

**REIMBURSEMENT AND PLEDGE AGREEMENT**

by and among

**MISSOURI GAS UTILITY, INC.**

and

**U.S. BANK NATIONAL ASSOCIATION**

and

**SUMMIT UTILITIES, INC.**

Dated as of May \_\_\_, 2009

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## **REIMBURSEMENT AND PLEDGE AGREEMENT**

THIS REIMBURSEMENT AND PLEDGE AGREEMENT (this "Agreement") is entered into as of the \_\_\_\_ day of May, 2009 by and among MISSOURI GAS UTILITY, INC., a Colorado corporation (the "Borrower" or "Company"), U.S. BANK NATIONAL ASSOCIATION, a national banking association (the "Bank") and SUMMIT UTILITIES, INC., a Colorado corporation (the "Guarantor"). Unless otherwise specified, capitalized terms used in this Agreement and not defined in this Agreement shall have the meanings given to such terms in the Indenture (defined below). The parties agree as follows:

### **PRELIMINARY STATEMENTS**

A. The Guarantor intends to issue from time to time certain variable rate demand revenue bonds, in one or more series, and loan the proceeds thereof to the Company pursuant to the provisions of one or more loan agreements between the Guarantor and the Company. The Company intends to use the proceeds of such bonds, along with other funds of the Company, to finance or refinance the costs of acquiring, constructing, installing and completing natural gas improvements and facilities, and to pay the costs of issuance of such bonds.

B. The Guarantor now intends to issue its \$5,500,000.00 Summit Utilities, Inc. Variable Rate Demand Revenue Bonds (Missouri Gas Utility, Inc. Project), Series 2009A (the "2009A Bonds") pursuant to the provisions of a Master Trust Indenture, dated as of August 7, 2008 (the "Master Indenture") between the Guarantor, as issuer, and The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), as trustee, and the provisions of the Series 2009A Bonds Supplement, dated as of May \_\_\_, 2009 (the "2009A Supplement" and together with the Master Indenture, the "Indenture") between the Guarantor, as issuer, and the Trustee.

C. The proceeds of the 2009A Bonds will be loaned by the Guarantor to the Company pursuant to the provisions of a Series 2009A Loan Agreement dated as of May \_\_\_, 2009 (the "2009A Loan Agreement") between the Guarantor, as the lender, and the Company, as the borrower. A portion of the proceeds of the 2009A Bonds will be used to refund certain outstanding obligations of the Company (as more particularly defined in Section 1.1 the "Refunded Obligations"). A portion of the proceeds of the 2009A Bonds will be used to acquire, construct, install and complete natural gas improvements and facilities of the Company.

D. The Company will execute a Promissory Note (the "2009A Summit Note") to evidence its obligations under the 2009A Loan Agreement. The Guarantor will assign its rights to receive payments from the Company under the 2008 Loan Agreement and the 2009A Summit Note to the Trustee pursuant to the Indenture to secure the payment of the 2009A Bonds and to secure the amounts payable to the Bank under this Agreement.

E. The Guarantor and the Company have now requested the Bank to issue a direct pay letter of credit (the "2009A Letter of Credit") in substantially the form of Exhibit A attached hereto to enhance the marketability of the 2009A Bonds.

F. The Bank may in the future establish a revolving line of credit (the "Line of Credit") to the Company to be used as working capital and for other corporate purposes.

G. As a part of the Line of Credit, the Company has requested that the Bank issue certain letters of credit for the benefit of public entities to guarantee the completion of certain projects (the "Improvement Letters of Credit") from time to time under the circumstances and subject to the conditions set forth in this Agreement.

H. The Guarantor has agreed to unconditionally guarantee the obligations of the Company hereunder.

I. The Bank is willing to issue the 2009A Letter of Credit, subject to the terms and conditions stated below.

## ARTICLE I

### DEFINITIONS

**Section 1.01. Defined Terms.** Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Indenture. In addition, the following terms shall have the following meanings:

"*2009A Bonds*" means the \$5,500,000 Summit Utilities, Inc. Variable Rate Demand Revenue Bonds (Missouri Gas Utility, Inc. Project), Series 2009A.

"*2009A Letter of Credit*" means the Irrevocable Letter of Credit No. \_\_\_\_\_ issued by the Bank for the account of Borrower and in favor of the Trustee in the original stated amount of Five Million Five Hundred Thousand and 00/100 U.S. Dollars (U.S. \$5,500,000.00) having an initial expiration date of \_\_\_\_\_, \_\_\_, 2012, in substantially the form of Exhibit A hereto, including any renewal, replacement, substitution, extension, amendment or modification thereof issued by the Bank for the account of the Borrower to enhance the marketability of the 2009A Bonds.

"*2009A Letter of Credit Note*" means the Promissory Note dated May \_\_\_, 2009 from the Borrower to the Bank, in substantially the form of Exhibit B hereto, evidencing the Obligations of the Borrower related to the 2009A Letter of Credit, including any amendments or modifications thereof.

"*2009A Loan Agreement*" means the Series 2009A Loan Agreement dated May \_\_\_, 2009, between the Guarantor, as lender, and the Company, as borrower.

"*2009A Summit Note*" means the Promissory Note dated May \_\_\_, 2009, from the Company to the Guarantor to evidence the Company's obligations under the 2009A Loan Agreement.

"*2009A Supplement*" means the Series 2009A Bond Supplement between the Guarantor, as issuer, and the Trustee, which supplements the Master Indenture and pursuant to which the 2009A Bonds are being issued.

"*Affiliate*" means any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Borrower.

“*Agreement*” means this Reimbursement and Pledge Agreement.

“*Bank*” means U.S. Bank National Association, a national banking association, its successors and assigns.

“*Banking Day*” means any day which is not (a) either a Saturday or a Sunday or a day on which banking institutions are authorized or required by law or executive order to close in the city in which the principal corporate trust office of the Trustee, the principal corporate office of the Remarketing Agent or the office of the Bank at which drawings under the Letters of Credit are to be honored is located (which is, as of the date hereof, Portland, Oregon) or (b) a day on which the New York Stock Exchange is closed.

“*Bond Documents*” means the Indenture, the 2009A Loan Agreement, the 2009A Summit Note, the Bond Purchase Agreement, the Remarketing Agreements and any other document (other than the Letters of Credit and the Reimbursement Documents) executed in connection with the Bonds.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement by and between the Borrower and the Underwriter (as defined in the Offering Memorandum) concerning the purchase of the 2009A Bonds.

“*Bonds*” means collectively the 2009A Bonds and any other bonds issued pursuant to the Master Indenture that are secured by loan payments to be made by the Company to the Guarantor, as issuer of such bonds. For purposes of this Agreement, the term “Bonds” shall not include any series of bonds that are issued under the Master Indenture that are secured by loan payments to be made by a Person other than the Company.

“*Borrower*” means Missouri Gas Utility, Inc., a Colorado corporation, and its successors and assigns.

“*Capitalization*” means all Funded Indebtedness of the Borrower plus the value of the Borrower’s preferred stock and common stock plus retained earnings, plus the minority interest, all as shown in the financial statements of the Borrower delivered to the Bank in accordance herewith.

“*Capitalized Lease*” means any lease of property which would be capitalized on a financial statement of a Person prepared in accordance with GAAP.

“*Capitalized Lease Obligations*” means the amount of the obligations of a Person under Capitalized Leases which are shown as liabilities on a balance sheet of such Person prepared in accordance with GAAP.

“*Commission*” and “*Commission Rate*” shall have the meanings ascribed in Section 2.5.2 hereof.

“*Company*” means Missouri Gas Utility, Inc., a Colorado corporation, and its successors and assigns.



“*Construction Contracts*” means collectively any contracts entered into by the Borrower for the construction, acquisition or installation of the Project, including but not limited to any contracts between the Borrower and any contractor, engineer or architect regarding the Project.

“*Cost Budget*” means the budget detailing the costs of the new money portion of the Project, as it may be amended from time to time, that is submitted by the Company to the Bank.

“*CNG*” means Colorado Natural Gas, Inc., a Colorado corporation.

“*Default*” means an event specified in Section 9 hereof.

“*Direct Project Costs*” means amounts payable or paid to third party project managers, contractors, sub-contractors, and material and service suppliers, as well as all billings, expenses, reimbursements and other expenditures associated with the Project. Direct Project Costs exclude the allocation of salaries, wages, benefits and other expenses incurred by employees of the Borrower or the Guarantor.

“*Disbursement Request*” shall mean the written request made by the Borrower, and approved by the Bank, for a disbursement of funds by the Trustee from the accounts of the Project Fund related to the Bonds for the payment of (i) Direct Project Costs, (ii) the refunding of the Refunded Obligations, and (iii) the costs of issuing the 2009A Bonds. The Disbursement Request may be in the form of a requisition provided in the Indenture, or any supplement thereto, but in all events shall meet the requirements of Section 2.12 hereof.

“*Drawing Document*” means any draft, demand or claim for payment under the Letters of Credit or Improvement Letters of Credit or other document presented for purposes of drawing under the Letters of Credit or the Improvement Letters of Credit.

“*EBITDA*” means, with respect to the Borrower only, net income, plus without duplication, to the extent deducted from revenues in determining net income for such period (i) income taxes, including deferred taxes, (ii) Interest Expense, and (iii) depreciation and amortization expense, (iv) extraordinary, non-recurring expenses, (v) any non-cash expense attributable to the expensing of share based payment awards (including without limitation awards related to stock option programs and phantom stock programs) pursuant to the implementation of or compliance with the Financial Accounting Standards Board Statement 123R (excluding any such expense that constitutes an accrual of or a reserve for cash charges for any future period), and (vi) any non-cash mark-to-market losses pursuant to the implementation of or compliance with the Financial Accounting Standards Board Statement 133 relating to interest rate swap transactions under permitted Rate Hedging Agreements minus, without duplication, to the extent included in revenues in determining net income for such period, (vii) any non-cash gains attributable to the expensing of share based payment awards (including, without limitation, awards related to stock option programs and phantom stock programs) pursuant to the implementation of or compliance with the Financial Accounting Standards Board Statement 123R (excluding any such gain that represents the reversal of any accrual of or reserve for anticipated cash charges in any prior period that are described in the parenthetical to clause (v) above), (viii) any non-cash mark-to-market gains pursuant to the implementation of or compliance with the Financial Accounting Standards Board Statement 133 relating to interest

rate swap transactions under permitted Rate Hedging Agreements, (ix) extraordinary, non-recurring income, revenue or gains, and (x) amounts identified as “Allowance for Equity Funds Used During Construction” on the financial statements of the Borrower delivered to the Bank in accordance herewith, all as computed and calculated in accordance with GAAP.

“*Environmental Indemnity*” means that certain Environmental Indemnity Agreement dated as of May \_\_, 2009, made by Borrower for the benefit of the Bank, including any amendments or modifications thereof, in substantially the form set forth in Exhibit E hereto.

“*Environmental Laws*” has the meaning set forth in the Environmental Indemnity.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“*ERISA Affiliate*” means, as to any Person, any trade or business, whether or not incorporated, which together with such Person would be treated as a single employer under ERISA.

“*Facilities*” means the Letters of Credit, the Line of Credit, the Improvement Letters of Credit and any other credit facilities that may be hereinafter provided by the Bank to Borrower.

“*Financial Contracts*” of a Person means (a) any exchange-traded or over-the-counter futures, forward, swap or option contract or other financial instrument with similar characteristics, (b) any agreements, devices or arrangements providing for payments related to fluctuations of interest rates, exchange rates or forward rates, including, but not limited to, interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, or (c) to the extent not otherwise included in the foregoing, any Rate Hedging Agreement.

“*Financial Statements*” means, as the context may require, (a) the financial statements of Borrower as of March 31, 2009, and/or (b) the similar financial statements of Borrower furnished from time to time pursuant to Section 7.2.1 hereof; in all cases together with any accompanying notes or other disclosures to such financial statements, and any other documents or data furnished to Bank in connection therewith.

“*Funded Indebtedness*” means, without duplication, Indebtedness determined in accordance with GAAP, evidenced by a note, bond, debenture or similar instrument with regularly scheduled interest payments and a maturity date.

“*GAAP*” means generally accepted accounting principles in the United States of America in effect from time to time as promulgated by the Financial Accounting Standards Board and recognized and interpreted by the American Institute of Certified Public Accountants, and in accordance with the requirements of the Federal Energy Regulatory Commission.

“*Governmental Authority*” means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limiting the

generality of the foregoing, any agency, body, commission, court or department thereof, whether federal, state, local or foreign.

“*Guarantor*” means Summit Utilities, Inc., a Colorado corporation, and its successors and assigns.

“*Improvement Letters of Credit*” shall have the meaning set forth in the Preliminary Statements.

“*Improvements*” means all construction completed, constructed and purchased by the Borrower together with all real and personal property associated therewith and located in the Service Area.

“*Indebtedness*” means, without duplication, (a) all indebtedness or other obligations of a Person for borrowed money or for the deferred purchase price of property or services, (b) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or services, the payment or collection of which the subject Person has guaranteed (except by reason of endorsement for collection in the ordinary course of business) or in respect of which the subject Person is liable, contingently or otherwise, including, without limitation, liability by way of agreement to purchase, to provide funds for payment, to supply funds to or otherwise to invest in such other Person, or otherwise to assure a creditor against loss, (c) obligations of the subject Person which are evidenced by notes, bankers acceptances, or other instruments, (d) Capitalized Lease Obligations, (e) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or services secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance upon or in property (including, without limitation, accounts) owned by the subject Person, whether or not the subject Person has assumed or become liable for the payment of such indebtedness or obligations, (f) the subject Person’s reimbursement or other obligations in connection with letters of credit, (g) obligations in connection with Sale and Leaseback Transactions, (h) the subject Person’s Net Mark-To-Market Exposure of Rate Hedging Agreements or other Financial Contracts, and (i) any other obligation arising from any transaction which is the functional equivalent of, or takes the place of borrowing, but which would not constitute a liability on a balance sheet of such Person prepared in accordance with GAAP.

“*Indenture*” means the Master Indenture together with the 2009A Supplement, including any permitted additional supplements, amendments or modifications thereof, related to the issuance of the Bonds.

“*Interest Coverage Ratio*” means, with respect to the Borrower, the ratio of (a) EBITDA to (b) Interest Expense.

“*Interest Drawing*” shall have the meaning ascribed in the Letters of Credit.

“*Interest Expense*” means, without duplication, the Borrower’s total gross interest expense during such period (excluding interest income), and shall in any event include (i) interest expensed (whether or not paid) on all Indebtedness, (ii) the amortization of debt

discounts, (iii) the amortization of all letter of credit, remarketing and any other fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense, (iv) the portion of any Capitalized Lease Obligation allocable to interest expense, and (v) all interest on all Indebtedness that is capitalized and not included in (i) above.

“*ISP*” means International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adhered to by the Bank on the Letter of Credit as issued.

“*Issue Date*” means the date of issuance of a particular series of Bonds.

“*Issuer*” means Summit Utilities, Inc., a Colorado corporation, or any successor to its rights and obligations under the Indenture.

“*Letters of Credit*” means, collectively, the 2009A Letter of Credit and any other letters of credit issued by the Bank to secure the Bonds.

“*Line of Credit*” means any revolving line of credit established with the Bank in its sole discretion, as the same it may be extended, increased or decreased by the Bank.

“*Line of Credit Advance*” means an advance or disbursement under the Line of Credit.

“*Line of Credit Maturity Date*” means the date on which the outstanding balance of the Line of Credit together with interest thereon is due and payable in full.

“*Line of Credit Note*” means any promissory note from the Borrower to the Bank, including any amendments or modifications thereof, which evidences unreimbursed obligations of the Company in connection with the Line of Credit and the Improvement Letters of Credit.

“*Liquidity Drawing*” means a draw on the Letter of Credit made for the purpose of paying all or a portion of the purchase price of the Bonds upon a failure by the Remarketing Agent to remarket all of the outstanding Bonds pursuant to Section 4.04 of the Indenture.

“*Loss*” shall have the meaning ascribed in Section 11.9 hereof.

“*Master Indenture*” means the Master Trust Indenture dated August 7, 2008, between the Guarantor, as issuer, and the Trustee.

“*Material Adverse Effect*” means any event, circumstance or condition that could reasonably be expected to have a material adverse effect on (a) the business, operations, financial condition or properties of Borrower, (b) the ability of Borrower to perform the Obligations, (c) the validity or enforceability of any of the Reimbursement Documents, or any material provision thereof or any material transaction contemplated thereby, or (d) the rights and remedies of the Bank under any of the Reimbursement Documents.

“*Materials*” means all materials, supplies, chattels, fixtures, machinery, equipment or other articles of property furnished or to be furnished in connection with the construction of, and

incorporated or to be incorporated into, the Improvements, which shall include all replacements thereof, additions thereto and substitutions therefor.

*“Mortgaged Real Estate”* means the real property and improvements of the Company more particularly described in Exhibit A to the Mortgage.

*“Mortgage”* means the Mortgage, Assignment, Security Agreement Fixture Filing and Financing Statement from the Borrower to the Bank dated as of May \_\_\_, 2009 related to each County in the Service Area.

*“Net Mark-To-Market Exposure”* of a Person means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Rate Hedging Agreements, where “unrealized losses” means the fair market value of the cost to such Person of replacing such Rate Hedging Agreement as of the date of determination (assuming the Rate Hedging Agreement were to be terminated as of that date), net of the value of any cash or securities given to the Bank as collateral security for such losses, and “unrealized profits” means the fair market value of the gain to such Person of replacing such Rate Hedging Agreement as of the date of determination (assuming such Rate Hedging Agreement were to be terminated as of that date).

*“Notes”* means, collectively, the 2009A Letter of Credit Note, the Line of Credit Note and any other promissory notes from the Borrower to the Bank related to Letters of Credit issued to secure the Bonds or related to the Line of Credit, pursuant to the terms and provisions hereof, including any amendments or modifications thereof.

*“Obligations”* means (a) all unpaid principal and accrued and unpaid interest under the Facilities, (b) actual and contingent reimbursement obligations under the Letters of Credit, the Line of Credit, the Improvement Letters of Credit and the Reimbursement Documents, (c) all accrued and unpaid fees hereunder and under the Reimbursement Documents, (d) all other obligations of Borrower to Bank of every type and description, direct or indirect, absolute or contingent, joint, several, or joint and several, primary or secondary, due or to become due, now existing or hereafter arising, whether or not contemplated by Borrower or Bank as of the date hereof, which Obligations arise in connection with the Facilities, (e) obligations owed to Bank or an affiliate of Bank in respect of Rate Hedging Obligations, which obligations arise in connection with the Facilities, (f) any and all advances made under the terms of Section 11.8 hereof, and (g) all reasonable costs of collection and enforcement of any and all thereof, including reasonable attorney fees.

*“Overdue Rate”* means a rate per annum equal to three percent (3%) above the Prime Rate.

*“PBGC”* means the Pension Benefit Guaranty Corporation established pursuant to ERISA, or any successor entity.

*“Permitted Encumbrances”* means (a) liens for taxes or assessments which are not yet due, liens for taxes or assessments or liens of judgments which are being contested, appealed or reviewed in good faith by appropriate proceedings which prevent foreclosure of any such lien or levy of execution thereunder and against which liens, if any, adequate insurance or reserves have

been provided; (b) pledges or deposits to secure payment of workers' compensation obligations, or deposits or indemnities to secure public or statutory obligations or for similar purposes; (c) utility easements, building restrictions, zoning ordinances and such other encumbrances or charges against real property as are of a nature generally existing with respect to properties of a similar character and which do not in any material way affect the marketability of the same or interfere with the use thereof in the business of a Person; (d) liens imposed by law, such as carrier's, warehousemen's, materialmen's, landlord's and mechanics' liens and other similar liens arising in the ordinary course of business which secure payment of obligations not more than sixty (60) days past due or which are being contested, appealed or reviewed in good faith by appropriate proceedings and for which adequate insurance or reserves have been provided; (e) mortgages, pledges, liens, security interests, title retention liens and other encumbrances in favor of the Bank; (f) the Indenture; (g) the security interest created in connection with the Line of Credit so long as the Borrower is in compliance with Section 3 hereof; (h) those further mortgages, pledges, liens, security interest, title retention liens and other encumbrances (if any) shown on Schedule B to each Mortgage; and (i) liens for borrowings permitted by Section 7.1.5 hereof.

*"Person"* means an individual, a partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization or a Governmental Authority.

*"Plans and Specifications"* means the plans and specifications for the acquisition, construction and installation of the Project submitted to and approved by the Bank.

*"Pledged Bonds"* means Bonds purchased with the proceeds of any draw on the Letters of Credit pursuant to the terms and provisions of the Indenture.

*"Prime Rate"* means a rate per annum equal to the prime rate of interest announced from time to time by Bank or its parent (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes.

*"Prior Loan Documents"* means the documents entered into by the Company and Cache Bank pursuant to which the Refunded Obligations were issued and secured.

*"Project"* means (i) financing the costs of acquiring, constructing, installing and completing improvements to the Borrower's natural gas distribution facilities with the proceeds of the 2009A Bonds, as set forth in the Cost Budget submitted by the Company to the Bank; (ii) refunding, paying and defeasing the Refunded Obligations; and (iii) paying certain costs associated with the issuance of the 2009A Bonds.

*"Project Fund"* shall have the meaning ascribed thereto in the Indenture, except that for purposes of this Agreement, Project Fund shall only refer to those accounts within the Project Fund that are related to the Bonds.

*"PSC"* means the State of Missouri Public Service Commission.

*"Qualified Investments"* means investment property of the type currently owned by the Borrower and similar assets acquired under the current investment policy of the Borrower in

effect as of the date of this Agreement which has been provided to the Bank, and other investment policies developed by the Borrower.

*“Rate Hedging Agreement”* means an agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates or for-ward rates, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants.

*“Rate Hedging Obligations”* of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Rate Hedging Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Rate Hedging Agreement.

*“Refunded Obligations”* means, collectively, (a) the Company’s outstanding indebtedness owing to Cache Bank in the outstanding principal amount of \$1,286,513, together with accrued but unpaid interest thereon and any prepayment penalty or premium, and (b) the Company’s outstanding indebtedness owing to Guarantor in the principal amount of \$855,729, together with accrued but unpaid interest thereon, which obligations are to be fully refunded with the proceeds of the 2009A Bonds.

*“Reimbursement Account”* means the deposit account maintained by the Borrower with the Bank, as set forth in Section 2.2 hereof.

*“Reimbursement Documents”* means this Agreement, the Mortgage, the Letters of Credit, the Environmental Indemnity, the Security Agreement, the Notes, and all other documents executed and delivered by the Borrower, the Guarantor or any party to govern, evidence or secure the Obligations.

*“Remarketing Agent”* shall have the meaning ascribed in the Indenture.

*“Remarketing Agreement”* means the Remarketing Agreements executed between Borrower and the Remarketing Agent entered into incident to the issuance of each series of Bonds, including any permitted amendments or modifications thereof.

*“Renewal Request”* means a renewal request by the Borrower of any Letters of Credit.

*“Revolving Facility Limit”* means the maximum aggregate principal amount of Line of Credit Advances and Improvement Letters of Credit that may be outstanding at any given time, as approved by the Bank from time to time.

*“Sale and Leaseback Transaction”* means any sale or other transfer of any property by any Person with the intent to lease such property as lessee.

*“Securities Account”* shall have the meaning ascribed in the Missouri Uniform Commercial Code, as in effect from time to time.

“*Securities Intermediary*” shall have the meaning ascribed in the Missouri Uniform Commercial Code, as in effect from time to time.

“*Security Agreement*” means the General Security Agreement and Assignment of Accounts dated as of May \_\_\_, 2009 between the Borrower and the Bank, in substantially the form set forth as Exhibit C hereto, including any amendments or modifications thereof.

“*Service Area*” means the area being served from time to time by the Company with local natural gas distribution as provided in Certificates of Public Convenience and Necessity granted from time to time by the State of Missouri Public Service Commission, including such additional areas as the Company lawfully extends service to pursuant to the PSC law and the municipalities that have granted franchises to the Company. Such Service Area includes all easements, rights-of-way, and customer service lines whether or not recorded in the public records.

“*Standard Letter of Credit Practice*” means, for the Bank, any domestic or foreign law or letter of credit practices applicable in the city in which the Bank issued the Letters of Credit or Improvement Letters of Credit, as the case may be. Such practices shall be (i) of banks that regularly issue letters of credit in the particular city and (ii) required or permitted under the ISP.

“*Subordinated Debt*” means all Indebtedness owing by a Person which has been subordinated by written agreement to the Obligations, in form and substance acceptable to Bank.

“*Subsidiary*” means, as to any Person, a corporation of which shares of stock having ordinary voting power (other than stock having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors or other managers of such corporation are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise expressly provided, all references herein to a “Subsidiary” shall mean a Subsidiary of Borrower.

“*Substitute Series Credit Facility*” means a Series Credit Facility that has been substituted for an existing Credit Facility in accordance with the terms and provisions of the Indenture and this Agreement.

“*Substitute Series Credit Facility Provider*” means the provider of a Substitute Series Credit Facility.

“*Termination Date*” means \_\_\_\_\_, 2012 for the 2009A Letter of Credit, or if the 2009A Letter of Credit is terminated earlier or extended by the Bank pursuant to the terms hereof, the last day a drawing is available under the Letter of Credit, and means with respect to any other Letters of Credit, the last day a drawing is available under such Letter of Credit.

“*Trustee*” means The Bank of New York Mellon Trust Company, N.A., and any successor trustee appointed pursuant to the Indenture.

“*Unmatured Default*” means any event which with notice, or lapse of time, or both, would constitute a Default.



**Section 1.02. Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with the principles applied in the preparation of the Financial Statements.

**Section 1.03. Rules of Construction.** The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Use of the terms “herein”, “hereof” and “hereunder” shall be deemed references to this Agreement in its entirety and not to the Section clause in which such term appears, and the use of the term “including” shall be deemed to mean “including, without limitation.”

## **ARTICLE II**

### **CREDIT**

**Section 2.01. Issuance of 2009A Letter of Credit.** Subject to the terms and conditions hereof, the Bank will issue and deliver the 2009A Letter of Credit for the account of Borrower and in favor of the Trustee in an aggregate original stated amount of Five Million Five Hundred Thousand and 00/100 U.S. Dollars (U.S. \$5,500,000.00) which shall be in effect until the Termination Date. The 2009A Letter of Credit will be available to draw to pay the unpaid principal of the 2009A Bonds and thirty-five (35) days of accrued interest thereon at an assumed rate of ten percent (10.00%) per annum (based on a 365 day year). The 2009A Letter of Credit is issued subject to the terms and conditions of this Agreement. The stated amount of the Letters of Credit outstanding at any time for all purposes hereof shall be the maximum amount which could be drawn thereunder pursuant to the terms and conditions of said Letters of Credit from and after the issue date of such Letters of Credit.

**Section 2.02. Direct Payment.** So long as the Letters of Credit are outstanding, Borrower will maintain a deposit account with the Bank (the “Reimbursement Account”). On the Banking Day immediately preceding the Banking Day on which any payment of principal or interest (to the extent such interest is not paid directly by the Trustee to the Bank from funds on deposit in the Bond Fund established under the Indenture) is due on account of the Bonds including payments due upon a remarketing of the Bonds, Borrower will cause the available balance of the Reimbursement Account to be not less than the amount of such anticipated payment (including any payment due upon a remarketing of the Bonds), plus the amount of the transaction fee (provided for in Section 2.4 hereof) which will be due upon the Bank’s payment of the related drawing under the Letters of Credit, together with the amount of any other outstanding items drawn against the Reimbursement Account (such amount to be held in escrow in a segregated account in the name of Borrower). Such amounts deposited with Bank and held in escrow may be withdrawn by Bank and applied to the reimbursement of the Bank only after the Bank has honored the related drawing under the Letters of Credit.

Upon honoring a drawing for a payment under the Letters of Credit, to the extent that the Bank is not repaid by the Trustee for such drawing pursuant to the terms of the Indenture, the Bank shall be entitled, without further authorization from Borrower, to charge the amount of such drawing and the related transaction fee to the Reimbursement Account or, to the extent sufficient funds are not available in the Reimbursement Account, to any other deposit account maintained by Borrower with Bank.

**Section 2.03. Reimbursement Obligations.** Draws on the Letters of Credit shall be reimbursed to the Bank no later than 2:00 p.m., New York time, on the day the Bank honors such drawing. Should Borrower's deposit balances with the Bank be insufficient to reimburse the Bank for any drawing under the Letters of Credit, together with the related transaction fee, Borrower shall pay to the Bank immediately and unconditionally an amount equal to the unreimbursed portion of such drawing and the related transaction fee, together with interest from the date of drawing until paid at a variable per annum rate equal to the Overdue Rate. Upon being reimbursed in full with interest as provided in this Agreement for any draw on the Letter of Credit applied to the purchase of Pledged Bonds, the Bank shall fully reinstate the Letters of Credit and the Bank shall transfer any Pledged Bonds which shall have not previously been delivered by the Bank upon sale by the Remarketing Agent to the Borrower or for cancellation pursuant to the terms of the Indenture.

**Section 2.04. Transaction Fee.** In addition to the fees described elsewhere in this Agreement, contemporaneously with each drawing under a Letter of Credit, Borrower shall pay the Bank the usual and customary fee for a letter of credit draw for each draft presented for payment (currently U.S. \$125.00). Borrower authorizes the Bank to collect such fees by deducting the amount thereof from the Reimbursement Account or any other account of Borrower at the Bank.

**Section 2.05. Commission Fees and Other Payments.**

(a) *Up Front Fee.* On the date of execution and delivery of this Agreement, Borrower shall pay to Bank an up-front fee in an amount equal to 0.15% of the aggregate stated amount of the 2009A Letter of Credit.

(b) *Annual Commissions.* While the Letters of Credit are outstanding and until the Termination Date, the Borrower shall pay to the Bank a non-refundable commission fee (the "Commission") equal to 1.25% per annum (the "Commission Rate") of the maximum amount available to be drawn from time to time under the Letters of Credit in accordance with the terms hereof. Such Commission shall be payable quarterly in arrears on the last calendar day of March, June, September and December (commencing on December 31, 2009), and on the Termination Date. Such maximum amount of the Letters of Credit for purposes of calculating the applicable Commission shall include any amount subject to reinstatement under the terms of the Letters of Credit. Such fees shall be calculated on the basis of the actual number of days elapsed based on a three hundred sixty (360) day year.

(c) *Adjustment to Commission Rate.* If any law, rule, regulation, directive or request of general applicability now or hereafter in effect and whether or not presently applicable to the Bank, or any interpretation thereof by any court or administrative or governmental authority charged with the administration thereof (whether or not having the force of law) shall, by reason of a change occurring or becoming effective subsequent to the Issue Date, affect the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank and Bank determines that the amount of such capital is based, in whole or in part, upon the existence of the Bank's obligations hereunder or under the Letters of Credit, then the Bank may, at its option, adjust the

Commission Rate to a rate sufficient to provide the Bank with the same after-tax return on capital as existed on the Issue Date.

The Bank shall give Borrower not less than sixty (60) days prior notice of its proposal to adjust the Commission Rate, which notice shall include the proposed adjusted Commission Rate determined as provided above.

(d) *Extension Fee.* The Bank reserves the right to assess a fee upon its approval of an extension of the term of any of the Letters of Credit. Any extension fee so assessed will be determined upon the Borrower's request for an extension of the term of the Letters of Credit and shall be based upon then current market conditions.

(e) *Transfer Fee.* In the event the Bank consents to transfer one or more of the Letters of Credit to a new beneficiary, then Borrower shall pay to the Bank upon its demand a transfer based upon the Bank's then current pricing for transfers under letters of credit issued to enhance bond issues, but in no event will such fee be less than \$1,000.00. In the event the Bank consents to an amendment to the Reimbursement Documents, the Borrower shall pay to Bank an amendment fee equal to then current customary charges by the Bank for such amendment, including any out-of-pocket costs and legal fees, for each amendment so approved and all legal fees incurred in connection therewith.

(f) *General.* The compensation provided for in this Section 2.5 shall be in consideration of the services of the Bank in connection with the Letters of Credit and shall be in addition to any other fee, charge, payment or expense required to be borne by Borrower under the Reimbursement Documents. All fees payable under this Agreement shall be calculated on the basis of a 360 day year and the actual number of days elapsed. All fees may be debited by the Bank to any deposit account of the Borrower carried with the Bank without further authority and in any event, shall be paid by the Borrower within ten days following billing.

(g) *Improvement Letters of Credit.* All fees relating to the issuance of Improvement Letters of Credit shall be calculated on the basis of a 360 day year and the actual number of days in the period during which any such Improvement Letters of Credit will be outstanding; provided, however, that such fee shall not be less than \$1.00 for each Improvement Letter of Credit. Borrower shall also pay the Bank's standard transaction fees with respect to any transactions occurring on account of any Improvement Letter of Credit. Each fee shall be payable when the related Improvement Letter of Credit is issued, and transaction fees shall be payable upon completion of the transaction as to which they are charged.

**Section 2.06. Obligations Absolute.** The obligations of Borrower under this Agreement and the obligation of Borrower to reimburse any drawings under the Letters of Credit and the Improvement Letters of Credit shall be absolute, unconditional and irrevocable and shall be paid and performed strictly in accordance with the terms of this Agreement, under all circumstances, whatsoever, including, without limitation, the following:

(a) any lack of validity or enforceability of the Letters of Credit, Line of Credit, any Bond Document or any Reimbursement Document;

(b) any amendment or waiver of or consent to departure from the terms of the Letters of Credit, Line of Credit, any Bond Document, any Reimbursement Document or any Improvement Letter of Credit or any agreement or document executed or issued in connection therewith;

(c) the existence of any claim, setoff, defense or other right which Borrower may have at any time against the beneficiary of the Letters of Credit, the Improvement Letters of Credit, any transferee thereof, the Bank or any other Person, whether in connection with the Bond Documents, Reimbursement Documents, the Letters of Credit, the Improvement Letters of Credit, the Line of Credit or any unrelated transaction;

(d) any statement, draft or other document presented under the Letters of Credit or the Improvement Letters of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(e) the surrender or impairment of any security for the performance or observance of the terms of the Letters of Credit, the Improvement Letters of Credit or any Reimbursement Documents; or

(f) any circumstance, happening or omission whatsoever, whether or not similar to any of the foregoing, including, without limitation, those matters described in Section 2.10 hereof.

**Section 2.07. Non-Usage Fee.** The Borrower shall pay to the Bank a non-usage fee (the “Non-Usage Fee”) with respect to each calendar quarter during the term of the Line of Credit, based on the unused amount of the Line of Credit. The Non-Usage Fee shall be an amount equal to  $A \times (B - C) \times (D/E)$ , where “A” equals 0.25%; “B” equals the maximum amount of the Line of Credit; “C” equals the average daily outstanding principal balance of the Line of Credit during the calendar quarter; “D” equals the actual number of days elapsed during the calendar quarter; and “E” equals 360. Each Non-Usage Fee shall be due and payable to the Bank quarterly, in arrears, within fifteen (15) days after Borrowers’ receipt of an invoice for the Non-Usage Fee from the Bank. The Bank may begin to accrue the foregoing fee on the date the Borrower executes or otherwise authenticates this Reimbursement Agreement.

**Section 2.08. Reserved.**

**Section 2.09. Manner of Payment; Interest Generally.** Except for amounts in the Reimbursement Account maintained with Bank as provided in Section 2.2 hereof, all payments with respect to the Obligations shall be payable at the office of the Bank in Portland, Oregon, in funds available for the Bank’s immediate use at that city, and no payment will be considered to have been made until received in such funds. If any installment of principal and/or interest provided herein becomes due and payable on a date other than a Banking Day, the maturity of the installment of principal or interest shall be extended to the next succeeding Banking Day, and interest shall be payable during such extension of maturity. All interest due to the Bank under

the Reimbursement Documents shall be due and payable for the exact number of days principal is outstanding and shall be calculated on the basis of a three hundred sixty (360) day year. Any change in the interest rate occasioned by a change in the Prime Rate shall be effective on the same day as such change in the Prime Rate. Any sums due and owing under this Agreement not paid when due and any other Obligations shall bear interest at the Overdue Rate.

**Section 2.10. Indemnification.** The Borrower shall indemnify and hold harmless the Bank, its parent, and correspondents, the Guarantor, and their successors and assigns (including any purchaser of a participation in the Facilities), and each of their respective directors, officers, employees and agents (each, including the Bank, an “Indemnified Person”) from and against any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, and expenses, including expert witness fees and legal fees, charges and disbursements of any counsel (including in-house counsel fees and allocated costs) for any Indemnified Person (“Costs”), arising out of, in connection with, or as a result of: (i) the Letters of Credit and the Improvement Letters of Credit or any pre-advice of its issuance; (ii) any transfer, sale, delivery, surrender, or endorsement of any Drawing Document at any time or times held by any Indemnified Person in connection with the Letters of Credit and/or the Improvement Letters of Credit; (iii) any action or proceeding arising out of or in connection with the Letters of Credit and/or the Improvement Letters of Credit, this Agreement or any Bond Documents or Reimbursement Documents (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under the Letters of Credit or the Improvement Letters of Credit, or for the wrongful dishonor of or honoring a presentation under the Letters of Credit or the Improvement Letters of Credit; (iv) any independent undertakings issued by the beneficiary of the Letters of Credit or the Improvement Letters of Credit; (v) any unauthorized communication or instruction (whether oral, telephonic, written, telegraphic, facsimile or electronic) (each an “Instruction”) regarding the Letters of Credit or the Improvement Letters of Credit or error in computer transmission; (vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated; (vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of proceeds of the Letters of Credit or the Improvement Letters of Credit; (viii) the fraud, forgery or illegal action of parties other than the Indemnified Person; (ix) the enforcement of this Agreement or any rights or remedies under or in connection with this Agreement, a Bond Document, Reimbursement Document, the Letters of Credit or Improvement Letters of Credit; (x) the Bank’s performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation; (xi) the Bank dishonoring any presentation upon or during the continuance of any Event of Default or for which the Borrower is unable or unwilling to make any payment to the Bank as required under this Agreement or any Bond Document or Reimbursement Document; (xii) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of such Indemnified Person; in each case, including that resulting from Bank’s own negligence, provided, however, that such indemnity shall not be available to any Person claiming indemnification under (i) through (xii) above to the extent that such Costs are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Indemnified Person claiming indemnity. If and to the extent that the obligations of Borrower under this paragraph are unenforceable for any reason, Borrower shall make the maximum contribution to the Costs permissible under applicable law.

**Section 2.11. Additional Amounts Payable.** If any change or the enactment, adoption or judicial or administrative interpretation of any law, regulation, treaty, guideline or directive (including, without limitation, Regulation D of the Board of Governors of the Federal Reserve System) either (a) subjects the Bank to any additional tax, duty, charge, deduction or withholding with respect to any of the Facilities (other than a tax measured by the net or gross income of the Bank), or (b) imposes or increases any reserve, special deposit or similar requirement on account of any of the Facilities not otherwise provided in this Agreement; and if any of the foregoing (i) results in an increase to the Bank in the cost of issuing or maintaining any of the Facilities, or making any payment on account of any of the Facilities, (ii) reduces the amount of any payment receivable by the Bank under this Agreement with respect to any of the Facilities, or (iii) requires the Bank to make any payment calculated by reference to the gross amount of any sum received or paid by the Bank pursuant to any of the Facilities, then Borrower shall pay to the Bank, as additional compensation for the Facilities, the amounts as will compensate the Bank for such increased cost, payment or reduction. Within twenty (20) days after (A) the initial demand therefor and (B) presentation by the Bank of a certificate to Borrower containing a statement of the cause of such increased cost, payment or reduction and a calculation of the amount thereof (which statement and calculation shall be presumed prima facie to be correct), Borrower shall pay the additional amount payable measured from the date such change, enactment, adoption or interpretation first affects the Bank.

**Section 2.12. Disbursements from Project Fund.** The Trustee shall make disbursements from the accounts of the Project Fund related to the Bonds only with the written approval of the Bank. The Bank's approval shall be subject to the following terms and conditions:

(a) *Requests for Disbursements.* The initial Disbursement Request shall be approved by the Bank on or prior to the issuance of the Bonds. Excluding the initial requested disbursement, not less than five (5) Banking Days prior to a requested disbursement from the Project Fund, Borrower shall submit to Bank a Disbursement Request setting forth the total amount of the Direct Project Costs for which such disbursement is requested, together with, if appropriate, receipted bills, bills, invoices, paid invoices, payroll records, lien waivers and other evidence satisfactory to Bank supporting each item of the Direct Project Costs covered by such Disbursement Request. Each Disbursement Request and each receipt of the disbursement requested thereby shall constitute a certification by Borrower that the representations and warranties contained in Section 4 hereof are true and correct on the date of such Disbursement Request or such receipt, as the case may be and that no Default or Unmatured Default exists on the date of such Disbursement Request.

(b) *Borrowing Limitations.* Project Fund disbursements, other than to refund, pay and discharge the Refunded Obligations and to pay the costs of issuing the 2009A Bonds, shall be made only to defray Direct Project Costs or to reimburse the Company for Direct Project Costs, as described in the Cost Budget and actually incurred by Borrower.

(c) *Deficiency in Total Cost Amount.* At all times the sum of the unadvanced portion of the accounts of the Project Fund related to the 2009A Bonds shall be sufficient

in the reasonable judgment of the Bank to pay all Direct Project Costs remaining unpaid on the Project. If at any time such sum is not sufficient in the reasonable judgment of Bank to pay all unpaid Direct Project Costs, Borrower shall immediately upon request by Bank deposit with Bank (or into the accounts of the Project Fund related to the 2009A Bonds) cash in an amount equal to such deficiency.

(d) *Satisfaction of Conditions/No Default.* Bank shall have no obligation to approve any disbursement from the Project Fund until each of the conditions set forth in Section 7 hereof have been satisfied in Bank's sole discretion notwithstanding that Bank has issued the Letters of Credit and may have approved earlier Disbursement Requests. There shall not exist a Default or Unmatured Default and all legal matters incident to the requested Project Fund disbursement shall be reasonably satisfactory to Bank.

(e) *Reserved.*

(f) *Advances to Cure Defaults.* Notwithstanding the foregoing provisions of this Section 2.12, and without receiving Disbursement Requests, Bank may at any time or from time to time upon a Default (i) make disbursements to satisfy any condition hereof or to cure any Default with regard to the construction of the Improvements, and (ii) make disbursements to pay the reasonable fees and expenses of counsel for Bank. Any disbursements made pursuant to this subparagraph shall be reflected on the books and records of the Bank and be payable in accordance with this Agreement and secured by the Reimbursement Documents as fully as if made to Borrower. While there exists a Default, Borrower hereby irrevocably appoints Bank and Bank's designees its true and lawful attorney-in-fact, with full power of substitution, to submit a disbursement request under the Indenture, to obtain disbursements from the Project Fund for the account of Borrower, to make the disbursements authorized pursuant to this subparagraph or to reimburse Bank for such disbursements.

(g) *Representations and Warranties.* Each representation and warranty contained in Section 5 shall be true and correct as of the date of each requested Project Fund disbursement, except to the extent such representative or warranty relates solely to an earlier date and except changes reflecting transactions permitted by this Agreement.

(h) *Last Disbursement Approval.* On or prior to the date Bank approves the last Disbursement Request for Direct Project Costs with respect to the Project, Bank shall have received:

(i) A certificate satisfactory to Bank stating that the Project has been completed substantially in accordance with the Plans and Specifications, all applicable governmental requirements and all applicable restrictive covenants;

(ii) A complete release of liens signed by each Contractor for contracts in excess of Twenty-Five Thousand Dollars (U.S. \$25,000) on forms to be supplied by the Bank at the time of the last Disbursement Request; and

(iii) Evidence of approval by all Governmental Authorities whose approval is required of the completed Project, the permanent occupancy thereof and the intended uses thereof.

**Section 2.13. Extension of Termination Date.** At the sole discretion of the Bank, the expiry date of any of the Letters of Credit may be extended from time to time and each time for a period agreed upon by the Bank. Borrower's request for an extension of such Letters of Credit must be received by the Bank not later than six (6) months prior to the scheduled expiry date of the Letters of Credit or any extension thereof. Within forty-five (45) days of receipt of such request, the Bank will notify Borrower as to whether the Bank will extend the applicable Letters of Credit, the period of the extension, and the terms and conditions applicable to such extension, including, without limitation, the Bank's fees and commissions applicable thereto, all of which shall be as prescribed by the Bank. In the event that the Bank does not respond to the Borrower's request for an extension of any of the Letters of Credit within such forty-five (45) day period, the Borrower's request shall be deemed to have been denied by the Bank. If granted by the Bank, the extension shall be effective upon acceptance by Borrower of such terms and conditions and delivery by the Bank to the Trustee of an extension certificate. Notwithstanding the foregoing, no such agreement for extension shall in any way limit or otherwise affect the remedies of the Bank upon Default or available to the Bank under any of the Reimbursement Documents.

**Section 2.14. Amendments Upon Extension.** Upon any extension of the Stated Expiration Date pursuant to Section 2.13 of this Agreement, the Bank and the Borrower each reserves the right to renegotiate any provision hereof.

**Section 2.15. Electronic Transmissions.** Bank is authorized to accept and process any amendments, instructions, consents, waivers and all documents relating to the credit or the application which are sent to Bank by electronic transmission, including SWIFT, electronic mail, telex, telecopy, telefax, courier, mail or other computer generated telecommunications and such electronic communication shall have the same legal effect as if written and shall be binding upon and enforceable against the Guarantor and the Borrower. Bank may, but shall not be obligated to, require authentication of such electronic transmission or that Bank receives original documents prior to acting on such electronic transmission.

### **ARTICLE III**

#### **LINE OF CREDIT**

The Line of Credit and the Improvement Letters of Credit shall be governed by the provisions set forth in this Agreement.

**Section 3.01. Revolving Line of Credit.** Any advance under the Line of Credit shall be subject to the terms of this Agreement, including, without limitation, this Article 3 and Article 12 hereof, and the Line of Credit Note (each a "Line of Credit Advance" and collectively the "Line of Credit Advances"). The aggregate principal amount of Line of Credit Advances and Improvement Letters of Credit outstanding at any time shall not exceed the Revolving Facility Limit. The Borrower hereby agrees to repay to the Bank all Line of Credit Advances made to the



Borrower hereunder, together with interest thereon, in the manner provided herein and in the Line of Credit Note. Subject to the terms and conditions of this Agreement and of the Line of Credit Note, the Borrower may borrow, repay and reborrow the Line of Credit Advances. Notwithstanding the foregoing, for a period of thirty (30) consecutive days in the fiscal year, Borrower shall have no amounts outstanding under the Line of Credit, except for Improvement Letters of Credit.

**Section 3.02. Payment of Principal and Interest.** The outstanding principal balance of the Line of Credit Advances shall bear interest at the fixed or variable Interest Rate (as provided for and as defined in the Line of Credit Note) as in effect from time to time. All accrued but unpaid interest on the outstanding principal balance of the Line of Credit Advances shall be due and payable by the Borrower to the Bank in accordance with the Line of Credit Note. The aggregate unpaid principal balance of the Line of Credit Advances plus all accrued but unpaid interest thereon shall be due and payable by the Borrower to the Bank on the Line of Credit Maturity Date or upon the early termination of this Agreement.

**Section 3.03. Conditions Precedent to Line of Credit Advances: Required Documentation.** The Line of Credit shall not be in effect until the Bank shall have received the following documents, duly executed in form and substance satisfactory to the Bank and its counsel, and each of the other conditions below have been satisfied in form and substance satisfactory to Bank and its counsel:

- (a) this Agreement and the Line of Credit Note;
- (b) a certificate executed by an authorized representative of the Borrower certifying (i) the names and signatures of the officers/representatives of such Persons, on behalf of the Borrower, authorized to execute this Agreement and the Line of Credit Note and (ii) the resolutions duly adopted by Borrower, as appropriate, authorizing the execution of this Agreement and the Line of Credit Note;
- (c) an opinion of counsel for the Borrower covering such matters as the Bank may request in its sole discretion;
- (d) a request for a Line of Credit Advance, in form and substance satisfactory to Bank;
- (e) no material adverse change in the condition (financial or otherwise) of the Guarantor has occurred;
- (f) all other conditions precedent as defined in Article 8 of this Agreement.

**Section 3.04. Additional Conditions Precedent.** The Bank shall have no obligation to make any Line of Credit Advance unless: (i) all representations and warranties made by the Borrower in this Agreement are true in all material respects on and as of the date of such Line of Credit Advance as if such representations and warranties had been made as of the date of such Line of Credit Advance (except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct on and as of such earlier date), (ii) the Borrower has performed and complied with all

agreements and conditions required in this Agreement to be performed or complied with by it on or prior to the date of such Line of Credit Advance, (iii) no Default or Event of Default shall have occurred and be continuing, (iv) such Line of Credit Advance shall not be prohibited by any law or any regulation or any order of any court or governmental agency or authority, (v) the Borrower shall not have repudiated or made any anticipatory breach of any of its obligations under this Agreement, and (vi) the Borrower shall submit a request for a Line of Credit Advance to the Bank, in form and substance satisfactory to the Bank. As a condition to making a Line of Credit Advance, the Bank may require a duly completed compliance certificate addressed to the Bank, in form and detail reasonably satisfactory to Bank, stating that the conditions set forth in this Section 3.4 have been satisfied.

## **ARTICLE IV**

### **GUARANTY**

**Section 4.01. Payment Guaranty; Right of Guarantor.** The Guarantor hereby absolutely and unconditionally guaranties to the Bank the full and prompt payment of any and all Obligations of the Borrower under this Agreement when and as the same shall become due in accordance with this Agreement, and agrees to pay all expenses and charges (including court costs and attorneys' fees) paid or incurred by the Bank in realizing upon any of the payments hereby guaranteed or in enforcing this Agreement. All payments by the Guarantor shall be paid in lawful money of the United States of America. Each and every default in payment of the Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

**Section 4.02. Nature of Obligations.** The obligations of the Guarantor under this Agreement shall be absolute and unconditional and shall remain in full force and effect until the Obligations of the Borrower under this Agreement have been paid in full and satisfied and until the Bank no longer has any obligation to make advances under the Line of Credit, the Letters of Credit and the Improvement Letters of Credit. Such obligations of the Guarantor shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation, any of the following, whether or not with notice to or the consent of the Guarantor:

- (a) the compromise, settlement, release or termination of the Bonds or any or all of the obligations, covenants or agreements of the Borrower under this Agreement;
- (b) the failure to give notice to the Guarantor of the occurrence of a default under the terms and provisions of this Agreement except as specifically provided in this Agreement;
- (c) the assignment or mortgaging or the purported assignment or mortgaging of all or any part of the interest of the Borrower in the Project;
- (d) the waiver of the payment, performance or observance by the Bank or the Guarantor of any of the obligations, covenants or agreements contained in this Agreement;

(e) the extension of the time for payment of any principal installment or interest on the Bonds or any part thereof owing or payable on such Bonds or the Obligations under this Agreement or of the time for performance of any other obligations, covenants or agreements under or arising out of this Agreement or the extension or the renewal of either thereof;

(f) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in this Agreement in accordance with its terms;

(g) the taking or the omission of any of the actions referred to in this Agreement and any actions under this Agreement;

(h) any failure, omission, delay or lack of diligence on the part of the Bank to enforce, assert or exercise any right, power or remedy conferred on the Bank by this Agreement, or any other act or acts on the part of the Bank;

(i) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Guarantor, the Borrower or any of the assets of any of them or any allegation or contest of the validity of this Agreement in any such proceedings;

(j) to the extent permitted by law, the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Agreement by operation of law;

(k) the default or failure of the Guarantor to fully perform any of its obligations, covenants or agreements set forth in this Agreement;

(l) the invalidity of the Bonds or any provision of the Bonds, or this Agreement; or

(m) the default or failure by the Borrower to fully perform its obligations under the 2009A Loan Agreement or under the 2009A Summit Note, or the default or failure by the Borrower to fully perform its obligations under any other agreement between the Guarantor and the Borrower.

**Section 4.03. Rights of Bank.** In the event of a default in payment of the Obligations when and as the same shall become due, the Bank, in its sole discretion, shall have the right to proceed first and directly against the Guarantor under this Agreement without proceeding against or exhausting any other remedies which it may have and without resorting to any other security held by the Bank.

**Section 4.04. Waiver of Notice.** The Guarantor hereby expressly waives notice in writing or otherwise, from the Bank of its acceptance and reliance on this Agreement. The

Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Bank in enforcing or attempting to enforce this Agreement following any default on the part of the Guarantor hereunder, whether the same shall be enforced by suit or otherwise.

## **ARTICLE V**

### **SECURITY; PLEDGE AGREEMENT; SETOFF; AND RELEASE**

**Section 5.01. Security.** The Obligations shall be secured by:

(a) the Mortgage, in substantially the form set forth in Exhibit D hereto, constituting a first mortgage lien upon the Mortgaged Real Estate, including, but not limited to, the pipelines of the Borrower located on the Mortgaged Real Estate owned by Borrower more particularly described therein;

(b) the Security Agreement, in substantially the form set forth in Exhibit C hereto, constituting a first priority security interest on the furniture, fixtures and equipment of the Borrower and a priority security interest in the Series Pledged Revenues on a parity with the Bonds, as defined in the Indenture;

(c) the Notes, evidencing the Borrower's promise to pay the Obligations under the Letters of Credit and the Line of Credit; and

(d) such other security interests as may be described in the Reimbursement Documents, evidencing, governing and/or securing the Obligations.

The Bank hereby acknowledges that the Master Indenture contemplates that the Guarantor has and may in the future issue one or more series of bonds thereunder and loan the proceeds thereof to CNG. In such an event, and notwithstanding any other provisions in the Bond Documents or Reimbursement Documents to the contrary, the Bank agrees that the Obligations shall not be secured by any revenues or assets of CNG, including any revenues or assets of CNG that are held by or pledged to the Trustee pursuant to the provisions of the Master Indenture.

**Section 5.02. Pledge Agreement.** The Obligations will be secured by the pledge of and a security interest in all Bonds purchased with the proceeds of a draw on the Letters of Credit which pledge and security interest Borrower hereby grants to the Bank. As soon as possible following any draw on the Letters of Credit, and in any event within ten (10) days of the date of such drawing, Borrower will cause the Trustee to acknowledge to the Bank that the Trustee holds the Pledged Bonds as agent for the Bank, subject to the Bank's instructions, or if the Pledged Bonds are held in a book-entry only system, cause the depository to properly evidence in the record that the beneficial owner of the Pledged Bonds is the Borrower for the account of the Bank, and/or, upon the Bank's request, cause the Trustee to transfer the Pledged Bonds to the Bank, or if the Pledged Bonds are held in a book-entry only system, cause the Pledged Bonds to be registered in the name of the Bank. During the period in which any Bonds are Pledged Bonds, the Bank shall be entitled to receive and retain all payments of principal and interest on account of the Pledged Bonds, and such payments shall be applied by the Bank to satisfaction of

Obligations in the order provided below. If Borrower should receive any payment of principal or interest on account of any Pledged Bonds, Borrower shall receive such amounts in trust for the Bank and subject to the Bank's security interest, and shall immediately forward any such payment to the Bank in the form in which received by Borrower, adding only such assignments or endorsements as may be necessary to perfect the Bank's title thereto. Borrower appoints and constitutes the Bank as its agent and any officer of the Bank as Borrower's attorney-in-fact for purposes of: (a) executing instruments of assignment of any Pledged Bonds, including "bond powers;" (b) issuing any instruction or taking any other action necessary to cause any Pledged Bonds to be transferred on the books of any Securities Intermediary from the Securities Account of Borrower to the Bank's account or to cause the Pledged Bonds to be registered in the Bank's name on the books and records of any registrar for the Bonds; and (c) taking any other action necessary to cause the Bank's security interest to be perfected or to facilitate any transfer of the Pledged Bonds deemed necessary or desirable by the Bank. Such appointment and such power are irrevocable so long as any of the Letters of Credit are outstanding or any Obligations remain unsatisfied. If the Bank directly sells Pledged Bonds without reinstating the Letters of Credit, such sale shall only be made to institutional investors that have acknowledged that the Letters of Credit do not secure such Pledged Bonds. Should any Pledged Bonds be sold by the Remarketing Agent pursuant to the terms of the Indenture, the Bank will transfer the Pledged Bonds together with appropriate instruments of assignment to or in accordance with the instructions of the Remarketing Agent against payment of the proceeds of such sale, but only on a Banking Day upon which reimbursement is received by 2:00 p.m., New York time, otherwise, on the next succeeding Banking Day upon which such proceeds are so received, which proceeds shall then be applied by the Bank to the satisfaction of Obligations in the order provided below.

Interest on Pledged Bonds shall accrue at the Overdue Rate. Any payments of principal or interest on account of Pledged Bonds and any proceeds of Pledged Bonds sold by the Remarketing Agent received by the Bank shall be applied by the Bank (i) first to satisfy Borrower's reimbursement obligation with respect to drawing on the Letters of Credit the proceeds of which were used to purchase the related Pledged Bonds, (ii) next to the transaction fee related to such drawing, and (iii) then to such other of the Obligations as may then be outstanding, as the Bank in its discretion shall choose. If no Obligations are then outstanding and if no Default or Unmatured Default has occurred and is continuing, the Bank shall pay any remaining portion of such funds to Borrower.

**Section 5.03. Additional Collateral; Setoff.** Borrower and Guarantor, respectively, hereby grant to the Bank and any and all participant(s) in the Facilities, as additional security for the Obligations or the Line of Credit, as the case may be, a continuing lien upon all monies, securities and other property of Borrower or Guarantor now or hereafter held or received by, or in transit to, the Bank or such participant(s) from or for Borrower in the Reimbursement Account and in any and all other general demand deposit accounts (excluding any trust or custodial account) of Borrower or the Guarantor, as the case may be, held by the Bank or such participant and, subject to the rights of the Trustee and bondholders under the Indenture, in all monies, accounts, instruments (including any of the Bonds) and other property at any time held by the Trustee or any paying agent (or held in a custodial or other account by another party for the Trustee or any paying agent for or on behalf of Borrower) as part of the Trust Estate for the Bonds under the Indenture, subject to the provisions set forth in the last paragraph of Section 5.1 of this Agreement.

The Bank and such participant(s) are authorized at any time and from time to time, without notice to Borrower or the Guarantor, and shall have the right to setoff, appropriate and apply its own debt or liability to Borrower, or to any other Person liable for the Obligations or the Line of Credit, as the case may be, in whole or partial payment of any Obligation or the Line of Credit, as the case may be, in such order or manner as the Bank may reasonably determine, without any requirements of mutual maturity.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

Borrower and Guarantor, respectively, represent and warrant to the Bank as follows:

**Section 6.01. Due Organization.** Each of the Borrower and Guarantor is a corporation duly organized and validly existing under and by virtue of the laws of the State of Colorado.

**Section 6.02. Due Qualification.** Each of the Borrower and Guarantor is qualified to do business and is in good standing in every other jurisdiction in which the nature of their business or the ownership of their properties requires such qualification and in which the failure to so qualify would materially adversely affect the business operations or financial condition of the Borrower or Guarantor, as the case may be.

**Section 6.03. Corporate Power.** Each of the Borrower and Guarantor possesses the requisite corporate power to enter into the Reimbursement Documents, the Line of Credit and the Bond Documents to which they are a party, to borrow under Bond Documents to which they are a party, to execute and deliver the Reimbursement Documents and the Bond Documents to which they are a party and to perform their respective obligations thereunder.

**Section 6.04. Corporate Authority.** Each of the Borrower and Guarantor have taken the necessary corporate action to authorize the execution and delivery of the Reimbursement Documents, the Line of Credit and the Bond Documents to which they are a party and the borrowings thereunder, and none of the provisions of the Reimbursement Documents, the Line of Credit and/or the Bond Documents to which either is a party violates, breaches, contravenes, conflicts with, or causes a default under any provision of the articles of incorporation or by-laws of Borrower or Guarantor or under any provision of any existing note, bond, mortgage, debenture, indenture, trust, license, lease, instrument, decree, order, judgment, or agreement to which Borrower or Guarantor is a party or by which it or its assets may be bound or affected.

**Section 6.05. Financial Statements.** The respective Financial Statements of the Borrower and the Guarantor were prepared in accordance with GAAP consistent with prior years, unless specifically otherwise noted thereon, and present fairly the financial position of Borrower and Guarantor, respectively, as of the date thereof and the activities and cash flows for the period then ended, and no material adverse change in the business, activities, financial position, properties or prospects of Borrower or Guarantor, respectively, have occurred since the date of the Financial Statements.

**Section 6.06. No Material Adverse Change.** The information submitted by Borrower and Guarantor, respectively, to the Bank discloses all known or anticipated material liabilities,

direct or contingent, of Borrower and Guarantor as of the dates thereof, and since such dates, there has been no material adverse change in Borrower's or Guarantor's respective financial condition.

**Section 6.07. Subsidiaries.** Borrower does not have any Subsidiary or other ownership interest in any Person.

**Section 6.08. Binding Obligations.** Each Reimbursement Document, Letter of Credit and Bond Document to which Borrower or Guarantor is a party, when executed by the Borrower and/or Guarantor, will constitute a legal, valid and binding obligation of Borrower and/or Guarantor, respectively, enforceable against Borrower and/or Guarantor, respectively, in accordance with its terms, except as the same may be limited by reorganization, bankruptcy, insolvency, moratorium or other laws generally affecting the enforcement of creditors' rights.

**Section 6.09. Marketable Title.** Borrower has good and marketable title to all of its real property and good title to all of its other properties and assets shown on the balance sheet included in the Financial Statements, except such properties or assets as have been disposed of since the date of such statements in the ordinary course of business. Except for Permitted Encumbrances, none of the assets of Borrower are subject to any mortgage, pledge, security interest, title retention lien or other encumbrance. Except to evidence Permitted Encumbrances, no financing statement or similar instrument which names Borrower as debtor or relates to any of its property, has been filed in any state or other jurisdiction and remains unreleased, and Borrower has not signed any financing statement or similar instrument or security agreement authorizing the secured party thereunder to file any such financing statement or similar instrument.

**Section 6.10. Indebtedness.** Except (a) as shown on the Financial Statements, (b) trade debt incurred in the ordinary course of business since the date of the Financial Statements, and (c) as permitted under Section 7.1.5 hereof, Borrower and Guarantor have no outstanding Indebtedness.

**Section 6.11. Default.** Neither the Borrower nor the Guarantor has committed or suffered to exist any default or any circumstance which with notice, lapse of time, or both, would constitute a material default under the terms and conditions of any trust, debenture, indenture, note, bond, instrument, mortgage, lease, agreement, order, decree, or judgment to which Borrower or Guarantor, respectively, is a party or by which it or its assets may be bound or affected.

**Section 6.12. Tax Returns.** All tax returns or reports of Borrower and Guarantor required by law have been filed, and all taxes, assessments, contributions, fees and other governmental charges (other than those presently payable without penalty or interest and those currently being contested in good faith and against which adequate reserves have been established), upon Borrower or its assets, properties or income, which are payable, have been paid.

**Section 6.13. Litigation.** No litigation or proceeding of any Governmental Authority or other Person is presently pending or threatened, nor has any claim been asserted, against Borrower or Guarantor which, if adversely determined, would have a Material Adverse Effect.

**Section 6.14. ERISA.** Borrower, Guarantor and each ERISA Affiliate are in compliance in all material respects with all applicable provisions of ERISA, and neither Borrower nor any ERISA Affiliate has incurred any liability to the PBGC. Neither a “reportable event”, nor a “prohibited transaction”, has occurred under, nor has there occurred any complete or partial withdrawal from, nor has there occurred any other event which would constitute grounds for termination of, or the appointment of, a trustee to administer any “employee benefit plan” (including any “multi-employer plan”) maintained for employees of Borrower or any ERISA Affiliate, all within the meanings ascribed by ERISA.

**Section 6.15. Full Disclosure.** No information, exhibit, memorandum, or report (excluding estimated future operating results) furnished by Borrower or Guarantor to the Bank in connection with the negotiation of the Facilities or Line of Credit contains any material misstatement of fact, or omits to state any fact necessary to make the statements contained therein not materially misleading, and all estimated future operating results, if furnished, were prepared on the basis of assumptions, data, information, tests or other conditions believed to be valid or accurate or to exist at the time such estimates were prepared and furnished. To Borrower’s knowledge, there presently exists no fact or circumstance relative to Borrower, whether or not disclosed, which is presently anticipated to have a Material Adverse Effect or materially impair the ability of the Borrower to fully perform its respective obligations under the Reimbursement Documents and the Bond Documents to which it is a party. To the Guarantor’s knowledge, there presently exists no fact circumstance relative to the Guarantor, which is presently anticipated to have a Material Adverse Effect or materially impair the Guarantor to fully perform its obligations hereunder or under the Guaranty.

**Section 6.16. Contracts of Surety.** Except for the endorsements of Borrower or the Guarantor of negotiable instruments for deposit or collection in the ordinary course of business, Borrower is not a party to any contract of guaranty or surety.

**Section 6.17. Permits and Licenses.** The Borrower has (i) obtained all licenses, authorizations, permits and approvals from applicable local, state and federal governmental agencies, including without limitation, the PSC, necessary in the business of the transmission and distribution of natural gas to customers of the Borrower; and (ii) all material permits, licenses and approvals required under Environmental Laws.

**Section 6.18. Compliance with Law.** Each of the Borrower and Guarantor is in compliance with all applicable requirements of law and of all Governmental Authorities, noncompliance with which would have a Material Adverse Effect upon the business, operations, financial condition, properties or prospects of Borrower or Guarantor.

**Section 6.19. Force Majeure.** Neither the business nor the properties of Borrower or Guarantor are presently affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other



casualty that would have a Material Adverse Effect upon the business, operations, financial condition, or properties of Borrower or the Guarantor, respectively.

**Section 6.20. Margin Stock.** Each of the Borrower and Guarantor is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of the Facilities or Line of Credit will be used, either directly or indirectly, for the purpose, whether immediate, incidental or remote, of purchasing or carrying any margin stock or of extending credit to others for the purpose of purchasing or carrying any margin stock, and Borrower and the Guarantor shall furnish to the Bank, upon its request, a statement in conformity with the requirements of Federal Reserve Board Form U-1 referred to in Regulation U. Further, no part of the proceeds of the Facilities or the Line of Credit will be used for any purpose that violates, or which is inconsistent with, the provisions of Regulations T, U or X of the Board of Governors.

**Section 6.21. Approvals.** No authorization, consent, approval or any form of exemption of any Governmental Authority is required in connection with the execution and delivery of the Reimbursement Documents and the Bond Documents to which Borrower or Guarantor is a party, the borrowings and performance thereunder (except with respect to permits and licenses related to the Project which cannot be obtained as of the date hereof) or the issuance of the Letters of Credit, which has not been obtained; provided that no representation is made with respect to compliance with the securities or “blue sky” laws of any state.

**Section 6.22. Insolvency.** Neither Borrower nor Guarantor is “insolvent” within the meaning of that term as defined in the Federal Bankruptcy Code and Borrower is able to pay its debts as they mature.

**Section 6.23. Regulation.** Neither Borrower nor Guarantor is an “investment company” within the meaning of the Investment Company Act of 1940, as amended, or a “holding company” or an “affiliate of a holding company” or a “subsidiary of a holding company” within the meanings of the Public Utility Holding Company Act of 1935, as amended.

**Section 6.24. Compliance With Governmental Authorities.** The construction of the Project as contemplated by the Plans and Specifications and the intended use of the Improvements, including the Project, comply with all applicable requirements of Governmental Authorities and all applicable restrictive covenants. To the extent required by applicable law, the Plans and Specifications have been approved by all Governmental Authorities.

**Section 6.25. Construction Contracts.** The Construction Contracts are in full force and effect. There is no default under the Construction Contracts by Borrower or, to Borrower’s knowledge, by any other party thereto. Borrower has not assigned or pledged any of its right, title or interest in the Construction Contracts to anyone and such right, title and interest is not subject to any other liens, claims, encumbrances or security interests.

**Section 6.26. Documents.** The documents furnished to Bank pursuant to Section 3.4 and Section 8.1 hereof are true and correct copies thereof, have not been modified or amended and are in full force and effect on the date hereof.

**Section 6.27. General.** All statements contained in any certificate or financial statement delivered by or on behalf of Borrower or Guarantor to the Bank under any Reimbursement Document shall constitute representations and warranties made by Borrower or Guarantor, respectively, hereunder.

**Section 6.28. Regulated Utility.** Borrower is a natural gas distribution company that is regulated by the State of Missouri Public Service Commission. The PSC has issued to Borrower certain Certificates of Public Convenience and Necessity (“CPCN”) to provide natural gas distribution in the Service Area. Each CPCN grants to Borrower the exclusive right to provide natural gas distribution service. The Borrower has also received permission from the PSC to secure the debt represented by the Bond Documents and the Reimbursement Documents with the pledge of its assets pursuant to the provisions of the Reimbursement Documents. No further approvals are required by the PSC to issue the 2009A Bonds or for the Borrower to execute, deliver and perform its obligations under the Bond Documents or the Reimbursement Documents.

## ARTICLE VII

### COVENANTS

**Section 7.01. Negative Covenants.** Until the Obligations have been fully and finally paid and performed, without the prior written consent of the Bank, neither Borrower nor Guarantor shall:

(a) *Dispose of Property.* Sell, transfer, lease or otherwise dispose of all or substantially all of its properties, or discount, with or without recourse, any accounts receivable, except for the sale of inventory in the ordinary course of business, and the disposition or trade-in of obsolete equipment in an aggregate amount of up to U.S. \$100,000 per fiscal year.

(b) *Further Encumber.* Except for Permitted Encumbrances, voluntarily create or suffer to exist any mortgage, pledge, lien or other encumbrance upon any of its properties or assets, real or personal, tangible or intangible including, without limitation, Borrower’s cash, marketable securities and gross revenues. Notwithstanding the foregoing or any other provision herein, the Borrower may encumber its properties or assets in connection with a borrowing that is permitted pursuant to Section 7.1.5 hereof.

(c) *Merger.* Enter into any consolidation or merger with, or acquisition of, any Person or any substantial portion of its assets.

(d) *Sell and Leaseback.* Enter into any Sale and Leaseback Transaction.

(e) *Borrowings.* Create, incur, assume or suffer to exist any Indebtedness in excess of \$300,000 aggregate principal amount, except (a) the Line of Credit; (b) that which is in existence as of the date hereof and disclosed in the Financial Statements; (c) trade accounts and normal business accruals payable in the ordinary course of business; (d) Indebtedness to the Bank; (e) guarantees permitted pursuant to Section 7.1.7 hereof; (f) loans from the Guarantor to its subsidiaries and affiliates, provided that any such loan

shall be fully subordinate to the Obligations to the Bank, the making of any such loan shall not result in a Default hereunder or under the Bond Documents or Reimbursement Documents, the making of any such loan does not render the Guarantor insolvent, the terms of any such loan to the Borrower shall provide that the Borrower may not make any repayment of such loan to the Guarantor during the occurrence and continuance of a Default hereunder, and the Guarantor shall provide written notice to the Bank upon the making of any such loan which notice shall include the principal amount thereof; and (g) subject to and in accordance with the provisions hereof, Indebtedness under the Bond Documents or the Reimbursement Documents.

Notwithstanding any provisions to the contrary in the Bond Documents or in this Agreement, so long as the 2009A Letter of Credit is in effect and the Bank is honoring its obligations thereunder, neither the Guarantor nor the Borrower shall issue or guarantee the payment of additional bonds that are superior to or on a parity with the 2009A Bonds, whether pursuant to the provisions of the Master Indenture or otherwise, without the prior written consent of the Bank.

(f) *Loans.* Make any investment, except (a) advances to trade debtors in the ordinary course of business, and (b) Qualified Investments, or make any disbursement to any Person, except in the ordinary course of business.

(g) *Guarantees.* Except as hereinafter set forth, assume, guarantee or otherwise become liable as a guarantor or surety for the obligations of any Person, except for (a) the endorsements of negotiable instruments for deposit or collection in the ordinary course of business, and (b) guarantees in favor of the Bank.

Notwithstanding the foregoing or any other provisions herein, the Bank acknowledges that the Guarantor has guaranteed certain obligations of CNG in connection with the issuance of a Credit Facility to secure bonds issued by the Guarantor under the Master Indenture for the benefit of CNG, including guaranteeing the reimbursement obligations of CNG with respect to such Credit Facility. Guarantor agrees that it has not and will not in the future secure such guarantee by a lien or other encumbrance on any properties or assets, real or personal, tangible or intangible of the Guarantor, including, without limitation, Guarantor's cash, marketable securities or gross revenues.

(h) *Change Name or Place of Business.* Change its name or principal place of business, except on not less than thirty (30) days' prior written notice to Bank.

(i) *Accounting Policies.* Change its fiscal year or any of its significant accounting policies, except to the extent necessary to comply with GAAP.

(j) *Change of Business.* Make any material change in the nature of its business as carried on at the date of this Agreement.

(k) *Adversity.* Permit any event within its control to occur or condition within its control to exist which has a Material Adverse Effect upon the business, operations, financial condition, properties or prospects of Borrower or Guarantor.

(l) *Benefit Plans.* Permit any condition to exist in connection with any employee benefit plan which might constitute grounds for the PBGC to institute proceedings to have the Borrower's or Guarantors employee benefit plan terminated or a trustee appointed to administer the Borrower's or Guarantor's employee benefit plan; or engage in, or permit to exist or occur any other condition, event or transaction with respect to any employee benefit plan which could result in Borrower or Guarantor incurring any material liability, fine or penalty.

(m) *Remarketing Bonds at a Discount.* Remarket or allow the Remarketing Agent to remarket any Bonds tendered for purchase under the Indenture at a discount.

(n) *Investments; Investment Policy Changes.* Make any investments not in substantial compliance with Borrower's or Guarantor's written investment policy or make any changes to its written investment policy, unless in each case, the Bank has been provided with thirty (30) days prior written notice.

(o) *Materials.* Purchase any Materials in any manner that will result in the ownership thereof not vesting unconditionally in Borrower, free from all liens, charges, encumbrances and security interests (other than Permitted Encumbrances), upon delivery of such Materials to the Project Site, or, if the only condition to such title is payment of the purchase price therefor, upon the making of a Project Fund disbursement therefor.

(p) *Bond Maturity.* Cause or permit the maturity of the Bonds to exceed a 30 year period.

(q) *Interest Coverage.* For the Borrower only, permit the Interest Coverage Ratio to fall below 2.25:1.00 in any fiscal year.

(r) *Capitalization.* Permit the ratio of the Borrower's Funded Indebtedness to Capitalization to exceed seventy percent (70%) at any time.

(s) *Dividends.* For Borrower and the Guarantor, as the case may be, declare a dividend to any class of shareholders in any fiscal year in an amount that exceeds eighty percent (80%) of net income of the Borrower or Guarantor, as the case may be, for the applicable fiscal year, as shown on the financial statements of the Borrower or Guarantor, as the case may be, delivered to the Bank in accordance herewith. The Borrower and the Guarantor shall not pay any dividends to any class of shareholders in any fiscal quarterly period until five (5) business days after the Borrower and the Guarantor have furnished to the Bank the financial information for the prior fiscal quarterly period, as required in Section 7.2.1(a) and (b) hereof. The Borrower and the Guarantor shall not pay any dividends to any class of shareholders while a Default exists and is continuing under this Agreement without the prior written consent of the Bank.

(t) *Unrestricted Cash Balances.* With respect to Guarantor, cease to at all times maintain unrestricted cash balances (as per GAAP) of less than \$500,000.

(u) *Credit Facilities and Confirmations under the Master Indenture.* So long as any Letter of Credit is in effect and the Bank is honoring its obligations thereunder, (i)

any new series of Bonds issued for the benefit of the Borrower to be secured by a Credit Facility pursuant to the Master Indenture shall be secured by a Credit Facility issued by the Bank, unless the Bank consents in writing to the provision of a Credit Facility by another qualified entity, (ii) no Letter of Credit securing any Bonds may be replaced with a Substitute Credit Facility without the prior written consent of the Bank, and (iii) no Confirmations securing the Bonds shall be provided by an entity other than the Bank without the prior written consent of the Bank.

(v) *Expansion of Services into Additional Counties.* The Borrower shall not provide natural gas distribution services in any Counties in Missouri other than Daviess, Harrison and Caldwell, unless the Borrower shall: (i) provide written notification thereof to the Bank, (ii) execute an amendment to the Mortgage to include all right, title and interest of the Borrower in and to the property in such County to the provisions of the Mortgage and the other Reimbursement Documents, (iii) file or make provisions for the filing of such amended Mortgage in the real estate records of such additional County or Counties, and (iv) take any such additional action as reasonably requested by the Bank to subject the new property and interests of the Borrower in such additional County or Counties to the lien of this Agreement, the Mortgage and the Reimbursement Documents. The Borrower shall provide the Bank with a copy of any such recorded amended Mortgage, and shall pay the reasonable fees and expenses of the Bank incurred in reviewing such additional documents.

**Section 7.02. Affirmative Covenants.** Unless expressly waived in writing by the Bank, until the Obligations have been fully and finally paid and performed, the Borrower and the Guarantor, respectively, shall:

(a) *Financial Reporting.* Furnish to the Bank:

(i) as soon as practicable, but in any event within one hundred twenty (120) days after the end of each fiscal year, Financial Statements of Borrower and Guarantor certified after audit by certified public accountants acceptable to the Bank, including the statement of financial position and statement of activities and statement of cash flows, with accompanying notes to financial statements, all prepared in accordance with GAAP on a basis consistent with prior years unless specifically noted thereon, and accompanied by the unqualified opinion of such accountants, and accompanied by a certificate of the chief financial officer of Borrower or the Guarantor, as the case may be, that includes, with respect to Borrower and Guarantor, respectively, certifying that (A) Borrower and Guarantor are in compliance with all financial covenants contained in this Agreement and, to the extent appropriate, a calculation of the elements underlying such covenant compliance and (B) there exists no Default or Unmatured Default, or if any Default or Unmatured Default exists, stating the nature and status thereof;

(ii) as soon as practicable, but in any event within forty-five (45) days after the end of the each calendar quarter of each year, interim financial statements of the Borrower as of the end of each such quarter, which may be on a

consolidated and consolidating or combined and combining basis, including a revenue and expense statement, prepared and signed by the chief financial officer of Borrower on a basis consistent with prior periods unless specifically noted thereon, and accompanied by a compliance certificate, in form and substance acceptable to the Bank, showing, with respect to Borrower, Borrower's compliance with the covenants contained herein including a calculation of the status of the Borrower's compliance with respect to all financial covenants and further accompanied by a certificate of the chief financial officer of Borrower certifying that (A) there exists no Default or Unmatured Default, or if any Default or Unmatured Default exists, stating the nature and status thereof and (B) Borrower is in compliance with the financing covenants contained in this Agreement;

(iii) as soon as possible, but in any event within ten (10) days after Borrower or the Guarantor becomes aware thereof, a written statement signed by the chief executive or chief financial officer of Borrower or the Guarantor, as the case may be, as to the occurrence of any Default or Unmatured Default stating the specific nature thereof, Borrower's intended action to cure the same and the time period in which such cure is to occur;

(iv) as soon as possible, but in any event within sixty (60) days after the commencement thereof, a written statement describing any litigation instituted by or against Borrower or the Guarantor, as the case may be, which, if adversely determined, would have a Material Adverse Effect;

(v) as soon as possible, but in any event within ten (10) days after Borrower or the Guarantor, as the case may be, becomes aware thereof, a written statement describing any reportable event or prohibited transaction which has occurred with respect to any employee benefit plan and the action which Borrower or the Guarantor proposes to take with respect thereto;

(vi) as soon as possible, but in any event within sixty (60) days of the fiscal year end, a budget for the Borrower and the Guarantor for the succeeding fiscal year; and

(vii) such other information concerning Borrower, the Guarantor or the Project as the Bank may from time to time reasonably request.

(b) *Existence.* Maintain its corporate existence and right to do business as a corporation in the State of Colorado.

(c) *Taxes, Etc.* Pay and discharge all taxes, assessments, judgments, orders, and governmental charges or levies, if any, imposed upon it or on its income or surplus or upon its property prior to the date on which penalties attach thereto and all lawful claims which, if unpaid, may become a lien or charge upon the property of Borrower or the Guarantor, provided that Borrower or the Guarantor shall not be required to pay any tax, assessment, charge, judgment, order, levy or claim, if such payment is being contested

diligently, in good faith, and by appropriate proceedings which will prevent foreclosure or levy upon its property and adequate reserves against such liability have been established.

(d) *Maintain Properties.* Maintain all properties and assets used by, or useful to, Borrower or the Guarantor in the ordinary course of its business in good working order and condition and suitable for the purpose for which it is intended, ordinary wear and tear excepted, and from time to time make any necessary repairs and replacements.

(e) *Insurance.* Maintain in full force and effect public liability insurance, worker's compensation insurance, casualty insurance policies and professional liability insurance with coverages and with such companies as are customarily maintained by companies engaged in business similar to that of Borrower and the Guarantor. Each such policy covering properties of Borrower pledged as collateral to Bank shall have a lender's loss payable clause in favor of Bank, and a copy of each policy, accompanied by a certificate of coverage issued by the insurance carrier, shall be delivered to Bank. Such policy shall stipulate that the insurance cannot be canceled or materially modified without thirty (30) days' prior written notice to Bank and shall insure Bank notwithstanding the acts or neglect of Borrower or the Guarantor.

The Borrower covenants that if the property of the Borrower shall be destroyed, damaged or stolen, or the use thereof is otherwise lost or impaired, in an aggregate amount of \$1 million or more, the Borrower shall promptly provide the Bank with written notification of the following: (i) the estimated cost to repair or replace such property, (ii) the insurance proceeds expected to be received by the Borrower with respect to such destruction, damage, theft, loss or other impairment, (iii) the extent to which the Borrower intends to either repair or replace such property, or provide additional substitute property that is comparable to such property; and (iv) the expected completion date of such repair, replacement or substitution. If the Borrower indicates in such notice that it does not intend to fully repair or replace such property or provide comparable substitute property, the Borrower agrees that it shall use any insurance proceeds received as a result of such destruction, damage, theft, loss or impairment to redeem outstanding 2009A Bonds at the earliest possible redemption date, unless the Bank agrees in writing that such insurance proceeds are not required to be applied to such redemption.

The Borrower hereby acknowledges that additional restrictions and provisions with respect to the use of insurance proceeds are contained in the Mortgage. The Borrower covenants and agrees to comply with the insurance provisions and the requirements regarding the use of insurance proceeds set forth in the Mortgage.

(f) *Books and Records.* Keep proper books of account in which full, true and correct entries will be made of all dealings and transactions of and in relation to the business and affairs of Borrower or the Guarantor, and, at all reasonable times and as often as the Bank may request, permit authorized representatives of the Bank to (a) have access to the premises and properties of Borrower or the Guarantor and to the records relating to the operations of Borrower or the Guarantor; (b) make copies of or excerpts from such records; (c) discuss the affairs, finances and accounts of Borrower or the Guarantor with and be advised as to the same by the chief executive and financial officers

of Borrower or the Guarantor; and (d) audit and inspect such books, records, accounts, memoranda and correspondence at all reasonable times, to make such abstracts and copies thereof as the Bank may deem necessary, and to furnish copies of all such information to any proposed purchaser of or participant in the Facilities, which activities described in this clause (d) unless a Default has occurred, shall be conducted at the expense of the Bank.

(g) *Reports.* File, as appropriate, on a timely basis, annual reports, operating records and any other reports or filings required to be made with any Governmental Authority, the failure to file which could reasonably be expected to have a Material Adverse Effect.

(h) *Licenses and Agreements.* Maintain in full force and effect all operating permits, licenses, franchises, and rights used by it in the ordinary course of business.

(i) *Compliance with Law.* Comply with, conform to, and obey all material laws, ordinances, rules, regulations and other legal requirements applicable to it, including, without limitation, ERISA and all environmental laws, the failure to comply with, conform to, or obey which could reasonably be expected to have a Material Adverse Effect.

(j) *Trade Accounts.* Pay all trade accounts in accordance with standard industry practices.

(k) *Obligations Under the Bond Documents.* Pay and perform in a timely manner all of its obligations under the Bond Documents.

(l) *Construction of the Project.* Pursue the construction of the Project with due diligence to completion in a good and workmanlike manner in substantial compliance with the Plans and Specifications and in compliance with all requirements of applicable Governmental Authorities and all applicable restrictive covenants, free and clear of all uninsured liens and claims of liens for materials supplied or work performed in connection therewith.

(m) *Materials.* Cause all Materials acquired or furnished in connection with the construction of, but not incorporated into, the Project to be stored at the Project Site or in bonded warehouses to be selected by Borrower under adequate insurance and under adequate safeguards to minimize the possibility of loss, theft, damage or commingling with other materials or projects.

## **ARTICLE VIII**

### **CONDITIONS PRECEDENT**

The obligation of the Bank to issue the Letters of Credit is subject to each of the following conditions precedent in addition to the conditions precedent set forth in Article 3 of this Agreement:



**Section 8.01. Authorization.** Each of the Borrower and the Guarantor shall have furnished to the Bank certified copies of its respective articles of incorporation and by-laws, both as amended, accompanied by recent certificates of good standing issued by the Secretary of State of Colorado for each and a certified copy of resolutions adopted by the Executive Committees of the Guarantor and the Borrower authorizing the Facilities and specifying the capacities of those Persons authorized to execute the Reimbursement Documents.

**Section 8.02. Insurance.** Borrower and Guarantor shall have furnished to Bank evidence of the insurance required by this Agreement.

**Section 8.03. Reimbursement Documents.** Each of the Reimbursement Documents to which Borrower is a party shall have been executed and delivered by Borrower, Guarantor (and any other parties) to the Bank.

**Section 8.04. Incumbency Certificates.** The Bank shall have received an incumbency certificate, executed by the Secretary or Assistant Secretary of Borrower which shall identify the name and title and bear the signature of the officers of Borrower authorized to sign the Bond Documents to which it is a party and the Reimbursement Documents, and the Bank shall be entitled to rely upon such certificate until informed of any change in writing by Borrower. The Bank shall have received an incumbency certificate, executed by the Secretary or Assistant Secretary of the Guarantor which shall identify the name and title and bear the signature of the officers of Guarantor authorized to sign the Bond Documents to which it is a party and the Reimbursement Documents to which it is a party, and the Bank shall be entitled to rely upon such certificate until informed of any change in writing by Guarantor.

**Section 8.05. Legal Matters.** All legal matters incident to the Bond Documents and the Reimbursement Documents shall be reasonably satisfactory to Bank and its counsel.

**Section 8.06. Opinions of Counsel.** The Bank shall have received the following opinions dated as of the issue date of the Bonds: (i) a favorable written opinion of counsel to Borrower substantially in the form set forth in Exhibit F hereto; (ii) an opinion of counsel to the Guarantor in form and substance satisfactory to the Bank as to such matters as the Bank may reasonably request; (iii) a favorable opinion of bond counsel in form and substance satisfactory to the Bank as to such matters as the Bank may reasonably request; and (iv) an opinion from regulatory counsel to the Borrower, regarding necessary approvals relating to the Borrower obtained or to be obtained from the PSC, in form and substance satisfactory to the Bank.

**Section 8.07. Regulation U.** The Bank shall have received such certificates and other documents as it shall have deemed reasonably appropriate as to compliance with Regulations T, U and X of the Board of Governors of the Federal Reserve System.

**Section 8.08. UCC Searches.** Bank shall be satisfied with results of a bankruptcy, judgment and lien search in such governmental offices as Bank shall have deemed appropriate.

**Section 8.09. Expenses and Fees.** Borrower shall have reimbursed the Bank for all reasonable legal fees and other reasonable out-of-pocket expenses of the Bank in connection with the Facilities and the Line of Credit, including those fees set forth in Section 11.8 hereof,

and the Bank shall have received the fees and commissions due and payable pursuant to Section 2.5 hereof.

**Section 8.10. Bond Documents.** Each of the Bond Documents, in substantially the form approved by the Bank, shall have been executed and delivered by the parties thereto; all conditions precedent to the issuance of the Bonds shall have been satisfied; and the Issuer shall have duly authorized, executed, issued and delivered the Bonds, duly authenticated by the Trustee.

**Section 8.11. Cost Budget.** Bank shall have received the Cost Budget, in form and substance acceptable to Bank in its sole discretion.

**Section 8.12. Certificates.** The Bank shall have received a certificate signed by a duly authorized officer of the Borrower and a certificate signed by a duly authorized officer of the Guarantor, dated the issue date of the Bonds and both stating that: (i) the representations and warranties contained in Article 5 of this Agreement are true and correct as of the closing date as though made on such date; and (ii) no Default or potential Default has occurred and is continuing, or would result from the issuance of the Letters of Credit or the execution, delivery or performance of this Agreement or any related document to which the Borrower or the Guarantor is a party.

**Section 8.13. Refunded Obligations.** The Bank shall have received evidence satisfactory to it that upon the issuance of the 2009A Bonds, the Refunded Obligations have been refunded, satisfied and discharged.

**Section 8.14. Other Documents.** The Bank shall have received such other documents as the Bank may reasonably request.

## **ARTICLE IX**

### **DEFAULT**

The occurrence of any of the following events shall be deemed a Default hereunder:

(a) any representation or warranty made by or on behalf of Borrower, Guarantor or any Affiliate of Borrower to the Bank under or in connection with any Reimbursement Document, or any Bond Document shall be false in any material respect as of the date on which made;

(b) Borrower fails to maintain sufficient balances in its Reimbursement Account or in any other demand deposit account with the Bank to pay amounts when due on account of the Bonds and amounts when due to reimburse the Bank for any drawing on the Letters of Credit, or Borrower otherwise fails to pay the Bank when due any amount due to reimburse the Bank on account of any drawing under the Letters of Credit under Article 2 hereof or under the Indenture, or otherwise fails to make payment of any fee or other payment of the Obligations when due under this Agreement; provided, however, that with respect to a Liquidity Drawing, a failure to reimburse the Bank as provided in Section 2.03 hereof shall not constitute an Event of Default if Borrower fully

reimburses the Bank for such Liquidity Drawing together with interest thereon within 90 days following the date of such Liquidity Drawing (the "Reimbursement Period") and if on the date of such Liquidity Drawing and through the Reimbursement Period (i) the Borrower is current in the payment of all fees and other sums due and owing to the Bank hereunder, (ii) the Borrower is in full compliance with all of its covenants hereunder and the Bank is in receipt of evidence satisfactory to the Bank of such compliance, (iii) all representations and warranties made by the Borrower in this Agreement are true in all material respects, and (iv) and no Default or Unmatured Default has occurred and is continuing.

(c) the breach of any of the covenants contained in Section 7.1 hereof;

(d) the breach of any of the covenants in Section 7.2 hereof which are not cured within thirty (30) days after written notice from Bank to Borrower or Guarantor specifying such breach;

(e) the breach by Borrower or Guarantor of any other terms or provisions of this Agreement and the other Reimbursement Documents, other than a breach which constitutes a Default under Section 9(a), (b) or (c) above, not cured within thirty (30) days after written notice from Bank to Borrower or Guarantor specifying such breach;

(f) except as hereinafter provided, the failure of Borrower or Guarantor, respectively, to pay any other material Indebtedness when due or within any applicable grace or cure period (including, without limitation, any Indebtedness regardless of the amount owed to the Bank), or the default by Borrower or the Guarantor, respectively, in the performance of any other term, provision or condition contained in any agreement under which any such Indebtedness was created or is governed, the effect of which is to permit the holder or holders of such Indebtedness to cause such Indebtedness to become due prior to its stated maturity, unless such default is waived in writing by the holder or holders of such Indebtedness; or any such Indebtedness shall be validly declared to be due and payable or required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity thereof. Notwithstanding the foregoing, it shall not be a default hereunder if the Guarantor defaults under an agreement that guarantees a Credit Facility related to bonds issued for the benefit of CNG under the Master Indenture, and it shall not be a default hereunder if there is a default or acceleration of bonds issued for the benefit of CNG under the Master Indenture.

(g) Borrower or Guarantor shall (i) have an order for relief entered with respect to it under the Federal Bankruptcy Code, (ii) fail to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) institute any proceeding seeking an order for relief under the Federal Bankruptcy Code or seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the

material allegations of any such proceeding filed against it, or (vi) suspend operations as presently conducted or discontinue doing business as an ongoing concern;

(h) without the application, approval or consent of Borrower or Guarantor, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Borrower or Guarantor any substantial part of its property, or a proceeding described in item (g) shall be instituted against Borrower or Guarantor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days;

(i) any Governmental Authority shall condemn, seize or otherwise appropriate, or take custody or control of all or any substantial portion of the property of Borrower or Guarantor;

(j) Borrower shall fail within sixty (60) days to pay, bond or otherwise discharge any judgment in excess of U.S. \$50,000 or order for the payment of money which is not stayed on appeal, or any attachment, levy or garnishment is issued against any collateral for the Obligations;

(k) Guarantor shall fail within sixty (60) days to pay, bond or otherwise discharge any judgment in excess of U.S. \$250,000 or order for the payment of money which is not stayed on appeal, or any attachment, levy or garnishment is issued against any collateral for the Obligations;

(l) there occurs a “reportable event” or a “prohibited transaction” under ERISA relative to Borrower;

(m) there occurs an event of default under any of the Bond Documents; or any of the Bond Documents are amended or modified without the prior written consent of the Bank;

(n) Borrower shall deliberately abandon construction of the Project and such abandonment shall continue for a period of thirty (30) days;

(o) any Reimbursement Document shall cease to be in full force and effect or shall be declared null and void, or be revoked or terminated, or the validity or enforceability thereof shall be contested by Borrower or Guarantor, or Borrower or Guarantor shall deny that it has any or further liability thereunder; or

(p) any Reimbursement Document shall for any reason fail to create a valid and perfected first priority security interest or mortgage in any collateral purported to be covered thereby (except as permitted by the terms of any Reimbursement Document), or any Reimbursement Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of, or the security interest created under, any Reimbursement Document.

## ARTICLE X

### REMEDIES

**Section 10.01. Remedies.** Upon the occurrence of any Default hereunder, the Bank may take any or all of the following actions:

(a) *Reimbursement Document and Bond Document Remedies.* The Bank may (a) give written notice to the Trustee under the Indenture that a Default has occurred hereunder and the Bank is terminating one or more of the Letters of Credit, (b) direct the Trustee to exercise any remedies the Bank has under the Indenture and any other Bond Documents, (c) refuse to approve any Disbursement Request or any Line of Credit Advance, (d) refuse to issue any Improvement Letter of Credit, and (e) exercise any other remedy available to the Bank under any of the Reimbursement Documents or the Bond Documents.

(b) *Deposit to Secure Reimbursement Obligations.* The Bank may demand that Borrower immediately pay to the Bank an amount equal to the aggregate outstanding amount of the Letters of Credit and Improvement Letters of Credit, and Borrower shall immediately upon any such demand make such payment. Borrower hereby irrevocably grants to the Bank a security interest in all funds deposited by Borrower to the credit of or in transit to the Reimbursement Account and to any other deposit account or fund established with Bank pursuant to this Section 10.1.2, including, without limitation, any investment of such fund. Borrower hereby acknowledges and agrees that the Bank would not have an adequate remedy at law for failure by Borrower to honor any demand made under this Section 10.1.2 and that the Bank shall have the right to require Borrower specifically to perform its undertakings in this Section 10.1.2 whether or not any draws have been made under the Letters of Credit and Improvement Letters of Credit. In the event the Bank makes a demand pursuant to this Section 10.1.2, and Borrower makes the payment demanded, the Bank agrees to invest the amount of such payment for the account of Borrower and at Borrower's risk and direction in short-term investments approved by Bank and Borrower.

(c) *Other Indebtedness to the Bank.* The Bank may declare all other Indebtedness of Borrower or Guarantor owing to the Bank immediately due and payable and upon such declaration all such Indebtedness shall become immediately due and payable and all commitments of the Bank to make further extensions of credit to Borrower shall immediately terminate all without notice of any kind, notwithstanding any contrary terms of any promissory note or agreement. In the event that Borrower is required to make any payment to the Bank pursuant to the foregoing provisions, the Borrower agrees, in addition to such payment, to pay to the Bank such further amount as shall be sufficient to cover the costs and expense of collection, including reasonable compensation to Bank, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Bank hereunder.

The Bank may also, in any event of Default, demand in writing that Guarantor shall pay the Bank, without further demand or notice and whether or not there had been any other default

under the Reimbursement Documents, the whole amount of the Obligations outstanding and any unpaid interest thereof, with interest thereon at a rate equal to the Overdue Rate. In the event that Guarantor is required to make any payment to the Bank pursuant to the foregoing provisions, the Guarantor agrees, in addition to such payment, to pay to the Bank such further amount as shall be sufficient to cover the costs and expense of collection, including reasonable compensation to Bank, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Bank hereunder.

(d) *Other Remedies.* Bank may pursue any other remedies available to it under any other Reimbursement Document, Bond Document or otherwise under applicable law, and Bank shall have the right to enter into and take possession of the Improvements (and any Materials not yet incorporated into the Improvements) and to complete or cause to be completed the Project, and all sums so expended by Bank shall be deemed to have been advanced to Borrower or Guarantor hereunder and secured by the Indenture, the Mortgage (as applicable) and the other Reimbursement Documents and Bond Documents. For this purpose, Borrower agrees that Bank shall have the right, and hereby irrevocably constitutes and appoints Bank its true and lawful attorney-in-fact, coupled with an interest, with full power of substitution, (a) to use any funds of Borrower (including any Project Funds and any fund which may remain unadvanced hereunder) in such amounts necessary to complete the Project; (b) to make such additions and changes to and corrections of the Plans and Specifications as may be necessary or desirable to complete the Project substantially in the manner contemplated by the Plans and Specifications; (c) to employ such contractors, subcontractors, agents, architects, watchmen and inspectors as shall be required for such purposes; (d) to pay, settle or compromise all existing bills and claims which are or may be liens against the Improvements or may be necessary or desirable for the completion of the work or the clearance of title; (e) to execute all applications and certificates in the name of Borrower which may be required by any Construction Contracts; (f) to prosecute and defend all actions or proceedings in connection with the construction of the Improvements and to take such action and require such performance as Bank deems necessary; and (g) generally to do any and every act with respect to the construction, occupancy and use of the Improvements as Borrower may do in its own behalf. Should the unadvanced portion of the Project Fund be insufficient to pay the sums expended or incurred by Bank for any of the foregoing purposes, the amount of the deficiency shall be considered part of the Obligations, shall be secured by the Indenture, the Mortgage and the other Reimbursement Documents and Bond Documents and shall be paid by Borrower to Bank on demand with interest thereon at the Overdue Rate until paid. Bank may bring any other action available at law or in equity to enforce payment and performance or otherwise to collect the Obligations, amounts owed under the Line of Credit and to foreclose any mortgage lien or security interest Bank holds to secure the Obligations and any such mortgage lien or security interest may also be foreclosed without legal process to the extent permitted by law.

**Section 10.02. Remedies Not Exclusive.** No right or remedy conferred upon or reserved to the Bank under the Reimbursement Documents or the Bond Documents is intended to be exclusive of any other available remedy or right, but each and every remedy shall be cumulative and concurrent and shall be in addition to every other remedy now or hereafter

existing at law or in equity. No single or partial exercise of any power or right shall preclude any further or other exercise of any power or right.

**Section 10.03. Preservation of Rights.** No delay or omission of the Bank to exercise any power or right under the Reimbursement Documents or the Bond Documents shall impair such power or right or be construed to be a waiver of any Default or an acquiescence therein, and any single or partial exercise of any power or right shall not preclude other or further exercise thereof or the exercise of any other power or right. No course of dealings shall be binding upon the Bank.

**Section 10.04. Subrogation.** The Bank shall, to the extent of any payments made by it under the Letters of Credit, be subrogated to all rights of the beneficiary thereof as to all obligations of Borrower or the Guarantor with respect to which such payment shall have been made by the Bank.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

**Section 11.01. Benefit of Agreement.** The terms and provisions of this Agreement and the other Reimbursement Documents shall be binding upon and inure to the benefit of Borrower, Guarantor and the Bank and their respective successors and assigns of their entire interests, except that the Borrower and the Guarantor shall not have the right to assign their respective obligations under this Agreement.

**Section 11.02. Survival of this Agreement.** All covenants, agreements, representations and warranties made in this Agreement shall survive the issuance by the Bank of the Letters of Credit and the Improvement Letters of Credit and shall continue in full force and effect so long as the Letters of Credit and the Improvement Letters of Credit shall be unexpired or any Obligations shall be outstanding and unpaid. The obligation of the Borrower to reimburse the Bank pursuant to this Agreement shall survive the payment of the Bonds and termination of this Agreement and the Facilities.

**Section 11.03. Governmental Regulation.** Anything contained in this Agreement to the contrary notwithstanding, the Bank shall not be obligated to extend credit to Borrower or Guarantor in violation of any limitation or prohibition provided by any applicable statute or regulation.

**Section 11.04. Taxes.** Any taxes (excluding taxation of the overall net or gross income of the Bank) payable or ruled payable by any Governmental Authority in respect of the Reimbursement Documents or the Facilities shall be paid by Borrower or Guarantor, together with interest and penalties, if any.

**Section 11.05. Choice of Law.** The Reimbursement Documents (other than those containing a contrary express choice of law provision) and the rights and obligations of the parties thereunder and hereunder shall be governed by, and construed and interpreted in accordance with the laws of the State of Missouri (but giving effect to federal laws applicable to national banks), notwithstanding the fact that Missouri conflict of law rules might otherwise

require the substantive rules of law of another jurisdiction to apply. Borrower and Guarantor hereby consent to the jurisdiction of any state or federal court located within the City and County of Denver, Colorado. All service of process may be made by messenger, certified mail, return receipt requested or by registered mail directed to Borrower and Guarantor at the addresses indicated aside their respective signature to this Agreement, and Borrower and the Guarantor otherwise waive personal service of any and all process made upon Borrower or Guarantor. Borrower and Guarantor waive any objection which Borrower or Guarantor may have to any proceeding commenced in a federal or state court located within the City and County of Denver, Colorado based upon improper venue or forum non conveniens. Nothing contained in this Section shall affect the right of the Bank to serve legal process in any other manner permitted by law or to bring any action or proceeding against Borrower, Guarantor, or their property in the courts of any other jurisdiction.

**Section 11.06. Headings.** Section headings in the Reimbursement Documents are for convenience of reference only and shall not govern the interpretation of any of the provisions of the Reimbursement Documents.

**Section 11.07. Entire Agreement.** The Reimbursement Documents and the Bond Documents embody the entire agreement and understanding among Borrower, Guarantor and the Bank and supersede all prior agreements and understandings among Borrower, Guarantor and the Bank relating to the subject matter thereof.

**Section 11.08. Fees and Expenses.** Borrower shall reimburse the Bank for any and all reasonable costs, charges and out-of-pocket expenses (including, without limitation, fees and expenses of attorneys, inspecting architects or engineers for the Bank, title policy fees, appraisal fees, appraisal review fees, environmental audits and environmental audit review fees), paid or incurred by the Bank in connection with the preparation, review, execution, delivery, amendment, modification, administration, collection and enforcement of the Facilities and/or the Reimbursement Documents or Bond Documents or in connection with the conduct by the Bank's internal auditors of periodic field audits of the books and records of Borrower and the Guarantor. The Bank may pay any of such expenses, and any proceeds so applied shall be deemed Obligations and secured by the other Reimbursement Documents, shall bear interest at the rate of interest provided herein, and shall be payable on demand.

**Section 11.09. Liability of the Bank.** (a) The liability of the Bank (or any other Indemnified Person, as defined in Section 2.10 hereof) under, in connection with and/or arising out of this Agreement, any Bond Document, Reimbursement Document or the Letters of Credit or the Improvement Letters of Credit (or any pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to any direct damages suffered by the Borrower that are caused directly by Bank's gross negligence or willful misconduct in (i) honoring a presentation that does not at least substantially comply with the Letters of Credit or the Improvement Letters of Credit, (ii) failing to honor a presentation that strictly complies with the Letters of Credit or the Improvement Letters of Credit or (iii) retaining Drawing Documents presented under the Letters of Credit or the Improvement Letters of Credit. In no event shall the Bank be deemed to have failed to act with due diligence or reasonable care if the Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement. The Borrower's aggregate remedies against the Bank and any Indemnified Person for wrongfully



honoring a presentation under the Letters of Credit or Improvement Letters of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by the Borrower to the Bank in respect of an honored presentation under the Letters of Credit or Improvement Letters of Credit, plus interest. Notwithstanding anything to the contrary herein, the Bank and the other Indemnified Persons shall not, under any circumstances whatsoever, be liable for any punitive, consequential, indirect or special damages or losses regardless of whether the Bank or any Indemnified Person shall have been advised of the possibility thereof or of the form of action in which such damages or losses may be claimed. The Borrower shall take action to avoid and mitigate the amount of any damages claimed against the Bank or any Indemnified Person, including by enforcing its rights in the underlying transaction. Any claim by the Borrower for damages under or in connection with this Agreement, any Bond Document, Reimbursement Document or the Letters of Credit or the Improvement Letters of Credit shall be reduced by an amount equal to the sum of (i) the amount saved by the Borrower as a result of the breach or alleged wrongful conduct and (ii) the amount of the loss that would have been avoided had the Borrower mitigated damages.

(b) Without limiting any other provision of this Agreement, the Bank and each other Indemnified Person (if applicable), shall not be responsible to the Borrower for, and the Bank's rights and remedies against the Borrower and the Borrower's obligation to reimburse the Bank shall not be impaired by: (i) honor of a presentation under the Letters of Credit or Improvement Letters of Credit which on its face substantially complies with the terms of the Letters of Credit or the Improvement Letters of Credit; (ii) honor of a presentation of any Drawing Documents which appear on their face to have been signed, presented or issued (X) by any purported successor or transferee of any beneficiary or other party required to sign, present or issue the Drawing Documents or (Y) under a new name of the beneficiary; (iii) acceptance as a draft of any written or electronic demand or request for payment under the Letter of Credit, even if nonnegotiable or not in the form of a draft, and may disregard any requirement that such draft, demand or request bear any or adequate reference to the Letters of Credit or the Improvement Letters of Credit; (iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness, or legal effect of any presentation under the Letters of Credit or the Improvement Letters of Credit or of any Drawing Documents; (v) disregard of any non-documentary conditions stated in the Letters of Credit or the Improvement Letters of Credit; (vi) acting upon any Instruction which it, in Good Faith, believes to have been given by a Person or entity authorized to give such Instruction; (vii) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation; (viii) any delay in giving or failing to give any notice; (ix) any acts, omissions or fraud by, or the solvency of, any beneficiary, any nominated Person or any other Person; (x) any breach of contract between the beneficiary and the Borrower or any of the parties to the underlying transaction; (xi) assertion or waiver of any provision of the ISP which primarily benefits an issuer of a letter of credit, including, any requirement that any Drawing Document be presented to it at a particular hour or place; (xii) payment to any paying or negotiating bank (designated or permitted by the terms of the Letters of Credit or the Improvement Letters of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice; (xiii) dishonor of any presentation

upon or during any Event of Default or for which the Borrower is unable or unwilling to reimburse or indemnify the Bank (provided that the Borrower acknowledges that if the Bank shall later be required to honor the presentation, the Borrower shall be liable therefore in accordance with Article 2 hereof); and (xiv) acting or failing to act as required or permitted under Standard Letter of Credit Practice. For purposes of this Section 11.9(b)), “Good Faith” means honesty in fact in the conduct of the transaction concerned.

(c) The Borrower shall notify the Bank of (i) any noncompliance with any Instruction, any other irregularity with respect to the text of the Letters of Credit or the Improvement Letters of Credit or any amendment thereto or any claim of an unauthorized, fraudulent or otherwise improper Instruction, within one (1) Business Day of the Borrower’s receipt of a copy of the Letters of Credit or Improvement Letters of Credit or amendment and (ii) any objection the Borrower may have to the Bank’s honor or dishonor of any presentation under the Letters of Credit or the Improvement Letters of Credit or any other action or inaction taken or proposed to be taken by the Bank under or in connection with this Agreement or the Letters of Credit or the Improvement Letters of Credit, within three (3) Business Days after the Borrower receives notice of the objectionable action or inaction. The failure to so notify the Bank within said times shall discharge the Bank from any loss or liability that the Bank could have avoided or mitigated had it received such notice, to the extent that the Bank could be held liable for damages hereunder; provided, that, if the Borrower shall not provide such notice to the Bank within three (3) Business Days of the date of receipt in the case of clause (i) or ten (10) Business Days from the date of receipt in the case of clause (ii), Bank shall have no liability whatsoever for such noncompliance, irregularity, action or inaction and the Borrower shall be precluded from raising such noncompliance, irregularity or objection as a defense or claim against Bank.

**Section 11.10. Confidentiality.** The Bank agrees to treat all information received by it in connection with the Reimbursement Documents and the Bond Documents (except such information which is generally available or has been made available to the public) as confidential, provided, however, that nothing in this Section 11.10 shall prohibit the Bank from, or subject the Bank to liability for, disclosing any such information to any Governmental Authority to whose jurisdiction the Bank may be subject, to the extent the Governmental Authority requires disclosure, and provided further that the Bank may provide such information to proposed purchasers of or participants in the Facilities from time to time.

**Section 11.11. Giving Notice.** Any notice required or permitted to be given under this Agreement or the other Reimbursement Documents may be, and shall be deemed effective if made in writing and delivered to the recipient’s address or facsimile number addressed to Borrower, Guarantor or the Bank at the addresses indicated aside their signatures to this Agreement by any of the following means: (a) hand delivery, (b) United States first class mail, postage prepaid, (c) registered or certified mail, postage prepaid, with return receipt requested, (d) by a reputable rapid delivery service, (e) electronic transmission, electronic mail, telex, telecopy, telefax, or other computer generated telecommunications, or (f) by facsimile or telegraph. Notice made in accordance with this Section shall be deemed given upon receipt if delivered by hand or wire transmission, three (3) Banking Days after mailing if mailed by first class, registered or certified

mail, or one (1) Banking Day after deposit with an overnight courier service if delivered by overnight courier. Borrower, Guarantor and the Bank may each change the address for service of notice upon it by a notice in writing to the other parties hereto and may agree in writing to a different method of giving notice. Notice shall be given:

If to the Bank (with  
respect to credit matters): U.S. Bank National Association  
950 17th Street, 8th Floor  
Denver, Colorado 80202  
Attention: Brett Siegel  
Telephone: (303) 585-4181  
Facsimile: (303) 585-4242

If to the Bank (with  
respect to draws under  
the Letter of Credit): U.S. Bank National Association  
111 S.W. 5th Avenue, Suite 500  
Portland, Oregon 97204  
Attention: International Department  
Telephone: (503) 275-6059  
Facsimile: (503) 275-5132

and, if to the Borrower: Missouri Gas Utility, Inc.  
7810 Shaffer Parkway, Suite 120  
Littleton, Colorado 80127  
Attention: Michael P. Earnest, President  
Facsimile No. 303-979-7892

and, if to the Guarantor: Summit Utilities, Inc.  
7810 Shaffer Parkway, Suite 120  
Littleton, Colorado 80127  
Attention: Michael P. Earnest, President  
Facsimile No. 303-979-7892

**Section 11.12. Counterparts.** This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by Borrower, the Guarantor and the Bank.

**Section 11.13. Incorporation by Reference.** All Exhibits and Schedules hereto are incorporated herein by this reference. Each of the other Reimbursement Documents shall be made subject to all of the terms, covenants, conditions, obligations, stipulations and agreements contained in this Agreement to the same extent and effect as if fully set forth therein and this Agreement is made subject to all of the terms, covenants, conditions, obligations, stipulations and agreements contained in the other Reimbursement Documents to the same extent and effect

as if fully set forth herein. The provisions of this Agreement, including, without limitation, provisions relating to maintenance of insurance, are in addition to, and not a limitation upon, the requirements of any other Reimbursement Document, any guaranty document or any subordination agreement.

**Section 11.14. No Joint Venture.** Notwithstanding anything to the contrary herein contained or implied, the Bank, by this Agreement, or by any action pursuant hereto, shall not be deemed to be a partner of, or a joint venturer with, Borrower or Guarantor, and Borrower and Guarantor hereby respectively indemnifies and agrees to defend and hold the Bank harmless, including the payment of reasonable attorneys' fees, from any Loss resulting from any judicial construction of the parties' relationship as such.

**Section 11.15. Severability.** In the event any provision of this Agreement or any of the Reimbursement Documents or Bond Documents shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect the validity, enforceability or legality of the remaining provisions hereof or thereof, all of which shall continue unaffected and unimpaired thereby.

**Section 11.16. Gender.** As used herein, the masculine gender shall be deemed to include the feminine and the neuter and the singular number shall also include the plural.

**Section 11.17. Waiver and Amendment.** Borrower, Guarantor and the Bank may enter into agreements supplemental hereto for the purpose of adding or modifying provisions of this Agreement or changing the respective rights, powers, privileges, duties, liabilities, covenants or obligations of the Bank, Borrower or Guarantor, or waiving any Default hereunder, provided, however, that no such agreements supplemental or amendments shall be binding unless in writing and duly signed by the parties hereto, and then only to the extent specifically set forth therein.

**Section 11.18. Bank Not Controlling Borrower or Guarantor.** None of the covenants or other provisions contained in the Reimbursement Documents or Bond Documents shall, or shall be deemed to, give the Bank the rights or power to exercise control over the affairs and/or management of Borrower or the Guarantor, the power of the Bank being limited to the right to exercise the remedies provided in the Reimbursement Documents and the Bond Documents, provided, however, that if the Bank becomes the owner of any stock or other equity interest in any Person, whether through foreclosure or otherwise, the Bank shall be entitled (subject to requirements of law) to exercise such legal rights as it may have by virtue of being the owner of such stock or other equity interest in such Person.

**Section 11.19. USA PATRIOT ACT NOTIFICATION.** The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account,

treasury management account, loan, other extension of credit, or other financial services product. What this means for Borrower: When Borrower opens an account, if Borrower is an individual Bank will ask for Borrower's name, taxpayer identification number, residential address, date of birth, and other information that will allow Bank to identify Borrower, and if Borrower is not an individual Bank will ask for Borrower's name, taxpayer identification number, business address, and other information that will allow Bank to identify Borrower. Bank may also ask, if Borrower is an individual to see Borrower's driver's license or other identifying documents, and if Borrower is not an individual to see Borrower's legal organizational documents or other identifying documents.

**Section 11.20. Waiver of Jury Trial.** THE BANK, BORROWER, AND GUARANTOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OTHER REIMBURSEMENT DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY OF THEM. NEITHER THE BANK, GUARANTOR, NOR BORROWER SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY THE BANK, THE GUARANTOR, OR BORROWER EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY THE BANK, THE GUARANTOR OR BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO PROVIDE THE FINANCING GOVERNED BY THIS AGREEMENT.

## ARTICLE XII

### IMPROVEMENT LETTERS OF CREDIT

**Section 12.01. Improvement Letters of Credit.** The Company may request, in accordance with the provisions of this Section 12, that the Bank issue, subject to satisfaction of the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Company set forth herein, one or more Improvement Letters of Credit for the benefit of public entities to be specified by the Company and approved by the Bank; provided, however, that the aggregate principal amount of Line of Credit Advances and Improvement Letters of Credit outstanding at any time shall not exceed the Revolving Facility Limit. The Company acknowledges that it must obtain Bank approval of the Line of Credit and the issuance of any Improvement Letter(s) of Credit.

**Section 12.02. Conditions Precedent to Issuance of Improvement Letters of Credit.** The Bank shall have received, on or before the date of the issuance of any Improvement Letter of Credit hereunder, the following documents in form and substance acceptable to the Bank and the following terms and conditions shall be fully satisfied:

(a) at least 5 Business Days prior to the proposed issuance date, an application in substantially the form of Exhibit G hereto. The Bank, in its sole discretion, may change the information required in any such application upon written notification to the Borrower.

(b) on the date of the issuance of an Improvement Letter of Credit, an issuance processing fee equal to the amount then charged by the Bank for similar transactions. While the Improvement Letters of Credit are outstanding, the Company shall pay to the Bank a non-refundable annual fee in an amount established by the Bank. Such fee shall be payable under terms agreed upon by the Bank and the Borrower at the time of issuance.

(c) all representations and warranties made by the Borrower in this Agreement shall be true in all material respects on and as of the date of such request for the Improvement Letter of Credit (except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct on and as of such earlier date).

(d) the Borrower and the Guarantor shall have performed and complied with all agreements and conditions required in this Agreement to be performed or complied with by each of them on or prior to the date of such request for the Improvement Letter of Credit.

(e) no Default or Event of Default shall have occurred and be continuing.

(f) such Improvement Letter of Credit shall not be prohibited by any law or any regulation or any order of any court or governmental agency or authority.

(g) the Borrower and the Guarantor shall not have repudiated or made any anticipatory breach of any of their respective obligations under this Agreement.

(h) the Borrower shall have executed an application and reimbursement agreement for any Improvement Letter of Credit in the Bank's standard form.

As a condition to issuing an Improvement Letter of Credit, the Bank may require a duly completed compliance certificate addressed to the Bank, in form and detail reasonably satisfactory to Bank, stating that the conditions set forth in this Section 12.2 have been satisfied. Company's request for the issuance of an Improvement Letter of Credit shall be deemed a representation by Company that the conditions set forth in this Section 12.2 have been satisfied and the statements set forth in this Section 12.2 are correct.

### **Section 12.03. Draws Under Improvement Letters of Credit.**

(a) Notwithstanding anything in this Agreement to the contrary, in the event of any draw on any Improvement Letter of Credit, the amount drawn shall be immediately due and payable on the date that the Bank funds the draw under the Improvement Letter of Credit. If such payment is not received by Bank prior to 2:00

p.m. New York time on the date of such draw, then such failure shall result in an immediate Default hereunder and shall accrue interest at the Overdue Rate.

(b) Any amounts advanced to fund draws on the Improvement Letters of Credit shall be deemed to be a Line of Credit Advance advanced under the Line of Credit Note and shall be evidenced by the Line of Credit Note and secured by the Reimbursement Documents.

(c) While any Improvement Letter of Credit is outstanding, the maximum amount of Line of Credit Advances that may be outstanding under the Line of Credit Note shall be automatically reduced by the maximum amount available to be drawn under any and all such Improvement Letters of Credit plus the aggregate of the amounts that have been drawn and remain unreimbursed under all Improvement Letters of Credit.

[Signature Page Follows]

IN WITNESS WHEREOF, Borrower, Guarantor and the Bank have caused this Agreement to be executed by their respective officers duly authorized as of the date first above written.

***BORROWER***

**MISSOURI GAS UTILITY, INC.**, a Colorado corporation

By: \_\_\_\_\_

Name: Michael P. Earnest

Title: President

***GUARANTOR***

**SUMMIT UTILITIES, INC.**, a Colorado corporation

By: \_\_\_\_\_

Name: Michael P. Earnest

Title: President

***BANK***

**U.S. BANK NATIONAL ASSOCIATION**, a national banking association

By: \_\_\_\_\_

Name:

Title:



**EXHIBIT A**  
**2009A LETTER OF CREDIT**

**EXHIBIT B**

**2009A LETTER OF CREDIT NOTE**

**EXHIBIT C**  
**GENERAL SECURITY AGREEMENT**

**EXHIBIT D**

**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF PROFITS AND  
PROCEEDS, FINANCING STATEMENT AND FIXTURE FILING**

**EXHIBIT E**  
**ENVIRONMENTAL INDEMNITY AGREEMENT**

**EXHIBIT F**  
**OPINION OF BORROWER'S COUNSEL**

