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SUBORDINATION AND FUNDING AGREEMENT

THIS SUBORDINATION AND FUNDING AGREEMENT ("Agreement") is made as of the 1st day of March, 1994 by and among THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not personally, but solely as the Trustee (the "Junior Trustee") under the hereinafter defined Collateral Trust Agreement, CGE FORD HEIGHTS, L.L.C., a Delaware limited liability company (the "Borrower"), ZURN INDUSTRIES, INC., a Pennsylvania corporation ("Zurn"), HOUSTON INDUSTRIES ENERGY, INC., a Delaware corporation ("HI Energy" - HI Energy and Zurn are hereinafter sometimes collectively referred to as the "Subordinate Lenders"), and CONTINENTAL BANK, NATIONAL ASSOCIATION, a national banking association, not personally but solely as the Trustee (the "Senior Trustee") under the hereinafter defined Indenture, and its successors and assigns.

RECITALS

DEPT-01 RECORDING \$57.00
T40011 TRAN 1141 04/07/94 14:09:00
43740 4 * -94 - 3 12015
COOK COUNTY RECORDER

92-1810

A. The Illinois Development Finance Authority ("Issuer") has issued its \$79,635,000 aggregate principal amount Solid Waste Disposal Facility Revenue Bonds (Ford Heights Waste Tire to Energy Project) Series 1994 ("Series 1994 Bonds");

B. Issuer has agreed to lend the proceeds of the Series 1994 Bonds to Borrower pursuant to the terms and conditions set forth in that certain Loan Agreement between Issuer and Borrower dated as of the date hereof ("Senior Loan Agreement"), said loan being in the aggregate principal amount of \$79,635,000 ("Senior Loan");

C. The proceeds of the Senior Loan are to be used to acquire, construct, equip, maintain and operate a portion of the "Project" (as defined in the Senior Loan Agreement), which is to be constructed upon the land legally described on Exhibit A attached hereto and made a part hereof (together with all existing and future fixtures and improvements thereon and appurtenances thereto, the "Premises"), as more particularly described in the Senior Loan Agreement;

D. Pursuant to the terms of that certain Trust Indenture between Issuer and Senior Trustee dated as of the date hereof ("Indenture"), Issuer has assigned all of its right, title and interest in and to the Senior Loan and the Senior Loan Agreement (except certain rights to receive notices and reports, give and withhold covenants, and to indemnification and payment of expenses of Issuer) to Senior Trustee, as Trustee under the Indenture, for the owners of the Series 1994 Bonds, as more particularly set forth in the Senior Loan Agreement and the Indenture;

E. To secure the Senior Loan, Borrower has granted a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing in favor of Senior Trustee (as now or hereafter amended, the "First Mortgage"), a Security Agreement dated as of the date

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THIS INSTRUMENT PREPARED BY
AND UPON RECORDING RETURN TO:

HOPKINS & SUTTER
Three First National Plaza
Suite 3800
Chicago, Illinois 60602
Attention: Richard S. Nikchevich

RI:3389-6

Box 334

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hereof in favor of Senior Trustee (as now or hereafter amended, the "Security Agreement") and various other documents evidencing and securing the Senior Loan (together with the Mortgage and the Security Agreement, the "Senior Loan Documents"). The First Mortgage was recorded on April 5, 1994 in the office of the Cook County Recorder of Deeds as Document No. 94305598.

F. Pursuant to the terms and conditions of that certain Note Purchase Agreement between Borrower and Subordinate Lenders dated as of the date hereof ("Note Purchase Agreement"), HI Energy has agreed to purchase subordinated notes (the "HI Energy Subordinate Notes") in the aggregate principal amount of up to Twenty Million Five Hundred Eighty-Five Thousand Dollars (\$20,585,000) and Zurn has agreed to purchase subordinated notes (the "Zurn Subordinate Notes" - the Zurn Subordinate Notes and the HI Energy Subordinate Notes are hereinafter sometimes collectively referred to as the "Subordinate Notes") in the aggregate principal amount of up to Four Million Eight Hundred Five Thousand Dollars (\$4,805,000) from Borrower (collectively, the "Subordinate Loan").

G. The proceeds of the Subordinate Loan are to be used to construct, equip, maintain and operate a portion of the Project, as more particularly described in the Note Purchase Agreement.

H. To secure the Subordinate Loan, Borrower has granted a Junior Mortgage, Security Agreement and Fixture Filing in favor of Junior Trustee (as now or hereafter amended, the "Junior Mortgage"), a Junior Security Agreement in favor of Junior Trustee (as now or hereafter amended, the "Junior Security Agreement" - together with the Note Purchase Agreement, the Junior Mortgage and any other documents evidencing or securing the Subordinate Loan, the "Subordinate Loan Documents"), in accordance with that certain Collateral Trust and Deposit Disbursement Agreement dated as of the date hereof by and among Subordinate Lenders and Junior Trustee (the "Collateral Trust Agreement"). The Junior Mortgage was recorded on April 5, 1994 in the office of the Cook County Recorder of Deeds as Document No. 94305601.

I. As a condition to the issuance of the Series 1994 Bonds and the making of the Senior Loan, it is required that the Subordinate Loan be subordinated to the liens and security interests of the First Mortgage, the Security Agreement and the other Senior Loan Documents upon the terms and conditions set forth herein.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the covenants, terms, conditions, agreements, and demises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement and not defined in the Preamble or Recitals of this Agreement are defined as follows:

"Membership Interest Pledge Agreements" shall mean the Membership Interest Pledge Agreements executed by David Nowacek, Terry A. Colip and HI Energy Ford Heights, Inc., respectively, in favor of Junior Trustee, each dated as of the date hereof.

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"Proceeding" shall mean the making by Borrower of an assignment for the benefit of creditors, the voluntary or involuntary dissolution or winding up, total or partial liquidation, reorganization, bankruptcy, insolvency, receivership or marshalling of assets or liabilities of Borrower, 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 Borrower.

"Senior Debt" shall mean the principal amount from time to time outstanding under the Senior Loan, as evidenced by the Senior Loan Documents, together with interest thereon at the applicable rates specified in the Senior Loan Documents (including, without limitation, all interest accruing thereon after the commencement of any Proceeding at the applicable rate (or default rate) specified in the Senior Loan Documents whether or not allowed as a claim in such Proceeding) and all fees, charges and expenses (including, without limitation, reasonable attorneys' fees and expenses), indemnification payments, protective advances, future advances (whether optional or obligatory) and all amounts payable by Borrower and/or any guarantor under the Senior Loan Documents (including, without limitation, any amounts payable by Borrower to Senior Trustee under any documents executed in further assurance of the Senior Loan Documents), regardless of the extent allowable in a Proceeding, whether direct or indirect, absolute or contingent and whether now existing or hereafter arising.

"Subordinated Debt" shall mean the principal amount from time to time outstanding of the Subordinate Notes, as evidenced by the Subordinate Loan Documents, together with interest thereon at the applicable rates specified in the Subordinate Notes (including, without limitation, all interest accruing thereon after the commencement of any Proceeding at the applicable rate (or default rate) specified in the Subordinate Loan Documents whether or not allowed as a claim in such Proceeding) and all fees, charges and expenses (including reasonable attorneys' fees and expenses), indemnification payments, protective advances, future advances (whether optional or obligatory) and all amounts payable by Borrower under the Subordinate Loan Documents (including, without limitation, any amounts payable by Borrower to Junior Trustee or either Subordinate Lender under any documents executed in further assurance of the Subordinate Loan Documents), regardless of the extent allowable in a Proceeding, whether direct or indirect, absolute or contingent and whether now existing or hereafter arising.

2. **Subordination.** Subordinate Lenders, Junior Trustee, Senior Trustee and Borrower hereby confirm, acknowledge and agree that (a) the Subordinated Debt is and shall be subordinate and subject to the prior indefeasible payment in full of the Senior Debt, (b) the Subordinated Debt is and shall be subordinate and subject as a claim against Borrower or its assets, including, without limitation, any claim against Borrower in a Proceeding, to the prior indefeasible payment in full of the Senior Debt, and (c) the Subordinate Loan Documents are and shall be subordinate and subject to the Senior Loan Documents in all respects.

3. **Notices from Senior Trustee.** Senior Trustee agrees: (a) to send Junior Trustee a copy of any notice of default which Senior Trustee sends Borrower under the Senior Loan Documents, and (b) to permit either Subordinate Lender or Junior Trustee, at their option, to cure any default, if such default is susceptible of being cured, within the same time period that Borrower is entitled to cure a default under the Senior Loan Documents.

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4. Reliance on Subordination.

(a) Junior Trustee and the Subordinate Lenders each hereby acknowledges that Senior Trustee and the owners of the Series 1994 Bonds are relying on this Agreement and its provisions in consenting to the Subordinate Loan, and Junior Trustee and the Subordinate Lenders each hereby agrees that it shall therefore be bound unto Senior Trustee by its respective covenants, agreements, certifications, representations and warranties contained in this Agreement. Junior Trustee and the Subordinate Lenders each hereby acknowledges that it has received and reviewed a copy of the Senior Loan Documents and that it is familiar with their contents; provided, however, that if any action is taken by Junior Trustee or any Subordinate Lender under this Section, but the maturity of the Series 1994 Bonds is not accelerated and, as a result of any such exercise of any of the rights and remedies set forth above, a new Person will succeed to the Borrower's obligations under the Loan Agreement (whether through a sale, merger, consolidation or otherwise), then such successor Person shall be subject to the prior written approval of the Issuer (which approval the Issuer hereby agrees will not be unreasonably withheld or delayed).

(b) Junior Trustee and the Subordinate Lenders each hereby further covenants and agrees, for itself and all who may claim through it (and this covenant shall be a real covenant running with the Premises) that, until such time as the Senior Loan is indefeasibly paid in full, it may not foreclose its liens or security interests on the Premises, or any portion thereof, or any other collateral for the Subordinated Debt (other than that collateral which consists of membership interests in Borrower which have been pledged pursuant to the hereinafter defined Membership Interest Pledge Agreements), or accept any additional collateral from Borrower, or accept any payment in violation of the provisions of the Senior Loan Documents, or exercise any other right or remedy whatsoever pertaining or pursuant to the Subordinate Loan Documents (other than an action to recover a Permitted Payment as defined in the Junior Mortgage, subject to the restrictions thereof) without Senior Trustee's prior written consent, which Senior Trustee may give or withhold in its sole and absolute discretion.

(c) Junior Trustee and the Subordinate Lenders each hereby waives any and all claims against Senior Trustee for damages suffered by any of them as a result of Senior Trustee's exercise of its rights or remedies under the Senior Loan Documents or this Agreement or Senior Trustee's refusal to consent to any action by the Junior Trustee or the Subordinate Lenders which requires Senior Trustee's consent under this Agreement, including, but not limited to, the foreclosure of the Junior Mortgage.

5. Subordinate Loan Representations and Warranties. (a) Junior Trustee hereby remakes, in favor of Senior Trustee, as of the date first above written, all of the representations and warranties of the Junior Trustee which are set forth in Section 3.2 of the Collateral Trust Agreement, as if said representations and warranties were set forth herein verbatim, except that for purposes hereof, all references in said Section to this "Agreement" shall mean this Subordination and Funding Agreement. The foregoing representations and warranties shall survive the execution and delivery of this Agreement.

(b) Each Subordinate Lender hereby makes the following representations and warranties in favor of Senior Trustee, which representations and warranties shall survive the execution and delivery of this Agreement:

(1) It is duly organized and validly existing corporation in good standing in the State in which it was organized and is in good standing in the State of Illinois, and

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has full power and authority to execute, deliver and perform its obligations under this Agreement.

(2) The execution, delivery and performance of this Agreement has been duly authorized by proper corporate proceedings, and this Agreement has been duly executed and delivered by it. This Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms (but subject as to enforceability to laws relating to bankruptcy and enforcement of creditors' rights).

(3) Neither the execution and delivery, nor the consummation of any of the transactions contemplated hereby nor compliance with any of the terms and conditions hereof will conflict with or be a violation of its organizational documents.

(4) Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions contemplated hereby, requires any consent, approval or authorization of, or filing, recording, registration or qualification with, any court or governmental or administrative body or authority.

(5) It has previously delivered to Senior Trustee true, correct and complete copies of all of the Subordinate Loan Documents, and all amendments thereto, and there have been no other modifications, amendments or changes to any of them as of the date hereof.

(6) The Subordinate Loan Documents constitute the entire agreement between Borrower and it and, to the best of its knowledge, between Borrower and Junior Trustee with respect to the Subordinate Loan and the Premises.

(7) Neither Subordinate Lender, Junior Trustee, nor, to the best of its knowledge, Borrower is now in default under any of the Subordinate Loan Documents nor are there any circumstances which with the giving of notice, passage of time, or both, would constitute a material default under any of the Subordinate Loan Documents.

(8) Neither it, nor to the best of its knowledge, Borrower, has assigned or purported to assign any right, title or interest in, to or under the Subordinate Loan Documents.

6. Senior Trustee Representations and Warranties. Senior Trustee makes the following representations and warranties in favor of Junior Trustee and the Subordinate Lenders, which representations and warranties shall survive the execution and delivery of this Agreement:

(a) Senior Trustee is a national banking association, and is duly qualified and licensed to do business in the State of Illinois.

(b) The execution, delivery and performance of this Agreement has been duly authorized by proper corporate proceedings, this Agreement has been duly executed and delivered by it, and this Agreement constitutes the legal, valid and binding obligation of Senior Trustee, enforceable in accordance with its terms (but subject as to enforceability to laws relating to bankruptcy and enforcement of creditors' rights).

(c) Neither the execution and delivery, nor the consummation of any of the transactions contemplated hereby nor compliance with any of the terms and conditions hereof will conflict with or be a violation of the corporate charter or by-laws of Senior Trustee.

(d) Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions contemplated hereby, requires any consent, approval or authorization of, or filing, recording, registration or qualification with, any court or governmental or administrative body or authority.

7. **Subordinate Loan Covenants.** In order to induce Senior Trustee to enter into the Senior Loan Agreement, until such time as the Senior Debt is repaid in full, Junior Trustee and the Subordinate Lenders each covenants and agrees as follows:

(a) **Termination of Leases, Etc.** Neither Junior Trustee nor either Subordinate Lender shall have any right, whether by foreclosure of the Junior Mortgage or otherwise, to terminate any lease, covenant, encumbrance, agreement of sale or other agreement pertaining to all or a portion of the Premises, whether or not such lease, covenant, encumbrance, agreement of sale or other agreement is subordinate (whether by law or the terms of such lease, covenant, encumbrance, agreement of sale or other agreement) to the lien of the Junior Mortgage without first obtaining the prior written consent of Senior Trustee, which consent Senior Trustee may give or withhold in its sole and absolute discretion. Any attempt to terminate any such lease, covenant, encumbrance or agreement shall be ineffective and void without first obtaining the prior written consent of Senior Trustee.

(b) **Waivers by Subordinate Lenders.** Junior Trustee and the Subordinate Lenders each hereby waives and relinquishes any rights which it may have, whether under a legal theory of marshalling of assets or any other theory at law or in equity, to restrain Senior Trustee from, or recover damages at any time from Senior Trustee as a result of, Senior Trustee's exercise of its various remedies under the First Mortgage or under any other Senior Loan Documents, in such order and with such timing as Senior Trustee shall deem appropriate in its sole and absolute discretion.

(c) **Limitations on Obligations.** The Junior Mortgage shall secure only the amounts advanced in accordance with the Subordinate Loan Documents, interest accruing under the Subordinate Loan Documents, plus sums expended by Subordinate Lenders to cure defaults of the Borrower or to protect or preserve the security of the Junior Mortgage or to enforce the Junior Mortgage.

(d) **Insurance Proceeds/Condemnation Awards Regarding Premises.** Notwithstanding anything to the contrary contained in the Junior Mortgage, Junior Trustee and the Subordinate Lenders agree that, for so long as the First Mortgage continues to encumber the Premises, insurance proceeds and the proceeds of condemnation awards attributable to any portion of the Premises, shall be applied to restoration of the Premises, or to the repayment of the Senior Debt, in accordance with the applicable provisions of the First Mortgage and the other Senior Loan Documents, and that neither Subordinate Lender's nor the Junior Trustee's consent shall be required for such purposes. Any proceeds of insurance or condemnation not applied by Senior Trustee under the First Mortgage and the other Senior Loan Documents, and any proceeds of any foreclosure or other disposition of the Premises under this First Mortgage remaining after all obligations to Senior Trustee under the First Mortgage and the other Senior Loan Documents have been paid in full, shall be applied by Senior Trustee in the manner provided in the Indenture.

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(e) **Notices from Subordinate Lenders.** Junior Trustee and the Subordinate Lenders each agrees (a) to send Senior Trustee a copy of any notice of default which it sends Borrower, and (b) to permit Senior Trustee, at its sole option, to cure any default within thirty (30) days thereafter, except that Junior Trustee and the Subordinate Lenders each agrees that no default shall be deemed to have occurred if such default is a non-monetary default and by its nature cannot be cured within such period so long as Senior Trustee shall have commenced curing the same within such thirty (30) day period and thereafter shall diligently and continuously perform the same to completion. Junior Trustee and the Subordinate Lenders each hereby acknowledges that Senior Trustee shall have no obligation whatsoever to cure any such default.

(f) **Limitations on Modifications to Subordinate Loan.** Junior Trustee and the Subordinate Lenders each shall perform its respective obligations under the Subordinate Loan Documents in compliance with the terms and provisions thereof. No amendments, changes or modifications of the Subordinate Loan Documents which would limit the amount, method, procedures, conditions or timing for the funding of the Subordinate Loan or modify the subordination provisions of any Subordinate Loan Document and no amendments of any provisions of the Subordinate Loan Documents which may adversely affect the interests of the Senior Trustee or the owners of the Series 1994 Bonds may be made without the prior written consent of Senior Trustee, which Senior Trustee may give or withhold in its sole discretion (subject, as between Senior Trustee and the owners of the Series 1994 Bonds, to the provisions of the Indenture). The Subordinate Lenders shall not suffer or permit any use of the proceeds of the Subordinate Loan for any purpose other than as relates to the construction, equipping, operation or maintenance of the Project.

(g) **Approval of Premises Leases.** Notwithstanding anything to the contrary contained in the Subordinate Loan Documents, Junior Trustee and the Subordinate Lenders each agrees and acknowledges that so long as the First Mortgage encumbers the Premises, it shall be deemed to have approved any leases for all or any portion of the Premises if such leases have been approved by Senior Trustee.

(h) **Survival of First Mortgage.** Junior Trustee and the Subordinate Lenders each hereby acknowledges and agrees that upon the occurrence, if any, of a foreclosure sale of the Premises pursuant to the terms and provisions of the Junior Mortgage or otherwise under the Subordinate Loan Documents and a subsequent conveyance of the Premises to Junior Trustee, either Subordinate Lender or any nominee, no extinguishment of the debt secured by the First Mortgage and the other Senior Loan Documents shall occur and, further, that the First Mortgage shall at all times remain a valid and subsisting first lien on the Premises notwithstanding any event described in this Subsection.

(i) **Restrictions on Payments to Subordinate Lenders.** If the balance in the Debt Service Reserve Fund held by Senior Trustee under the Indenture equals or exceeds the Reserve Requirement (as such terms are defined in the Indenture) and if the balance in the Operating Reserve Fund held by the Senior Trustee under the Indenture equals or exceeds the Operating Reserve Requirement (as such terms are defined in the Indenture), then prior to the occurrence of a Default (as defined in the Senior Loan Agreement), Borrower may make regularly scheduled principal and interest payments to Subordinate Lenders as specified in the Subordinate Loan Documents. After the occurrence of any such Default, and until Senior Trustee gives written notice to Junior Trustee that such Default has been cured or waived by Senior Trustee, Subordinate Lenders hereby agree that no payment of or on account of the Subordinate Loan or any other Subordinated Debt shall be made, or any additional security therefor given, by

Borrower unless and until the Senior Debt has been paid in full, and Subordinate Lenders further agree not to demand, receive or accept any such payment or security from Borrower. Subordinate Lenders agree that any payment, distribution or security received in violation of the preceding sentence shall be deemed to be received for the benefit of Senior Trustee and the amount of such payment, together with any interest accrued thereon, shall be immediately remitted to Senior Trustee in the form received (except for endorsement (without recourse) or assignment by the Subordinate Lenders to Senior Trustee), for application to the Senior Debt, and, until so delivered, such payment shall be held in trust by Subordinate Lenders as the property of Senior Trustee.

(j) **Exercise of Remedies under Subordinate Loan.** Notwithstanding anything to the contrary contained hereto, Junior Trustee shall have the right to foreclose on and take title to the collateral evidenced by the Membership Interest Pledge Agreements without the consent of Senior Trustee. Neither the Subordinate Lenders nor Junior Trustee shall exercise any right to pursue a foreclosure, deficiency or other judgment or attachment or garnishment or other lien or encumbrance affecting the collateral for the Senior Loan or against Borrower or any other person who may be liable under the Senior Loan Documents, without Senior Trustee's prior written consent, which consent may be withheld in Senior Trustee's sole and absolute discretion. Without limiting the generality of the foregoing, Junior Trustee and the Subordinate Lenders each hereby acknowledges and agrees that Senior Trustee shall be a third-party beneficiary of Section 13 of the Membership Interest Pledge Agreements insofar as such Section limits the exercise of remedies thereunder, the consequences of which may include that the Project is not a qualifying facility under PURPA. Any legal opinion delivered under that Section must also be addressed to the Senior Trustee, as representative of the holders of the Series 1994 Bonds.

(k) **Proceedings.** Junior Trustee and the Subordinate Lenders each agrees not to initiate or join in the involuntary filing of any Proceeding with respect to Borrower. If a Proceeding is filed by or against Borrower, Junior Trustee and the Subordinate Lenders each agrees not to vote any claim it may have against Borrower for or against any proposition which Senior Trustee determines, in its sole discretion, could have a material, adverse effect on Senior Trustee's claim against Borrower, without Senior Trustee's prior written consent, which Senior Trustee may give or withhold in its sole discretion. If either Subordinate Lender and Senior Trustee or Junior Trustee and Senior Trustee cannot agree on how any such claim held by Subordinate Lenders and Junior Trustee shall be voted with respect to any such proposition, such claim shall be voted at the sole direction of Senior Trustee, and Senior Trustee is hereby irrevocably appointed the lawful attorney of each Subordinate Lender and Junior Trustee for the purpose of enabling Senior Trustee to vote any such claim with respect to such proposition. Senior Trustee is also irrevocably appointed the lawful attorney of each Subordinate Lender and Junior Trustee in any Proceeding (1) to declare any or all of the Subordinated Debt to be immediately due and payable and to enforce claims comprising the Subordinated Debt in its own name or in the name of the Junior Trustee or Subordinated Lenders, as the case may be, by proof of debt, proof of claim, suit or otherwise and (2) to collect any assets of the Borrower (excluding assets of the Borrower distributed, divided or applied prior to any such Proceeding and excluding funds held in a debt service reserve fund created under the Collateral Trust Agreement) distributed, divided or applied in such Proceeding on account of the Subordinated Debt and apply the same to the Series 1994 Bonds until all of the same shall have been paid in full, rendering any surplus to the Subordinated Lenders. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Senior Debt is rescinded or must otherwise be returned by Senior Trustee in connection with any Proceeding or otherwise, all as though such payment had not been made.

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(l) **Distributions of Proceeds.** In any Proceeding, the Senior Debt shall first be paid in full before any payment is made in respect of the Subordinated Debt, and any payment or distribution in any such Proceeding as described in **subsection 7(k)** above of any kind or character (whether in cash, securities or other property) that may become payable or deliverable in respect of the Subordinated Debt shall be paid or delivered directly to Senior Trustee unless and until the Senior Debt shall have been paid in full.

(m) **Proof of Claim.** If Senior Trustee gives notice to either Subordinate Lender or Junior Trustee requesting that it file a proof of claim on account of the Subordinated Debt and such notice is given at least thirty (30) days before the expiration of the time to file such claim, then (i) if either Subordinate Lender or Junior Trustee fails to do so prior to twenty (20) days before the expiration of the time to file such claim, Senior Trustee is hereby irrevocably appointed the lawful attorney of such Subordinate Lender or Junior Trustee, as the case may be, for the purpose of enabling Senior Trustee to prove such claims, and each of the Subordinate Lenders and Junior Trustee shall, promptly upon Senior Trustee's written demand therefor, provide Senior Trustee with copies of such of Subordinate Lender's and Junior Trustee's records as are sufficient to show the amount of the outstanding obligations of Borrower under the Subordinate Loan Documents and copies of all Subordinate Loan Documents and Senior Trustee shall be entitled to rely upon the accuracy of such records and documents; and (ii) if Subordinate Lenders and Junior Trustee shall comply with such notice and file such proof of claim, Subordinate Lenders and Junior Trustee shall promptly supply to Senior Trustee a copy of such proofs of claim and a copy of any notice or pleading thereafter received by such Subordinate Lenders or Junior Trustee relating to such proof of claim, and Junior Trustee and the Subordinate Lenders each hereby acknowledges that Senior Trustee will be a party in interest entitled to be heard on all matters relating to such proof of claim.

(n) **Payments in Trust.** If, notwithstanding the foregoing, either Subordinate Lender or the Junior Trustee shall receive any payment or distribution in any such Proceeding described in **subsection 7(k)** above while the Senior Debt remains unpaid which it is not entitled to receive under the terms and provisions of this Agreement, such Subordinate Lender or Junior Trustee (as the case may be) shall hold such payment or distribution in trust (segregated from its other funds or property) for the benefit of and as the property of Senior Trustee; and such party shall immediately turn over such payment or distribution to Senior Trustee, in the same form as received (with any necessary endorsement without recourse) for application to (in the case of cash) or held as collateral for (in the case of property) the payment of the Senior Debt, until the Senior Debt has been indefeasibly paid in full after giving effect to any concurrent payment or distribution on account of the Senior Debt. Junior Trustee and the Subordinate Lenders shall execute such further documents or instruments and take such further action as Senior Trustee may reasonably request from time to time to carry out the intent of this Agreement. All payments and distributions received by Senior Trustee in respect of the Subordinated Debt owed to either Subordinate Lender or Junior Trustee may be applied by Senior Trustee first to the payment of any and all reasonable expenses (including, without limitation, reasonable attorneys' fees and legal expenses) paid or incurred by Senior Trustee in enforcing this Agreement against either Subordinate Lender or Junior Trustee or in endeavoring to collect or realize upon the Subordinated Debt and any balance thereof shall, solely as between Subordinate Lenders and Senior Trustee, be applied by Senior Trustee in such order of application as Senior Trustee may from time to time select, toward the payment of the Senior Debt remaining unpaid; but, as between any of the Borrower and its respective creditors, no such payments or distributions of any kind or character shall be deemed to be payments or distributions in respect of the Senior Debt. Notwithstanding the foregoing, Junior Trustee shall have no fiduciary obligations to the owners of the Series 1994 Bonds.

(c) **Release of Junior Mortgage.** If Borrower offers or agrees to convey the Premises to Senior Trustee in lieu of the foreclosure of the First Mortgage or to consent to the foreclosure of the First Mortgage, then the Subordinate Lenders and Junior Trustee shall release the Junior Mortgage on the Premises and any of the other Subordinate Loan Documents which may encumber the Premises without requiring the payment of the Subordinate Debt, or any part thereof, within five (5) days after Senior Trustee delivers written notice thereof to Junior Trustee.

(p) **Furnishing Information.** Upon Senior Trustee's written request therefor, the Subordinate Lenders and Junior Trustee shall furnish to Senior Trustee: (i) written verification of the timing, amounts and use of all Subordinate Loan proceeds previously disbursed by the Subordinate Lenders; (ii) copies of full or partial lien waivers, as the case may be, from each contractor and subcontractor and materialman to whom Subordinate Loan proceeds have been paid, together with copies of all owner's and contractor's sworn statements relating to each such disbursement; and (iii) such additional information and materials as Senior Trustee may from time to time reasonably request.

9. Funding Obligation of Subordinate Lenders.

(a) **Absolute Obligation.** Without limiting the generality of any other covenant or agreement set forth herein, each Subordinate Lender agrees to perform its respective funding obligations in accordance with the Note Purchase Agreement. The funding obligation of the Subordinate Lenders shall remain in full force and effect, notwithstanding intervening events of any kind. The obligation of the Subordinate Lenders to fund in accordance with the Note Purchase Agreement is absolute and unconditional and shall not be affected by (a) any default by the Borrower in the performance or observance of any of its agreements or covenants hereunder, under the Subordinate Loan Documents or otherwise, (b) the failure by the Borrower or any other person to satisfy any conditions precedent to the making of the Subordinate Loan under the Note Purchase Agreement or any other Subordinate Loan Documents, (c) the bankruptcy or insolvency of the Borrower or any other person, (d) the value, genuineness, validity, regularity or enforceability of this Agreement, any of the Subordinate Loan Documents or any other agreement, (e) the rejection of this Agreement, any of the Subordinate Loan Documents or any other agreement in any bankruptcy or similar proceedings, or (f) any other circumstance or event which might otherwise constitute a legal or equitable discharge or defense to the funding obligations of the Subordinate Lenders. The Senior Trustee, on behalf of, and upon the direction of, the holders of the Series 1994 Bonds, shall be entitled to enforce on behalf of the Borrower the obligations of each Subordinate Lender under the Note Purchase Agreement (but Senior Trustee shall be under no fiduciary obligation to the Borrower to do so) and shall be entitled (but not required) to act as the Borrower's attorney-in-fact under Sections 3B(c) and 3B(f) or 4B(a) or 4B(e), as applicable, of the Note Purchase Agreement.

(b) **Waiver of Defenses.** The obligation to fund pursuant to the Note Purchase Agreement of the Subordinate Lenders shall not be subject to any abatement, defense, counterclaim or recoupment whatsoever or any right to any thereof, and shall not be released, discharged or in any way affected by any reorganization, arrangement, compromise, composition or plan affecting the Borrower, any other person or Senior Trustee, or by any compromise, settlement, release, modification, amendment, whether material or otherwise, waiver or termination of any or all of the obligations, conditions, covenants or agreements of any person in respect of any of the Senior Debt or Subordinate Debt, or by the occurrence of any default or omission of any action referred to in any of the Senior Loan Documents or Subordinate Loan Documents, or any modification or release of any security for the Senior Debt.

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or by any lack of validity or enforceability of any of the Senior Loan Documents, whether or not any Subordinate Lender or Junior Trustee shall have notice or knowledge of any of the foregoing, in each case, to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might constitute a legal or equitable discharge of or defense to the funding obligations of the Subordinate Lenders.

10. Rescinded Payments. If at any time all or any part of any payment theretofore applied by Senior Trustee to any of the Senior Debt is or must be rescinded or returned by Senior Trustee for any reason whatsoever, including, without limitation, pursuant to a settlement agreement or compromise effected by Senior Trustee with a claimant, such Senior Debt shall, for the purposes of this Agreement, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by Senior Trustee, and Junior Trustee's and Subordinate Lenders' obligations under this Agreement shall continue to be effective or shall be reinstated, as the case may be, as to such payment all as though such application by Senior Trustee had not been made.

11. Modifications to Senior Loan. Senior Trustee expressly agrees that, prior to the occurrence of an Event of Default under the Senior Loan Documents, the Senior Trustee may not, at any time or from time to time, renew, extend or increase the amount of the Senior Loan, or alter or modify the terms of the First Mortgage or the other Senior Loan Documents in any way, in whole or in part in any manner which adversely affects the Junior Trustee or the Subordinate Lenders, and may not release any portion of the Premises or any other security or any person who may be liable for the repayment of the Senior Loan, in each case, without the consent of Junior Trustee. No right of the Senior Trustee or of any present or future holder of the Series 1994 Bonds to enforce subordination as herein provided shall at any time be prejudicial or impaired by any act or failure to act in good faith, by such Senior Trustee or holder. Without limiting the generality of the foregoing, the Senior Trustee and any such holder may, after the occurrence of an Event of Default under the Senior Loan Documents, take any action described in the preceding sentence without impairing or releasing the subordination provided in this Agreement.

12. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered (effective upon receipt), (b) if mailed (effective three (3) business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested, (c) if sent by overnight courier by a nationally recognized delivery service, charges prepaid (effective one business day after delivery to such courier) or (d) if sent by telecopy, charges prepaid (effective upon confirmation of transmission), in each case addressed as follows:

If to Senior Trustee:

Continental Bank, National Association
231 S. LaSalle Street
Chicago, Illinois 60697
Attention: Corporate Trust Administration
Telecopy: (312) 828-6052
Telephone: (312) 828-7009

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If to Junior Trustee:

Hand Delivery:
The First National Bank of Boston
150 Royall Street, Mail Stop 45-02-15
Canton, Massachusetts 02021
Attention: Corporate Trust Division
Telecopy: (617) 575-2078
Telephone: (617) 575-2000

General Mailing Address:
The First National Bank of Boston
P.O. Box 1618, Mail Stop 45.02.15
Boston, Massachusetts 02105-1618
Attention: Corporate Trust Division
Telecopy: (617) 575-2078
Telephone: (617) 575-2000

If to Subordinate Lenders:

Houston Industries Energy, Inc.
611 Walker
Suite 1100
Houston, Texas 77002
Telecopy: (713) 220-5343
Telephone: (713) 220-5375

Zurn Industries, Inc.
One Zurn Place
Erie, Pennsylvania 16514-2000
Telecopy: (814) 878-2396
Telephone: (814) 452-2111

If to Borrower:

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

with a copy to:

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

or at such other address or addresses or facsimile number as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

13. Amendments. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

14. Choice of Law. This Agreement has been delivered in the State of Illinois and shall be construed and interpreted in accordance with, and governed by, the internal laws and decisions of the State of Illinois (without giving effect to Illinois choice of law principles).

15. Entire Agreement. This Agreement sets forth the entire agreement between the parties hereto with respect to the subject matter hereof and this Agreement supersedes any and all of other agreements between any of the parties hereto as to the subject matter hereof.

16. Severability. The parties hereto intend and believe that each provision in this Agreement comports 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 Agreement is found by a court of competent jurisdiction 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 Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of the parties hereto 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 Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interests of the parties under the remainder of this Agreement shall continue in full force and effect.

17. No Joint Venture. The parties hereby agree that nothing herein contained shall be construed as creating a partnership or joint venture between any of the parties hereto.

18. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

19. Transfer. Neither Subordinate Lender shall transfer, sell or otherwise dispose of any of its interest in the Subordinate Loan, without the prior written consent of Senior Trustee. Senior Trustee shall have the right to transfer all or any part of its interest in the Senior Debt without the consent of Subordinate Lenders or the Junior Trustee. Subordinate Lender as used herein shall mean each Subordinate Lender and its successors and assigns as holders of the Subordinated Debt from time to time. Senior Trustee as used herein shall mean Senior Trustee and its successors and assigns as holders of the Senior Debt from time to time.

20. Rights of Borrower. This Agreement creates no rights whatsoever in the Borrower or any person or entity claiming by, through or under the Borrower, it being expressly understood that the Borrower has entered into this Agreement solely for purposes of inducing the making of the Senior Loan and the Subordinate Loan.

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21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

22. Evidence of Subordination. From time to time upon the request of the Senior Trustee, the Junior Trustee or the Subordinate Lenders, as requested, shall take such action as may be necessary and appropriate to acknowledge and evidence the prior position of the Senior Trustee and the Series 1994 Bonds with respect to the collateral pledged to the Senior Trustee and the Junior Trustee's or Subordinate Lenders' subordination as provided herein.

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Property of Cook County Clerk's Office

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

SENIOR TRUSTEE:

CONTINENTAL BANK,
NATIONAL ASSOCIATION,
not personally, but solely as
Trustee as aforesaid

By: Miguel Valle
Name: Miguel Valle
Title: Trustee

SUBORDINATE LENDERS:

ZURN INDUSTRIES, INC.,
a Pennsylvania corporation

By: Dennis Hoines
Name: DENNIS HOINES
Title: General Counsel / Secretary

Attest: F. L. C. [Signature]
Name: F. L. C. [Signature]
Title: CONTROLLER - PROS AND DIVISION

JUNIOR TRUSTEE:

THE FIRST NATIONAL BANK OF BOSTON,
not personally, but solely as Trustee
as aforesaid

By: [Signature]
Name: MARK NELSON
Title: Authorized Officer

HOUSTON INDUSTRIES ENERGY,
INC., a Delaware corporation

By: [Signature]
Name: LEWIS J. HOGAN
Title: President & CEO

Attest: [Signature]
Name: Michael [Signature]
Title: Senior Counsel

BORROWER:

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

By: Terry A. Coffey
Name: TERRY A. COFFEY
Title: Member

Attest: [Signature]
Name: DAVID NOWALSKY
Title: MARTIN

0032015

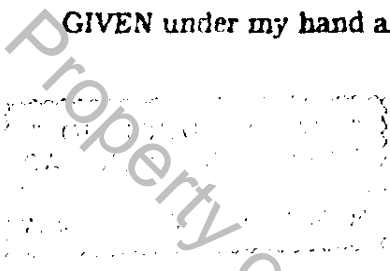
UNOFFICIAL COPY

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Carlo S. Menditto, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David Nowacek and Terry A. Colip 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 MEMBER and , respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as such officers of said company, as 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 6th day of April, 1994.



Carlo S. Menditto
NOTARY PUBLIC

My Commission Expires:
9-30-94

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Carlo S. Menditto, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MICHELLE GALL and of **CONTINENTAL BANK, NATIONAL ASSOCIATION**, a national banking association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such TRUST OFFICER appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as such officer of said bank, and affixed the corporate seal of said bank, thereto, as his/her own free and voluntary act and as the free and voluntary act of the bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of April, 1994.



Carlo S. Menditto
NOTARY PUBLIC

My Commission Expires:
9-30-94

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EXHIBIT 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 53083 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.

Street Address: Vacant Land at the Northwest Corner of Cottage Grove Avenue
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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