

US EPA ARCHIVE DOCUMENT

NOTE: This sample loan document and its specific provisions may or may not be appropriate to your program. Your own loan documents should be prepared based on your review of this samples in combination with a review of other program guidance, and applicable statutory and regulatory provisions. It is up to the user to review this sample carefully and determine whether it is appropriate for your program.

BROWNFIELDS CLEANUP REVOLVING LOAN FUND
SAMPLE LOAN AGREEMENT #1

THIS AGREEMENT is made and entered into on this _____ day of _____, 2000, by and between _____, acting herein through _____, its duly authorized representative, hereinafter referred to as "Borrower", and the City of _____, a duly organized municipal corporation of the State of _____, herein represented by _____, Mayor, duly authorized to act herein and hereinafter referred to as "Lender".

WITNESSETH:

WHEREAS, the City of _____ is the recipient of Brownfields Cleanup Revolving Loan Funds (BCRLF) and authorized to make certain loans from these funds (Loan Funds); and

WHEREAS, these funds are to be used to undertake cleanup of brownfields sites by making low interest loans to parties willing to undertake cleanup of these sites; and

WHEREAS, the Borrower is the owner of certain real property located in _____ (the Property), which property is more particularly described in Exhibit 1, attached hereto; and

WHEREAS, the Property is not listed, or proposed for listing on the National Priorities List of the U. S. Environmental Protection Agency (EPA); and

WHEREAS, the Borrower is not a generator or transporter of the contamination at the site; and

WHEREAS, the Borrower is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Property nor is the Borrower, or its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible for participation in this federal program or from the receipt of these funds; and

WHEREAS, the Borrower acquired the property after the time of disposal or placement of hazardous substances and has not caused, contributed to, permitted, or exacerbated the release of a hazardous substance on, or emanating from that property.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows:

1. iii The Borrower will carry out the Project in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in (42 USC 9601 et seq.); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31); Cooperative Agreements for Superfund Response Actions (40 CFR Part 35, Subpart O); the National Oil and Hazardous Substances Contingency Plan (NCP) (40 Part 300) and and all other applicable provisions

of federal, state or local law.

2. iii The Borrower shall carry out the Project in accordance with the Davis-Bacon Act of 1931 (CERCLA 104(g)(1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). CERCLA compliance with Davis Bacon requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with BCRLF Loan Funds. The Borrower must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.

NOTE: Paragraphs 3-8 are needed if the loan agreement is signed prior to the completion of cleanup planning and decision documents (e.g., the Approval Memo, EE/CA, and Action Memo) These paragraphs should be deleted or modified if the loan document is signed after these tasks are completed.

3. iii The Borrower shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4 relating to Federally assisted construction contracts.
4. iii The Borrower shall provide the Lender with a copy of the Phase I and Phase II Environmental Assessment of the Property performed according to the American Society for Testing and Materials (ASTM) standards. The Borrower shall be responsible for the payment of all costs and expenses related to the Assessment. The Borrower agrees that Loan Funds shall not be used for the payment of any cost or expense related to the Assessment. The Assessment shall include, but is not limited to site background, the threat posed to by the contaminant to public health, welfare and the environment and all past enforcement activities conducted by any governmental agency, and the site testing results.
5. iii The Lender shall select a Site Manager who shall serve as the On-Scene Coordinator (OSC). The Site Manager shall perform all duties as required by the Lender, including but not limited to coordination and oversight of the BCRLF Project Response Action (Response Action). The Site Manager shall prepare an Approval Memo documenting that the situation meets the CERCLA and NCP criteria for initiating a non-time critical removal action for signature by the Lender.
6. iii After the Lender has signed the Approval Memo, the Lender shall prepare a Community Relations Plan (CRP) with the assistance and cooperation of the Borrower. The CRP shall include the following:
 - a. Copies of interviews conducted with residents and community leaders, local officials, and public interest groups.
 - b. Copies of news releases and other information which explains the proposed project to be disseminated throughout the area surrounding the affected area.
 - c. Procedures for the establishment of a local information repository at or near the potential site that includes public information supplied by both the Lender and the Borrower related to the proposed response action. The Borrower shall supply the

Lender with any additional information that would assist the Lender in documenting the BCRLF Response Action.

7. iii After the Lender has prepared the CRP, the Borrower shall draft an EE/CA, which shall clearly identify the objectives of the removal action, provide an analysis of alternatives, recommends an action for the removal of the contamination and the estimated costs of removal. The Borrower shall submit copies of the Draft EE/CA to the Site Manager and the Lender for approval. The Borrower agrees to accept advice and suggestions from the Site Manager and Lender, and to incorporate those suggestions or requests for revisions into the Draft EE/CA.

NOTE: The NCP states that the Lead Agency shall prepare the EE/CA. Pilots may use up to 20% of their funding for conducting activities necessary for complying with CERCLA and the NCP such as preparing the EE/CA In this instance, the Borrower drafted an EE/CA to assist the Lead Agency in its preparation.

8. iii After the Lender and Site Manager have approved the Draft EE/CA, the Lender shall make the Draft EE/CA available for review and public comment for a period of not less than thirty (30) days from the date of publication of the public notice.
9. iii After the public comment period, the Site Manager shall prepare a Response to the public comments and an Action Memo documenting the basis for the removal action for signature by the Lender. At the request of the Lender, the Borrower shall submit all information to the Lender in a form requested by the Lender which will enable the Lender to prepare the Action Memo. After the Lender has signed the Action Memo, the Borrower shall prepare a Scope of Work containing detailed design and construction plans and specifications for the cleanup activities including a Budget and Work Schedule; a Health and Safety Plan (OSHA 1910-120 - 126) and a Quality Assurance Project Plan which sets forth the manner and method of collecting samples to assure the complete removal of all hazardous substances, (collectively referred to as the Project Documents) and submit same to the Site Manager and Lender for approval.
10. The Borrower understands and agrees that all Loan Funds provided by Lender shall be used to cleanup the Property identified in Attachment 1. Borrower shall supply the Lender with design and construction plan and specifications for redevelopment of the Property and evidence of a firm commitment for a construction loan and permanent financing from an accredited lending institution.
11. iii The Borrower further understands and agrees that any and all work performed on the Property for which Loan Funds are used and the receipt of any Loan Funds under this Agreement is conditioned upon the Borrower's full compliance with the Project Documents and this Agreement.
12. Lender agrees to loan to Borrower the sum of _____ to be used for cleanup of the Property. *(NOTE: If a Loan Discount is appropriate. "Borrower shall*

repay _____ of this amount.) The Borrower shall evidence its obligation to repay the Loan Funds by execution of a Letter of Loan Guarantee (Loan Guarantee), attached hereto and made a part hereof. The Loan Guarantee shall contain specific terms for the repayment of the Loan Funds.

13. The term of the BCRLF Loan shall be a period of _____ months/years, with interest to be charged on the Loan at a rate of _____ percent per annum.
14. The Loan Funds shall be payable to the Borrower as reimbursement for allowable expenses incurred based upon the progress of the work and in accordance with the approved Project Budget, attached hereto and made a part hereof. No reimbursement shall be made to the Borrower without the written approved of the Site Manager however, the Lender shall not advance nor be obligated to advance any Loan Funds to the Borrower prior to the receipt of properly executed Lien Waivers.
15. iii Borrower agrees to keep all expenditures from the Loan Funds within the approved Budget. Borrower shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Site Manager.
16. The Lender may withhold up to ten (10%) percent of each payment requested as a retainage until the Borrower has completed the Project and Substantial Completion obtained.
17. The closing of this Loan shall be subject to:
 - a. The Lender's receipt of a property appraisal from the Borrower.
 - b. Payment by the Borrower of a loan origination fee equal to _____ percent of the total loan amount to be paid out of the first reimbursement payment to the Borrower.
 - c. Opinion of the Lender's Counsel that the Borrower, if a corporation, is in good standing and that all documents executed by the Borrower are valid and enforceable.
 - d. Written authorization in the form of a resolution, if a corporation, authorizing the loan to the Borrower and authorizing Borrower's representative to execute the loan documents on behalf of the Borrower.
 - e. Evidence by the Borrower that no outstanding taxes, fees, charges, mortgages, liens, encumbrances or other assessments have been filed or are recorded against in the Property.
 - f. Title insurance provided at the expense of the Borrower.
 - g. Evidence of insurance coverage with limits of liability as determined by the Lender's Risk Manager. All insurance coverage required by this section shall remain in full force and effect during the term of this Agreement.
 - h. Identification of the Borrower's contractor and subcontractor for the Project.
 - i. The Lender's receipt of Project cost breakdown based upon estimates and prices supplied by the Borrower.

The Lender reserves the right to waive any or all requirements of this section.

18. iii Borrower shall commence work on the Project within _____ days from the date of execution of this Agreement and shall complete and performed all work on the Project within 365 days in accordance with the approved Schedule of Work attached hereto and made a part hereof.

NOTE: BCRLF response actions must be completed within 12-months.

19. All work of the Project performed pursuant to this Agreement and with Loan Funds shall be performed in a good and workmanlike manner.
20. iii All changes or modification to the Project or the Project Documents shall be approved in writing by the Site Manager and the Lender prior to such change or modification becoming effective. All additional costs incurred as the result of any Change Orders shall be the responsibility of the Borrower. In the event that unforeseen conditions are discovered during the project implementation, the Lender reserves the right to revise the Response Action and the Project Documents.
21. Borrower, at its sole cost and expense, and from sources other than Loan Funds, shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement.
22. The Borrower shall:
- a. Begin the project within ____ days and will complete all work included in the Work Plan within twelve (12) months following commencement of work. The Borrower agrees to complete the work in a timely manner in accordance with the Work Plan and Approved Budgeted. Borrower shall notify the Lender when the Project is complete. iii The notice shall contain certification or documentation as necessary to prepare a Cleanup Closeout report developed in accordance with Section 300.165 of the NCP and all applicable EPA guidance. This report shall summarize the actions taken, the resources committed and the problems encountered in completion of the project, if any.
 - b. Perform all of its obligations and agreements under this Loan Agreement, the Note and the Mortgage securing same, if applicable, and any other agreements or instruments to which the Borrower is a party and which relate to this Loan or to the Project.
23. Throughout the term of this Agreement, the Borrower shall indemnify, defend and hold the Lender harmless from any and all liability, loss, damage(s) and expense(s), including attorney's fees, which it may or shall incur in connection with the Project or by reason of any good faith action taken by the Lender in order to protect its rights hereunder.

24. iii The Borrower shall erect a sign on the Project site stating that the Project is being financed in part by BCRLF and the Lender and providing the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Project site shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising as well as 40 CFR Subpart O (§35.6105(a)(2)(ii)).
25. The Borrower shall not demolish any part of the buildings or structures located on the Property or commit any waste except as provided in the Scope of Work without the prior written consent of the Lender.
26. If the Borrower elects to repay the loan evidenced by this Agreement or sells or transfers the Property prior to completion of the Project, then, in that event, the Borrower shall immediately repay the entire principal balance due to the Lender.
27. Any forbearance by the Lender with respect to any of the terms and conditions of this Agreement or the Letter of Loan Guarantee shall in no way constitute a waiver of any of Lender's rights or privileges granted hereunder.
28. In the event of a default of any of the terms or conditions of this Loan Agreement or the Letter of Loan Guarantee securing same, then, in that event, the entire outstanding principal balance amount of this Loan shall become immediately due and payable without the necessity of demand from Lender. The Borrower shall be deemed to be in default under this Loan Agreement upon the occurrence of any or more of the following events:
 - a. The Borrower assigns this Agreement or any Loan Funds advanced hereunder or any interest herein to a third party or if the Property or any interest is conveyed, assigned or otherwise transferred without the prior written consent of the Lender,
 - b. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or the Loan Documents shall prove to be false in any material respect;
 - c. The Borrower fails to pay any principal amount, fee or interest on the indebtedness to the Lender after the same shall become due and payable and such failure continues beyond ten (10) business days;
 - d. The Borrower defaults in the performance of any term, covenant or condition to be performed hereunder and such default is not remedied within thirty (30) days, unless a longer period of time is reasonably required to cure the default, from and after written notice by certified mail, return receipt requested, from the Lender to the Borrower, specifying said default, or, if such default cannot be remedied within that period, and remedial effort is not commenced within that period and diligently and continuously pursued, the Lender shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions of this Agreement and/or terminate this Agreement and recover damages from the Borrower to the extent allowed by law.
 - e. Any proceeding involving the Borrower or the Property, commenced under any

- bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, but if such proceedings are instituted, no Event of Default shall be deemed to have occurred hereunder unless the Borrower either approves, consents to, or acquiesces in such proceedings, or such proceedings are not dismissed within sixty (60) days.
- f. An order, judgment or decree is entered, without the application, approval or consent of the Borrower, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Borrower of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of sixty (60) days.
- g. Upon the occurrence of any one or more of the events of default enumerated above, all indebtedness of the Borrower to the Lender pursuant to this Agreement shall become due and payable, both as to the principal and to the interest, if any, without presentment, demand, protest or notice of any kind to the Borrower, all of which are hereby expressly waived by the Borrower.
29. iii The Borrower agrees to maintain financial and programmatic records pertaining to all matters relative to this Agreement in accordance with generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of ten (10) years except as follows:
- a. Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved.
- b. All such records and supporting documents shall be made available, upon request, for inspection or audit by the Lender or its representatives.
- NOTE: The Borrower must obtain written approval from the Cooperative Agreement Recipient prior to destroying, or approving the destruction of, any records.**
30. iii The Borrower agrees to permit the Lender or its designated representative to inspect and/or audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances and to copy therefrom any information that the Lender desires relevant to this Agreement. The Lender shall provide written notice to the Borrower prior to the execution of this provision. The Borrower agrees to deliver the records or have the records delivered to the Lender or its designated representative at an address designated by such party within the City _____. If the Lender or its representative finds that the records delivered by the Borrower are incomplete, the Borrower agrees to pay the Lender or its representative's costs to travel to the Borrower's office or other location where the books or records are located to audit or retrieve the complete records. In addition, all loan related documents are subject to 40 C.F.R. 35.6710.
31. iii The Borrower will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the Borrower will undertake good faith efforts in compliance with 40 CFR §35.6580 to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and

Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. The Borrower shall submit a report of such efforts on the City-provided form.

32. The Borrower agrees to protect, indemnify, defend and hold harmless, the Lender, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the Borrower may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the Borrower as provided herein and caused in whole or in part by any act, error, or omission of the Borrower, its agents, servants, employees or assigns.
33. The Borrower shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the Lender. The Borrower shall not assign all or any portion of the Property made the subject of this Agreement without the prior written consent of the Lender.
34. This Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.
35. All amendments to this Agreement shall be in writing and signed by both parties hereto.
36. It is expressly understood that a failure or delay on the part of the Borrower in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or default under this Agreement however, the Borrower shall use its best effort to insure that the Project is completed in a reasonable time without unnecessary delay.
37. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
38. No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.
39. All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Any such notice,

request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

TO THE LENDER: The City of _____

TO THE BORROWER:

or to such other address as a party may subsequently specify in writing to the other party.

- 40. This Agreement and all covenants, agreements, representations and warranties made herein shall survive the execution of this Agreement and shall continue in full force and effect so long as the Loan Obligation is outstanding and unpaid.
- 41. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement which can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.
- 42. Except for any exhibits, attachments, plats or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.
- 43. The Borrower understands and agrees that any use of the Property or any activity thereon which is inconsistent with the foregoing provisions is expressly prohibited.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed in the name and on behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, hereunto duly authorized) as of the day and year first written above.

WITNESSES:

[TYPE NAME OF SIGNATURE]

[TYPE NAME OF SIGNATURE]

WITNESSES:

[TYPE NAME OF SIGNATURE]

[TYPE NAME OF SIGNATURE]

BORROWER:

[TYPE NAME OF BORROWER]

BY:

[TYPE NAME OF SIGNATURE]

LENDER:

[TYPE NAME OF LENDER]

BY:

[TYPE NAME OF SIGNATURE]

BROWNFIELD CLEANUP REVOLVING LOAN FUND
PROMISSORY NOTE

\$ _____
_____, [INSERT STATE]
_____, 20_____

FOR VALUE RECEIVED the undersigned (the "Borrower"), hereby promises to pay to the order of the City of _____ (the "Lender") the principal sum of _____ (\$ _____) DOLLARS (hereinafter referred to as the "Loan Obligation") together with interest on the Loan Obligation at the rate equal to _____ percentum (_____ %) per _____ in level _____ installments for _____ months, due on the first date of each month commencing on the ____ day of _____, 20_____, in the amount of _____; provided however that interest shall be forgiven on the Loan Obligation if the Borrower completes the project and repays the principal within _____ (_____) months from date. In the event that the principal amount of this Note plus accrued interest is not repaid in full upon maturity, then in that event, interest shall increase to the rate of _____ (_____ %) per _____ from the date of maturity until the indebtedness evidenced by this Note is repaid in full. The Loan Obligation shall be payable at _____ or at such other place as may be designated by the Lender from time to time, in accordance with the following conditions.

If prior to completion of the removal action performed to address the identified environmental hazard, the Borrower repays the Loan Obligation evidenced by this Note or sells or transfers the above described property, then in that event, the Borrower shall repay the outstanding principal balance due on the amount of this Note plus accrued interest and a prepayment penalty of _____ (_____ %) percent of the said principal balance.

This Note evidences a loan to the Borrower from the Lender under the Brownfields Cleanup Revolving Loan Fund ("BCRLF") Program of the U. S. Environmental Protection Agency for the exclusive purpose of carrying out a removal action to address the hazardous substances identified on the Property located at _____.

This Note is subject to the terms and conditions the Brownfields Cleanup Revolving Loan Fund Agreement (the "Agreement"), dated _____, by and between the Lender and the Borrower and is entitled to the benefits and is subject to the conditions thereof. All the terms, conditions and provisions of the Agreement are, by this reference thereto, incorporated herein as part of this Note, and shall control in the interpretation and enforcement of this Note.

In addition to the foregoing, the Borrower hereby promises to pay to the full extent required by the Agreement all costs and expenses of collection incurred in connection with any default by the Borrower hereunder and all other payments required to be made by the Borrower pursuant to the Agreement.

In the event the Borrower should fail to make any of the payments required in this Note, such payments so in default shall continue as an obligation of the Borrower until the amount of default shall have been fully paid.

In case of default in this Note or a default or an "event of default", as defined in the Mortgage (the "Mortgage") with which this Note is paraphed or in this Agreement shall occur, the entire principal amount of the Loan Obligation together with interest as provided for herein, at the option of the holder hereof, may be declared immediately due and payable as provided for in the Agreement and the Mortgage with which this Note is paraphed.

The maker of this Note hereby waives presentation for payment, demand, notice of nonpayment and protest, all pleas of division and discussion, and consents that the time of payment may be extended without notice thereof.

This Note is secured by the first Mortgage of even date herewith, executed and delivered by maker, hereof, mortgaging and hypothecating certain property therein described, the terms and conditions of which said Mortgage are made a part hereof and shall control in the interpretation and enforcement of this Note.

"NE VARIETUR"
For identification with an Act of
Mortgage and a Brownfields Cleanup
Revolving Loan Fund Agreement, both passed
before me this _____ day of _____, 2000.

NOTARY PUBLIC

BROWNFIELD CLEANUP REVOLVING LOAN FUND
ACT OF MORTGAGE

BE IT KNOWN, that on this _____ day of _____, 20_____, before me, the undersigned Notary Public, duly commissioned and qualified, in and for the _____, therein residing, and in the presence of the undersigned witnesses, personally came and appeared:

CITY OF _____, a political subdivision of the State of _____, whose mailing address is _____, herein represented by _____, Mayor, duly authorized to act herein, and hereinafter sometimes referred to as "Lender" or "Mortgagee"),

and

_____, (Social Security/Tax Identification Number: _____), a person of the full age of majority and a resident of the _____, whose mailing address is the property address stated below (hereinafter sometimes referred to as "Borrower" or "Mortgagor").

Mortgagor acknowledges that it is indebted to Mortgagee in the sum of _____ (\$ _____)(hereinafter referred to as the "Mortgage"). In evidence of said indebtedness the Mortgagor has furnished its certain Promissory Note (the "Note") made and subscribed by Mortgagor to the order of Mortgagee. The Note after being paraphed, "Ne Varietur" by me, Notary, for identification herewith, have been delivered to Mortgagee, who hereby acknowledges receipt thereof.

In order to secure the full and punctual payment of the Note, in principal, premium, if any, and interest, when the same shall be due, together with attorney's fees and all taxes, insurance premium, costs and charges, and to secure the performance of the covenants and agreements on the part of the Mortgagor herein, a special Mortgage is hereby granted by the said Mortgagor on the following described property:

LEGAL DESCRIPTION
(Include GEO and Municipal Address)

including all interests in connection therewith with respect to the buildings, improvements and component parts thereof now or hereafter erected thereon, appurtenances, appliances, furnishings, fixtures, rights, ways, privileges, servitudes, advantages thereunto belonging or in anywise appertaining, including all immovables by declaration now or hereafter forming a part of or attached to or connected with the Property or used in connection therewith and all of the estates, rights, title and interest of the Mortgagor in and to said described premises, and articles of movable property of every kind and nature whatsoever now or hereafter located in or upon said immovable property or any part thereof and used in connection with any present or future operation of said immovable property and now owned or hereafter acquired by the Mortgagor.

UNIFORM COVENANTS. Mortgagor and Mortgagee covenant and agree as follows:

1. Mortgagor shall not demolish any improvements on the Property, or commit or permit waste thereof, except in connection with activities related to the Project, or the redevelopment of the Property, or to commit, suffer or permit any act thereon in violation of the law or in derogation of the rights of the Lender under the terms of the Brownfield Cleanup Revolving Loan Fund Agreement entered into by the parties on the _____ day of _____, 20____, and the Note secured by this Mortgage without the express written consent of the Mortgagee, its assigns or successors.
2. The Property shall remain mortgaged and hypothecated until payment of the full amount of the Note, in principal, premium, if any, and interest, together with said attorney's fees, taxes, insurance premiums, costs and charges, and the performance of said covenants and agreements of Mortgagor contained herein.
3. Mortgagor recognized, agreed and understands that the Note is issued pursuant to the Brownfield Cleanup Revolving Fund Program (the "Program") of the U. S. Environmental Protection Agency for the exclusive purpose of carrying out a removal action to address hazardous substances identified at the Property and is entitled to the benefits and subject to the conditions thereof. All the terms, conditions and provisions of the Program are by reference thereto incorporated herein as part of this Mortgage. The Mortgagor covenants and agrees that it will comply with and fulfill all of its obligations and duties under the terms of the Program and will do all things necessary to preserve and to keep in full force and effect the Agreement. It is specifically agreed, recognized and understood that in addition to securing the payment of the principal of and interest on the Note, as hereinabove described, this Mortgage is further given as security for the performance of all of the covenants and agreements of the Mortgagor set forth in this Mortgage and the attachments hereto.
4. This Mortgage shall take effect on the date specified herein and shall remain in effect for a period of _____ thereafter.
5. Mortgagor shall keep the improvement(s) now existing or hereafter erected on the property insured against loss by fire and any other hazards, including floods or flooding. Evidence of insurance shall be required at the time of execution of the Agreement and shall remain in full force and effect throughout the term of this Mortgage.
6. The Mortgagor declares that there are no taxes due and exigible on the Property and that same have been paid up to an including the year _____. Mortgagor shall promptly pay when due all subsequent taxes, insurance premiums, charges, or other amounts under this Mortgage. Mortgagee shall be entitled, but not obligated, to pay such taxes, premiums, charges, or other amounts provided that no such payment or other action by Mortgagee shall be deemed to be a waiver of or to relieve Mortgagor from any default. Mortgagee shall be, and is hereby subrogated to all rights, liens, and privileges securing or assuring payment of any debt or claim for the payment of which Mortgagee may make advances pursuant to the terms hereof. All sums expended by Mortgagee for any such payment or in connection with

any such action shall become part of this indebtedness and secured by this Mortgage.

7. Mortgagor shall comply with all terms and conditions contained in a the Brownfield Cleanup Revolving Fund Loan Agreement entered into by the parties on _____, 20____ and the Note secured by this Mortgage.
8. A. The following shall be “events of default” under this Mortgage and the terms “events or default” or “default” shall mean, whenever they are used in this Mortgage, any one or more of the following acts:
 1. Failure of the Mortgagor to pay when due any amounts required to be paid under the terms of the Note;
 2. Failure by the Mortgagor to observe and perform any covenant(s), condition(s) or agreement(s) on its part to be observed or performed hereunder or in accordance with the terms and conditions of the Agreement, which failure shall have continued for a period of forty-five (45) days after written notice thereof shall have been given by the Mortgagee to the Mortgagor, specifying the failure and requiring that it be remedied;
 3. Insolvency by the Mortgagor, or an application to the Bankruptcy Court to be adjudicated a voluntary bankrupt, or the institution of proceedings against the Mortgagor to be placed in involuntary bankruptcy, or the institution of any proceedings against the Mortgagor seeking the appointment of a receiver, or seizure of the Property under any writ or process of court or by any trustee acting under any Mortgage.
- B. Upon the occurrence of any Event of Default, as defined in paragraph A of this section, Mortgagee may by notice in writing delivered to the Mortgagor declare the Loan to be due and payable immediately. The provisions of this section are subject however, to the condition that if at any time after the declaration of acceleration and prior to the entry of a judgment in a court for enforcement hereunder all existing Events of Default shall have been cured, then and in every case, Mortgagee may waive the Event of Default and its consequences and may rescind and annul that declaration. No waiver or rescission and annulment shall extend to or affect any subsequent Event of Default or shall impair any rights consequent thereon. The Mortgagee may exercise the remedies hereunder and as authorized by provisions of the Program with respect to any of the Mortgaged Property, in whole or in part, and in such portions and in such order as may be deemed advisable by the Mortgagee in its discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or liens evidenced by this Mortgage. No remedy herein conferred upon Mortgagee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Mortgage, now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be

deemed expedient. In order to entitle Mortgagee to exercise any remedy reserved to it under this Mortgage, it shall not be necessary to give notice to Mortgagor, other than such notice as may be herein expressly required.

9. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law nor or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and Mortgagor to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment and stay or execution, in the event of foreclosure of the liens hereby created. If any law referred to in this paragraph and now in force, of which Mortgagor might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph.
10. In the event of any sale of the Property, or any part thereof, in any foreclosure proceedings instituted to enforce this Mortgage, it is agreed that the said Property may be sold without appraisalment to the highest bidder for cash, the Mortgagor hereby expressly waiving the benefit of any and all appraisalment thereof.
11. Mortgagor hereby further expressly waives: (a) the benefit of appraisalment as provided in Louisiana Code of Civil Procedure, Articles 2332, 2336, 2723 and 2724 and all other laws conferring the same; (b) demand and three (3) days delay provided by the Louisiana Code of Civil Procedure, Articles 2331 and 2722; and (e) the benefit of the other provisions of the Louisiana Code of Civil Procedure, Articles 2331, 2722 and 2723; and Mortgagor expressly agrees to the immediate seizure of the property subject to this mortgage in the event of suit hereon.
12. Mortgagor acknowledges the obligation secured hereby and hereby confesses judgement in favor of the Mortgagee, or any future holder or holders of the Note, up to the full amount of principal and interest, and premium, if any, and the attorney's fees, and for any sums that may be advanced by the Mortgagee to the Mortgagor for the payment of premiums of insurance, taxes, or of amounts for the protection and preservation of this Mortgage, and does by these presents, consent, agree and stipulate that, in the event of an occurrence of any one or more events of default, the entire principal amount of the Note, together with all accrued interest thereon and all costs of collection, including reasonable attorney's fees and court costs, may, at the option of the Mortgagee be declared immediately due and payable and it shall be lawful for and the Mortgagor does hereby authorize the Mortgagee, without making a demand and without notice or putting in default, the same being hereby expressly waived, to cause all and singular the Mortgaged Property or any part thereof, to be seized and sold by executory process issued by any competent court or to proceed with the enforcement of its Mortgage in any other manner provided by law.
13. The Loan Obligation evidenced by the Mortgage Note shall be "In Rem" and the future

holders shall not have

personal recourse against the makers, their heirs, assigns, vendees or donees. The recourse of the future holder or holders shall be limited to the Property described above.

14. Mortgagor further agrees that, in the event any proceedings are taken under this Mortgage by way of executory process or otherwise, any and all declarations of the facts made by authentic act before a notary public and in the presence of two witnesses, by a person declaring that such facts lie within his knowledge, shall constitute authentic evidence of such facts for the purpose of executory process.
15. If for any reason any of the provisions of this Mortgage shall be declared invalid or unenforceable, such decision shall not affect the validity or enforceability of the other provisions hereof.
16. Any failure of the Mortgagee to enforce the terms and conditions of the said Agreement and this Mortgage or the Note secured by the same shall not constitute a waiver of any of the Mortgagee's rights or privileges granted thereunder.
17. This Mortgage shall be construed and interpreted in accordance with the laws of the State of Louisiana.
18. Mortgagor agrees to give Mortgagee immediate notice of the actual or threatened commencement of any proceedings in the nature of eminent domain affecting all or any part of the Property, and agrees to promptly deliver to Mortgagee, copies of any papers served upon Mortgagor in connection with any such proceedings. No settlement for the damages sustained shall be made by Mortgagor without Mortgagee's prior written consent and approval, which consent and approval shall not be unreasonably withheld.
19. Mortgagee and any person authorized by Mortgagee shall have the right at any time, upon reasonable notice to Mortgagor, to enter the Property at a reasonable time and hour to inspect and photograph its condition and state of repair.
20. All notices permitted or required under this Mortgage or the Note shall be in writing, and shall be sent by registered or certified mail, postage prepaid, addressed to the addressee as set forth in this Mortgage or in the Note, or at such other address as the addressee may designate in writing from time to time.
21. This Mortgage cannot be changed or amended except by an agreement in writing signed by Mortgagor(s) and Mortgagee.
22. The covenants herein contained shall bind, and the benefits and advantages shall insure to, the successors or

assigns of the parties hereto.

- 23. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include any genders.
- 24. This Mortgage shall not be released of record until the Note, together with all charges, payments and premiums due hereunder and thereunder, has been paid in full.

THUS DONE AND PASSED on the _____ day of _____, 20____, in the presence of the undersigned competent witnesses, who hereunto sign their names with the said appearers, and me, Notary, after reading of the whole.

WITNESSES:

NOTARY PUBLIC

in and for _____
My Commission is for _____