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## JUNIOR MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

Property Address: Vacant Land at the Northwest Corner of Cottage Grove Avenue and the Michigan Central Railroad Right-of-Way  
Ford Heights, Illinois

P.I.N.: 32-23-300-022  
32-23-313-003  
32-23-314-027  
32-23-314-026-6001  
32-23-314-026-6002  
32-23-314-025-6001  
32-23-314-025-6002

DEPT-01 RECORDING 993.00  
T92222 TRAN 9519 04/05/94 16:49:00  
45359 KLE # - 94 - 305601  
COOK COUNTY RECORDER

**THIS JUNIOR MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING** ("Mortgage") is made as of the 1st day of March, 1994, by CGE FORD HEIGHTS, L.L.C., a Delaware limited liability company ("Mortgagor"), to The First National Bank of Boston, a national banking association organized under the laws of the United States, acting not in its individual capacity but solely as trustee for the Noteholders (as defined in the Note Purchase Agreement referred to below) under the Collateral Trust Agreement (as defined below) ("Mortgagee").

### RECITALS:

WHEREAS, Mortgagor has entered into a certain Note Purchase Agreement dated as of the date hereof ("Note Purchase Agreement") with Zurn Industries, Inc. ("Zurn") and Houston Industries Energy, Inc. ("HI Energy"; Zurn and HI Energy being referred to collectively as "Initial Purchasers"), pursuant to which Mortgagor has issued its "Senior Subordinated Notes" (as defined therein) in the aggregate principal amount of \$4,805,000 to Zurn and its "Junior Subordinated Notes" (as defined therein) in the aggregate principal amount of \$20,585,000 to HI Energy (the Senior Subordinated Notes and the Junior Subordinated Notes being referred to collectively as the "Notes");

WHEREAS, the proceeds of the Notes are to be used to finance a portion of the costs of acquiring, constructing, equipping, maintaining and operating the Project (as defined in the Note Purchase Agreement), which is to be constructed upon the "Project Site" (as hereinafter defined), as more particularly described in the Note Purchase Agreement;

WHEREAS, pursuant to the terms of that certain Collateral Trust and Deposit and Disbursement Agreement among Mortgagor, Mortgagee, Zurn and HI Energy dated as of the date

THIS INSTRUMENT WAS PREPARED BY  
AND AFTER RECORDING RETURN TO:

Schliff Hardin & Waite  
7200 Sears Tower  
Chicago, Illinois 60606  
Attention: Bruce P. Weisenthal

Box 9

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hereof ("Collateral Trust Agreement"), Mortgagor and the Initial Purchasers have appointed Mortgagee to act as Trustee for the Initial Purchasers and as Mortgagee under this Mortgage, as more particularly set forth in the Collateral Trust Agreement;

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Collateral Trust Agreement; and

WHEREAS, the execution and delivery of this Mortgage as security for the Obligations (as defined in Section 1 below) are conditions to the making of the loans evidenced by the Notes.

NOW, THEREFORE, for and in consideration of: (i) the Recitals set forth above (such Recitals being incorporated herein and made a part hereof by this reference), (ii) the mutual covenants and agreements set forth in the Note Purchase Agreement and this Mortgage, (iii) the making of the loans evidenced by the Notes and (iv) other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the Obligations, Mortgagor, intending to be legally bound, does, by these presents, MORTGAGE, WARRANT and CONVEY unto Mortgagee, its successors and assigns, all of Mortgagor's estate, right, title and interest in, to and under the real estate ("Project Site") described in Attachment A attached hereto and made a part hereof, situate, lying and being in the Village of Ford Heights, County of Cook and the State of Illinois which, with the property hereinafter described, is hereinafter collectively referred to as the "Premises":

TOGETHER with all right, title and interest which Mortgagor may now have or hereafter acquire in, to, under or as holder of, all goods, types and items of property of any kind or nature whatsoever, including without limitation, the items of property which are described in clauses (a) through (b) below:

(a) the Project to be constructed on the Project Site and any and all other buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of the Project and all such buildings and improvements, now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon delivery thereof to the Project Site;

(b) all tenements, easements, fixtures and appurtenances thereto pertaining or belonging whether now held or hereafter acquired, including, without limitation, all easements, licenses, privileges and appurtenances created pursuant to any reciprocal easement agreement or declaration of covenants, conditions and restrictions now existing or hereafter created;

(c) all leases, lettings, agreements for use and occupancy, concessions and licenses of or with respect to any or all of the Project Site or improvements thereon (collectively, the "Leases"), and all rents, issues and profits thereof accruing and to accrue from the Premises and the avails thereof (collectively, the "Rents") for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily);

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(d) all land lying in the bed of any street, road, avenue, alley, sidewalk or walkway opened or proposed, vacated or adjoining the Project Site;

(e) all other property, fixtures, apparatus, machinery, equipment, goods, systems and articles of any kind or nature whatsoever now or hereafter in or on the Project Site and used or useful in connection with the Project Site, including, without limitation, those used to produce and/or supply electricity, steam, condensate, heat, gas, HVAC, air cooling, air conditioning, ventilation, water, light, power, sanitation, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled); and all pollution-control, recycling, production, maintenance and cleaning materials, equipment and supplies; and all conduits, ducts, generators, compressors, pumps, tanks, motors; and all inventory, raw materials, component parts, tires, tire pieces, work-in-process and finished and unfinished goods; and all shades, awnings, venetian blinds, screens, doors, windows, appliances, curtain fixtures, partitions, floor coverings and all building materials; and all telephone, computer, communication, and audio-visual systems, equipment and supplies; and all other fixtures, apparatus, equipment, machinery, furniture, furnishings, supplies, goods and articles and all other items of tangible personal property of whatever kind now or hereafter owned by Mortgagor;

(f) all right, title and interest of Mortgagor in and to any and all contracts and contract rights (including, without limitation, the project documents described on Attachment B attached hereto (as amended, restated, extended, renewed and modified from time to time, the "Project Documents") and all contract rights under the Project Documents), together with all the reversions and remainders and all insurance proceeds, deposits, refunds, rebates, rents, tolls, issues and profits related thereto and any other expectancy under or from any such contract or contract right, including, without limitation, all the estate, right, title, interest and claims whatsoever, at law or in equity, which Mortgagor may now or hereafter acquire with respect to the Project Site or the Collateral;

(g) all right, title and interest of Mortgagor in and to all advertising materials, guaranties, warranties, plans and specifications, building permits, other permits, licenses, soil tests, environmental reports, market and feasibility studies, appraisals and any other documents, materials or personal property of any kind now or hereafter existing in connection with the use of the Project Site and in and to all contracts relating to the construction, operation and maintenance of the Project Site; and

(h) all right, title and interest of Mortgagor in and to any general intangibles not otherwise specified herein, including, without limitation, all names, trade names, goodwill, authorizations, variances, land use entitlements, appurtenances, permits, licenses, approvals, clearances and consents, including, without limitation, the permits described on Attachment C attached hereto — it being understood that the enumeration of any specific articles of property in clauses (a) through (h) above shall in no way result in or be held to exclude any items of property not specifically mentioned or any such items hereafter acquired (the items in clauses (e), (f), (g) and (h) above being sometimes collectively called the "Personal Property"); and

TOGETHER with all estates, interests, rights, titles, claims or demands which Mortgagor now has or may hereinafter acquire in the Premises, including, but not limited to, any and all awards or payments, including interest thereon, and the right to receive the same, which may be made to or for the account of Mortgagor with respect to the Premises as a result of (a) the

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exercise of the right of eminent domain, (b) the alteration of the grade of any street, (c) any loss of or damage to any building or other improvement on the Project Site, (d) any other injury to or decrease in the value of the Premises, or (e) any refund due on account of the payment of real estate taxes, assessment or other charges levied against or imposed upon the Premises — Mortgagor hereby agreeing to execute and deliver, from time to time, such further instruments as may be reasonably requested by Mortgagee to confirm such assignment to Mortgagee of any such award or payment.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate mortgaged hereby and to be appropriated to the use of the real estate, and shall, for the purposes of this Mortgage, be deemed to be real estate and conveyed and mortgaged hereby. As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of said real estate, this Mortgage is hereby deemed to be, as well, a Security Agreement under the UCC for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as "secured party" (as said term is defined in the UCC), securing said indebtedness and obligations described in this Mortgage, and Mortgagee shall have, in addition to its rights and remedies hereunder, all rights and remedies of a Secured Party under the UCC. As to above personal property which the UCC classifies as fixtures, this instrument shall constitute a fixture filing and financing statement under the UCC.

The Premises shall include any and all property now or hereafter owned or created, replacements and substitutions therefor, accretions thereto, proceeds (whether cash, noncash, moveable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and all proceeds and products from any and all of the foregoing (a) through (h).

Notwithstanding the foregoing, any interest of Mortgagor (if any) in (i) the Trust Funds held by Mortgagee under the Collateral Trust Agreement, (ii) in the amounts held pursuant to the terms of the Escrow Agreement dated as of March 1, 1994 by and among the Mortgagor, Kidder, Peabody & Co. Incorporated, Terry A. Colip, David Nowack, HI Energy and The First National Bank of Boston, as Escrow Agent, and (iii) the Membership Interests (as defined in those certain Membership Pledge Agreements, each dated March 1, 1994, in favor of Mortgagee, is excluded from the Premises.

Mortgagor hereby covenants, represents and warrants (i) that Mortgagor is lawfully seized of the indefeasible fee title to the Premises, (ii) that Mortgagor is the record title owner of the Premises and that the same are unencumbered, except for (A) the lien of the Senior Mortgage (as defined in Section 2 below), and (B) the liens, encumbrances, conditions, restrictions, easements, leases, and other matters, rights or interests disclosed in Attachment D attached hereto (herein called "Permitted Encumbrances"), (iii) that Mortgagor has good right, full power and lawful authority to convey and mortgage the Premises, and (iv) Mortgagor shall forever defend the Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

**TO HAVE AND TO HOLD** the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

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## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

### Obligations Secured

1. This Mortgage secures:

(a) the due and punctual payment of the principal amount of, premium, if any, and interest on, the Notes from time to time outstanding, which Notes shall be issued in the aggregate original principal amount of not to exceed \$26,390,000;

(b) the due and punctual payment of all indebtedness evidenced by the Note Purchase Agreement and the Notes, including, without limitation, any future advances, plus all interest accruing thereon (including, without limitation, all interest accruing after commencement of any proceeding against or with respect to Mortgagor under the Bankruptcy Code 11 U.S.C. §1101 *et seq.*, or any other federal or state bankruptcy, insolvency, receivership or similar law at the rates specified in the Note Purchase Agreement and the Notes), and all fees due and payable in connection therewith, and all other amounts due hereunder and otherwise secured hereby under law when and as due, whether at maturity, acceleration, upon one or more dates set for payment or otherwise;

(c) the due and punctual payment of all other monetary obligations of Mortgagor to Mortgagee or the Noteholders under this Mortgage, the Note Purchase Agreement, the Notes and any and all other Collateral Documents, whether now existing or hereafter arising;

(d) the due and punctual performance by Mortgagor of all other covenants, agreements and obligations on the part of Mortgagor under this Mortgage, the Note Purchase Agreement, the Notes and any and all other Collateral Documents, whether now existing or hereafter arising;

(e) any renewals, extensions, restatements, supplements, amendments or modifications of this Mortgage, the Note Purchase Agreement, the Notes and any other Collateral Document.

The foregoing items set forth in subsections (a) through (e) of this Section 1 of this Mortgage are hereinafter collectively called the "Obligations."

### Subordination Provisions

2. This Mortgage is subject and subordinate to that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of March 1, 1994 made by Mortgagor, as mortgagor, to Continental Bank, National Association, as mortgagee ("Senior Mortgage"), recorded in Cook County, Illinois (the "Senior Mortgage"), to secure, among other things, the payment of \$79,635,000 aggregate principal amount Solid Waste Disposal Facility Revenue Bonds (Ford Heights Waste Tire to Energy Project) Series 1994 ("Series 1994 Bonds") and a loan in the aggregate principal amount of \$79,635,000 (the "Loan"), in each case as more specifically identified in the Senior Mortgage, and the obligations, covenants and agreements of Mortgagor under the Loan Agreement dated as of March 1, 1994 between the Illinois Development Finance Authority and Mortgagor (the "Loan Agreement"). Mortgagor agrees to perform all of its

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obligations under the Series 1994 Bonds, the Loan, the Loan Agreement and the Senior Mortgage, including but not limited to payment, when due, of all principal, interest, and other indebtedness secured thereby. Mortgagor further agrees to promptly furnish Mortgagee with copies of all notices received from Senior Mortgagee claiming the existence of a default under the Senior Mortgage or giving notice of a condition which with the passage of time would give rise to a default thereunder.

The terms by which this Mortgage and the Obligations are subordinated to the Senior Mortgage and the indebtedness secured thereby are as follows:

(a) Except as set forth in Section 2(c) of this Mortgage, Mortgagee will not ask, demand, sue for, take or receive from Mortgagor, by set-off or in any other manner, the whole or any part of the Obligations, unless and until all principal of, premium, if any, and interest on the Series 1994 Bonds and the Loan shall have been fully paid and all obligations, covenants and agreements of Mortgagor under the Loan Agreement shall have been fully performed (such payments, obligations, covenants and agreements being hereinafter referred to as the "Senior Obligations").

(b) Irrespective of the time or manner of the filing of their respective financing statements, the possession of any collateral, or the dating, execution or delivery of any agreement granting them security interests in the Premises, all liens and security interests of Mortgagee, whether now or hereafter arising and howsoever existing, in the Premises shall be and hereby are subordinated to the rights and interests of Senior Mortgagee in the Premises; and Mortgagee shall have no right to possession of the Premises or to foreclose upon the Premises, whether by judicial action or otherwise, unless and until all of the Senior Obligations shall have been fully paid and performed. Mortgagee also hereby agrees that, regardless of whether the Senior Obligations are secured or unsecured, Senior Mortgagee shall be subrogated to Mortgagee with respect to Mortgagee's claims against Mortgagor and Mortgagee's rights, liens and security interests, if any, in the Premises until all of the Senior Obligations shall have been fully paid and performed.

(c) Notwithstanding the provisions of Section 2(a) of this Mortgage, Mortgagor may pay to Mortgagee, and Mortgagee may accept from Mortgagor, the payments permitted under Section 7(i) of the hereinafter described Subordination Agreement ("Permitted Payments"). Prior to the payment and performance in full of the Senior Obligations, Mortgagee shall have no right to enforce payment of any Permitted Payment, or to otherwise take any action against Mortgagor or the Premises with respect to the enforcement of a Permitted Payment, without Senior Mortgagee's prior written consent, except as may be expressly set forth in said Subordination Agreement.

(d) If at any time or from time to time Mortgagee shall fail to receive any Permitted Payment, Mortgagee may institute any action available generally to unsecured creditors and available specifically to Mortgagee under the Subordination Agreement against Mortgagor to collect such Permitted Payment; provided, however, that Mortgagee shall not take any action that would result in the imposition of any judgment lien, attachment, garnishment or other liens on any assets of the Mortgagor nor initiate or join in the involuntary filing of any action for the dissolution or winding up, total or partial liquidation, bankruptcy, insolvency or marshalling of assets or liabilities of the Mortgagor or any other statutory or common law proceeding or assignment for the postponement or adjustment of all or a substantial part of the liabilities of Mortgagor, and provided further, however, the Mortgagee shall not exercise any other right or remedy whatsoever pertaining

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or pursuant to the Obligations (including but not limited to acceleration of the Obligations or foreclosure of any other right pursuant to this Mortgage or law). Notwithstanding the foregoing, but subject in all events to the terms and conditions of the Subordination Agreement, (i) if Senior Mortgagee has commenced foreclosure of its interest in the Premises, Mortgagee may accelerate the Obligations and take action to have its interest in the Premises recognized subject, however, to Senior Mortgagee's right to sell the Premises free and clear of such interest without Mortgagee's consent, and (ii) Mortgagee shall be entitled at all times and from time to time, notwithstanding any provision to the contrary contained in this Section 2, to enforce its lien and security interest in the Pledged Memberships in accordance with the provisions of the Membership Interest Pledge Agreements.

(c) Except for Permitted Payments received by Mortgagee, should any payment or distribution of security or instrument or proceeds thereof be received by Mortgagee upon or with respect to the Obligations prior to the payment and performance in full of all of the Senior Obligations (other than amounts received pursuant to the terms of the Collateral Trust Agreements), Mortgagee shall receive and hold the same in trust, as trustee, for the benefit of Senior Mortgagee and shall forthwith deliver the same to Senior Mortgagee in precisely the form received (except for the endorsement or assignment of Mortgagee where necessary), for application to any of the Senior Obligations, due or not due, and, until so delivered, the same shall be held in trust by Mortgagee as the property of Senior Mortgagee.

(f) Mortgagee acknowledges and agrees (i) that the terms and provisions of this Section 2 are intended to benefit Senior Mortgagee and that no amendment of this Section 2 shall be effective without the written consent of Senior Mortgagee. Notwithstanding the foregoing, the provisions of this Section 2 are intended solely for the benefit of Senior Mortgagee and the owners of the Series 1994 Bonds, and, upon payment and performance in full of the Senior Obligations, the rights of Mortgagee as to Mortgagor shall then be the same as they would have been without regard to the operation of this Section 2.

(g) Mortgagee further acknowledges and agrees that the benefits of this Section 2 are intended to be cumulative and in addition to the benefits afforded to Senior Mortgagee under that certain Subordination and Funding Agreement of even date herewith by and among Mortgagee, Mortgagor, Senior Mortgagee, Zurn Industries, Inc. and Houston Industries Energy, Inc. (the "Subordination Agreement"). Whenever possible, each provision in this Mortgage shall be interpreted in such manner as to be consistent with the provisions of the Subordination Agreement and no conflict or inconsistency shall be deemed to exist simply because one document contains more extensive benefits, restrictions or requirements than the other. In the event of any conflict or inconsistency between the provisions of this Mortgage and the provisions of the Subordination Agreement, the provisions of the Subordination Agreement shall govern and control to the extent of any such conflict or inconsistency.

## Maintenance, Repair and Restoration of Improvements, Payment of Liens, Etc.

3. (a) Mortgagor shall: (i) promptly repair, restore and rebuild any buildings or improvements now or hereafter located on the Project Site which may become damaged or destroyed, except as provided in Section 9.2 of the Loan Agreement; (ii) keep the Premises free from mechanics' liens or other liens or claims for lien of any kind or nature whatsoever (collectively, "Liens"); (iii) pay when due any indebtedness which may be secured by a mortgage on the

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Premises, whether senior or junior to this Mortgage and whether permitted by the terms hereof or otherwise, and comply with all requirements of all documents and instruments evidencing or securing such indebtedness, and upon request, exhibit satisfactory evidence of the discharge of any such mortgage to Mortgagee; (iv) comply with all material requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (v) make no material alterations in the Premises, except as specifically permitted in writing by Mortgagee and as permitted or required by law or municipal ordinance; (vi) suffer or permit no change in the general nature of the occupancy or use of the Premises, except as may be specifically permitted in writing by Mortgagee and permitted or required by law or municipal ordinance; (vii) initiate or acquiesce in no zoning variation or reclassification, except for zoning changes which are initiated upon reasonable advance written notice to Mortgagee and are necessary to the operation of the Project and which do not involve any property other than the Project Site and will not result in any diminution or loss in the use or value of the Premises or in Mortgagee's security interest in the Premises; (viii) procure, maintain and renew any and all governmental licenses, approvals and permits as may be required, at any time and from time to time, in order to own, operate, repair and maintain the Premises; and (ix) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof, and pay, perform, satisfy and discharge each of the Obligations when required to do so under the terms of this Mortgage, the Note Purchase Agreement, the Notes and the other Collateral Documents.

(b) Mortgagor may, in good faith and with due diligence, contest the validity or amount of any Lien, and defer payment and discharge thereof during the pendency of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; and (ii) that, within ten (10) days after Mortgagor has first learned of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iii) that Mortgagor shall deposit with Mortgagee a sum of money deemed adequate by Mortgagee to pay all liens and any penalties and interest thereon, increasing such deposit as Mortgagee may from time to time require in its sole judgment. If Mortgagor shall: (x) fail to prosecute such contest with reasonable diligence, or (y) fail to maintain sufficient funds on deposit (as hereinabove provided) or other security (as provided below), then Mortgagee may apply money on behalf of Mortgagor in payment of or on account of any such Lien, or that part thereof then unpaid, together with all interest and penalties thereon and Mortgagor shall reimburse Mortgagee in full for all such monies, within five (5) days after demand therefor by Mortgagee. Mortgagor shall, upon the final disposition of any such contest, pay in full any such Lien or that part thereof then unpaid, together with all interest and penalties thereon. In lieu of the cash deposits described in subsection (iii) above, Mortgagor may deliver to Mortgagee and maintain during the pendency of any such proceeding either a payment bond in form and from a bonding company satisfactory to Mortgagee or a letter of credit in form and from a bank satisfactory to Mortgagee or an endorsement to the Title Insurance Policy (as defined in the Note Purchase Agreement) insuring over any such Lien, provided that such letter of credit or bond or endorsement shall indemnify Mortgagee against the Lien which Mortgagor is contesting as aforesaid, and shall otherwise be in form and substance satisfactory to Mortgagee in its sole discretion.

## Payment of Taxes

4. (a) Mortgagor shall pay or cause to be paid, on or before the due date thereof, all general real estate taxes, special taxes, special assessments, water charges, sewer service

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charges, and other charges against the Premises (collectively, "Taxes"), and shall, upon written request, promptly furnish to Mortgagee duplicate receipts evidencing such payment. If Mortgagor desires to protest any Taxes after the date the same are due and payable, then such Taxes must be paid under protest on or before their due date and then Mortgagor may pursue such protest in strict compliance with all applicable laws, rules and regulations.

(b) Subject to Section 4(c), Mortgagor covenants and agrees to deposit with Mortgagee, commencing on the date of the first disbursement of the proceeds of the Notes and continuing on the first day of each month thereafter until the Obligations are fully paid, satisfied, performed and discharged, a sum equal to one-twelfth (1/12) of the Taxes for the last ascertainable year on the Premises. Mortgagor, concurrently with making said first deposit, shall also deposit with Mortgagee an amount, based upon 1/12th of the last year's ascertainable Taxes, on the Premises, on the accrual basis, for each month or portion thereof in the period commencing on January 1, immediately succeeding the last year for which all Taxes have been paid, to and including the date of the first deposit in this Section hereinabove mentioned. Such deposits are to be held by Mortgagee without any allowance of interest and are to be used by Mortgagee for the payment of Taxes on the Premises next due and payable when they become due, such payments to be made by Mortgagee directly to the applicable tax collecting body. Notwithstanding the foregoing, upon the occurrence of an Event of Default and an acceleration of the Notes, Mortgagee shall, if so directed by the Required Noteholders in accordance with the terms of the Collateral Trust Agreement, apply all or any portion of such deposits in reduction of the indebtedness evidenced by the Notes, absent which direction, the deposits shall continue to be used for the payment of real estate taxes. If the funds so deposited are insufficient to pay any such Taxes for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of demand therefor (but in no event less than thirty (30) days prior to the last day in which the same may be paid without interest or penalty), deposit such additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied on a subsequent deposit or deposits.

(c) At any time prior to release of the Senior Mortgage, the provisions of this Section 4 shall be deemed to be satisfied if Mortgagor complies with the relevant provisions of Section 3 of the Senior Mortgage.

## Insurance

5. Mortgagor shall at all times maintain, or cause to be maintained, insurance covering loss by perils, hazards, liabilities and other risks and casualties and in such amounts as are described on Attachment E attached hereto and made a part hereof. Commencing with January 1995, and during each subsequent month of January while any Note is outstanding, Mortgagor shall cause an Insurance Consultant (as herein defined) to review the insurance maintained by Mortgagor as to whether such insurance coverages satisfy the requirements of said Attachment E and whether any additional types or amounts of coverage are required of Mortgagor so as to conform with such Insurance Consultant's determination of the coverages which would be customary in the case of entities involved in the same or similar activities and similarly situated and adequate to protect the Premises and the operation of the Property ("Additional Coverage"). Mortgagor shall maintain, or cause to be maintained, any and all such Additional Coverage. During each such January, Mortgagor shall also cause an Insurance Consultant to deliver a certificate to Mortgagee which indicates that the insurance then being maintained by Mortgagor satisfies the requirements of (a)

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said Attachment E and (b) any such Independent Consultant's determination of the Additional Coverage which should then be maintained by Mortgagor. For purposes hereof, "Insurance Consultant" means an individual or firm who, in the case of an individual, is not an employee or officer of Mortgagor, any member of Mortgagor or any of their affiliates, and which in the case of a firm, does not control, nor is controlled by or under common control with Mortgagor, any member of Mortgagor or any of their affiliates and is qualified to survey risks and to recommend insurance coverage for business similar to that of Mortgagor, but shall not include any broker or agent with whom Mortgagor or any of its members or any of their affiliates transact business.

All physical damage policies and renewals shall contain a standard mortgagee clause naming Mortgagee as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor shall not prejudice the rights of Mortgagee under such insurance; and a loss payable clause in favor of Mortgagee for property, contents, inventory, equipment, and business interruption insurance coverages. All liability policies and renewals shall name Mortgagee as an additional insured, subject to the rights of Senior Mortgagee. No additional parties (other than Senior Mortgagee) shall appear in the mortgagee or loss payable clause without Mortgagee's prior written consent. All policies shall be issued by companies which have an A.M. Best's rating of at least Class A. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in full or partial satisfaction of the loans evidenced by the Notes, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

All policies shall include a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty (30) days prior written notice to Mortgagee. All property insurance policies shall also include a provision for law and ordinance change coverage. Mortgagor shall deliver copies of all policies and duplicate original certificates evidencing such insurance, including copies of additional and renewal policies and duplicate original certificates, together with evidence of full payment of premiums thereon, to Mortgagee, and, in the case of insurance about to expire, shall deliver duplicate original certificates and copies of each renewal policy, together with evidence of full payment of premiums thereon, not less than thirty (30) days prior to their respective dates of expiration. Mortgagor will not permit any condition to exist at the Project Site which would wholly or partially invalidate any insurance thereon. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon as an additional insured and under a mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance. Should Mortgagor fail to insure, fail to pay the premiums on, or fail to provide the renewals of any insurance required hereunder, Mortgagee, at its option but without any obligation so to do, may obtain such insurance and pay the premiums thereon and said premiums and all costs associated therewith shall be paid by Mortgagor upon demand therefor and shall be secured hereby.

## Adjustment of Losses with Insurer and Application of Proceeds of Insurance

6. (a) Subject to Section 6(f), all proceeds of the insurance required to be maintained by this Mortgage and the Project Documents payable in connection with any damage, and all awards or other compensation payable in connection with any condemnation described in Section 21 below, shall be deposited with Mortgagee or another entity selected by Mortgagee (as

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holder of such amounts, the "Depository") in a cash collateral account, except that any such proceeds or awards aggregating less than \$100,000 shall not be required to be so deposited. Mortgagor shall execute and deliver to Mortgagee any and all agreements, financing statements and other documents which Mortgagee may reasonably require to create, perfect and maintain a first priority lien and security interest in all funds (including, without limitation, condemnation awards, insurance proceeds and additional deposits required hereunder) on deposit from time to time with Mortgagee or Depository, in favor of Mortgagee to secure the payment and performance of the Obligations. Except to the extent required by Section 6(d), such proceeds or awards or other compensation (after deducting therefrom all costs and expenses, including reasonable attorneys' fees incurred by Mortgagee and the other Depository, if any, in connection with the collection thereof regardless of the particular nature thereof and whether incurred with or without suit) shall be paid by the Depository to or for the account of Mortgagor for application to the payment of the costs of restoring the Project so damaged (or restoring the portion thereof not so taken to a viable economic unit), and shall be applied to pay or reimburse the restoring party for expenditures made in restoring the Project so damaged (or restoring the portion thereof not so taken to a viable economic unit) as the work progresses, against receipt by the Depository of proof satisfactory to it that (i) the requirements of Section 6(b) have been complied with, (ii) the work, to the extent performed, has been satisfactorily accomplished, (iii) the amount requested has been paid by or on behalf of Mortgagor or is justly due to the restoring party in connection with the work, (iv) no Liens have been filed against the Premises, and (v) there are no amounts then due and payable to any persons who have rendered services or furnished materials in connection with such work other than such as will be discharged in full from the amounts requested. The Depository shall not be required to apply such proceeds or awards as aforesaid unless Mortgagor and an independent architect and/or engineer selected by Mortgagor ("Independent Engineer") determine that the amount thereof remaining after payment of the amount requested (together with anticipated interest and investment earnings thereon and the anticipated proceeds of business interruption and extra expense insurance) will be sufficient to pay in full for the completion of such restoration and to pay all Obligations that become or are expected to become due and payable during such restoration. Mortgagor shall promptly deposit or cause to be deposited with the Depository the amount of any such insufficiency to be held and disbursed by the Depository in accordance with the provisions of this Section 6.

(b) Subject to Section 6(f), all restoration work following any damage by fire or other casualty or condemnation pursuant to this Mortgage shall be subject to the following terms and conditions:

(i) no work shall be undertaken unless Mortgagor shall have procured and paid for all required Governmental Approvals (as defined in the Note Purchase Agreement) and other governmental permits and authorizations of any Governmental Authorities having jurisdiction in connection therewith;

(ii) all work shall be designed, constructed and completed in accordance with plans and specifications prepared by an architect or engineer selected by Mortgagor and satisfactory to Mortgagor and Independent Engineer and otherwise in accordance with the Construction Contract (as defined in the Note Purchase Agreement) and shall be performed by contractors selected by Mortgagor and approved by the Independent Engineer, pursuant to plans and specifications prepared by Mortgagor and approved by the Independent Engineer;

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(iii) no work involving an estimated cost of \$500,000 or more shall be undertaken unless the Independent Engineer shall have certified in writing (which certification shall be given only after consultation with Mortgagor) that the portions of the Project so damaged (or the portions thereof not so taken) can be restored substantially to the value and condition thereof immediately prior to such damage, or, in the case of a condemnation, to a complete, viable economic unit; and

(iv) no work involving an estimated cost of \$500,000 or more shall be undertaken unless such work is done pursuant to guaranteed maximum or fixed price contracts satisfactory to Mortgagor, together with payment and performance bonds having penal amounts equal to such guaranteed maximum or fixed prices or a completion guaranty, in any event in form and content and from an issuer acceptable to Mortgagor.

Mortgagee may (without any obligation to do so) waive strict compliance with any of the requirements of this Section 6(b) if an Independent Engineer shall furnish Mortgagee with a certificate indicating that the work substantially conforms in all material respects with the requirements of this Section 6(b) and that any such non-compliance shall not result in any diminution or loss in the use or value of the Premises.

(c) Upon receipt by the Depository of certificates of the architect or engineer selected by Mortgagor pursuant to Section 6(b) and of the Independent Engineer certifying the completion of such restoration and the payment of the cost thereof in full, the balance of any monies not required to be disbursed pursuant to Section 6(a) shall be applied as provided in Section 6(d).

(d) If an Event of Default shall occur and be continuing prior to completion of any such restoration work, then, at the option of Mortgagee, all funds on deposit with Mortgagee or Depository shall be applied to the payment of the Obligations in such order as Mortgagee shall determine (as provided in the Collateral Trust Agreement) until the same have been paid in full and the Notes are no longer outstanding, and any balance thereof remaining after such payment shall be paid to Mortgagor, or to whosoever shall be legally entitled thereto, or as a court of competent jurisdiction may direct.

(e) Any monies held by the Depository pursuant to this Section 6 shall be invested at the direction of Mortgagor in Permitted Investments (as defined in the Note Purchase Agreement). The Depository shall have the right to deduct from any such proceeds or awards its reasonable charges for acting as Depository hereunder.

(f) At any time prior to release of the Senior Mortgage, the provisions of this Section 6 shall be deemed to be satisfied if Mortgagor complies with the relevant provisions of Section 5 of the Senior Mortgage.

(g) Notwithstanding anything contained in this Section to the contrary, but subject in all events to the terms and conditions of the Subordination Agreement, any and all condemnation awards, insurance (including, without limitation, business interruption and extra expense insurance) proceeds and additional deposits required hereunder may be used by Mortgagee to pay any and all Obligations coming due during any such period of restoration and any such funds

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remaining after completion of such restoration work shall be applied to reduce any other outstanding Obligation, unless the Note Purchase Agreement, the Subordination Agreement or any Collateral Document shall expressly provide to the contrary.

## Stamp Tax

7. If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any stamp tax or similar tax is due or becomes due in respect of any of the Obligations or the recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any stamp tax or similar tax on the issuance of the Obligations or the recording of this Mortgage.

## Prepayment

8. Mortgagor shall have no right to prepay the Notes except as may be expressly set forth in the Note Purchase Agreement and the Notes.

## Effect of Extensions of Time

9. If the payment of any of the Obligations or any part thereof is extended or varied or if any part of the security is released, all persons or entities now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

## Effect of Changes in Laws Regarding Taxation

10. In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, and imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the property, or the manner of collection of taxes so as to affect this Mortgage or the Obligations secured hereby, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then either such event shall constitute an Event of Default as described in Section 13(b) below.

## Mortgagee's Performance of Defaulted Acts: Subrogation

11. In case of default on the part of Mortgagor under this Mortgage and the failure of Mortgagor to cure such default within the applicable cure period, if any, Mortgagee shall have the right, but not the obligation, to make any payment or perform any act herein or in or with

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respect to any of the Obligations required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien on title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. Anything to the contrary notwithstanding, Mortgagee may immediately take action to cure any default in the payment of taxes or insurance premiums or any other defaults that create an emergency regarding the priority or validity of the lien of this Mortgage or the physical condition of the Premises without regard to Mortgagor's cure rights, if any. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses, and any other moneys advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate as hereinafter defined in Section 26 below. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor under this Mortgage. Should the proceeds of the Obligations or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

## Mortgagee's Reliance on Tax Bills, Etc.

12. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any Lien, may do so without inquiry as to the validity or amount of such Lien or any claim for Lien which may be asserted.

## Default

13. Each and all of the following shall be a default (an "Event of Default") under this Mortgage: (a) if any payment due pursuant to Section 4(b) of this Mortgage, or any payment due on the Senior Obligations, is not paid within fifteen (15) days after the due date thereof; or (b) if any other payment due under or with respect to any of the Obligations, or any other payment due in accordance with the terms of this Mortgage, the Note Purchase Agreement, the Notes or any other Collateral Document is not paid when the same is due and payable, subject to any applicable grace, cure or notice periods; or (c) if any other of the covenants, agreements or conditions, hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor in this Mortgage, are not observed or performed, and such nonperformance or nonobservance is not remedied by Mortgagor within thirty (30) days after written notice from Mortgagee to Mortgagor (provided that if such default cannot reasonably be cured within said 30 day period, but is susceptible of cure within an additional 60-day period, then said 30 day cure period shall be extended by up to 60 additional days (but no longer, unless Mortgagee, in its sole discretion, elects to grant one or more further extensions) so long as Mortgagor diligently and continuously pursues

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such cure); or (d) if any other default or event of default, shall have occurred and be continuing under the Note Purchase Agreement, the Notes, any other Collateral Document or the Senior Mortgage, which is not cured within any applicable grace, cure or notice period. Any and all cure, grace or notice periods under this Mortgage shall run concurrently with any such periods allowed with respect to any default under the Note Purchase Agreement, the Notes or any of the other Collateral Documents or otherwise available to Mortgagor.

## Foreclosure: Expense of Litigation: Protective Advances

14. Subject to the provisions of Section 2 hereof when an Event of Default shall have occurred (whether listed in Section 13 or described elsewhere in this Mortgage) and remain uncured, Mortgagee shall have the right to accelerate the maturity of all of the Obligations and when the indebtedness secured hereby or any part thereof shall become due, whether by lapse of time, acceleration or otherwise, then Mortgagee shall have the right to foreclose the lien hereof by judicial action; provided, however, that such right to foreclose may be exercised as expressly permitted under the Subordination Agreement and provided, further, that in any event such foreclosure shall be subject to the rights of Senior Mortgagee. In any suit to foreclose the lien hereof or in any other action to enforce any other remedy of Mortgagee under this Mortgage or with respect to any of the other Obligations, there shall be allowed and included as additional indebtedness in the decree for sale, judgment of foreclosure or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, paralegals' fees, appraisers' fees, environmental consultants' and contractors' fees, outlays related to compliance with Environmental Laws (as defined in the Note Purchase Agreement), outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including but not limited to the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Obligations or the Premises, including bankruptcy proceedings, or in the preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate (as defined in Section 26 hereof), and shall be secured by this Mortgage.

Without limitation on the foregoing, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* ("Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to (collectively, "Protective Advances"):

- (a) all advances by Mortgagee in accordance with the terms of this Mortgage to:
  - (i) preserve or maintain, repair, restore or rebuild the Project or other improvements upon

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the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages (including the Senior Mortgage) or any other prior liens;

(d) attorneys' fees and other expenses incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by subsection (c)(1) of Section 15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member if any way affecting the Premises; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and

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completion of construction, as may be authorized by the Note Purchase Agreement; and (viii) pursuant to any lease or other agreement for occupancy of the Premises.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate set forth in Section 26 below. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (i) determination of the amount of indebtedness secured by this Mortgage at any time; (ii) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (iii) if right of redemption is deemed not to be waived by this Mortgage, computation of amount required to redeem, pursuant to subsections (d)(2) and (e) of Section 15-1603 of the Act; (iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (v) application of income in the hands of any receiver or Mortgagee in possession; and (vi) computation of any deficiency judgment pursuant to subsections (b)(2) and (c) of Sections 15-1508 and Section 15-1511 of the Act.

Upon any sale made under or by virtue of this Section or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Premises or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of Mortgagor secured by this Mortgage the sale price, after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Mortgagor is required to pay or that Mortgagee is authorized to deduct under this Mortgage.

Mortgagor understands and agrees that in the event of an Event of Default, Mortgagee, to the extent this Mortgage constitutes a security agreement under the UCC, may, subject to the rights of Senior Mortgagee, exercise any and all rights and remedies of a secured party under the UCC including but not limited to the taking possession of any personal property covered by this Mortgage and disposing of the same by sale or otherwise; provided that at least ten (10) days' prior notice of such disposition must be given to Mortgagor, all as provided for by the UCC, it being agreed that such ten (10) days' notice shall constitute fair and reasonable notice to Mortgagor of such disposition.

## Application of Proceeds of Foreclosure Sale

15. Subject to the rights of Senior Mortgagee, the proceeds of any foreclosure sale of the Premises (or the sale of property under the last unnumbered paragraph of Section 14 hereof) shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings (or sale, as the case may be), including all such items as are mentioned in the preceding Section hereof; second, to the repayment of the Obligations and all other items which under the terms hereof constitute secured indebtedness additional to that constituting the Obligations, with interest thereon as herein provided; and third,

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any overplus to Mortgagor, its successors or assigns, as their rights may appear or as a court may direct.

## Appointment of Receiver

16. Subject to the rights of the Senior Mortgagee, upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice if permitted by law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises, and Mortgagee hereunder may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from any judgment or decree of foreclosure, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part to: (x) the Obligations or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to any foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

## Assignment of Rents and Leases

17. To further secure the Obligations, and subject to the rights of the Senior Mortgagee, Mortgagor hereby sells, assigns and transfers unto Mortgagee all Leases for or with respect to the Premises and all the Rents now due and which may hereafter become due (whether before or after foreclosure or during the period of redemption and whether before or after the filing of any petition by or against Mortgagor under the Bankruptcy Code, 11 U.S.C. §1101 *et seq.*, or any other federal or state bankruptcy, insolvency, receivership or similar law) under or by virtue of, and to the extent payable pursuant to, any Lease, whether written or verbal, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases and all the Rents and other avails thereunder to Mortgagee. Mortgagor, from and during the occurrence of an Event of Default, hereby irrevocably appoints Mortgagee (which appointment is irrevocable until termination of this Mortgage and is coupled with an interest) its true and lawful attorney in its name and stead (with or without taking possession of the Premises as provided in Section 18 hereof) to rent, lease or let all or any portion

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of the Premises to any party or parties at such rental and upon such terms as Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the Leases, written or verbal, or other tenancy existing, or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Section 18 hereof.

Mortgagor agrees that, without the consent of Mortgagee: (a) no rent will hereafter be paid by any person in possession of any portion of the Premises for more than one (1) month in advance; and (b) the payment of the rents to accrue for any portion of the Premises will not be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor. Mortgagor agrees that hereafter it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises permitted under the provisions of this Mortgage.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession of the Premises in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Section 18 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

Mortgagor further agrees to assign and transfer to Mortgagee all future Leases upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time reasonably require.

Although it is the intention of the parties that the assignment contained in this Section 17 shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section until an Event of Default occurs. The rights of Mortgagee under this Section 17 shall continue and remain in full force and effect both before and after commencement of any action or proceeding to foreclose this Mortgage, after the foreclosure sale in connection with the foreclosure of this Mortgage, and until expiration of the period of redemption from any such foreclosure sale.

## Mortgagee's Right of Possession in Case of Event of Default

18. In any case in which under the provisions of this Mortgage, Mortgagee has a right to foreclose the lien hereof, Mortgagor shall, forthwith, upon demand by Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled, to the fullest extent permitted by law, to take actual possession of, the Premises or any part thereof personally or by its agent or attorneys, subject to the rights of the Senior Mortgagee. In such event, Mortgagee in its discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of the Premises together with all documents, books, records, papers and accruals of Mortgagor or the then owner of the Premises relating thereto and may exclude Mortgagor its agents or servants wholly therefrom and may, as attorney-in-fact, as agent for Mortgagor or in its own name as Mortgagee, and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures,

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legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of Rents, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any Lease which is then subordinate to the lien hereof; (c) to extend or modify any then existing Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) to receive all of such avails, rents, issues and profits; Mortgagor hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor. Without limitation on the foregoing, in addition to any rights granted Mortgagee hereunder or under applicable law, Mortgagee shall have all powers, rights and duties as provided for in Sections 15-1701, 15-1702 and 15-1705 of the Act.

From and after an Event of Default, Mortgagor shall be deemed to have constituted and appointed Mortgagee its true and lawful attorney-in-fact with full power of substitution either in the name of Mortgagee or Mortgagor, to exercise any of the powers granted to Mortgagee pursuant to this Section 18. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage (except for any such liability, loss or damage which may be caused by the willful misconduct or gross negligence of Mortgagee) which Mortgagee may or might incur by reason of its performance of any action authorized under this Section 18 and of and from any and all claims and demands whatsoever (except for any such liability, loss or damage which may be caused by the willful misconduct or gross negligence of Mortgagee) which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor.

## Application of Income Received by Mortgagee

19. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 17 and Section 18 hereof, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of any Obligations secured hereby or any deficiency which may result from any foreclosure sale;

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(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Premises and of placing the Premises in such condition as which, in the judgment of Mortgagee, make it readily rentable; and

(d) to the payment of the operating expenses of the Premises, including but not limited to the cost of the management and leasing thereof, judgments claims for damages, if any, and premiums on insurance hereinabove authorized.

## Mortgagee's Right of Inspection

20. Mortgagee, personally or through its agents, shall have the right to inspect the Premises upon reasonable notice (except in cases of emergency or abandonment) and at all reasonable times and access thereto shall be permitted for that purpose, including, without limitation, to ascertain whether the Premises comply with applicable Environmental Laws.

## Condemnation

21. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises (or any interest therein) taken or damaged by the power of eminent domain or by condemnation, subject to the rights of the Senior Mortgage. Mortgagee shall be entitled (but shall not be obligated) to participate in the collection of such proceeds and any such proceeds shall be first applied to reimburse Mortgagee for all costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses, incurred in connection with the collection of such proceeds, subject to the rights of Senior Mortgage. The remainder of any such award shall be applied in accordance with Section 6 above.

## Release upon Payment and Discharge of Mortgagor's Obligations

22. If Mortgagor shall fully pay and satisfy all of the indebtedness secured hereby and fully comply with, satisfy and discharge all of the other terms and provisions hereof and all other Obligations to be paid, satisfied, performed and complied with by Mortgagor, then, upon Mortgagor's request, Mortgagee shall promptly execute and deliver to Mortgagor a release of this Mortgage in recordable form.

## Giving of Notice

23. Any notice, demand, request or other communication which either party hereto may desire or be required to give to the other party shall be in writing and shall be given by registered or certified mail, return receipt requested, or by telecopy, or by commercial overnight delivery service, addressed as follows:

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If to Mortgagor:

CGE Ford Heights L.L.C.  
7120 E. Orchard Road, Suite 220  
Englewood, Colorado 80111  
Attention: Terry Colip  
Telecopy: (303) 689-0198  
Telephone: (303) 689-9693

with a copy to:

CGE Ford Heights, L.L.C.  
611 Walker, Suite 1100  
Houston, Texas 77002  
Attention: David T. Greeson  
Telecopy: (713) 220-5563  
Telephone: (713) 220-5375

If to Mortgagee:

The First National Bank of Boston  
150 Royall Street, Mail Stop 45-02-15  
Canton, Massachusetts 02021  
Attention: Corporate Trust Division  
Telecopy: (617) 575-3011  
Telephone: (617) 575-2000

or to such other address or addressee as the parties hereto may from time to time designate by written notice to the other party hereto. Notices, demands, requests and other communications given by: (a) registered or certified mail, return receipt requested, shall be deemed sufficiently served or given for all purposes upon three (3) days after the deposit thereof in the United States mail; (b) telecopy shall be deemed given when received; and (c) by commercial overnight delivery shall be deemed given one (1) business day after it is deposited for delivery.

## Waiver of Defense: Remedies Not Exclusive: Time Is of the Essence

24. No action for the enforcement of the lien hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law or in equity upon the Obligations. Mortgagee and the Noteholders shall be entitled to enforce payment and performance of any indebtedness secured hereby and to exercise all rights and powers under this Mortgage or under or with respect to any other Obligations or any laws now or hereafter in force, notwithstanding that some or all of the Obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security, the other Collateral Documents or any Obligations now or hereafter held by Mortgagee or the Noteholders, it being agreed that Mortgagee and the Noteholders shall be entitled to enforce this Mortgage and any other remedy herein or by the other Collateral

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Documents or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy under the other Collateral Documents or other remedy given hereunder or now or hereafter existing under the other Collateral Documents or at law or in equity or by statute. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. No waiver of any Event of Default shall be implied from any omission by Mortgagee to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any such default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such Default Rate or of late charges, if any. Time is of the essence of this Mortgage and each of the covenants and provisions hereof.

## Filing and Recording Fees

25. Mortgagor shall pay all title insurance premiums, escrow charges, filing, registration or recording fees and all expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the Obligations.

## Default Rate

26. "Default Rate" as used herein shall mean the rate of interest applicable to overdue payments of principal set forth in the Junior Subordinated Notes.

## Binding on Successors and Assigns

27. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor and shall inure to the benefit of Mortgagee and its permitted successors and assigns.

## Definitions of "Mortgagor" and "Mortgagee"

28. The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the Premises. The word "Mortgagee" when used herein shall include all successors and assigns of Mortgagee identified in the preambles hereof. As used in this Mortgage, the terms "Mortgagor" and "Mortgagee" and any pronouns used to refer to Mortgagor or Mortgagee shall, as the context requires, include the singular and plural, and the masculine, feminine and neuter.

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## Captions

29. The captions and headings of various paragraphs and sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

## Business Loan Recital/Statutory Exemptions

30. (a) Mortgagor acknowledges and agrees that (i) the Obligations secured hereby constitute a business loan which comes within the purview of Section 4 of the Interest Act (815 ILCS 205/0.01 *et seq.*) and (ii) that the Obligations are exempted transactions under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 *et seq.*

(b) Mortgagor acknowledges and agrees that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act or residential real estate (as defined in Section 15-1219 of the Act).

## Waiver of Statutory Rights

31. To the fullest extent permitted under applicable law, Mortgagor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension, reinstatement or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim by, through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor hereby waives any and all rights of reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage on its behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. The foregoing waiver of the right of redemption is made pursuant to Section 15-1601 of the Act.

## Execution of Separate Security Agreements, Financing Statements, Etc.

32. Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, a security agreement, financing statement or other similar security instruments, in form reasonably satisfactory to Mortgagee, covering all property of any kind whatsoever which Mortgagor may hereafter acquire, and Mortgagor will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument, which security interest is subordinate in priority to only the liens in favor of Senior Mortgagee. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses reasonably incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document. Whenever possible, each provision in this Mortgage shall be interpreted in such manner as to be consistent with the provisions of that certain Junior Security Agreement of even date herewith between Mortgagor and Mortgagee ("Security Agreement") and no conflict or inconsistency shall

be deemed to exist simply because one document contains more extensive grants, restrictions or requirements than the other. In the event of any conflict or inconsistency between the provisions of this Mortgage and the provisions of the Security Agreement, the provisions of the Security Agreement shall govern and control to the extent of any such conflict or inconsistency.

## Partial Invalidity: Usury

33. (a) Whenever possible, each provision in this Mortgage shall be interpreted in such manner as to comport with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage are found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decisions, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the respective rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect.

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## Captions

29. The captions and headings of various paragraphs and sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

## Business Loan Recital/Statutory Exemptions

30. (a) Mortgagor acknowledges and agrees that (i) the Obligations secured hereby constitute a business loan which comes within the purview of Section 4 of the Interest Act (815 ILCS 205/0.01 *et seq.*) and (ii) that the Obligations are exempted transactions under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 *et seq.*

(b) Mortgagor acknowledges and agrees that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act or residential real estate (as defined in Section 15-1219 of the Act).

## Waiver of Statutory Rights

31. To the fullest extent permitted under applicable law, Mortgagor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension, reinstatement or exemption laws, or any so-called "Mortgagor Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim by, through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor hereby waives any and all rights of reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage on its behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. The foregoing waiver of the right of redemption is made pursuant to Section 15-1601 of the Act.

## Execution of Separate Security Agreement, Financing Statements, Etc.

32. Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, a security agreement, financing statement or other similar security instruments, in form reasonably satisfactory to Mortgagee, covering all property of any kind whatsoever which Mortgagor may hereafter acquire, and Mortgagor will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument, which security interest is subordinate in priority to only the liens in favor of Senior Mortgagee. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses reasonably incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document. Whenever possible, each provision in this Mortgage shall be interpreted in such manner as to be consistent with the provisions of that certain Junior Security Agreement of even date herewith between Mortgagor and Mortgagee ("Security Agreement") and no conflict or inconsistency shall

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be deemed to exist simply because one document contains more extensive grants, restrictions or requirements than the other. In the event of any conflict or inconsistency between the provisions of this Mortgage and the provisions of the Security Agreement, the provisions of the Security Agreement shall govern and control to the extent of any such conflict or inconsistency.

## Partial Invalidity: Usury

33. (a) Whenever possible, each provision in this Mortgage shall be interpreted in such manner as to comport with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions in this Mortgage are found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decisions, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the respective rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect.

(b) All agreements between Mortgagor and Mortgagee under this Mortgage and the other Collateral Documents, and all agreements between Mortgagor and the Noteholders under the Note Purchase Agreement and the Notes, are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Mortgagee or the Noteholders exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then *ipso facto*, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois, and if for any reason whatsoever, Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the next maturing installment or installments of the principal balance of the indebtedness secured hereby (whether or not due and payable) and not to the payment of interest.

## Note Purchase Agreement, Notes and Other Collateral Documents

34. The Note Purchase Agreement, the Notes and the other Collateral Documents and all provisions thereof are incorporated herein by express reference. Any and all indebtedness arising and accruing under the Note Purchase Agreement, the Notes and the other Collateral Documents from time to time shall be secured hereby to the full extent of the amount stated to be secured hereby and according to law. Whenever possible, each provision in this Mortgage shall be interpreted in such manner as to be consistent with the provisions of the Note Purchase Agreement, the Notes and the other Collateral Documents and no conflict or inconsistency shall be deemed to exist simply because one document contains more extensive grants, restrictions or requirements than the other. In the event of any conflict or inconsistency between the provisions of this Mortgage and the provisions of the Note Purchase Agreement, the provisions of the Note Purchase Agreement shall govern and control to the extent of any such conflict or inconsistency.

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## Mortgagee's Lien for Service Charge and Expenses

35. At all times and from time to time, this Mortgage secures (in addition to any proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Mortgagee in connection with this Mortgage, the Obligations to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Mortgage, the Note Purchase Agreement, the Notes and any other Collateral Document.

## Maintenance of Mortgagor's and Beneficiary's Interest

36. Except as may be expressly permitted under the Note Purchase Agreement, the occurrence of any of the following events, without the prior written consent of Mortgagee, shall also constitute an Event of Default under this Mortgage:

(a) any sale, assignment, transfer, conveyance, pledge, hypothecation, mortgage, including, without limitation, lease or other encumbrance of the Premises or any portion thereof, including, without limitation, any buildings, structures or other improvements thereon;

(b) any sale, assignment, transfer, conveyance, pledge, hypothecation, mortgage, lease or encumbrance of the beneficial interest in any land trust which Mortgagee hereafter permits (in writing) to hold title to all or any part of the Premises; and

(c) any contract to effectuate any of the foregoing, except for the entering into of a commitment for a loan that will be used, in whole or in part, to repay the Obligations in full.

Consent by Mortgagee to any transaction described in this Section shall not operate to relieve Mortgagor from any covenant or obligation under this Mortgage except to the extent, if any, expressly provided for in writing in such consent, or be deemed to be a consent to or relieve Mortgagor from obtaining Mortgagee's consent to any subsequent transaction described in this Section.

## Applicable Law

37. This Mortgage and the other Collateral Documents shall be construed, interpreted and governed by the internal laws of the State of Illinois (without giving effect to Illinois choice of law principles).

## No Offsets

38. No right of offset or claim that Mortgagor now has or may have in the future against Mortgagee shall relieve Mortgagor from paying any amounts due under or with respect to the Obligations or from performing any other duties contained herein or secured hereby.

## Future Advances

39. This Mortgage also secures any and all future obligations and indebtedness arising under or in connection with the Note Purchase Agreement, the Notes, this Mortgage and any of the other Collateral Documents, which future obligations and indebtedness shall have the

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same priority as if all such future obligations and indebtedness were made on the date of execution hereof. Nothing in this Section, Section 40 or in any other provision of this Mortgage shall be deemed either (a) an obligation on the part of Mortgagee or the Noteholders to make any future advances of any sort other than as expressly set forth in the Note Purchase Agreement or (b) an agreement on the part of Mortgagee or the Noteholders to increase the amount of the Notes or the loans evidenced thereby.

## Maximum Amount of Indebtedness Secured

40. The maximum aggregate amount of principal, interest and other indebtedness (now or hereafter owed) secured by this Mortgage is Sixty Million Dollars (\$60,000,000).

## Mortgagee Not a Joint Venturer

41. Mortgagee by entering into this Mortgage or any of the other Collateral Documents, or by any action taken pursuant thereto, will not be deemed a partner or joint venturer with Mortgagor. Mortgagor acknowledges and agrees that the sole relationship created between Mortgagor and Mortgagee under this Mortgage and the other Collateral Documents is that of borrower and lender.

## Mortgagee's Duties

42. The powers conferred on Mortgagee hereunder are solely to protect its interest in the Premises and shall not impose any duty upon it to exercise any such powers. Mortgagee shall have no duty as to any Premises or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Premises.

## Construction Mortgage

43. This is a construction mortgage, as said term is defined in the UCC. Mortgagor further covenants and agrees that the Obligations secured hereby constitute a construction loan and that:

(a) the Project to be erected, altered or remodeled on the Premises shall be completed in accordance with the Note Purchase Agreement;

(b) there shall be no stoppage of construction for a period longer than thirty (30) days, except as may be expressly provided in the Note Purchase Agreement;

(c) said construction shall be completed within the time required under the Note Purchase Agreement, as such period may be extended pursuant to the terms and conditions of the Note Purchase Agreement;

(d) upon Mortgagor's failure to comply with any of the covenants in the foregoing clauses (a), (b) or (c), or upon the occurrence of any Event of Default not cured within the applicable cure period, Mortgagee may (but need not) complete the construction, alteration or remodeling of said Project and enter into the necessary contracts therefor, after providing Mortgagor within thirty (30) days' prior written notice of its intent to do so. All

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money so expended shall be so much additional indebtedness secured by this Mortgage and any monies so expended shall be payable on demand with interest at the Default Rate. Mortgagee may exercise the foregoing remedy, as well as any other right or remedy available to Mortgagee under this Mortgage, the Note Purchase Agreement, the Notes, the other Collateral Documents or at law or in equity;

(e) the construction of said Project is and will be in compliance with all governmental regulations and restrictions and with all zoning and building laws and ordinances of the Village of Ford Heights, the County of Cook, the State of Illinois and with all covenants, conditions and restrictions of record and all other terms, conditions, covenants, representations and warranties set forth in the Note Purchase Agreement; and

(f) The Noteholders shall be under no obligation to disburse the proceeds of the Notes except as expressly set forth in the Note Purchase Agreement. All advances and indebtedness arising and accruing under the Note Purchase Agreement and the Notes from time to time, whether or not the total amount thereof may exceed the original aggregate principal amount of the Notes, shall be secured hereby to the same extent as though said Note Purchase Agreement and Notes were fully incorporated in this Mortgage.

## Non-Recourse

44. If any suit is brought against Mortgagor under this Mortgage, Mortgagee shall look exclusively to the following sources for the satisfaction of the Obligations of Mortgagor:

(a) the Premises, including without limitation, the Project Site, the Project, the Rents, the Leases, the Project Documents and any other proceeds, revenues, rents, issues, profits and income therefrom;

(b) any other funds, property or other collateral held, pledged or assigned pursuant to this Mortgage, the Note Purchase Agreement, the Notes or any other Collateral Document (including the Membership Interest Pledge Agreements);

(c) insurance proceeds and condemnation awards paid or payable in respect of the Premises, and any other proceeds of the Premises, except to the extent, if any, that the foregoing have been applied in accordance with the Collateral Documents prior to the occurrence of any Event of Default;

(d) the personal liability of any guarantor or indemnitor, to the extent of its guaranty or indemnity agreement; and

(e) any other assets of Mortgagor (as distinguished from the separate assets of any member of Mortgagor).

None of the officers or members of Mortgagor or any of their respective affiliates shall be personally liable for payments due under this Mortgage (except to the extent of the Pledged Memberships, as set forth in the Membership Interest Pledge Agreements) or for the performance of any obligation under this Mortgage and the sole recourse of Mortgagee for satisfaction of the obligations of Mortgagor under this Mortgage shall be against Mortgagor as an entity and to the

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remedies provided under this Mortgage and the other Collateral Documents (including the Membership Interest Pledge Agreements). If a default occurs in connection with such obligations, no action shall be brought against any officer or member of Mortgagor (except to the extent of the Pledged Memberships, as set forth in the Membership Interest Pledge Agreements) or any of its affiliates and any judicial proceedings Mortgagee may institute against Mortgagor shall be limited as provided above. In the event of foreclosure or other sale or disposition of properties, no judgment for any deficiency upon the obligations hereunder shall be obtainable by Mortgagee against the officers or members of Mortgagor or any affiliate thereof (except to the extent of the Pledged Memberships, as set forth in the Membership Interest Pledge Agreements).

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed by duly authorized officers as of the day and year first above written.

**MORTGAGOR:**

**CGE FORD HEIGHTS, L.L.C.,**  
a Delaware limited liability company

By: *[Signature]*  
Name: DAVID NOVAK  
Title: MEMBER

Attest: *[Signature]*  
Name: Terry A. Kelly  
Title: Member

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STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

Jennifer L. Smith, a Notary Public in and for said County, in the State of Illinois, DO HEREBY CERTIFY that David Moultrie and Jessy K. Cook of CGE FORD HEIGHTS, L.L.C., a Delaware limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Members and Members, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as such officers of said company, and affixed the corporate seal of said company, thereto, in their own free and voluntary act and as the free and voluntary act of the company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5<sup>th</sup> day of April, 1994.

Jennifer L. Smith  
NOTARY PUBLIC

My Commission Expires:

5/18/96

OFFICIAL SEAL  
JENNIFER L. SMITH  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 5/18/96

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## ATTACHMENT A

### Legal Description

#### PARCEL 1:

THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE DRAWN PARALLEL WITH AND 100 RODS SOUTH OF THE NORTH LINE OF SAID SOUTHWEST 1/4 (EXCEPT (i) THAT PART THEREOF CONVEYED TO THE OSWEGO AND INDIANA PLANK ROAD CO. BY DEED RECORDED AUGUST 18, 1854 IN BOOK 78, PAGE 362 AS DOCUMENT NUMBER 53088 IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS AND (ii) THE WEST 50 FEET THEREOF GRANTED AS AN EASEMENT FOR HIGHWAY PURPOSES TO THE COUNTY OF COOK BY INSTRUMENT DATED JULY 22, 1964 AND RECORDED JULY 29, 1964 AS DOCUMENT NUMBER 19199037), IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

BLOCK 7 IN THOMAS, CHENEY AND WAUGH'S FOURTH ADDITION TO CHICAGO HEIGHTS IN THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOTS 1 AND 2 AND LOT "D" IN BLOCK 10 IN THOMAS, CHENEY AND WAUGH'S THIRD ADDITION TO CHICAGO HEIGHTS, A SUBDIVISION IN THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

HOWEVER, EXCEPTING FROM ALL OF THE ABOVE LANDS ALL COAL, OIL, GAS AND THE MINERALS AND MINERAL RIGHTS OF WHATEVER NATURE OR DESCRIPTION, KIND OR CHARACTER, LIKE OR UNLIKE, KNOWN OR UNKNOWN, AND WHETHER OCCURRING IN SOLID, LIQUID, VAPOROUS OR OTHER AND DIFFERENT FORMS IN, ON OR UNDER THE ABOVE LANDS, AS RESERVED AND EXCEPTED TO THE GRANTOR IN THE DEED FROM CHICAGO HEIGHTS TERMINAL TRANSFER RAILROAD COMPANY TO SPACE PORT USA, INC., FILED JANUARY 12, 1990 AS DOCUMENT NUMBER LR 3853427 AND RECORDED MAY 21, 1990 AS DOCUMENT NUMBER 90234992.

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Street Address:  
Avenue

Vacant Land at the Northwest Corner of Cottage Grove  
and the Michigan Central Railroad Right-of-Way,  
Ford Heights, Illinois

Permanent Index Number: 32-23-300-022

32-23-313-003

32-23-314-027

32-23-314-026-6001

32-23-314-026-6002

32-23-314-025-6001

32-23-314-025-6002

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34305601

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## ATTACHMENT B

### THE PROJECT DOCUMENTS

1. Amended and Restated Municipal Service and Recycling Facility Agreement dated as of April 1, 1994 between Debtor and the Village of Ford Heights, an Illinois municipal corporation.
2. Equipment Lease dated as of April 6, 1994 between Debtor and Browning-Ferris Industries of Illinois, Inc., a Delaware corporation ("BFII").
3. Facility Lease dated as of April 6, 1994 between Debtor and BFII.
4. First Amended and Restated Tire Supply Agreement dated as of March 22, 1994 between Debtor and BFII.
5. Operations and Maintenance Agreement dated as of April 6, 1994 between Debtor and Operational Energy Corporation, a California corporation.
6. Design and Construction Contract dated as of April 6, 1994 between Debtor and National Energy Production Corporation, a Washington corporation.
7. Electric Service Contract dated as of February 19, 1993, as amended December 1, 1993 between Debtor (as successor by assignment from Chewton Glen Energy, Inc.) and Commonwealth Edison Company.
8. Contract for consulting and engineering services dated as of April 6, 1994 between Debtor and Sargent & Lundy.
9. Guaranty (with respect to Item 5 above) dated as of April 6, 1994 from Zurn Industries, Inc., a Pennsylvania corporation ("Zurn").
10. Guaranty (with respect to Item 6 above) dated as of April 6, 1994 from Zurn.

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## ATTACHMENT C

### THE PROJECT PERMITS

1. IEPA and other Permit(s) for Construction/Operation of the Combustion Facility
2. IEPA and other Permit(s) for Construction/Operation of Processing Facility
3. Metropolitan Water Reclamation District and other Wastewater Discharge Authorizations and Permits
4. Stormwater Discharge Authorizations and Permits
5. Building Permits
6. FAA Permits
7. Business Licenses

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## ATTACHMENT D

### Permitted Encumbrances

1. General real estate taxes which are not yet due or payable.
2. Grant of Easement recorded March 5, 1928 as Document Number 9944544 to Prairie Pipe Line Company for pipelines to lay, construct, operate, maintain and repair pipelines, and the terms, provisions and conditions therein contained. (Affects South 25 feet lying North of the North boundary line of the Michigan Central Railroad right-of-way in the Southwest 1/4 of Section 23).
3. Grant of Easement recorded February 2, 1928 as Document Number 9938240 to Prairie Pipe Line Company for pipelines to lay, construct, operate, maintain and repair pipelines, and the terms, provisions and conditions therein contained (Affects South 25 feet of Thomas, Cheney and Waugh's Third and Fourth Additions to Chicago Heights in Section 23, lying North of the North boundary line of the Michigan Central Railroad right-of-way).
- 4.A. Assignment of Easements recorded January 20, 1951 as Document Number 14995446 from Sinclair Refining Company to Sinclair Pipe Line Company, purporting to assign the easements created and granted by Grants of Easements Documents Numbers 9944544 and 9938240 shown above.
- 4.B. Assignment of Easements recorded May 6, 1992 as Document Number 92315669 from ARCO Transportation Alaska, Inc., formerly known as ARCO Pipe Line Company, to ARCO Pipe Line Company, purporting to assign the easements created and granted by Grants of Easements Documents Numbers 9944544 and 9938240 shown above.
- 4.C. Assignment of Easements recorded June 14, 1995 as Document Number 93448855 from ARCO Pipe Line Company to NORCO Pipeline, Inc., purporting to assign the easements created and granted by Grants of Easements Documents Numbers 9944544 and 9938240 shown above.
5. Grant of Easement recorded May 20, 1968 as Document Number 20494268 to Sinclair Pipe Line Company to install, construct, operate, maintain, repair, replace, renew and remove poles, power lines, meters, cables, anodes, ground beds, fittings and equipment for control of electrolytic action on its pipe lines as an appurtenance to its pipe lines, and the terms, provisions and conditions therein contained.
6. Rights of owners of land adjoining Deer Creek in respect to the free and unobstructed interrupted flow of the waters thereof. (Affects Parcel 3).
7. Any and all rights of the United States of America, the State of Illinois, the County, the Sanitary District, the Municipality, the Public, and adjoining owners in and to that part of Parcel of the subject premises lying within the bed of Deer Creek. (Affects Parcel 3).
8. Terms provisions, conditions, limitations and regulations of Ordinance No. 01-01-91-2 of the Village of Ford Heights, and recorded Amendment thereto recorded January 7,

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1992 as Document Number 92010081, by the Mayor and the Village Board of Trustees of the Village of Ford Heights, concerning Enterprise Zone.

9. Subordination and Funding Agreement dated as of the date hereof by and among Mortgagee, Mortgagor, Junior Trustee, Zurn Industries, Inc. and Houston Industries Energy, Inc.

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## ATTACHMENT E

### Insurance Coverage Schedule

The initial insurance requirements are set forth Schedule II to the Loan Agreement, which requirements are incorporated herein by this reference.

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