaged Property, including any applicable environmental, zoning or building, use and land use laws, ordinances, rules or regulations and all covenants, restrictions and conditions now or hereafter of record which may be applicable to it or to any of the Mortgaged Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Mortgaged Property (collectively, the "Legal Requirements"), except for any Legal Requirements the failure to comply with which shall not adversely affect the Lien of this Mortgage or the business, assets, operations, prospects or condition (financial or otherwise) of the Grantor and its Subsidiaries taken as a whole. Grantor shall have the right, at Grantor's sole cost and expense, to contest or object to the validity of any Legal Requirements by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modifying or extending Grantor's covenant to comply therewith as provided in this Section 5, unless Grantor has given prior written notice to Mortgagee of Grantor's intent to so contest and unless (i) the legal proceedings shall operate conclusively to prevent the sale or forfeiture of the Mortgaged Property, or any part thereof, for failure to comply with such Legal Requirements prior to the determination of such proceedings, and (ii) if during such contest a Lien or cloud on title shall exist with respect to any of the Mortgaged Property, or any part thereof, for failure to comply with such Legal Requirements prior to the determination of such proceedings, Grantor shall, at Mortgagee's option, to the extent required by GAAP, set aside on its books adequate reserves or shall provide the Mortgagee with other security reasonably satisfactory to Mortgagee in an amount equal to 110% of the aforesaid Lien or cloud on title or, if the amount thereof is uncertain, in an amount reasonably satisfactory to Mortgagee, and (iii) Mortgagee shall not be subject either to civil or criminal liability for any failure by Grantor to comply with such Legal Requirements during the pendency of such contest. If there is an adverse conclusion with respect to any such

proceedings, Grantor shall thereafter comply with the Legal Requirements so contested.

(b) Grantor has and will maintain all certificates, licenses, authorizations, registrations, permits and/or approvals reasonably necessary for the operation of all or any part of the Mortgaged Property, and the conduct of Grantor's business at the Mortgaged Property, including, where appropriate, one or more Certificates of Occupancy and Board of Fire Underwriters Certificates, and all required zoning ordinance, building code, land use, environmental and other similar permits or approvals, all of which are as of the date hereof in full force and effect and not subject to any revocation, amendment, release, suspension or forfeiture. Promptly upon request by Mortgagee, Grantor shall deliver to Mortgagee copies of any of the foregoing. The Mortgaged Property and the present use and/or occupancy of the Mortgaged Property comply with and do not conflict with or violate any of the applicable zoning ordinances, building codes, certificates of occupancy, environmental laws and other similar applicable laws and regulations. Grantor has suitable access from public roads to the Land and the Improvements.

6. Payment of Impositions.

(a) Grantor shall pay and discharge, immediately upon becoming due and before any penalty, interest or cost for non-payment may be added thereto, all taxes of every kind and nature (including, without limitation, all real and personal property, income, franchise, withholding, profits and gross receipts taxes), all charges for any easement or agreement maintained for the benefit of any of the Mortgaged Property, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges and all other public charges whether of a like or different nature, even if unforeseen or extraordinary, imposed upon or assessed on or against Grantor or any of the Mortgaged Property, together with any interest or penalties on any of the foregoing (all of the foregoing are hereinafter collectively referred to as the "Impositions"). Grantor shall have the right, at Grantor's sole cost and expense, to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modi-

fyng or extending Grantor's covenant to pay any such Imposition at the time and in the manner provided in this Section 6, unless Grantor has given prior written notice to Mortgagee of Grantor's intent so to contest or object to an Imposition, and unless (i) the legal proceedings shall operate conclusively to prevent the sale or forfeiture of the Mortgaged Property, or any part thereof, to satisfy such Impositions prior to final determination of such proceedings; and

(ii) Grantor shall provide Mortgagee with a good and sufficient bond or other security reasonably satisfactory to Mortgagee in the amount of the Impositions which are being contested plus any interest and penalty which may be imposed thereon and which could become a Lien against the Mortgaged Property. Subject to the foregoing, and if Mortgagee shall so request, Grantor shall deliver to Mortgagee receipts evidencing the payment of all such Impositions.

(b) Grantor agrees that if an Event of Default occurs and is continuing with respect to any obligations hereunder to pay any amount or to perform any action, including, without limitation, its obligation to pay Impositions and to procure, maintain and pay premiums on the insurance policies referred to herein, then Mortgagee shall have the right, but not the obligation, in Grantor's name or in its own name, and without notice to Grantor, to advance all or any part of such amounts or to perform any or all such actions, and, for such purpose, Grantor expressly grants to Mortgagee, in addition and without prejudice to any other rights and remedies hereunder, the right to enter upon and take possession of the Mortgaged Property in accordance with applicable law to such extent and as often as Mortgagee may deem necessary or desirable to prevent or remedy any such default. Except as otherwise provided by law, no such advance or performance shall be deemed to have cured such Event of Default. All sums advanced and all expenses incurred by Mortgagee in connection with such advances or actions, and all other sums advanced or expenses incurred by Mortgagee hereunder or under applicable law (whether required or optional) shall be part of the Indebtedness, shall bear interest at the Alternate Base Rate plus 4% and shall be secured by this Mortgage. Mortgagee, upon making any such advance, shall be subrogated to all of the rights of the person receiving such advance.

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(c) Grantor shall not claim, demand or be entitled to receive any credit or credits towards the satisfaction of this Mortgage or on any interest payable thereon for any taxes assessed against the Mortgaged Property or any part thereof, and shall not claim any deduction from the taxable value of the Mortgaged Property by reason of this Mortgage.

(d) Upon any Event of Default, Grantor, upon Mortgagee's request, shall pay to Mortgagee an amount equal to one-twelfth of the annual Impositions reasonably estimated by Mortgagee so that Mortgagee shall have sufficient funds to pay the Impositions on the first day of the month preceding the month in which they become due. In such event Grantor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and provided Grantor has deposited sufficient funds with Mortgagee pursuant to this Section 6, Mortgages shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee (disregarding any gain or loss realized by Mortgagee from investments made with such funds) are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Grantor and Grantor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 6 and not theretofore applied by Mortgagee in respect of any obligation of Grantor hereunder. Mortgagee may commingle said funds with its own funds, and Grantor shall be entitled to no interest thereon. If amounts collected by Mortgagee under this subsection (d) exceed amounts necessary in order to pay Impositions, Mortgagee may impound or reserve for future payment of Impositions such portion of such excess payments as Mortgagee in its absolute discretion may deem proper. Should Grantor fail to deposit with Mortgagee sums sufficient to pay such Impositions in full at least 30 days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, with interest at the Alternate Base Rate plus 4% from the date of advance

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thereof, shall be secured hereby and shall be repayable to Mortgagee on demand. If an Event of Default shall occur and be continuing, at the option of Mortgagee, Mortgagee may, without making any advance whatever, apply any sums held by it hereunder upon any obligation of Grantor secured hereby.

7. Insurance.

(a) Grantor shall, for the benefit of Mortgagee (i) keep the Land and Improvements (A) insured against loss or damage by fire, lightning, vandalism, windstorm, tornado, malicious mischief and by such other further and additional risks and hazards as now are or hereafter may be covered by extended coverage and "all risk" endorsements, (B) insured against loss or damage by any other risk commonly insured against by persons occupying or using like properties in the locality in which the Land and Improvements are situated, (C) insured by a policy of business interruption in an amount reasonably satisfactory to Mortgagee, and (D) insured by a policy of boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment (if the Improvements contain equipment of such nature), and insurance against loss of occupancy or use arising from the breakdown of such machinery, (ii) keep the Equipment insured against loss or damage by fire, lightning, vandalism, windstorm, tornado, malicious mischief, and theft and by such other further and additional risks as now or hereafter may be covered by extended coverage and "all risk" endorsements, and (iii) obtain and maintain (A) comprehensive public liability insurance on an occurrence basis (to the extent available) against claims for personal injury including without limitation bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, in such amounts as shall be acceptable to Mortgagee and which shall include blanket contractual liability coverage which insures contractual liability under the indemnification set forth in Section 29 hereof, but such coverage shall in no way limit such indemnification, and (B) worker's compensation insurance (including employer's liability insurance if requested by Mortgagee) for all employees of Grantor engaged on or with respect to the Mortgaged Property in such amounts as are required to be maintained by law or, if no amounts are established by law,

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then in such amounts as are reasonably satisfactory to Mortgagee and (iv) to the extent the Land lies within an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, keep the Real Estate insured under a policy of flood insurance in an amount equal to the amount insured for comparable properties in the same geographic location unless such coverage becomes no longer available either with respect to properties of this type or at commercially reasonable premium rates, but in no event less than the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended. Mortgagee shall waive requirements for flood insurance upon presentation of a certified statement by Grantor that the Mortgaged Property is not within a flood plain or mudslide hazard area designated by any agency or subdivision of the Federal, state or local government. Each insurance policy (other than flood insurance written under the National Flood Insurance Act of 1968, as amended, in which case to the extent available) shall (i) be noncancelable (which term shall include any reduction in the scope or limits of coverage) without at least 30 days' prior written notice to Mortgagee or the maximum notice period then available, whichever is shorter, (ii) except in the case of workmen's compensation and comprehensive public liability insurance, be endorsed to name Mortgagee as its interest may appear, with loss payable to Mortgagee, without contribution, under a standard mortgagee clause and in the case of comprehensive public liability insurance be endorsed to name Mortgagee as an additional insured, (iii) unless otherwise consented to by Mortgagee, in the case of property insurance, including Improvements, boilers and Equipment, provide for deductibles and contain a "Replacement Cost Endorsement", both satisfactory to Mortgagee, for the actual cost of replacing the property in question, without allowance for depreciation, as determined from time to time by the insurer or, upon request of Mortgagee, by an appraiser or engineer approved by both, (iv) be written by companies having an Alfred M. Best Company, Inc. rating of A or higher and a financial size category of not less than XII, or otherwise approved by Mortgagee, and (v) contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer

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waiving all rights of setoff, counterclaim, deduction or subrogation against Grantor. If said insurance or any part thereof shall expire, be withdrawn, become void by breach of any condition thereof by Grantor or by any lessee of any part of the Mortgaged Property or otherwise, or become void or unsafe by reason of the failure or impairment of the capital of any insurer, or if for any other reason whatsoever said insurance shall become unsatisfactory to Mortgagee in its judgment, Grantor shall immediately obtain new or additional insurance complying with the requirements of this Mortgage. Grantor shall not take out any separate or additional insurance which is contributing in the event of loss unless it is properly compatible with all other insurance carried by Grantor.

(b) Grantor shall (i) pay as they become due all premiums for such insurance, and (ii) not later than 15 Business Days prior to the expiration of each policy to be furnished pursuant to the provisions of this Section 7, deliver a valid certificate of insurance (or if such certificate is not then available, a renewal binder), evidencing a renewed policy or policies marked "premium paid", or accompanied by such other evidence of payment satisfactory to Mortgagee with standard noncontributory mortgage clauses in favor of and acceptable to Mortgagee. Such certificate of insurance (or renewal binder) shall be accompanied by a written statement of Grantor certifying that the insurance coverage evidenced thereby complies with the requirements of this Section 7.

(c) If Grantor shall be in default of its obligations to so insure or deliver any such prepaid certificate of issuance or renewal binder, then Mortgagee, at Mortgagee's option and without prior notice, may effect such insurance from year to year, and pay the premium or premiums therefor, and, following notice from Mortgagee that such insurance has been effected and paid for, Grantor shall pay to Mortgagee such premium or premiums so paid by Mortgagee with interest from the time of payment at the Alternate Base Rate plus 4% on demand, and the same shall be deemed to be secured by this Mortgage.

(d) Grantor promptly shall comply with and conform to (i) all provisions of each such insurance policy, and (ii) all requirements of the insurers thereunder applicable to Grantor or to any of the Mortgaged

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Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Mortgaged Property (collectively, the "Insurance Requirements"). If Grantor shall use any of the Mortgaged Property in any manner which would permit the insurer to cancel any insurance policy, Grantor immediately shall obtain a substitute policy satisfactory to Mortgagee to be effective at or prior to the time of any such cancelation.

(e) If the Mortgaged Property, or any portion thereof, shall be destroyed or damaged by fire or any other casualty, whether insured or uninsured, and regardless of any amount of proceeds of insurance which are available to Grantor, Grantor shall promptly thereafter commence and diligently pursue to completion the restoration, repair and replacement of the Mortgaged Property or any such portion as nearly as possible to its value, condition and character immediately prior to said damage, loss or destruction. Grantor shall give immediate notice of any material destruction or damage to Mortgagee who may make proof of loss if not promptly made by Grantor, and each insurance company concerned is hereby authorized and directed to make payment for any loss directly to Mortgagee. Mortgagee shall have the right, at its option, to participate in the adjustment of any loss in excess of \$750,000. The insurance proceeds or any part thereof received by Mortgagee shall be applied by Mortgagee toward reimbursement of all costs and expenses of Mortgagee in collecting such proceeds, and the balance shall be applied as follows: (i) if no Event of Default shall have occurred and be continuing, such proceeds shall be applied to the restoration and repair of the Mortgaged Property (in accordance with the provisions of Section 8) or, if such proceeds shall be less than \$750,000 or if Mortgagee shall determine, in its sole discretion, that it shall not be necessary to retain control over such insurance proceeds, such proceeds shall be paid over to Grantor for application to such restoration and repair or (ii) if any Event of Default shall have occurred and be continuing, (A) first, to the payment of the Indebtedness which has become due and remains unpaid, and (B) second, to the restoration and repair of the Mortgaged Property (in accordance with the provisions of Section 8). Any proceeds remaining after the application thereof in accordance with the foregoing provisions shall be disbursed to Grantor pursuant and subject to the provisions of Section 8.

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(f) The insurance required by this Mortgage may, with Mortgagee's consent, be effected by blanket and/or umbrella policies issued to Grantor or an affiliate of Grantor covering the Mortgaged Property and other properties (real and personal) owned or leased by Grantor, provided that such policies otherwise comply with the provisions of this Mortgage and, in the case of extended coverage insurance, all risk endorsements shall provide coverage (i) in amounts satisfactory to Mortgagee, (ii) on a 100% replacement cost basis which Grantor shall be required to review and adjust annually, and (iii) without co-insurance.

(g) Any transfer of the Mortgaged Property, by foreclosure or deed in lieu of foreclosure, shall transfer therewith all of Grantor's interest, including any unearned premiums, in all insurance policies then in force covering the Mortgaged Property.

(h) If any Event of Default shall have occurred and be continuing, Grantor, upon Mortgagee's request, shall pay to Mortgagee an amount equal to one-twelfth of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage on a specified date each month. In such event, Grantor shall cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and provided Grantor has deposited sufficient funds with Mortgagee pursuant to this Section 7, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee (disregarding any gain or loss realized by Mortgagee from investments made with such funds) are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Grantor and Grantor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 7 and not theretofore applied by Mortgagee in respect of any obligation of Grantor hereunder. Mortgagee may commingle said funds with its own funds and Grantor shall be entitled to no interest thereon. Mortgagee may impound or reserve for future payment of insurance premiums such

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portion of such payments as Mortgagee in its absolute discretion may deem proper. Should Grantor fail to deposit with Mortgagee sums sufficient to pay in full such insurance premiums at least 30 days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, with interest thereon at the Alternate Base Rate plus 4% from the date of advance thereof, shall be secured hereby and shall be repayable to Mortgagee on demand. If an Event of Default shall occur and be continuing, at the option of Mortgagee, Mortgagee may, without making any advance whatever, apply sums held by it hereunder upon any obligation of Grantor secured hereby.

#### 8. Restoration.

(a) Restoration of any of the Mortgaged Property pursuant to the provisions of Section 7 hereof shall be performed promptly, in a good and workmanlike manner and, in any event where Mortgagee shall retain possession of insurance proceeds pursuant to Section 7(e) hereof, only in accordance with the following additional conditions:

(i) prior to the commencement of restoration, the contracts, contractors, architects, plans and specifications for the restoration shall have been approved by Mortgagee (such approval not to be unreasonably withheld or delayed), and Mortgagee shall have the right to require, in its judgment reasonably exercised, an acceptable surety bond insuring satisfactory completion of the restoration;

(ii) at the time of any disbursement of the restoration funds, (A) no Event of Default shall then exist, (B) no mechanics or materialman's liens shall have been filed and remain undischarged, except those bonded while being contested and those discharged by the disbursement of the requested restoration funds, and (C) a satisfactory continuation of title insurance on the Land and Improvements shall be delivered to Mortgagee;

(iii) disbursements shall be made monthly in an amount not exceeding the cost of the work completed since the last disbursement, upon receipt

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of reasonably satisfactory evidence of the stage of completion and of performance of the work in a good and workmanlike manner and in accordance with the contracts, plans and specifications;

(iv) Mortgagee shall, at all times, be satisfied that there remain adequate funds to complete the restoration;

(v) Mortgagee may impose such other reasonable conditions as are customarily imposed by construction lenders for borrowers having a similar financial position as then existing for Grantor, including the maintenance of any insurance coverage which Mortgagee shall deem appropriate; and

(vi) any restoration funds remaining after the application thereof in accordance with the provisions hereof shall be disbursed to Grantor unless an Event of Default shall have occurred and be continuing.

(b) Grantor shall pay the cost of the restoration to the extent that it exceeds the amount of insurance proceeds or condemnation proceeds awarded. Grantor (i) shall evidence to Mortgagee an unencumbered source of funds to pay for such restoration, and (ii) agrees to use said funds to complete restoration of the Improvements.

(c) The administration of the restoration procedures set forth in subsection (a) of this Section 8 may be delegated by Mortgagee to and performed by an independent bonded consulting professional experienced in the administration of such procedures who shall be designated by Grantor and approved by Mortgagee. All reasonable fees, costs and expenses of any such consulting professional shall be borne and timely paid by Grantor.

(d) Notwithstanding any damage or destruction caused by fire or other casualty, Grantor shall continue to pay the Indebtedness and perform the Obligations secured hereunder. Any reduction in the Indebtedness resulting from the application to the Indebtedness of insurance proceeds pursuant hereto shall be deemed to take effect only on the date of receipt by Mortgagee of such proceeds and the application of such proceeds to the Indebtedness.



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9. Condemnation/Eminent Domain. Immediately upon obtaining knowledge of any pending or threatened institution of any proceedings for the condemnation of the Mortgaged Property, or any portion thereof or interest therein, or for any exercise of rights of eminent domain or of any similar proceedings (collectively, "Condemnation"), Grantor shall notify Mortgagee of the threat of or pendency of such proceedings. Mortgagee may participate in any such proceedings, and Grantor shall from time to time deliver to Mortgagee all instruments requested by it to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceeding and shall consult with Mortgagee, its attorneys and experts and cooperate with it in any defense of any such proceedings to the extent requested by Mortgagee. All awards and proceeds of Condemnation shall be assigned to Mortgagee to be applied in the same manner as insurance proceeds, as provided in Sections 7 and 8. Without limiting the generality of the foregoing, the terms and conditions of Section 8(d) shall be equally applicable in connection with any Condemnation and all awards and proceeds resulting therefrom.

10. Discharge of Liens, Utilities.

(a) Grantor shall not, without the prior written consent of Mortgagee, create, consent to or suffer the creation of any Lien, or through any act or failure to act, acquiesce in the placing of or allowing to remain any Lien, on any of the Mortgaged Property, whether or not such Lien is subordinate to this Mortgage, or fail to have any Lien which may be imposed without Grantor's consent discharged and satisfied of record within 30 days after it is imposed, except that Grantor shall have the right to contest such claims or demands in accordance with and subject to the conditions of Section 6.02(i) of the Credit Agreement and, as applicable, Sections 4 or 5 hereof. Grantor shall pay when due all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a Lien, except that Grantor shall have the right to contest such claims or demands in accordance with and subject to the conditions of Section 6.02(i) of the Credit Agreement and, as applicable, Sections 4 and 5 hereof.

(b) Grantor shall pay when due all utility charges which are incurred by it for gas, electricity, water or sewer services and all other assessments or charges of a similar nature, whether public or private.

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and whether or not such taxes, assessments or charges are Liens on the Mortgaged Property. Notwithstanding the foregoing, Grantor shall have the same right, as set forth in Section 4 and 5 hereof, as applicable and subject to the conditions therein, to contest any of the aforementioned charges.

11. Books and Records. Grantor shall at all times keep and maintain complete and accurate records and books of account with respect to the Mortgaged Property and prepare any reports requested with respect thereto, all as provided for in the Credit Agreement.

12. Estoppel Certificates. From time to time, within 10 days after a request of Mortgagee, Grantor shall furnish a written statement, signed and acknowledged, certifying to Mortgagee or any proposed assignee of this Mortgage as to the amount of the Indebtedness which Grantor acknowledges to be secured hereby, specifying any claims of offset or defense which Grantor asserts against the Indebtedness secured hereby or any obligations, and, at the request of Mortgagee, any facts relevant to the condition of the Mortgaged Property. Grantor shall also certify as to the terms of payment of the Indebtedness, the date to which interest has been paid under the Credit Agreement and any other matters reasonably requested by Mortgagee and reasonably related to the Mortgaged Property.

13. Expenses. Grantor shall pay, together with any interest or penalties imposed in connection therewith, all expenses incident to the preparation, execution, acknowledgment, delivery and/or recording of this Mortgage, including all filing, registration or recording fees and all federal, state, county and municipal, internal revenue or other stamp taxes and other taxes, duties, imposts, assessments and charges now or hereafter required by the Federal, state, county or municipal government.

14. Mortgagee's Costs and Expenses. Upon the occurrence of any Event of Default or the exercise by Mortgagee of any of Mortgagee's rights hereunder, or if any action or proceeding be commenced, to which action or proceeding Mortgagee is or becomes party or in which it becomes necessary to defend or uphold the lien of this Mortgage, or if the taking, holding or servicing of this Mortgage by Mortgagee is alleged to subject Mortgagee to any civil fine, or if Mortgagee's review and approval of any document is requested by Grantor or required by Mortgagee, all costs, expenses and fees incurred by Mortgagee in connection

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therewith (including any civil fines and reasonable attorneys' fees and disbursements) shall, on notice and demand, be paid by Grantor, and if not paid within 15 days, shall accrue interest thereon at the Alternate Base Rate plus 4% from the date the same are paid by Mortgagee, shall be a lien on the Mortgaged Property and shall be secured by this Mortgage; and, in any action to foreclose this Mortgage, or to recover or collect the Indebtedness, the provisions of this Section 14 with respect to the recovery of costs, disbursements and allowances shall prevail unaffected by the provisions of any law with respect to the same to the extent that the provisions of this Section 14 are not inconsistent therewith or violative thereof. The provisions of this Section 14 shall not be construed to limit Mortgagee's claims under the Credit Agreement or any other Loan Document in respect of reimbursement of costs and expenses or indemnification, which claims shall also be secured by this Mortgage.

15. Mortgagee's Right to Perform. Upon any Event of Default, Mortgagee, without waiving or releasing Grantor from any obligation or default under this Mortgage, may (but shall be under no obligation to), at any time (with prior written notice to Grantor) perform the same, and the cost thereof, with interest at the Alternate Base Rate plus 4%, shall immediately be due from Grantor to Mortgagee, and the same shall be secured by this Mortgage and shall be a lien on the Mortgaged Property prior to any right, title to, interest in or claim upon the Mortgaged Property attaching subsequent to the lien of this Mortgage. No payment or advance of money by Mortgagee under this Section 15 shall be deemed or construed to cure Grantor's default or waive any right or remedy of Mortgagee hereunder.

16. Further Assurances. Grantor agrees, upon demand of Mortgagee and at Grantor's sole cost and expense, to do any act or execute any additional documents, including, but limited to, security agreements on any personalty included or to be included in the Mortgaged Property as may be reasonably required by Grantor to confirm the lien of or carry out more effectively the lien of this Mortgage and to promptly correct any defect or error which may be discovered in the contents of the Loan Documents or in the execution, acknowledgement or recordation thereof.

17. Event of Default. The occurrence of any one or more of the events specified as an "Event of Default" in the Credit Agreement shall constitute an Event of Default by Grantor hereunder.

18. Remedies. Upon the occurrence of any Event of Default, the Indebtedness and all amounts owing under this Mortgage may be declared to be, or shall automatically become, immediately due and payable without presentment, demand, protest or notice of any kind, including, but without limitation, notice or default, notice of intent to accelerate or notice of acceleration, all as provided in the Credit Agreement, and Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce Mortgagee's rights against Grantor in and to the Mortgaged Property, including, but not limited to, the following actions:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operations and collection including reasonable attorneys' fees and expenses, upon the Indebtedness secured hereby, all in such order as Mortgagee may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in the Credit Agreement, this Mortgage, any other Loan Document or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

(b) Commence an action to foreclose this Mortgage as a lien, appoint a receiver, or specifically enforce any of the covenants hereof.

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(c) Elect to foreclose by exercise of the power of sale herein contained.

19. Foreclosure by Power of Sale. Mortgagee may elect to cause the Mortgaged Property or any part thereof to be sold as follows:

(a) Mortgagee may proceed as if all of the Mortgaged Property were real property in accordance with subsection (d) below, or Mortgagee may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Land or the Improvements without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subsection (c) below, separate and apart from the sale of real property.

(b) To the extent permitted by law, Mortgagee may cause any such sale, proceeding or other disposition to be commenced immediately following the expiration of any grace period, if any, provided under the Credit Agreement or Mortgagee may delay any such sale or other disposition for such period of time as Mortgagee deems to be in its best interest. Should Mortgagee desire that more than one such sale or other disposition be conducted, Mortgagee may, to the extent permitted by law, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Mortgagee may deem to be in its best interests.

(c) Should Mortgagee elect to cause any of the Mortgaged Property to be disposed of as personal property as permitted by subsection (a) above, it may dispose of any part thereof in any manner now or hereafter permitted by the Uniform Commercial Code in effect in the jurisdiction in which the Land is located or in accordance with any other remedy provided by law. Any such disposition may be conducted by an employee or agent of Mortgagee. To the extent permitted by law, Mortgagee and its beneficiaries, including any Bank, shall be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Mortgagee may elect, subject to the provisions of the Uniform Commercial Code in effect in the jurisdiction in which the Land is located. Expenses of retaking, holding, preparing for sale, selling or the like shall include Mortgagee's

reasonable attorneys' fees and legal expenses, and upon any Event of Default, Grantor, upon demand of Mortgagee, shall assemble all personal property included in the Mortgaged Property and make it available to Mortgagee. Mortgagee shall give Grantor at least 10 days' prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any such other intended disposition is to be made, and if such notice is sent to Grantor in the manner provided for in the Credit Agreement for the giving of notices, Grantor agrees it shall constitute reasonable notice to Grantor under the aforesaid Uniform Commercial Code.

(d) Should Mortgagee elect to foreclose under power of sale, the Mortgagee shall foreclose under the power of sale herein contained, and it shall be lawful for and Mortgagee is hereby authorized and empowered to expose to sale, and sell the Mortgaged Property at public auction for cash or, to the extent permitted by law, other consideration after having first given such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and giving such notice and advertising of the time and place of such sale and in such manner as may then be provided by law, and upon such compliance with the law then relating to foreclosure proceedings under power of sale, to convey title to the purchaser in as full and ample manner as the Mortgagee is empowered. Mortgagee and its beneficiaries, including any Bank, may be and become the purchaser at any sale under this Mortgage. At any such sale, Mortgagee may, at its election, require the successful bidder to immediately deposit with Mortgagee cash or certified check in an amount equal to all or any part of the successful bid, and notice of any such requirement need not be included in the advertisement or the notice of such sale.

The proceeds of the sale shall be disbursed as follows: First, to the payment of all expenses incident to said sale, including reasonable attorneys' fees for services performed, and all the costs of sale, including but not limited to, costs of collection, taxes and assessments (unless the sale is made subject to taxes and assessments), costs of recording, service fees and reasonable incidental expenditures; Second, the payment of the Indebtedness and advancements and other sums expended by Mortgagee according to the

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provisions hereof and otherwise as required by the then existing law relating to foreclosures; and Third, the balance, if any, to those so entitled, according to applicable law, or if Mortgagee cannot determine those to whom such excess would be entitled, to payment to the clerk of court of the county in which the sale is conducted for a determination of the ownership of the proceeds.

(e) In the event of a sale or other disposition of the Mortgaged Property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts, such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

(f) The acknowledgement of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee from all obligations to see to the proper application of the consideration therefor as hereinafter provided. The purchaser at the foreclosure sale hereunder may disaffirm any easement granted or rental or lease contract made in violation of any provision of this Mortgage, and may take immediate possession of the Mortgaged Property free from and despite the terms of such grant of easement or rental or lease contract.

(g) Grantor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale pursuant hereto.

20. Proceeds of Sale. The purchase money, proceeds or avails of any sale made pursuant to any security agreement contained in this Mortgage shall be distributed according to the provisions of the Uniform Commercial Code as adopted in the state in which the Mortgaged Property is located. Proceeds, purchase money or avails of any of the real property made pursuant to Section 19 hereof shall be distributed in accordance with the provisions of Section 19(d) of this Mortgage. The proceeds of any judicial foreclosure sale of the Mortgaged Property shall be

distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings; and second, in accordance with provisions of Section 19(d) of this Mortgage.

21. Satisfaction and Cancelation. If Grantor shall pay the Indebtedness in full in accordance with its terms, then this conveyance shall be null and void, and this Mortgage may be canceled of record at the request and at the expense of the Grantor, but without representation or warranty by Mortgagee.

22. Right of Mortgagee to Credit Sale. Upon any sale or sales made hereunder, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgement or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Indebtedness or other sums secured by this Mortgage the net sale price after deducting therefrom the expenses of sale and the cost of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage, and, in such event, this Mortgage, shall be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon the Indebtedness as having been paid.

23. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Mortgagee as a matter of right and without notice to Grantor, and without regard to the then value of the Mortgaged Property or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in Section 18(a) and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated.

24. Extension, Release, etc. Without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations (including the Obligations), Mortgagee (i) may, from time to



time and without notice, agree to (A) release any person liable upon any such obligation, (B) extend the maturity or alter any of the terms of any such obligation (including the Obligations), (C) grant other indulgences, (D) release or reconvey or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (E) take or release any other or additional security for any obligation herein mentioned, or (F) make compositions or other arrangements with debtors in relation thereto, and (ii) shall release Mortgaged Property to the Grantor pursuant to the terms and conditions of Section 5.04(c) of the Credit Agreement.

25. Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of the Indebtedness or any obligations (including the Obligations) secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Indebtedness and obligations (including the Obligations) may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may in Mortgagee's absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given to Mortgagee or to which Mortgagee may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may deemed expedient by Mortgagee.

26. Surrender. Upon the occurrence and continuation of any Event of Default and pending the exercise by Mortgagee or Mortgagee's agents or attorneys of the right to exclude Grantor from all or any part of the Mortgaged Property, Grantor agrees upon such prior written notice from Mortgagee as required by law to vacate and surrender possession of the Mortgaged Property to Mortgagee or to a receiver, if any, and in default thereof, it may be

evicted by any summary action or proceeding for the recovery of possession of premises for nonpayment of rent, however designated.

27. Successor Grantor. In the event ownership of the Mortgaged Property or any portion thereof becomes vested in a person other than the Grantor herein named, Mortgagee may, without notice to the Grantor herein named, whether or not Mortgagee has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Mortgage and the Indebtedness or the Obligations in the same manner as with the Grantor herein named, without in any way vitiating or discharging Grantor's liability hereunder or under the Indebtedness or the Obligations.

28. Security Agreement under Uniform Commercial Code. It is the intention of the parties hereto that this Mortgage shall constitute, in addition to a real property mortgage and an Assignment of Leases and Rents, (i) a grant by Grantor of a security interest in the Mortgaged Property unto Mortgagee and (ii) a Security Agreement within the meaning of the Uniform Commercial Code of the State in which the Land is located. Mortgagee shall have, therefore, in addition to all the rights and remedies provided in the Credit Agreement, this Mortgage and the other Loan Documents, all the rights and remedies of a secured party under the aforementioned Uniform Commercial Code. Notwithstanding the filing of a financing statement covering any of the Mortgaged Property in the records normally pertaining to personal property, all of the Mortgaged Property, for all purposes and in all proceedings, legal or equitable, shall be regarded, at Mortgagee's option (to the extent permitted by law), as part of the Land and Improvements whether or not any such item is physically attached to the Land and Improvements or serial numbers are used for the better identification of certain items. The mention in any such financing statement of any of the Mortgaged Property shall never be construed as in any way derogating from or impairing this declaration and it is hereby stated intention of the parties that such mention in the financing statement is hereby declared to be for the protection of Mortgagee in the event any court shall at any time hold that notice of Mortgagee's priority of interest, to be effective against any third party, including the Federal government and any authority or agency thereof, must be filed in the Uniform Commercial Code records. Pursuant to the provisions of the Uniform Commercial Code, Grantor hereby authorizes Mortgagee, without the signature of Grantor, to execute and file

financing and continuation statements if Mortgagee shall determine, in its sole discretion, that such are necessary or advisable in order to perfect its security interest in the Equipment covered by this Mortgage, and Grantor shall pay to Mortgagee, on demand, any expenses incurred by Mortgagee in connection with the preparation, execution, and filing of such statements that may be filed by Mortgagee.

29. Indemnification; Waiver of Claim.

(a) Grantor agrees to indemnify and hold harmless Mortgagee from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Mortgagee by reason or on account of, or in connection with, (i) any wilful misconduct of Grantor or any default or Event of Default by Grantor hereunder or under any other Loan Document, (ii) Mortgagee's exercise of any of its rights and remedies, or the performance of any of its duties, hereunder or under any other Loan Document to which Grantor is a party, (iii) the construction, reconstruction or alteration of the Mortgaged Property or any part thereof, (iv) any negligence of Grantor or any of its respective agents, contractors, subcontractors, servants, employees, licensees or invitees or (v) any accident, injury, death or damage to any person or property occurring in, on or about the Mortgaged Property or any street, drive, sidewalk, curb or passageway adjacent thereto, except for any of the foregoing resulting from the wilful misconduct or gross negligence of Mortgagee. Any amount payable to Mortgagee under this Section shall be due and payable within 10 days after demand therefor and receipt by Grantor of a statement from Mortgagee setting forth in reasonable detail the amount claimed and the basis therefor, and, if not so paid, such amount shall be added to the Indebtedness, together with interest thereon at the Alternate Base Rate plus 4% commencing from the date of demand therefor and shall be secured hereby. Grantor's obligations hereunder shall not be affected by the absence or unavailability of insurance. If Mortgagee commences an action against Grantor to enforce any of the terms hereof or because of the breach by Grantor of any of the terms hereof, or for the recovery of any sum secured hereby, Grantor shall pay to Mortgagee reasonable attorneys' fees and expenses, together with interest thereon at the Alternate Base Rate plus 4% from the date the same are paid by Mortgagee to the date of reimbursement by Grantor, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable

whether or not such action is prosecuted to judgment. If an Event of Default shall have occurred, Mortgagee may engage an attorney or attorneys to protect its rights hereunder, and in the event of such engagement, Grantor shall pay Mortgagee reasonable attorneys' fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Grantor by reason of breach. The provisions of this Section 29 shall not be construed to limit Mortgagee's claims under the Credit Agreement or any other Loan Document in respect of reimbursement of costs and expenses or indemnification, which claims shall also be secured by this Mortgage.

30. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. Grantor shall not be relieved of Grantor's obligations to pay the Indebtedness at the time and in the manner provided for its payment in the Credit Agreement and other Loan Documents, and to perform the Obligations, by reason of (i) failure of Mortgagee to comply with any request of Grantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the other Loan Documents or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Indebtedness or any portion thereof or the performance of the Obligations or (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for or guarantor or obligor in respect of the Indebtedness or the Obligations. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Mortgaged Property, Mortgagee may release any person at any time liable for the payment of the Indebtedness or any portion thereof or the performance of the Obligations or any part of the security held for the Indebtedness or the Obligations and may extend the time of payment or otherwise modify the terms of the Loan Documents or any other mortgage, instrument or document evidencing, securing or guaranteeing the Indebtedness or the Obligations, including, without limitation, a modification of the interest rate payable on the principal balance of the Loans, without in any manner impairing or affecting this Mortgage, as so extended and modified, as security for the Indebtedness and the Obligations over any such subordinate lien, encumbrance, right, title or interest. Mortgagee may resort for the payment of the Indebtedness or the performance of the Obligations to any other security held by Mortgagee in such order and

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manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as election to proceed under any one provision herein to the exclusion of any other provision.

31. Waivers by Grantor. Upon the happening and continuation of an Event of Default, Grantor hereby waives, to the extent permitted by applicable law, all errors and imperfections in any proceedings instituted by Mortgagee under this Mortgage and all notices of any Event of Default (except as may be provided for under the terms of the Credit Agreement) or of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under this Mortgage and all benefit of any present or future statute of limitations or moratorium law or any other present or future law, regulation or judicial decision, nor shall Grantor at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of such statute, law, regulation or judicial decision which (a) exempts any of the Mortgaged Property or any other property, real or personal, or any part of the proceeds arising from any sale thereof from attachment, levy or sale under execution, (b) provides for any stay of execution, moratorium, marshalling of assets, exemption from civil process, redemption, extension of time for payment or valuation or appraisal of any of the Mortgaged Property, (c) requires Mortgagee to institute proceedings in mortgage foreclosure against the Mortgaged Property before exercising any other remedy afforded Mortgagee hereunder upon the occurrence of an Event of Default, or (d) conflicts with or may affect, adverse to Mortgagee, any provision, covenant or term of this Mortgage.

32. Notices. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to or served upon either of the parties by the other, or whenever either of the parties desire to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect to this Mortgage or to the Mortgaged Property, each

such notice, demand, request, consent, approval or other communication shall be given in the manner and with the effect provided in the Credit Agreement to the party to receive the same at its address or at such other address as may be substituted by notice given as herein provided.

(a) If to Mortgagee:

Chemical Bank, as Agent  
277 Park Avenue  
New York, N.Y. 10172  
Attention: Ms. Sylvia Collymore

with a copy to:

Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
53rd Floor  
New York, N.Y. 10005  
Attention: Martin R. Levine, Esq.

(b) If to Grantor:

Sealed Power Technologies, L.P.  
2025 Sanford Street  
Muskegon Heights, Michigan 49444  
Attention: Vice President-Finance

33. Taxes on Mortgagee.

(a) If any governmental authority shall levy, assess, or charge any tax, other than a direct tax on the income of Mortgagee, assessment or imposition upon this Mortgage, the indebtedness, the interest of Mortgagee in the Mortgaged Property, or Mortgagee by reason of or as holder of any of the foregoing, Grantor shall pay all such taxes, assessments and impositions to, for, or on account of Mortgagee (or provide funds to Mortgagee for such payment) as they become due and payable and on demand shall furnish proof of such payment to Mortgagee. In the event of passage of any law or regulation permitting, authorizing or requiring the tax, assessment or imposition to be levied, assessed or charged, which law or regulation in the opinion of Mortgagee's counsel may prohibit Grantor from paying the tax, assessment or imposition to or for Mortgagee (and from providing funds to Mortgagee to pay such tax, assessment or imposition), or which shall make such payment by Grantor result in the imposition of interest

exceeding the maximum permitted by law, then, at the election of Mortgagee, all that portion of the Indebtedness under the Credit Agreement and this Mortgage shall become immediately due and payable.

(b) In the event of the passage after the date of this Mortgage of any law of the jurisdiction in which the Land and Improvements are located deducting from the value of the Land and Improvements for the purposes of taxation any lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes and imposing a tax, either directly or indirectly, on this Mortgage, the Credit Agreement or any other Loan Document, Mortgagee shall have the right to declare all sums outstanding secured by this Mortgage immediately due and payable; provided, however, that such election shall be ineffective if Grantor is exempt from such tax or, if not exempt from such tax, is permitted by law to pay the whole of such tax (or to provide funds to Mortgagee to pay such taxes) in addition to all other payments required hereunder and if Grantor pays such tax (or provides funds to Mortgagee to pay such tax) when the same is due and payable and agrees in writing to pay such tax when thereafter levied or assessed against the Land or Improvements.

34. No Modification; Binding Obligations. This Mortgage may not be modified, amended, discharged or waived in whole or in part except by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought. The covenants of this Mortgage shall run with the land and bind Grantor, the heirs, distributees, personal representatives, successors and assigns of Grantor, and all present and subsequent encumbrances, lessees and sublessees of any of the Mortgaged Property, and shall inure to the benefit of Mortgagee and its successors, assigns and endorsees.

35. Miscellaneous. As used in this Mortgage, the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (a) "including" shall mean "including but not limited to"; (b) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (c) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage and/or deed of trust"; (d) "obligation" shall mean "obligation, duty, covenant and/or condition"; and (e) "any of the Mortgaged

Property" shall mean "the Mortgaged Property or any part thereof or interest therein." If more than one person executes this Mortgage as Grantor, the duties of the Grantor under this Mortgage shall be joint and several. Any act which Mortgagee is permitted to perform hereunder may be performed at any time and from time to time by Mortgagee or any person or entity designated by Mortgagee. Any act which is prohibited to Grantor hereunder is also prohibited to all lessees of any of the Mortgaged Property.

36. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

37. Enforceability. The creation of this Mortgage, the perfection of the lien or security interest in the Mortgaged Property, and the rights and remedies of the Mortgagee with respect to the Mortgaged Property, as provided herein and by the laws of the state in which the Mortgaged Property is located, shall be governed by and construed in accordance with the laws of the state in which the Mortgaged Property is located. Otherwise, to the extent permitted by applicable law, the Loan Documents and all other obligations of Grantor (including the liability of Grantor for any deficiency following a foreclosure of all or any part of the Mortgaged Property) shall be governed by and construed in accordance with the laws of the State of New York. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Mortgage.

38. Receipt of Copy. Grantor acknowledges that it has received a true copy of this Mortgage.

39. Leases and Rents. The Assignment of Leases and Rents contained in the granting clause of this Mortgage shall be fully operative without any further action on the part of Grantor or Mortgagee and shall entitle Mortgagee to all Rents and Profits, whether or not Mortgagee takes possession of the Mortgaged Property. Grantor hereby further grants to Mortgagee the right (i) to enter upon and take possession of the Mortgaged Property for the purpose of collecting the Rents and Profits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Mortgagee, (iii) to let the Mortgaged



Property or any part thereof, and (iv) to apply the Rents and Profits, after payment of all necessary charges and expenses, toward payment of the Indebtedness in such priority and proportions as Mortgagee, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, in each case whether or not sale or foreclosure has been instituted. Such assignment and grant shall continue in effect until the Indebtedness has been fully paid and shall be cumulative of all other rights and remedies available to Mortgagee under this Mortgage or otherwise. The foregoing provisions shall constitute an absolute and present assignment of the Rents and Profits to Mortgagee, subject, however, to the conditional permission given to Grantor to collect the Rents and Profits until the occurrence of an Event of Default. Rents and Profits collected by Grantor, or a portion of such Rents and Profits sufficient to discharge all current sums due on the Indebtedness, shall be held by Grantor in trust for use in payment of the Indebtedness. Nothing contained in this Section shall be construed as imposing on Mortgagee any of the obligations of the lessor under the Leases.

40. The Other Security Documents. Grantor acknowledges that, in addition to this Mortgage, there are a number of other security documents (the "Other Security Documents" comprising several of the Loan Documents) which secure the Indebtedness and the Obligations. Grantor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of the Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by the Mortgagee of any security for or guarantors upon any of the Indebtedness or Obligations hereby secured, or by any failure, neglect or omission on the part of the Mortgagee to realize upon or protect any of the Indebtedness hereby secured or any collateral security therefor including the Other Security Documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Indebtedness hereby secured or of any of the collateral security therefor, including the Other Security Documents or of any guarantee thereof, and Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Security Documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of the

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Mortgagee's rights and remedies under any or all of the Other Security Documents shall not in any manner impair the Indebtedness or the Obligations hereby secured or the lien of this Mortgage and any exercise of the rights or remedies of the Mortgagee hereunder shall not impair the lien of any of the Other Security Documents or any of the Mortgagee's rights and remedies thereunder. The undersigned specifically consents and agrees that the Mortgagee may exercise its rights and remedies hereunder and under the Other Security Documents separately or concurrently and in any order that it may deem appropriate.

41. Other Security for the Indebtedness. Grantor shall observe and perform all the terms, covenants and provisions contained in the Credit Agreement and in all other mortgages, deeds of trust, security agreements, pledge agreements and other instruments or documents, including the Loan Documents, evidencing or securing payment of the Indebtedness and performance of the Obligations, in whole or in part, or otherwise executed and delivered in connection with the Loan Documents.

42. Fixture Filing. Certain of the Mortgaged Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code of the jurisdiction in which the Land is located) on the Land described or referred to in this Mortgage, and this Mortgage upon being filed for record in the real estate records of the county wherein such fixtures are situated shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Mortgaged Property which is or may become fixtures.

43. Hazardous Waste. (a) Grantor shall (i) not manage any hazardous waste, hazardous substance, hazardous material, hazardous chemical, toxic substance or toxic pollutant, including, without limitation, asbestos, PCB's and dioxin and including such wastes, contaminants, substances, materials or pollutants as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Clean Air Act, the Clean Water Act, in any regulations promulgated pursuant thereto or in any other applicable law ("Hazardous Waste") on, under or at the Mortgaged Property in material violation of any applicable Legal Requirement, (ii) contain or remove, at Grantor's sole cost and expense, any Hazardous Waste on, under or at the

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Mortgaged Property if, as and when containment or removal is required under any applicable Legal Requirement and, whether or not so required, any containment or removal of Hazardous Waste on, under or at the Mortgaged Property shall be performed in material compliance with all applicable Legal Requirements and (iii) provide Mortgagee with written notice, within 20 days, of any of the following: (A) upon Grantor's obtaining knowledge of a material violation of any applicable Legal Requirement with respect to Hazardous Waste, or any actual or threatened release, of any Hazardous Waste on, under or at the Mortgaged Property, which is not in material compliance with any applicable Legal Requirement, (B) upon Grantor's receipt, or upon Grantor's obtaining knowledge of the receipt by any affiliate or tenant of Grantor, of any written notice from any Federal, state or local governmental authority regarding Hazardous Waste on, under or at the Mortgaged Property, which alone or in conjunction with other such notices is material, or (C) upon Grantor's obtaining knowledge of the incurrence of any cost or expense by any Federal, state or local governmental authority in connection with the assessment, containment or removal of any Hazardous Waste at or from the Mortgaged Property, or of such governmental authority in connection with any Hazardous Waste on, under or at the Mortgaged Property. In the event Grantor fails to so comply with (a)(ii) above after Grantor receives notice of any condition requiring removal and after the expiration of any cure period under applicable law, regulation or order, Mortgagee may either declare an Event of Default under this Mortgage or cause the removal from the Mortgaged Property of the hazardous substances or wastes, which has been discharged into or onto the Mortgaged Property in material violation of any applicable Legal Requirement, whether buried, concealed or otherwise, and reimbursement to Mortgagee of the cost of the removal or remedy which is reasonably necessary under applicable Legal Requirements shall be secured by this Mortgage and be due and payable on demand with interest thereon at the Alternate Base Rate plus 4% from the date such cost is incurred, provided that Mortgagee gives Grantor prior written notice of Mortgagee's removal activities.

(b) Grantor shall indemnify Mortgagee and the Banks and defend and hold Mortgagee and the Banks harmless from and against all losses, costs, damage and expense (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee or the Banks may reasonably incur, directly or indirectly, as a result of or in

connection with the assertion against Mortgagee or the Banks of any claim relating to the presence or removal of any Hazardous Waste, or compliance or noncompliance with any Federal, state or local laws, rules, regulations or orders relating thereto, whether before, during or after the term of this Mortgage, including claims relating to personal injury or damage to personal property, provided that such indemnity shall not apply to any loss, costs, damage and expense as are found in a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or wilful misconduct of Mortgagee or the Banks.

(c) Upon Mortgagee's request (but not more than once in any six-month period) and provided that Mortgagee has reason to believe Grantor is not complying in all material respects with all Legal Requirements relating to Hazardous Waste, Grantor will provide, at Grantor's sole cost and expense, an inspection or audit of the Mortgaged Property by an engineering or consulting firm approved by Mortgagee evaluating the Grantor's compliance with such Legal Requirements. If Grantor fails to undertake such an inspection or audit within 30 days after receiving a request therefor, such an inspection or audit is not completed within a reasonable time and the results thereof not promptly provided to Mortgagee, Mortgagee may undertake such evaluation. Reimbursement of the cost of such evaluation shall be secured by this Mortgage and be due and payable on demand with interest at the Alternate Base Rate plus 4% from the date such cost is incurred.

(d) Grantor shall remove asbestos as required by applicable Legal Requirements and shall indemnify and defend and hold Mortgagee harmless from and against all loss, cost, damage and expense (including reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may incur, directly or indirectly, as a result of or in connection with the assertion against Mortgagee of any claim relating to the presence or removal of any asbestos, or material compliance or material noncompliance with any Federal, state or local laws, rules, regulations or orders relating thereto whether before, during or after the term of this Mortgage, including claims relating to personal injury or damage to personal property, provided such indemnity shall not apply to any such loss, cost, damage and expense as is found in a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or wilful misconduct of Mortgagee.

(e) All expenditures and outlays of money (plus interest thereon) made by Mortgagee pursuant to any paragraph in this Section 43 shall be (i) additional Obligations secured hereby prior to any right or title to, interest in or claim upon any of the Mortgaged Property subordinate to the lien of this Mortgage and (ii) payable on demand.

44. Alterations and Additions, etc. Grantor shall not authorize, permit or make any demolition, alteration, installation, addition, improvement, decoration or new construction (collectively, "Alterations") of or on any of the Mortgaged Property, except in conformity with and subject to the limitations set forth in this Section 44. Grantor shall have the right at its sole cost and expense to make or permit Alterations of or on the Mortgaged Property as shall be reasonably necessary or desirable for the conduct of Grantor's business (a) if required in order to comply with any other provision of this Mortgage or any Legal Requirement or Insurance Requirement or (b) at any other time, unless an Event of Default shall have occurred and be continuing at such other time or shall be caused thereby. Grantor shall secure such cost estimates as may be necessary to determine whether Grantor is in compliance with this Section 44. Any such Alterations shall be made in all cases subject to the following conditions:

(i) any Alteration shall be subject to satisfaction of and/or compliance with the terms and conditions set forth in Sections 3(a)(v)-(viii) herein;

(ii) all work done in connection with any Alteration shall be commenced promptly and shall be performed with due diligence in a good and workmanlike manner; the work in connection with any Alteration shall be promptly and duly paid for by Grantor, subject to Grantor's right to contest any amount claimed to be due in accordance with the provisions of this Mortgage; and

(iii) unless required by Legal Requirements or Insurance Requirements, no Alterations of any kind shall be made to the Mortgaged Property which would adversely affect the fair market value of the Mortgaged Property or impair the validity or priority of the Lien of this Mortgage.

45. Consent to Transfer. In the event that Grantor shall, at any time, sell, assign, lease with an option to sell, dispose of, further encumber or otherwise transfer (collectively, "Transfer") the Land or

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Improvements, whether in whole or in part, to any other person or entity without the prior written consent of Mortgagee, or in the event title to the Land or Improvements becomes vested in any other person or entity in any manner whatsoever, whether by operation of law or otherwise, all Indebtedness secured by this Mortgage and the other Security Documents shall, at the option of Mortgagee, become immediately due and payable, and Mortgagee may avail itself of all remedies provided for herein.

46. Successors and Assigns. The provisions hereof shall be binding upon Grantor and the heirs, devisees, representatives, successors and assigns of Grantor, including successors in interest of Grantor, in and to all or any part of the Mortgaged Property, and shall inure to the benefit of Mortgagee and its respective heirs, successors, substitutes and assigns. All references in this Mortgage to Grantor and Mortgagee shall be construed as including all of such other persons with respect to the person referred to. Where two or more persons have executed this Mortgage, the obligations of such persons shall be joint and several except to the extent the context clearly indicates otherwise.

47. Interest Permitted Under Law. This Mortgage is limited so that in no contingency, whether by reason of demand for payment of or acceleration of the maturity of any of the Indebtedness or otherwise, shall the interest contracted for, charged or received by Mortgagee, however characterized or computed, exceed the lesser of 50 percent per annum or the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Mortgagee in excess of the maximum lawful amount, the interest payable to Mortgagee shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance Mortgagee shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal balance of the Indebtedness and not to the payment of interest or, if such excessive interest exceeds the unpaid balance of principal of the Indebtedness, such excess shall be refunded to Grantor. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal of the Indebtedness (including the period of any renewal or extension thereof)

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so that the interest thereon for such full period shall not exceed the maximum amount permitted by applicable law.

IN WITNESS WHEREOF, Grantor has caused this Mortgage to be duly executed under seal the day and year first above written.

SEALED POWER  
TECHNOLOGIES, L.P.,  
by SEALED POWER MANAGEMENT  
CORP., Managing General  
Partner,

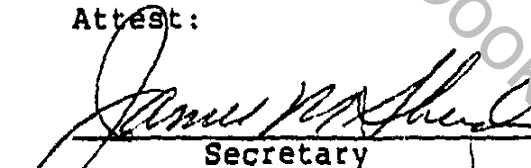
by



Title: ~~President~~

DALE A JOHNSON

Attest:

  
Secretary  
JAMES M. SHERIDAN

Property of Cook County Clerk's Office

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# UNOFFICIAL COPY

ILLINOIS NOTARY

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that DALE JOHNSON, personally known to me to be the President of the SEALED POWER MANAGEMENT CORP, and JAMES H. SHERIDAN, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such DALE JOHNSON President and JAMES H. SHERIDAN Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their 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 official seal, this 30TH  
 day of MAY, 1988.

Nancy Nelson  
 Notary Public

My commission expires:  
6-5-89

COOK County Clerk's Office

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# UNOFFICIAL COPY

EXHIBIT A

Index Nos.: 09-17-100-040-0000  
09-17-100-041-0000

## PARCEL 1:

THAT PART OF LOT "A" IN BENJAMIN CONSOLIDATION OF PART OF THE NORTH WEST 1/4 OF SECTION 17 AND PART OF THE EAST 1/2 OF THE NORTH EAST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 7, 1922 AS DOCUMENT NUMBER 7455426, BOUNDED AND DESCRIBED AS FOLLOWS. BEGINNING AT A POINT IN THE CENTER LINE OF SEEGRS ROAD (ALSO KNOWN AS ELK GROVE ROAD) BEING THE NORTH LINE OF THE SAID NORTH WEST 1/4 OF SECTION 17, 351 FEET EAST OF THE NORTH WEST CORNER OF THE SAID NORTH WEST 1/4 OF SECTION 17, THENCE SOUTH ALONG A LINE DRAWN PARALLEL WITH THE WEST LINE OF THE SAID NORTH WEST 1/4 OF SECTION 17, A DISTANCE OF 452.93 FEET TO AN INTERSECTION WITH A LINE 8.5 FEET NORTHEASTERLY OF AND PARALLEL WITH THE CENTER LINE OF EXISTING SWITCH TRACK; THENCE SOUTHEASTERLY ALONG THE SAID LINE, 8.5 FEET NORTHEASTERLY OF AND PARALLEL WITH THE SAID CENTER LINE OF SWITCH TRACK, BEING THE ARC OF A CURVED LINE, CONVEX TO THE NORTH EAST AND HAVING A RADIUS OF 718.65 FEET FOR A DISTANCE OF 130.32 FEET, THE CHORD OF SAID ARC BEING A LINE FORMING AN ANGLE OF 11 DEGREES 05 MINUTES 55 SECONDS FROM NORTH TO SOUTH EAST WITH THE SAID LINE PARALLEL WITH THE WEST LINE OF THE SAID NORTH WEST 1/4 OF SECTION 17; THENCE SOUTHEASTERLY ON A LINE TANGENT TO THE SAID LAST DESCRIBED CURVED LINE AND FORMING AN ANGLE OF 5 DEGREES 11 MINUTES 42 SECONDS TO THE RIGHT WITH A PROLONGATION OF THE SAID LAST DESCRIBED CHORD, A DISTANCE OF 49.63 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE, CONVEX TO THE SOUTH WEST TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 704.47 FEET, A DISTANCE OF 430.33 FEET, AS MEASURED ON THE SAID ARC TO A POINT OF TANGENCY 359.15 FEET WESTERLY OF THE WESTERLY RIGHT OF WAY LINE OF SAID ST. PAUL, MINNEAPOLIS AND SAULTE ST. MARIE RAILROAD ON A LINE FORMING AN ANGLE WITH SAID WESTERLY RIGHT OF WAY LINE 82 DEGREES 19 MINUTES FROM NORTH TO WEST FROM A POINT ON SAID WESTERLY RIGHT OF WAY LINE WHICH IS 620.32 FEET SOUTHEASTERLY OF THE INTERSECTION OF SAID RIGHT OF WAY LINE WITH THE NORTH LINE OF SAID NORTH WEST 1/4 OF SECTION 17; THENCE EASTERLY ON SAID LINE TANGENT TO THE LAST DESCRIBED CURVED LINE A DISTANCE OF 55.41 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVED LINE, TANGENT TO THE LAST DESCRIBED LINE, CONVEX TO THE NORTH EAST AND HAVING A RADIUS OF 406.9 FEET, FOR A DISTANCE OF 375.37 FEET AS MEASURED ON THE ARC OF SAID CURVE, TO AN INTERSECTION WITH THE WESTERLY LINE OF THE ST. PAUL, MINNEAPOLIS AND SAULTE ST. MARIE RAILROAD RIGHT OF WAY, THENCE NORTHWESTERLY ALONG SAID WESTERLY LINE OF SAID RIGHT OF WAY 782.72 FEET TO THE INTERSECTION OF SAID WESTERLY RIGHT OF WAY LINE WITH THE NORTH LINE OF SAID NORTH WEST 1/4 OF SECTION 17; THENCE WEST ALONG THE NORTH LINE OF SAID NORTH WEST 1/4 TO THE POINT OF BEGINNING, EXCEPT THEREFROM THAT PART THEREOF LYING WESTERLY OF A LINE DRAWN 335 FEET (AS MEASURED PERPENDICULARLY) WESTERLY OF AND PARALLEL WITH THE WESTERLY RIGHT OF WAY LINE OF THE ST. PAUL, MINNEAPOLIS AND SAULTE ST. MARIE RAILROAD, IN COOK COUNTY, ILLINOIS

## PARCEL 2:

EASEMENTS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS AND UTILITIES AS CREATED IN THE DECLARATION MADE BY AND BETWEEN THE LA SALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 1, 1978 AND KNOWN AS TRUST NUMBER 54286 AND CAROL L. MEYER DATED AUGUST 12, 1978 AND RECORDED AUGUST 18, 1978 AS DOCUMENT 24589638, AND RE-RECORDED SEPTEMBER 25, 1978 AS DOCUMENT 24641128, (EXCEPT THAT PART FALLING WITHIN PARCEL 1 ALL IN COOK COUNTY, ILLINOIS.

875 Seegr's Road

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SCHEDULE I  
to the Mortgage,  
Assignment of Leases  
and Rents and  
Security Agreement

## PERMITTED ENCUMBRANCES

1. Mortgage dated August 16, 1978 and recorded September 29, 1978 as document 24649714 made by LaSalle National Bank, a National Banking Association, as Trustee under Trust Agreement dated May 1, 1978, and known as Trust Number 54286 to H.F. Philipsborn and Company, a corporation of Illinois to secure a note for \$1,630,000.00. Assigned to the Manufacturers Life Insurance Company, Toronto, Canada by Document 25052064 recorded July 16, 1979 Modification Agreement recorded September 4, 1979 as Document 25129691.
2. Rights of the public, the State of Illinois and the Municipality in and to that part of the land falling in Elk Grove Road.
3. Grant made by Benjamin Electric Manufacturing Company, a corporation of Illinois to Public Service Company of Northern Illinois, a corporation of Illinois, dated October 20, 1947 and recorded October 28, 1947 as document 14178110.
4. Grant over a strip of land 5 feet in width lying immediately south of and adjoining the south line of Seegers Road dated July 13, 1961 and recorded August 31, 1961 as document 18263995.
5. A permanent non-exclusive easement created by agreement dated July 17, 1973 and recorded September 6, 1973 as document 22467477.
6. Notice of requirements for storm water detention recorded September 18, 1978 as document 24630930.
7. Assignment of rents made by LaSalle National Bank, as Trustee, under Trust Agreement dated May 1, 1978 and known as Trust No. 54286 to H.F. Philipsborn & Co., and recorded September 29, 1978 as document 24649715 and assignment recorded as document 25052065 made by H.F. Philipsborn & Co., to the Manufacturers Life Insurance Company, Toronto, Ontario, Canada.

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- 8. Easements for ingress and egress and utilities as created in the declaration made by and between LaSalle National Bank, a National Banking Association, as Trustee under Trust Agreement dated May 1, 1978 and known as Trust Number 54286 and Carol L. Meyer dated August 12, 1978 and recorded August 18, 1978 as document 24589638 and re-recorded September 25, 1978 as document 24641128.
- 9. Terms, provisions and conditions relating to the easement described as Parcel 2 contained in the instrument creating such easement.
- 10. Rights of the adjoining owner or owners to the concurrent use of the easement.

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