

**CHARLES J. FAIN  
ATTORNEY AT LAW**

118 1/2 SOUTH COMMERCIAL  
BRANSON, MISSOURI 65616

PHONE: 417-334-2161  
FAX: 417-334-1236

April 7, 1997

Mr. Cecil Wright, Secretary  
MISSOURI PUBLIC SERVICE COMMISSION  
P. O. Box 360  
Room 530 , Truman State Office Bldg.  
301 West High Street  
Jefferson City, Missouri 65101

**FILED**  
**APR 9 - 1997**  
**MISSOURI  
PUBLIC SERVICE COMMISSION**

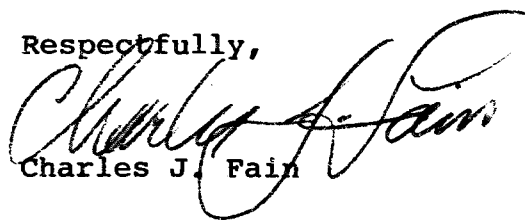
Re: Tri-State Utility, Inc.

Dear Mr. Wright:

Enclosed is the original and fourteen copies of a revised application in the above Case No. WF-97-349 in answer to the Commission's NOTICE dated this date and just received by me. The corrections were due to a scrivener's error on the exhibits date.

Please bring the corrected copies to the attention of the commissioners and staff.

Respectfully,

  
Charles J. Fain

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Application of Tri-State )  
Utility, Inc. For Authority to Borrow an Amount )  
Not to Exceed \$1,300,000 From Great Southern Bank )  
and in Connection Therewith to Execute a Loan )  
Agreement, Promissory Note, Deed of Trust, Security )  
Agreement and Financing Statement. )

CASE NO. WF-97-349

**FILED**

APR 9 - 1997

MISSOURI  
PUBLIC SERVICE COMMISSION

*Amended*  
**APPLICATION**

Comes now Tri-State Utility, Inc., (hereinafter referred to as "Applicant") and states as follows:

1.

That Applicant is a corporation organized and existing under the laws of the State of Missouri and is in good standing in all respects; that Applicant's headquarters and principal place of business is located at Branson, Missouri, 65616; that Applicant is engaged generally in the rendering of utility service to approximately 2,600 customers subject to the jurisdiction of the Missouri Public Service Commission (hereinafter referred to as the "Commission") located in the Missouri county of Taney.

2.

That all communications with respect to this Application and this proceeding should be directed to:

1.

Harold Epps, President  
Tri-State Utility, Inc.  
2580 State Highway 165  
Branson, Missouri 65616  
Telephone No. (417) 334-4189

Charles J. Fain  
Attorney for Applicant  
118 1/2 South Commercial  
Branson, Missouri 65616  
Telephone No. (417) 334-2161

3.

That Applicant proposes to borrow certain sums, not to exceed One Million Three Hundred Thousand and No/One-Hundredths Dollars (\$1,300,000.00) from Great Southern Bank ("Great Southern") in order to refinance the Applicant's existing indebtedness and to finance the operating needs of Applicant.

4.

That the borrowing referred to in paragraph three supra will be used by Applicant generally for the acquisition of property, the construction, completion, extension, or improvement of its facilities or improvement of its service within the state or for the discharge or lawful refunding of its obligations, or reimbursement of monies actually expended from the income from any source within the last five (5) years; specifically, the proceeds of the loan will be used to pay the balance of the Mercantile Bank loans; the balance of which was loan #4184 for Three Hundred Sixty Three Thousand Four Hundred Forty and 16/One-Hundredths Dollars (\$363,440.16), loan #11668 for Five Hundred Sixty Four Thousand Nine Hundred Seventy One and 60/One-Hundredths Dollars (\$564,971.60), and loan #76588 for One Hundred Eighty Seven Thousand Six Hundred Twenty Six and 04/One-Hundredths Dollars (\$187,626.04) totaling One Million

2.

One Hundred Sixteen Thousand Thirty Seven and 80/One-Hundredths Dollars (\$1,116,037.80) and Eighty Three Thousand Nine Hundred Sixty Two and 20/One-Hundredths Dollars (83,962.20) to finance engineering costs on an expansion project; to fund the debt service reserve; and for any other appropriate purposes.

5.

That Applicant proposes to enter into a loan agreement with Great Southern substantially in the form of the Loan Agreement marked Exhibit 1 attached hereto and made a part hereof for all purposes.

6.

That Applicant proposes to execute and deliver a promissory note payable to Great Southern in the aggregate principal amount of One Million Three Hundred Thousand and No/One-Hundredths Dollars (\$1,300,000.00) bearing interest at the rate of Prime plus one and three quarters percent (1 3/4%), payment of the indebtedness evidenced thereby within twenty (20) years from the date thereof, substantially in the form of the Promissory Note marked Exhibit 2, attached hereto and made a part hereof for all purposes.

7.

That as security for the loan, Applicant proposes to execute and deliver a deed of trust, security agreement, and financing statement substantially in the form of the Deed of Trust, Security Agreement and Financing Statement marked Exhibit 3, attached hereto and made a part hereof for all purposes.

3.

8.

That marked Exhibit 4, attached hereto and made a part hereof for all purposes, is an original certified copy of the Resolution of the Board of Directors of Tri-State Utility, Inc., which approves the making of the loan, the execution of the promissory note and the giving of security therefore.

9.

That marked Exhibit 5, attached hereto and made a part hereof for all purposes, is a pro forma balance sheet and proforma income statement of Applicant showing the effect of the proposed financing upon bonded and other indebtedness.

10.

That marked Exhibit 6, attached hereto and made a part hereof for all purposes is a five (5) year capitalization expenditure schedule as required by 392.310 RSMo, (Supp. 1993).

11.

That approximately One Million One Hundred Sixteen Thousand Thirty Seven and 80/One-Hundredths Dollars (\$1,116,037.80) of the proceeds of the loan will be used for the purposes of guaranteeing, taking over, refunding, discharging or retiring existing indebtedness; consequently only One Hundred Eighty Three Thousand Nine Hundred Sixty Two and 20/One-Hundredths Dollars (\$183,962.20) of the proposed financing will be subject to the fee schedule as set forth in 386.300 RSMo, 1986.

**WHEREFORE**, Applicant prays this Commission to enter its order:

A. Approving and authorizing the transactions as set forth in this Application and

4.

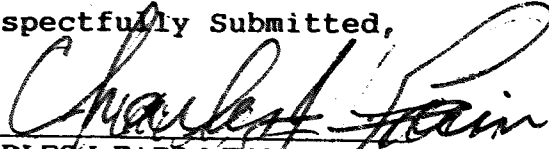
authorizing Applicant to:

1. Borrow from Great Southern Bank an amount not to exceed One Million Three Hundred Thousand and No/One-Hundredths Dollars (1,300,000.00), substantially in accordance with the terms and conditions of the Loan Agreement attached hereto as Exhibit 1;
  2. Execute and deliver a promissory note evidencing the loan, substantially in the form of the Promissory Note attached hereto as Exhibit 2, in the total sum not to exceed One Million Three Hundred Thousand and No/One-Hundredths Dollars (\$1,300,000.00);
  3. Execute and deliver a mortgage, security agreement and financing statement for the purposes of securing the loan substantially in the form of the Mortgage, Security Agreement, and Financing Statement attached hereto as Exhibit 3;
  4. Do and perform or cause to be done and performed all such other acts and things, as well as to make, execute and deliver any and all documents as may be necessary, advisable or proper to the end that the intent and purposes of this financing may be fully effectuated;
- B. Finding that the money, property and labor to be procured by said transaction is reasonably required for the purposes specified above, and that no part of the proceeds shall be reasonably chargeable to operating

expenses or to income; and,

- C. Granting such further relief in this matter as the Commission may deem necessary.

Respectfully Submitted,

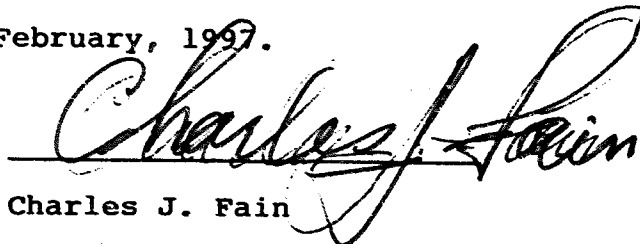


CHARLES J. FAIN MBN 14830  
ATTORNEY FOR APPLICANT  
118 1/2 SOUTH COMMERCIAL  
BRANSON, MISSOURI 65616  
(417) 334-2161


STATE OF MISSOURI )  
                                  ) Ss.  
County of Taney    )

Charles J. Fain, being duly sworn, states that he is attorney for Tri-State Utility, Inc, Applicant in the above application; that he has authority from the applicant corporation to make this affidavit and that the facts stated in said application are true, according to his best knowledge, information and belief.

Dated this 19th day of February, 1997.

  
Charles J. Fain

Subscribed and sworn to before me the undersigned notary public the day and year above written.

6.  


**KAREN FAIN**  
NOTARY PUBLIC STATE OF MISSOURI  
TANEY COUNTY  
MY COMMISSION EXP APR. 10, 1999

Notary Public



# Great Southern Bank

**Paul Potthoff**  
Assistant Vice President

January 28, 1997

Harold and Sharon Epps  
Tri-States Utility Inc.  
P.O. Box L  
Branson, MO 65815

Dear Mr. and Mrs. Epps,

Thank you for your loan request of \$1,300,000. Great Southern Bank has approved your request. The terms and conditions of this loan would be as follow:

- |                |   |
|----------------|---|
| 1) Amount      | \$1,300,000.00  |
| 2) Rate        | Prime + 1 3/4% (currently would be 10%)   |
| 3) Term        | Balloon in 3 years  |
| 4) Payments    | \$12,545.00 per month (20 year amortization)  |
| 5) Fees        | 1 point (\$13,000)  |
| 6) Security    | First lien/deed of trust on all wells, towers, lines, real estate, accounts receivable, general intangibles, inventory, equipment, furniture, contract rights, fixtures and other assets owned by Tri-States Utility, Inc. Two 56' houseboats owned by Hilco, Inc d/b/a Hwy K Marina. Assignment of \$270,000 life insurance policy on Harold Epps. |
| 7) Guarantys   | Personal guaranty of stockholders of Tri-States Utility, Inc. (Harold and Sharon Epps) for entire \$1,300,000.  |
| 8) Deposits    | All company deposit accounts to be held at Great Southern Bank  |
| 9) Salary      | Owner draws including salary and dividends limited to \$36,000 annually plus life insurance payments, car payments, and taxes without prior consent by Great Southern Bank.   |
| 10) Financials | Tri-States will provide copy of financial information filed quarterly with the Missouri Public Service Commission.  |
| 11) Default    | Any noncompliance or default of regulations or specifications of the Public Service Commission is also a default on Great Southern note.  |
| 12) Rent       | Rent paid to Hilco, Inc by Tri-States Utility Inc. will be limited to \$36,000 without prior consent by Great Southern Bank.  |
| 13) Approval   | Tri-States Utility Inc. will furnish bank with a letter from the Missouri Public Service Commission approving Great Southern Bank as lender, rate increase, and pledge of utility assets for this loan.   |
| 14) Expiration | This committment will be valid until April 15, 1997 and remains valid to that date only if there are no significant changes in the financial, legal, or ownership of Tri-States Utility, Inc. or Harold and Sharon Epps.  |

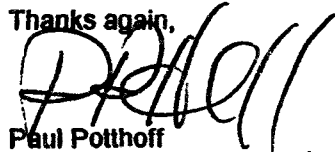


This letter contains the terms within Great Southern Banks loan and security agreements which vary from borrower to borrower. This letter does not contain all conditions and remedies that the actual documents will.

Upon receipt of the approval letter, Great Southern will begin documentation of aforementioned security. All fees to third parties with relation to this documentation (ie. title insurance, filing fees, updated valuation opinion letters, etc.) will be the responsibility of Tri-States Utilitys, Inc.

If you have any question, please call at 888-4339.

Thanks again,



Paul Potthoff

Agreement to terms:



Agreement to terms:



Amount	Collateral	Priority	Loan No.	Collateral	Amount	Collateral
\$1,300,000.00	02-28-1987	02-28-1987	9908217	02	02	02

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

**Borrower:** Tri States Utility, Inc.  
2540 State Hwy 159  
Branson, MO 65616

**Lender:** Great Southern Bank, FSB  
1491 E. Beilföld  
Springfield, MO 65804

**THIS COMMERCIAL SECURITY AGREEMENT** is entered into between Tri States Utility, Inc. (referred to below as "Grantor"); and Great Southern Bank, FSB (referred to below as "Lender"). For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

**DEFINITIONS.** The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Agreement.** The word "Agreement" means this Commercial Security Agreement as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

**Collateral.** The word "Collateral" means the following described property of Grantor, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

1986 66' aluminum Forerunner Houseboat to Number FCX00104C595 - Vessel Number MO-2070-RN and a 1986 66' aluminum Forerunner Houseboat - ID Number FCX00103C595 - Vessel Number MO-2059-RN

All inventory, chattel paper, accounts, equipment and general intangibles, together with the following specifically described property: All wells, towers, lines, contract rights and real estate easements

In addition, the word "Collateral" includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (a) All attachments, accessions, accessories, tools, parts, supplies, increases, and additions to and all replacements of and substitutions for any property described above.
- (b) All products and produce of any of the property described in this Collateral section.
- (c) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, or other disposition of any of the property described in this Collateral section.
- (d) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section.
- (e) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

**Event of Default.** The words "Event of Default" mean and include without limitation any of the Events of Default set forth below in the section titled "Events of Default."

**Grantor.** The word "Grantor" means Tri States Utility, Inc., its successors and assigns.

**Guarantor.** The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the indebtedness.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note, including all principal and interest, together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. In addition, the word "Indebtedness" includes all other obligations, debts and liabilities, plus interest thereon, of Grantor, or any one or more of them, to Lender, as well as all claims by Lender against Grantor, or any one or more of them, whether existing now or later; whether they are voluntary or involuntary; due or not due, direct or indirect, absolute or contingent, liquidated or unliquidated; whether Grantor may be liable individually or jointly with others; whether Grantor may be obligated as guarantor, surety, accommodation party or otherwise; whether recovery upon such indebtedness may be or hereafter may become barred by any statute of limitations; and whether such indebtedness may be or hereafter may become otherwise unenforceable.

**Lender.** The word "Lender" means Great Southern Bank, FSB, its successors and assigns.

**Note.** The word "Note" means the note or credit agreement dated February 28, 1987, in the principal amount of \$1,300,000.00 from Tri States Utility, Inc. to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for the note or credit agreement.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**RIGHT OF SETOFF.** Grantor hereby grants Lender a contractual possessory security interest in and hereby assigns, conveys, delivers, pledges, and transfers all of Grantor's right, title and interest in and to Grantor's accounts with Lender (whether checking, savings, or some other account), including all accounts held jointly with someone else and all accounts Grantor may open in the future, excluding, however, all IRA and Keogh accounts, and all trust accounts for which the grant of a security interest would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all indebtedness against any and all such accounts.

**OBLIGATIONS OF GRANTOR.** Grantor warrants and covenants to Lender as follows:

**Perfection of Security Interest.** Grantor agrees to execute such financing statements and to take whatever other actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will deliver to Lender's interest upon any and all chattel paper not delivered to Lender for possession by Lender. Grantor hereby appoints Lender as its irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect or to continue the security interest granted in this Agreement. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral. Grantor promptly will notify Lender before any change in Grantor's name including any change to the assumed business names of Grantor. This is a continuing Security Agreement and will continue in effect even though all or any part of the indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.

**No Violation.** The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

**Enforceability of Collateral.** To the extent the Collateral consists of accounts, chattel paper, or general intangibles, the Collateral is enforceable in accordance with its terms, is genuine, and complies with applicable laws concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Lender, the account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor, for merchandise held subject to delivery instructions or theretofore shipped or delivered pursuant to a contract of sale, or for services theretofore performed by Grantor with or for the account debtor; there shall be no setoffs or counterclaims against any such account; and no agreement under which any deductions or discounts may be claimed shall have been made with the account debtor except those disclosed to Lender in writing.

**Location of the Collateral.** Grantor, upon request of Lender, will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (a) all real property owned or being purchased by Grantor; (b) all real property being rented or leased by Grantor; (c) all storage facilities owned, rented, leased, or being used by Grantor; and (d) all other properties where Collateral is or may be located. Except in the ordinary course of its business, Grantor shall not remove the Collateral from its existing locations without the prior written consent of Lender.

**Removal of Collateral.** Grantor shall keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts, the records concerning the Collateral) at Grantor's address shown above, or at such other locations as are acceptable to Lender. Except in the

required to be discharged or paid by Grantor under this Agreement, including without limitation all taxes, liens, security interests, encumbrances, and other claims, at any time levied or placed on the Collateral. Lender also may (but shall not be obligated to) pay all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses shall become a part of the indebtedness and, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of an Event of Default.

**REINSTATEMENT OF SECURITY INTEREST.** If payment is made by Grantor, whether voluntarily or otherwise, or by guarantor or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment (a) to Grantor's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (b) by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Lender or any of Lender's property, or (c) by reason of any settlement or compromise of any claim made by Lender with any claimant (including without limitation Grantor), the indebtedness shall be considered unpaid for the purpose of enforcement of this Agreement and this Agreement shall continue to be effective or shall be reinstated on the date that may be, notwithstanding any cancellation of this Agreement or of any note or other instrument or agreement evidencing the indebtedness, and the Collateral will continue to secure the amount repaid or recovered to the same extent as if that amount never had been originally received by Lender, and Grantor shall be bound by any judgment, decree, order, settlement or compromise relating to the indebtedness or to this Agreement.

**EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Default on Indebtedness.** Failure of Grantor to make any payment when due on the indebtedness.

**Other Defaults.** Failure of Grantor to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or in any other agreement between Lender and Grantor.

**Default in Favor of Third Parties.** Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor under this Agreement, the Note or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason.

**Insolvency.** The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Foreclosure Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against the Collateral or any other collateral securing the indebtedness. This includes a garnishment of any of Grantor's deposit accounts with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or such Guarantor dies or becomes incompetent. Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure the Event of Default.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Insecurity.** Lender, in good faith, deems itself insecure.

**Right to Cure.** If any default, other than a Default on Indebtedness, is curable and if Grantor has not been given a prior notice of a breach of the same provision of this Agreement, it may be cured (and no Event of Default will have occurred) if Grantor, after Lender sends written notice demanding cure of such default, (a) cures the default within fifteen (15) days; or (b), if the cure requires more than fifteen (15) days, immediately notifies Lender which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the Missouri Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

**Accelerate Indebtedness.** Lender may declare the entire indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice.

**Assemble Collateral.** Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

**Sell the Collateral.** Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in its own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline specifically in value or is of a type customarily sold on a recognized market, Lender will give Grantor reasonable notice of the manner in which any private sale or any other intended disposition of the Collateral is to be made. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of relating, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Appoint Receiver.** To the extent permitted by applicable law, Lender shall have the following rights and remedies regarding the appointment of a receiver: (a) Lender may have a receiver appointed as a matter of right; (b) the receiver may be an employee of Lender and may serve without bond; and (c) all fees of the receiver and his or her attorney shall become part of the indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Collect Revenues, Apply Accounts.** Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in its discretion transfer any Collateral into its own name or that of its nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the indebtedness or apply it to payment of the indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

**Obtain Deficiency.** If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**Other Rights and Remedies.** Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

**Cumulative Remedies.** All of Lender's rights and remedies, whether evidenced by this Agreement or the Related Documents or by any other writing, shall be cumulative and may be exercised singly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and to exercise its remedies.

ordinary course of its business, including the sales of inventory. Grantor shall not remove the Collateral from its existing locations without the prior written consent of Lender. To the extent that the Collateral consists of vehicles, or other titled property, Grantor shall not lease or permit any action which would require application for certificates of title for the vehicles outside the State of Missouri, without the prior written consent of Lender.

**Transactions Involving Collateral.** Except for inventory sold or accounts collected in the ordinary course of Grantor's business, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While Grantor is not in default under this Agreement, Grantor may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Grantor's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

**Title.** Grantor represents and warrants to Lender that it holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other parties.

**Collateral Schedules and Locations.** As often as necessary, and insofar as the Collateral consists of accounts and general intangibles, Grantor shall deliver to Lender schedules of such Collateral, including such information as Lender may require, including without limitation names and addresses of account debtors and other accounts and general intangibles. Insofar as the Collateral consists of inventory and equipment, Grantor shall deliver to Lender, as often as Lender shall require, such lists, descriptions, and designations of such Collateral as Lender may require to identify the nature, extent, and location of such Collateral. Such information shall be submitted for Grantor and each of its subsidiaries or related companies.

**Maintenance and Inspection of Collateral.** Grantor shall maintain all tangible Collateral in good condition and repair. Grantor will not commit or permit damage to or destruction of the Collateral or any part of the Collateral. Lender and its designated representatives and agents shall have the right at all reasonable times to examine, inspect, and audit the Collateral wherever located. Grantor shall immediately notify Lender of all cases involving the return, rejection, repossession, loss or damage of or to any Collateral; of any request for credit or adjustment or of any other dispute arising with respect to the Collateral; and generally of all happenings and events affecting the Collateral or the value or the amount of the Collateral.

**Taxes, Assessments and Liens.** Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Compliance With Governmental Requirements.** Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

**Hazardous Substances.** Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any hazardous waste or substance, as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1501, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6801, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for hazardous wastes and substances. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify shall survive the payment of the indebtedness and the satisfaction of this Agreement.

**Maintenance of Casualty Insurance.** Grantor shall procure and maintain all necessary insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if it so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

**Application of Insurance Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Collateral. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to the repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditures, pay or reimburse Grantor for the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall cause a sufficient amount of the proceeds to pay all of the indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the indebtedness.

**Insurance Reserves.** Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

**Insurance Reports.** Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (a) the name of the insurer; (b) the risk insured; (c) the amount of the policy; (d) the property insured; (e) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (f) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

**GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS.** Until default and except as otherwise provided below with respect to accounts, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified by Lender, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for application to the indebtedness. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the indebtedness.

**EXPENDITURES BY LENDER.** If not discharged or paid when due, Lender may (but shall not be obligated to) discharge or pay any amounts

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Applicable Law.** This Agreement has been delivered to Lender and accepted by Lender in the State of Missouri. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Greene County the State of Missouri. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

**Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be decreed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Multiple Parties; Corporate Authority.** All obligations of Grantor under this Agreement shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Agreement.

**Notices.** All notices required to be given under this Agreement shall be given in writing, may be sent by telefacsimile, and shall be effective when actually delivered or when deposited with a nationally recognized overnight courier or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying the purpose of the notice is to change the party's address. To the extent permitted by applicable law, if there is more than one Grantor, notice to any Grantor will constitute notice to all Grantors. For notice purposes, Grantor will keep Lender informed at all times of Grantor's current addresses.

**Power of Attorney.** Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (a) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (b) to execute, sign and deliver any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (c) to settle or compromise any and all claims arising under the Collateral, and, in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (d) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

**Successor Interests.** Subject to the limitations set forth above on transfer of the Collateral, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**Waiver.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT, AND GRANTOR AGREES TO ITS TERMS. THIS AGREEMENT IS DATED FEBRUARY 23, 1997.**

GRANTOR:

Tri States Utility, Inc.

By: Harold L. Epps  
Harold L. Epps, President

Sharon R. Epps  
Sharon R. Epps, Secretary

DRAFT

# PROMISSORY NOTE

Ex. 2 Page 1

Principal	Loan Date	Maturity	Loan No	Call	Collateral	Account	Officer	Initials
\$1,300,000.00	02-28-1997	02-28-2000	96099519		54		837	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

**Borrower:** Tri States Utility, Inc.  
2580 State Hwy 166  
Branson, MO 65618

**Lender:** Great Southern Bank, FSB  
1451 E. Bettendorf  
Springfield, MO 65804

**Principal Amount: \$1,300,000.00**

**Initial Rate: 10.000%**

**Date of Note: February 28, 1997**

**PROMISE TO PAY.** Tri States Utility, Inc. ("Borrower") promises to pay to Great Southern Bank, FSB ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million Three Hundred Thousand & 00/100 Dollars (\$1,300,000.00), together with interest on the unpaid principal balance from February 28, 1997, until paid in full.

**PAYMENT.** Subject to any payment changes resulting from changes in the Index, Borrower will pay this loan in 36 regular payments of \$12,666.34 each and one irregular last payment estimated at \$1,242,000.00. Borrower's first payment is due March 28, 1997, and all subsequent payments are due on the same day of each month after that. Borrower's final payment due February 28, 2000, will be for all principal and all accrued interest not yet paid. Payments include principal and interest. Interest on this Note is computed on a 365/360 simple interest basis; that is, by applying the ratio of the annual interest rate over a year of 360 days multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing. Unless otherwise agreed in writing or by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs and late charges.

**VARIABLE INTEREST RATE.** The interest rate on this Note is subject to change from time to time based on changes in an Index which is the Great Southern Bank, FSB "Prime Rate" (the "Index"). "Prime Rate" shall mean the rate per annum described or announced by Great Southern Bank, FSB as its prime rate. Lender will tell Borrower the current Index rate upon Borrower's request. Borrower understands that Lender may make loans based on other rates as well. The interest rate change will not occur more often than each day. The Index currently is 8.260% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate of 1.750 percentage points over the Index, resulting in an initial rate of 10.000% per annum. **NOTICE:** Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: (a) increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, (b) increase Borrower's payments to cover accruing interest, (c) increase the number of Borrower's payments, and (d) continue Borrower's payments at the same amount and increase Borrower's final payment.

**PREPAYMENT PENALTY.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Upon prepayment of this Note, Lender is entitled to the following prepayment penalty: Borrower may prepay this Note in full or in part upon any scheduled payment date upon paying to the Lender a prepayment premium in an amount equal to three (3) months interest, at the interest rate then in effect, on any amount prepaid. Except for the foregoing, Borrower may pay all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, they will reduce the principal balance due and may result in Borrower making fewer payments.

**LATE CHARGE.** If a payment is late, Borrower will be charged 5.000% of the regularly scheduled payment.

**DEFAULT.** Borrower will be in default if any of the following happens: (a) Borrower fails to make any payment when due, (b) Borrower breaks any promise Borrower has made to Lender, or Borrower fails to comply with or to perform when due any other term, obligation, covenant, or condition contained in this Note or any agreement related to this Note, or in any other agreement or loan Borrower has with Lender, (c) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the Related Documents, (d) Any representation or statement made or furnished to Lender by Borrower or on Borrower's behalf is false or misleading in any material respect either now or at the time made or furnished, (e) Borrower becomes insolvent, a receiver is appointed for any part of Borrower's assets, (f) Borrower makes an assignment for the benefit of creditors, or any proceeding is commenced either by Borrower or against Borrower under any bankruptcy or insolvency laws, (g) Any creditor tries to take any of Borrower's property on or in which Lender has a lien or security interest. This includes a garnishment of any of Borrower's accounts with Lender, (h) Any guarantor dies or any of the other events described in this default section occurs with respect to any guarantor of this Note, (i) A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired, (j) Lender in good faith deems itself in default.

If any default, other than a default in payment, is curable and if Borrower has not then given notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (a) cures the default within fifteen (15) days, or (b) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, without notice, and then Borrower will pay that amount. Upon default, including failure to pay upon final maturity, Lender, at its option, may also, if permitted under applicable law, increase the variable interest rate on this Note to 3.750 percentage points over the Index. The interest rate will not exceed the maximum rate permitted by applicable law. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower also will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law. This Note has been delivered to Lender and accepted by Lender in the State of Missouri. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Greene County, the State of Missouri. This Note shall be governed by and construed in accordance with the laws of the State of Missouri.

**DISHONORED ITEM FEE.** Borrower will pay a fee to Lender of \$15.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

**RIGHT OF SETOFF.** Borrower grants to Lender a contractual possessory security interest in, and hereby assigns, conveys, delivers, pledges, and transfers to Lender all Borrower's right, title and interest in and to, Borrower's accounts with Lender (whether checking, savings, or some other account), including without limitation all accounts held jointly with someone else and all accounts Borrower may open in the future, excluding however all IRA and Keogh accounts, and all trust accounts for which the grant of a security interest would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on this Note against any and all such accounts.

**COLLATERAL.** This Note is secured by, in addition to any other collateral, a Deed of Trust executed on February 28, 1997, to a trustee in favor of

Lender on real property located in Taney County, State of Missouri, all the terms and conditions of which are hereby incorporated and made a part of this Note.

**ANNUAL PAYMENT CHANGES.** The scheduled payments provided for hereinabove may be changed in amount one year from the day of the first scheduled payment and on the same day of each succeeding year (hereinafter referred to as "Adjustment Date") in the event that the payment, if unchanged, would not repay the principal and interest of this Note based on the Amortization Period prescribed below and the interest rate then in effect. Payments may be adjusted on each Adjustment Date to an amount which would repay the principal and interest of this Note based on the payment required to amortize the remaining principal balance of this Note, together with interest thereon at the interest rate then in effect, over the original Amortization Period prescribed below less the payments paid prior to such Adjustment Date. This payment change provision does not limit Lender's options provided in the "Variable Interest Rate" section of this Note.

**AMORTIZATION PERIOD.** The amortization period upon which the scheduled payments are based is 20 years.

**FINANCIAL INFORMATION.** Upon Lender's request, Borrower will provide in frequency and form acceptable to Lender, financial statements accurately reflecting the Borrower's financial condition as of the date thereon together with such additional financial information the Lender may request. Borrower will also provide to Lender copies of financial information filed quarterly with the Missouri Public Service Commission.

**OWNER DRAWS.** Owner draws including salary and dividends will be limited to \$36,000.00 annually, plus life insurance payments, car payments and taxes, without prior consent of Lender.

**NONCOMPLIANCE OR DEFAULT.** Any noncompliance or default of regulations or specifications of the Public Service Commission will also be a default of this Note.

**RENT.** Rent paid by Borrower to Hico Enterprises, Inc. will be limited to \$36,000.00 per year without prior consent of Lender.

**GENERAL PROVISIONS.** Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, protest and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan, or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE AND ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THE NOTE.**

**ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU (BORROWER(S)) AND US (CREDITOR) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.**

**BORROWER:**

Tri States Utility, Inc.

By: Harold I. Epps  
Harold I. Epps, President

By: Sharon R. Epps  
Sharon R. Epps, Secretary

**RECORDATION REQUESTED BY:**

Great Southern Bank, FSB  
1451 E. Battlefield  
Springfield, MO 65804

**WHEN RECORDED MAIL TO:**

Great Southern Bank  
Commercial Lending  
P.O. Box 8008  
Springfield, MO 65808-8008

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**DEED OF TRUST**

**THIS DEED OF TRUST IS DATED FEBRUARY 28, 1987, among Tri States Utility, Inc., a Missouri Corporation, whose address is 2580 State Hwy 165, Branson, MO 65616 (referred to below as "Grantor"); Great Southern Bank, FSB, whose address is 1451 E. Battlefield, Springfield, MO 65804 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Great Southern Financial Corporation, whose address is 1451 East Battlefield, Springfield, MO 65804 (referred to below as "Trustee")**

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor, hereinafter grant, bargain, sell, convey and confirm unto the Trustee for the benefit of Lender as Beneficiary the following described real property together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, appurtenances; all water, water rights and ditch rights (including stock in ditches with ditch or irrigation rights); all proceeds (including insurance proceeds); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, located in Taney County, State of Missouri (the "Real Property"):

As per legal description hereto attached as Exhibit A and made a part hereof.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants Lender a Uniform Commercial Code security interest in the Rents and the Personal Property defined below.

**DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Beneficiary.** The word "Beneficiary" means Great Southern Bank, FSB, its successors and assigns. Great Southern Bank, FSB also is referred to as "Lender" in this Deed of Trust.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Grantor.** The word "Grantor" means any and all persons and entities executing this Deed of Trust, including without limitation Tri States Utility, Inc.

**Guarantor.** The word "Guarantor" means and includes without limitation any and all guarantors, sureties, and accommodation parties in connection with the indebtedness.

**Improvements.** The word "Improvements" means and includes without limitation all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Trustee or Lender to enforce obligations of Grantor under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. In addition to the Note, the word "Indebtedness" includes all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor, or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, absolute or contingent, liquidated or unliquidated and whether Grantor may be liable individually or jointly with others, whether obligated as guarantor or otherwise, and whether recovery upon such indebtedness may be or hereafter may become barred by any statute or limitation, and whether such indebtedness may be or hereafter may become otherwise unenforceable.

**Lender.** The word "Lender" means Great Southern Bank, FSB, its successors and assigns.

**Note.** The word "Note" means the Note dated February 28, 1987, in the principal amount of \$1,300,000.00 from Grantor to Lender, together with all renewals, extensions, modifications, refinancings, and substitutions for the Note. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessories, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the property, interests and rights described above in the "Conveyance and Grant" section.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Trustee.** The word "Trustee" means Great Southern Financial Corporation and any substitute or successor trustee.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RIGHTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (a) remain in possession and control of the Property, (b) use, operate or manage the Property, and (c) collect any Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "deposited," "release," and "imminent release," as used in this Deed of Trust, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499

("SARA"), the hazardous Materials Transportation Act, 49 U.S.C. Section 1601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal acts, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any reaction thereof and asbestos. Grantor represents and warrants to Lender that: (a) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Property by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste and hazardous substances. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against all actual claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

**Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may comply in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUPLICATE - CONSENT BY LENDER.** Lender may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein, whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Missouri law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are a part of this Deed of Trust.

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall not further encumber the Property or permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien on the Property, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees or other charges that would accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and bases reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at its election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

other payment necessary to prevent filing of or to effect discharge of any lien

**Default in Favor of Third Parties.** Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, or any other creditor or person that may materially affect any of Borrower's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Deed of Trust or any of the Related Documents:

**Compliance Default.** Failure of Grantor to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents

**False Statements.** Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor under the Deed of Trust, the Note or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason.

**Insolvency.** The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Foreclosure, Forfeiture, etc.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any of the Property. However, this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the foreclosure or forfeiture proceeding, provided that Grantor gives Lender written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Lender.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure the Event of Default.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith deems itself insecure.

**Right to Cure.** If such a failure is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Grantor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within fifteen (15) days; or (b) if the cure requires more than fifteen (15) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**Foreclosure.** Lender shall have the right to direct the Trustee to proceed to sell the Property at public vendue or out-cri to the highest bidder for cash, at the customary place for foreclosure sales within Taney County, State of Missouri, first giving all notices required by Missouri law, then in effect, with respect to exercising powers of sale under deeds of trust. Upon such sale, the Trustee shall execute and deliver a deed or deeds of conveyance of the Property sold to the purchasers thereof, and any statement or recital of fact in any such deed shall be prima facie evidence of the truth of such statement or recital. The Trustee shall receive the proceeds of any such sale, out of which the Trustee shall pay, first the costs and expenses of executing this trust, including compensation to the Trustee and to any attorneys employed by the Trustee, for their services, and the cost of procuring evidence of title; second, to Lender, for all moneys paid for insurance, taxes, lien claims, and other charges, together with interest thereon as provided in this Deed of Trust; third, to Lender, all remaining Indebtedness, including the Note; fourth, the remainder, if any, to the holders of any lien on the Property junior to the lien of this Deed of Trust and to the Grantor, as their interests may appear. In the event the net proceeds of such sale or sales shall not be sufficient to pay in full the Indebtedness secured by this Deed of Trust, unless prohibited by law, Grantor hereby promises and agrees to pay any deficiency thereon on demand, with interest.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property pending foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receiver, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

**Cumulative Remedies.** All of Lender's rights and remedies, whether evidenced by this Deed of Trust, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after failure of Grantor to perform, shall not affect Lender's right to declare a default and to exercise its remedies.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of Personal Property may be made in conjunction with any sale of the Real Property.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshaled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Waiver; Election of Remedies.** A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy provided in this Deed of Trust, the Note, in any Related Document, or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust after failure of Grantor to perform shall not affect Lender's right to declare a default and to exercise any of its remedies.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at law and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender which in Lender's opinion are necessary for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of securing records, obtaining title reports (including foreclosure reports), surveys' reports, appraised fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** Trustee shall have all of the rights and duties of Lender as set forth in this section.

**POWERS AND OBLIGATIONS OF TRUSTEE.** The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust.

**Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property to the extent necessary to give clear title and upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

**Obligations to Notify.** Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

**Trustee.** Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**Successor Trustee.** Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of Taney County, Missouri. The instrument shall contain, in addition to all other matters required by applicable law, the names of the original Lender, Trustee, and Grantor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. As successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law.

**NOTICES TO GRANTOR AND OTHER PARTIES.** Any notice under this Deed of Trust shall be in writing, may be sent by telefacsimile, and shall be effective when actually delivered, or when deposited with a nationally recognized overnight courier, or, if mailed, shall be deemed effective when deposited in the United States mail first class, certified or registered mail, postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. For notice purposes, Grantor agrees to keep Lender and Trustee informed at all times of Grantor's current address.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Applicable Law.** This Deed of Trust has been delivered to Lender and accepted by Lender in the State of Missouri. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Missouri.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Multiple Parties; Corporate Authority.** All obligations of Grantor under this Deed of Trust shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Deed of Trust.

**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be invalid or unenforceable as to any person or circumstances, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Deed of Trust, in all other respects shall remain valid and enforceable.

**Successors and Assigns.** Subject to the limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, shall bind the Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or estoppel without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waivers and Consents.** Lender shall not be deemed to have waived any rights under this Deed of Trust (or under the Related Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or any of Grantor's obligations as to any future transactions. Whenever consent by Lender is required in this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Missouri as to all indebtedness secured by this Deed of Trust.

**EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND EACH GRANTOR AGREES TO ITS TERMS.**

GRANTOR:

Tri States Utility, Inc.

By: Harold I. Epps  
Harold I. Epps, President

By: Sharon R. Epps  
Sharon R. Epps, Secretary

**CORPORATE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared Harold I. Epps, President and Sharon R. Epps, Secretary, to me personally known, who, being by me duly sworn, did say that they are President and Secretary, respectively, of Tri States Utility, Inc., President and Secretary and that on behalf of said corporation, by authority of its board of directors, said Harold I. Epps and Sharon R. Epps, acknowledged said Deed of Trust to be the free act and deed of said corporation.

Notary Public

(SEAL)

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

## RESOLUTION OF THE BOARD OF DIRECTORS

of

TRI-STATES UTILITY, INC.

(Name of Borrower)

WHEREAS, the above named borrower ("Borrower"), under its articles of incorporation, bylaws, or other organizational documents has full power and authority to borrow money and to secure the same with its property; and

WHEREAS, all prerequisite acts and proceedings preliminary to the adoption of this Resolution have been taken and done in due and proper form, time and manner;

NOW, THEREFORE, BE IT RESOLVED, that each of the following officers or positions (insert titles only)  
President

("Officers") of the Borrower are jointly and severally authorized and empowered to obtain for and on behalf of the Borrower from time to time, from CoBank, ACB ("CoBank"), a loan or loans or other financial accommodations (including, without limitation, letters of credit and bankers acceptances) (collectively, a "Loan") under this Resolution not exceeding the principal SUM OF ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000) at any one time outstanding, exclusive of amounts authorized to be borrowed under other resolutions submitted to CoBank and which have not been revoked; and for such purposes: (1) to execute such application or applications (including exhibits, amendments and/or supplements thereto) as may be required for all borrowings; (2) to obligate the Borrower to pay such rate or rates of interest as the Officers so acting shall deem proper, and in connection therewith to purchase such interest rate risk management products as may be offered from time to time by CoBank; (3) to obligate the Borrower to such other terms and conditions as the Officers so acting shall deem proper; (4) to obligate the Borrower to make such investments in CoBank as required by CoBank; (5) to execute and deliver to CoBank or its nominee all such written loan agreements, documents and instruments as may be required by CoBank in regard to or as evidence of any Loan made pursuant to the terms of this Resolution; (6) to pledge, grant a security interest or lien in, or assign property of the Borrower of any kind and in any amount as security for any or all obligations (past, present and/or future) of the Borrower to CoBank; (7) from time to time extend, amend, renew or refinance any such Loan; (8) to reborrow from time to time, subject to the provisions of this Resolution, all or any part of the amounts repaid to CoBank on any Loan made pursuant hereto (whether for the same or a different purpose); (9) to direct and delegate to designated employees of the Borrower the authority to direct, by written or telephonic instructions, the disposition of the proceeds of any Loan authorized herein or any property of the Borrower at any time held by CoBank; and (10) to delegate to designated employees of the Borrower the authority to request (by telephonic or written means) loan advances and/or other financial accommodations, and in connection therewith, to fix rates and agree to pay fees. In the absence of any direction or delegation authorized in (9) or (10) above, all existing directions and/or delegations shall remain in full force and effect and shall be applicable to any Loan authorized herein.

RESOLVED FURTHER, That each of the Officers are hereby jointly and severally authorized to: (1) establish a Cash Investment Services Account at CoBank; (2) make such investments therein as any Officer shall deem proper; (3) direct by written or telephonic instructions the disposition of the proceeds therein; and (4) delegate to designated employees of the Company the authority set forth in (2) and (3) above.

RESOLVED FURTHER, That each of the Officers are hereby jointly and severally authorized and directed to do and/or cause to be done, from time to time, all things which may be necessary and/or proper for the carrying out of the terms of these Resolutions.

RESOLVED FURTHER, That all prior acts by the Officers or other employees or agents of the Borrower to accomplish the purposes of these Resolutions are hereby approved and ratified.



TRI-STATES UTILITY, INC.  
OF BRANSON, MISSOURI

Exhibit 5  
page 1

PRO FORMA BALANCE SHEET

December 31, 1996

ASSETS	12/31/96 Historical	Pro forma adjustments		12/31/96 Pro forma
		Increase	Decrease	
Current assets	\$234,818	\$7,112		\$241,930
Total noncurrent assets	23,715			23,715
Net plant in service (Note A)	<u>1,029,115</u>	<u>183,962</u>		<u>1,213,077</u>
	<u>\$1,287,648</u>	<u>\$191,074</u>		<u>\$1,478,722</u>
LIABILITIES & EQUITY				
Current liabilities	\$126,106		\$72,215	\$53,891
Long-term debt (Note A)	1,008,926	\$191,074		1,272,215
		72,215		
Stockholders' equity	<u>152,616</u>			<u>152,616</u>
	<u>\$1,287,648</u>	<u>\$263,289</u>	<u>\$72,215</u>	<u>\$1,478,722</u>

See notes to pro forma financial statements.

TRI-STATES UTILITY, INC.  
OF BRANSON, MISSOURI

PRO FORMA INCOME STATEMENT

December 31, 1996

	12/31/96 Historical	Pro forma adjustments		12/31/96 Pro forma
		Increase	Decrease	
Operating revenues	\$558,678			\$558,678
Operating expenses	<u>396,669</u>			<u>396,669</u>
Net operating income	162,009			162,009
Operating taxes	14,537			14,537
Net nonoperating income and expenses	31,489			31,489
Interest (Note B)	<u>79,882</u>	<u>\$43,618</u>		<u>123,500</u>
Net income (Loss)	<u>\$36,101</u>	<u>\$43,618</u>		<u>(\$7,517)</u>

See notes to pro forma financial statements.

TRI-STATES UTILITY, INC.  
OF BRANSON, MISSOURI

NOTES TO PRO FORMA FINANCIAL STATEMENTS

DECEMBER 31, 1996

These pro forma financial statements have been prepared for the purpose of a presentation to the Missouri Public Service Commission pursuant to the Company obtaining financing. The basis of these pro forma financial statements are the historical financial statements of the Company for the year ended December 31, 1996. The assumptions used in these pro forma financial statements are those the management believes are significant and would most likely occur had the financing occurred at the beginning of 1996. Even if the financing had been obtained in 1996, the actual terms and other related matters would, in all likelihood, be different than those used in these pro forma financial statements, and those differences could be material.

NOTE A - DEBT

The pro forma financial statements assume that \$1,300,000 would be borrowed as follows: \$1,116,037 to repay a balloon payment due to Mercantile Bank, \$83,962 to finance engineering costs on expansion project. For purposes of these pro forma financial statements, it has been assumed that a twenty year loan was obtained January 1, 1996, which bears interest at 9.5 percent.

NOTE B - INTEREST EXPENSE

Interest Expense of \$43,618 was estimated based on the additional \$191,074 (\$1,300,000 minus \$1,108,926) that would have been outstanding had the loan been in place and if we had expensed the construction period interest, of \$15,035, and had not capitalized the interest.

TRI-STATES UTILITY, INC.  
OF BRANSON, MISSOURI

FIVE YEAR CAPITALIZATION SCHEDULE

December 31, 1996

<u>Year</u>	<u>Plant additions</u>
1996	120,000
1995	390,056
1994	238,950
1993	2,200
1992	12,921

TRI-STATES UTILITY, INC.  
OF BRANSON, MISSOURI

PRO FORMA BALANCE SHEET

December 31, 1996

	12/31/96 Historical	Pro forma adjustments		12/31/96 Pro forma
		Increase	Decrease	
<b>ASSETS</b>				
Current assets	\$234,818	\$7,112		\$241,930
Total noncurrent assets	23,715			23,715
Net plant in service (Note A)	1,029,115	183,962		1,213,077
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<b>LIABILITIES &amp; EQUITY</b>				
Current liabilities	\$126,106		\$72,215	\$53,891
Long-term debt (Note A)	1,008,926	\$191,074		1,272,215
		72,215		
Stockholders' equity	152,616	-		152,616
	<u>\$1,287,648</u>	<u>\$263,289</u>	<u>\$72,215</u>	<u>\$1,478,722</u>

See notes to pro forma financial statements.

TRI-STATES UTILITY, INC.  
OF BRANSON, MISSOURI

NOTES TO PRO FORMA FINANCIAL STATEMENTS

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