

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

by and between

MISSOURI GAS UTILITY, INC., AS DEBTOR OR GRANTOR
(Taxpayer I.D. No. 20-1863133)
(Organizational Identification No. 20041356932)

and

U.S. BANK NATIONAL ASSOCIATION

Dated as of September ___, 2008

THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS.

THIS INSTRUMENT SECURES PAYMENTS PURSUANT TO A REIMBURSEMENT AGREEMENT AND ALSO PAYMENT OF FUTURE ADVANCES PURSUANT TO A REVOLVING CREDIT ARRANGEMENT.

EXHIBIT A SETS FORTH A LIST OF THE COUNTIES IN WHICH THE REAL ESTATE OF THE DEBTOR IS CURRENTLY LOCATED. SOME OF THE PERSONAL PROPERTY CONSTITUTING A PORTION OF THE COLLATERAL IS OR IS TO BECOME FIXTURES RELATED TO THE REAL ESTATE.

THIS INSTRUMENT IS TO BE RECORDED IN THE REAL ESTATE RECORDS OF THE COUNTY RECORDER IN EACH COUNTY WHERE THE REAL ESTATE IS LOCATED.

A POWER OF SALE HAS BEEN GRANTED IN THIS INSTRUMENT. A POWER OF SALE MAY ALLOW SECURED PARTY TO TAKE THE COLLATERAL AND SELL IT WITHOUT GOING TO COURT IN A FORECLOSURE ACTION.

THIS IS A CONSTRUCTION MORTGAGE UNDER THE UNIFORM COMMERCIAL CODE, GIVEN TO SECURE AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT OF LAND, INCLUDING THE ACQUISITION COST OF LAND OR INTERESTS IN LAND.

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EXHIBIT A PROPERTY

EXHIBIT B CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF PROFITS AND PROCEEDS, FINANCING STATEMENT AND FIXTURE FILING (this “Instrument”), dated as of September __, 2008, is from **MISSOURI GAS UTILITY, INC.**, a Colorado corporation, as grantor (“Debtor”), with an address of Suite 120, 7810 Shaffer Parkway Littleton, Colorado 80127, to and for the benefit of **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as beneficiary (“Secured Party”), with an address of 950 – 17th Street, 8th Floor, Denver, Colorado 80202. All capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Reimbursement and Pledge Agreement, dated as of September __, 2008 (the “Reimbursement Agreement”), among Summit Utilities, Inc., the Debtor and the Secured Party.

COLLATERAL:

All of the property described in paragraphs (a) through (f) below is herein collectively called the “Collateral”:

(a) All right, title and interest of Debtor of whatever kind or character, wherever located (whether now owned or hereafter acquired by operation of law or otherwise) in and to all natural gas distribution, storage, purchase, sale, transportation and exchange facilities and related property, interests and rights, related to (i) the distribution of natural gas by Debtor in all the areas being served from time-to-time by the Debtor with local natural gas distribution as provided in Certificates of Public Convenience and Necessity (the “Certificates of Public Convenience and Necessity”) granted from time-to-time by the State of Missouri Public Service Commission (the “PSC”), including such additional areas as the Debtor lawfully extends service to pursuant to the PSC law and the municipalities that have granted franchises to the Company (the “Service Area”), and (ii) the operation of the natural gas distribution facilities and utilities owned or to be owned by the Debtor involving the distribution of natural gas to customers located in the Service Area, including all distribution lines, customer hookup lines, meters and related equipment, telecommunications conduits installed with the distribution lines, rights-of-way and related real estate interests and all related equipment and personal property, together with any additions, modifications and substitutions to such facilities (the “Project”), located in Daviess, Harrison, and Caldwell Counties, Missouri, and such additional counties that become part of the Service Area, referred to as the Missouri Natural Gas Distribution System (the “Gas Distribution Facilities”) including, without limitation, the following:

(i) all property, interests and rights of whatever kind or character of the Debtor, wherever located, whether now owned or hereafter acquired by operation of law or otherwise, in and to all presently existing and hereafter created easements, rights-of-way, servitudes, leases, permits, licenses, franchises, grants,

certificates, immunities and privileges and other rights to use the surface attributable to the Gas Distribution Facilities, arising in connection therewith or otherwise relating thereto or used or held in connection therewith (collectively, the "Easements");

(ii) all property, interests and rights of whatever kind or character (whether now owned or hereafter acquired by operation of law or otherwise) in and to all presently existing and hereafter created contracts and agreements relating to the distribution, storage, purchase, sale, transportation or exchange of natural gas, liquefied natural gas, and other liquid and gaseous hydrocarbons ("Hydrocarbons") of whatever kind or character and in whatever form covering, affecting or otherwise relating to the Gas Distribution Facilities or attributable thereto or arising in connection therewith or otherwise relating thereto or used or held in connection therewith (the "Contracts");

(iii) all property, interests and rights of whatever kind or character, wherever located (whether now owned or hereafter acquired by operation of law or otherwise) in, to and under all facilities, buildings, structures, materials, supplies, equipment, fixtures, improvements and other property, including any asset, property, interest or right considered as regulated by the State of Missouri Public Service Commission in connection with the ownership and operation of a natural gas public utility, which include, but are not limited to, easements, rights-of-way, distribution and/or transportation lines, pipelines, meters, valves, pipe, pipe connections, fittings, flanges, tanks, storage facilities, terminals, buildings, control equipment, cathodic and electrical protection units, bypasses, regulators, metering stations, compressors and compressor equipment, condensers and condenser equipment, scrubbers and scrubber equipment, chillers and chiller equipment, exchanges and exchange equipment, accumulators and accumulator equipment, economizers and economizer equipment, stabilizers and stabilizer equipment, collectors and collector equipment, pumps, pump houses and pumping stations, town border stations, treating equipment, dehydrators and dehydration equipment, separators and separation equipment, and processors and processing equipment, now or hereafter located on or in or used or held for use in connection with the Gas Distribution Facilities, including without limitation, the entire interests and rights in the items of equipment and property used for or in connection with the regulated natural gas public utility now or hereafter located on or in or used or held for use in connection with the Gas Distribution Facilities, including without limitation, the entire interests and rights in the items of equipment and property of the Borrower located in the Counties described on Exhibit A to this Instrument, or hereafter constructed or acquired by the Borrower, wherever located (the "Equipment");

(iv) all property, interests and rights of whatever kind or character (whether now owned or hereafter acquired by operation of law or otherwise) in, to and under all licenses, technology, franchises, servitudes, grants, designs, trademarks, trade names, copyrights, permits, immunities and privileges attributable to the Gas Distribution Facilities, or arising or otherwise used or held

in connection therewith, including without limitation, the entire interests and rights created by the permits and similar authorizations and related instruments and rights in the Certificates of Public Convenience and Necessity described on Exhibit B attached hereto, including any subsequently obtained Certificates of Public Convenience and Necessity and any amendments to or modifications of existing or new Certificates of Public Convenience and Necessity;

(v) all property, rights and interests, present and future, personal and real, tangible and intangible, attributable to, arising in connection with or otherwise used or held in connection with the foregoing;

(vi) all accounts, deposit accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory, investment property and letter of credit rights, together with all proceeds and products of, and supporting obligations with respect to the foregoing (as such terms are defined in the Uniform Commercial Code currently in effect in the State of Missouri) from or relating to the distribution, storage, purchase, sale, transportation or exchange of Hydrocarbons through, or in the Gas Distribution Facilities, or in, or relating to or used or held for use in connection with the Gas Distribution Facilities, including without limitation, Hydrocarbons owned by Debtor at any time in the Gas Distribution Facilities or in storage on or adjacent thereto;

(vii) any and all revenues, income, receipts and/or moneys of the Debtor and/or received by the Debtor or on behalf of the Debtor in any way related, directly or indirectly, to the provision by the Debtor of services to customers, including, without limitation, distribution and gas tariffs, meter fees and contributions in aid of construction paid by customers, and all investment income and profit from moneys held by the Secured Party pursuant to the Lockbox Service Terms between Debtor and the Secured Party (collectively, the "Revenues");

(viii) all renewals, extensions, modifications, additions, accessions, replacements, substitutions, products and appurtenances to and of the foregoing;

(ix) to the extent not otherwise included in the foregoing, all of the personal and fixture property of every kind and nature (including, without limitation, all furniture, fixtures, raw materials and deposit accounts, books, records, ledger sheets, files and other data and documents, including records in any form (digital or other) and recorded in or through any medium (magnetic, lasergraphic or other) and all machinery and processes (including computer programming instructions) required to read and print such records, now or hereafter existing relating to all types of personal and fixture property described in this paragraph (a)), rights and interests, present and future, tangible and intangible, which are owned by Debtor or in which Debtor otherwise has any rights, including without limitation all "accounts," "deposit accounts," "inventory," "equipment," "fixtures," "chattel paper," "documents," "instruments," "investment property," "letter of credit rights" and "general

intangibles,” as all such quoted terms are defined in or encompassed by the Code; and

(x) all proceeds, products and supporting obligations of any and all of the foregoing and, to the extent not otherwise included, any payments under insurance (whether or not Secured Party is the loss payee thereof) or under any indemnity, warranty or guaranty by reason of loss to or otherwise with respect to any of the foregoing.

In each case, the foregoing shall be covered by this Instrument, whether Debtor’s ownership or other rights therein are presently held or hereafter acquired (by operation of law or otherwise) and howsoever Debtor’s interests therein may arise or appear (whether by ownership, security interest, claim or otherwise) and whether owned jointly or severally, individually or collectively and wherever located.

(b) All of Debtor’s right, title and interest in and to all of the items incorporated as a part of or allocated or attributed to or used or held in connection with any of the real property interests described in Paragraph 1 in such a manner that such items are no longer personal property under applicable state law.

(c) All property, personal and real, tangible and intangible, and all rights and interests, tangible and intangible, of Debtor (whether now owned or hereafter acquired by operation of law or otherwise), or in which Debtor otherwise (whether now or hereafter) has any rights, located in, on, under, affixed, allocated or attributed to or obtained or used in connection with the Gas Transportation and Processing Facilities, including, without limitation, all accounts, deposit accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory, investment property and letter of credit rights, together with all proceeds and products of, and supporting obligations with respect to the foregoing (as such terms are defined in the Uniform Commercial Code currently in effect in the State of Missouri).

(d) All of the rights, privileges, benefits, hereditaments and appurtenances in any way belonging, incidental or appertaining to the estates, property, interests and rights described or referred to under paragraphs (a) through (c) above.

(e) All Debtor’s right, title and interest in, to, and under the properties, assets and rights of the Debtor located in the counties listed in Exhibit A hereto, or hereafter constructed or acquired by the Debtor, wherever located (the “Property”), including, without limitation, all of the items incorporated as part of or attributed to any of the Property in such a manner that such items are no longer personal property under applicable State of Missouri law and all of the rights, privileges, benefits, hereditaments and appurtenances in any way belonging, incidental or appertaining to any of the Property.

(f) All of the proceeds, products and supporting obligations of the estates, property, interests or rights described or referred to under paragraphs(a) through

(e) above, including without limitation, the proceeds of any and all insurance policies covering all or any part of said estates, property, interests or rights or under any indemnity, warranty or guaranty by reason of law or otherwise with respect to any of the foregoing.

GRANTING CLAUSES:

In consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Debtor, and the matters hereinafter set forth, Debtor hereby:

A. **Real Property.** Grants, bargains, sells, mortgages, assigns, transfers, conveys and grants a security interest to Secured Party, with POWER OF SALE pursuant to this Instrument and applicable law, that part of the Collateral that is real property (including the Property and any fixtures that are real property under applicable state law), subject to the assignment of Profits and proceeds made under paragraph C below; TO HAVE AND TO HOLD all of the Collateral that is real property (including any fixtures that are real property under applicable state law), together with all of the rights, privileges, benefits, hereditaments and appurtenances in any way belonging, incidental or pertaining thereto, to Secured Party and its successors and assigns, forever, for the security and benefit of Secured Party and its successors and assigns; subject to all of the terms, conditions, covenants, agreements and trusts herein set forth;

B. **Personal Property.** Grants to Secured Party a security interest in that part of the Collateral that is personal property (including any fixtures that are personal property under applicable state law); and

C. **Assignment of Profits.** Absolutely assigns to Secured Party all rents, royalties, issues, profits and income in, to or relating to the Collateral or to any of the estates, property rights or other interests described or referred to above and all Revenues together with all of the proceeds thereof and payments in lieu thereof (collectively, the foregoing are the "Profits").

ARTICLE I

OBLIGATIONS SECURED

This Instrument is executed, acknowledged and delivered by Debtor to secure and enforce the following indebtedness, liabilities and obligations (the "Obligations"):

(a) **Promissory Notes.** All indebtedness (including principal, interest, fees and penalties) evidenced by: (i) that certain Promissory Note dated September __, 2008 from the Debtor to the Secured Party evidencing the Obligations of the Debtor related to the 2008B Letter of Credit, including any amendments or modifications thereof; (ii) that certain Promissory Note dated September __, 2008 from the Debtor to the Secured Party evidencing unreimbursed obligations of the Secured Party in connection with the Line of Credit and the Improvement Letters of Credit including any amendments or modifications thereof; and (iii) any other promissory notes from the Debtor to the

Secured Party related to Letters of Credit issued to secure the Bonds or related to the Line of Credit, including any amendments or modifications thereof (collectively, the “Notes”).

(b) ***Reimbursement Agreement.*** All indebtedness and obligations evidenced by the Reimbursement Agreement, as amended from time-to-time, between Debtor and Secured Party.

(c) ***Environmental Indemnity Agreement.*** All indebtedness evidenced by that certain Environmental Indemnity Agreement (the “Environmental Indemnity”), dated as of September ___, 2008, given by the Debtor to the Secured Party.

(d) ***General Security Agreement.*** All indebtedness evidenced by that certain General Security Agreement (the “General Security Agreement”), dated as of September ___, 2008, given by the Debtor to the Secured Party.

(e) ***This Instrument.*** All indebtedness payable by Debtor pursuant to the provisions of and evidenced by this Instrument, including, without limitation, any amounts advanced to protect the liens and security interests herein granted and all reasonable attorneys’ fees, court costs, and expenses of whatever kind or character now existing or hereafter created or arising, incident thereto or to the collection of the indebtedness, liabilities and obligations hereby secured and enforcement of the liens and security interests herein granted and created.

(f) ***Other Obligations.*** All other indebtedness payable by Debtor to Secured Party of whatever kind or character now existing or hereafter created or arising, whether fixed, absolute or contingent, direct or indirect, primary or secondary, joint, several or joint and several, due or to become due, and however evidenced whether by note, open account, overdraft, endorsement, security agreement, guarantee or otherwise, it being contemplated that Debtor may hereafter become indebted to Secured Party in such further sum or sum.

(g) ***Renewals, Extensions and Amendments.*** All indebtedness evidenced by all renewals, extensions and restatements of, modifications, changes, amendments and supplements to and substitutions for, all or any part of the foregoing.

ARTICLE II

WARRANTIES, REPRESENTATIONS, COVENANTS AND INDEMNITIES

Section 2.01. Debtor Warrants and Represents to Secured Party as Follows:

(a) ***Authority and Power.*** Debtor is a corporation validly existing and in good standing under the laws of the State of Colorado, is qualified to conduct business in the State of Missouri, and has the requisite corporate power to own, lease and operate its properties and to carry on its business as now being conducted. Debtor is duly qualified to do business and is in good standing in each jurisdiction in which the character or location of the properties owned or leased by Debtor or the nature of the business

conducted by Debtor makes such qualification necessary or advisable. Debtor has the requisite corporate power to execute, deliver and perform this Instrument and the documents and instruments executed in connection therewith, and to consummate the transactions contemplated thereby. The execution and delivery of this Instrument and the documents and instruments executed in connection therewith by Debtor and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of Debtor. Each of this Instrument and the documents and instruments executed by Debtor in connection therewith has been duly executed and delivered by Debtor and constitutes a legal, valid and binding obligation of Debtor and is enforceable against Debtor in accordance with its terms.

(b) ***Title to Collateral.*** Debtor is the lawful owner of marketable title to the Collateral free and clear of all burdens, charges, liens, security interests, encumbrances, agreements, contracts, assignments and other matters, except for Permitted Encumbrances (as defined in the Reimbursement Agreement).

(c) ***Compliance With Laws.*** All laws, rules, regulations, ordinances and orders of all local, tribal, state and federal governmental bodies, authorities and agencies having jurisdiction over the Collateral have been complied with in all material respects. Without limiting the generality of the foregoing, the use and operation of the Collateral as it is currently used and its contemplated use do not violate and are in full compliance with all land use, zoning and similar laws, rules, regulations, ordinances, orders and permits, including, without limitation, the Permits.

(d) ***Information.*** All information furnished to Secured Party concerning the Collateral is accurate and complete in all material respects.

(e) ***Condition of Tangible Property.*** The inventory, equipment, fixtures and other tangible personal property forming a part of the Collateral (including, without limitation, the Equipment) are in good repair and condition and will be adequate for the normal operation of the Gas Distribution Facilities in accordance with prudent industry standards. All of such Collateral is or will be located on the lands covered by the Easements.

(f) ***Claims and Proceedings.*** There are no suits, actions, claims, investigations, inquiries, proceedings or demands pending or threatened that affect the Collateral (including, without limitation, any which challenge or otherwise pertain to Debtor's title to the Collateral).

(g) ***Place of Business.*** Debtor's principal place of business and chief executive office, and the place where Debtor keeps its books and records concerning the Collateral (including, without limitation, the records with respect to Profits and other accounts, contract rights and general intangibles), is the address set forth in the introduction to this Instrument.

(h) ***Consents and Preferential Rights To Purchase.*** Except as specifically set forth in Exhibit F, there are no preferential rights to purchase all or any portion of the

Collateral and there are no rights of third parties to consent to the transfer of all or any portion of the Collateral.

(i) ***Taxes.*** All ad valorem, property, production, severance, excise and similar taxes and assessments based on or measured by the ownership of property or the receipt of proceeds therefrom relating to the Collateral that have become due and payable have been properly and timely paid.

(j) ***Non-Foreign Person Status.*** Debtor is not a “foreign person” within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”), Sections 1445 and 7701; that is, Debtor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and any regulations promulgated thereunder.

(k) ***Accounts and General Intangibles.*** Each account and general intangible included in the Collateral represents the valid and legally binding indebtedness or obligation of a bona fide account debtor or obligor arising from the sale or lease by Debtor of goods or the rendition by Debtor of services and is not subject to contra-accounts, setoffs, defenses or counterclaims by or available to account debtors or obligors obligated on the accounts and general intangibles except as disclosed to Secured Party in writing. Goods which have been delivered to, and services which have been rendered by Debtor to the account debtor or obligor have been accepted by the account debtor or obligor, and the amount shown as to each account or general intangible on Debtor’s books is the true and undisputed amount owing and unpaid thereon, subject only to discounts, allowances, rebates, credits and adjustments to which the account debtor or obligor has a right and which have been disclosed to Secured Party in writing.

(l) ***Adequacy of Collateral.*** Debtor owns and the Collateral includes all property, personal and real, tangible and intangible, (including, without limitation, all rights-of-way, easements, licenses, franchises, technology, trade secrets, inventions, designs, patents, trademarks, trade names and privileges) necessary or appropriate for the proper use and operation of the Gas Transportation and Processing Facilities in accordance with customary industry practices and as currently used and operated and as it is contemplated to be used and operated in the future. The Gas Transportation and Processing Facilities constitute substantially all of the assets and properties, real and personal, tangible and intangible, of Debtor.

(m) ***Rentals and Payments.*** All rentals and other payments due under the Easements and the Permits have been properly and timely paid and all conditions necessary to keep the same in full force and effect have been fully performed. The Easements and Permits are in full force and effect, are valid and subsisting, cover the entire interests and rights they purport to cover and contain no express provisions that require any material operations in order to earn, own or continue to hold all or any part thereof.

(n) ***Defaults.*** There is no default under any of the Easements, the Contracts or the Permits and, except for the Easements, Contracts and Permits, there are no material

contracts or other agreements pertaining to the Gas Transportation and Processing Facilities or necessary for the proper use and operation thereof.

Section 2.02. Covenants. Debtor covenants and agrees as follows:

(a) ***Payment of Taxes and Charges.*** Debtor shall duly pay and discharge before the same shall become overdue all taxes, assessments and other governmental charges imposed upon Debtor and its properties, sales and activities, or any part thereof, or upon the income or profits therefrom, or burdening the Collateral, as well as all claims for labor, materials or supplies, including all such claims incurred in connection with operation of the Collateral, which if unpaid might by law become a lien or charge upon any of its property; provided, however, that any such tax, assessment, charge, levy or claim need not be paid if the validity or amount thereof shall currently be contested by Debtor in good faith by appropriate proceedings and if Debtor shall have escrowed with a third-party escrow agent for the benefit of Secured Party adequate reserves with respect thereto; and provided, further, that Debtor shall pay all such taxes, assessments, charges, levies or claims forthwith upon the commencement of proceedings to foreclose any lien which may have attached as security therefor.

(b) ***Filings.*** Debtor shall: (i) promptly, and at Debtor's own expense, file in such offices, at such times and as often as may be necessary, this Instrument and every other instrument in addition or supplemental hereto, including applicable financing statements, as may be necessary to create, perfect, maintain and preserve the liens and security interests intended to be created hereby and the rights and remedies of Secured Party hereunder; (ii) promptly furnish to Secured Party evidence satisfactory to Secured Party of all such filings; (iii) otherwise do all things necessary or expedient to be done effectively to create, perfect, maintain and preserve the liens and security interests intended to be created hereby as a first lien on real property and fixtures included within the Collateral and a first priority security interest in personal property and fixtures included within the Collateral; and (iv) execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, to Secured Party such other and further instruments and do such other acts as in the reasonable opinion of Secured Party may be necessary or desirable to effect the intent of this Instrument, promptly upon request of Secured Party and at Debtor's expense.

(c) ***Maintenance of Collateral—Negative Covenants.*** Without the prior written consent of Secured Party, which shall not be unreasonably withheld, Debtor shall not (i) amend, modify or otherwise revise any lease, license or other agreement pertaining to or included in the Collateral (including, without limitation, the Easements and the Permits) in any material respect; (ii) release, surrender, abandon or forfeit the Collateral or any material part thereof; (iii) sell, convey, assign, lease, sublease, alienate, mortgage or grant security interests in or otherwise dispose of or encumber the Collateral or any part thereof, except sales of inventory in the ordinary course of Debtor's business and for fair consideration and except for personal property that is replaced by equivalent property or consumed in the normal operation of the Gas Transportation and Processing Facilities or that is disposed of or traded-in as permitted under the Reimbursement Agreement; (iv) transport or remove the Collateral from the lands covered by the Easements; or

(v) consent to, permit or authorize any such act by another party with respect to the Collateral or any part thereof; provided Debtor shall have the right without such consent to negotiate, renegotiate, amend, terminate, cancel or otherwise modify contracts and agreements pertaining to the purchase, sale, distribution and/or transportation of Hydrocarbons provided such action does not materially impair or diminish the use, operation or value of the Collateral.

(d) ***Maintenance of Collateral—Affirmative Covenants.*** Debtor shall, at Debtor's own expense, (i) take all reasonably necessary steps to keep in full force all rights-of-way, easements, licenses, franchises, technology, trade secrets, inventions, designs, patents, trademarks, trade names and privileges necessary or appropriate for the proper operation of the Collateral (including, without limitation, the Easements and the Permits), by the proper payment of all sums due thereunder and the proper performance of all obligations and other acts required thereunder; (ii) take all reasonably necessary steps to cause the Collateral to be properly maintained, developed and continuously operated in a good and workmanlike manner as a prudent operator would in accordance with good industry practice and applicable federal, state, tribal and local laws, rules, regulations and orders; (iii) take all reasonably necessary steps to pay or cause to be paid when due all expenses incurred in connection with such maintenance, development, operation and protection of the Collateral; (iv) take all reasonably necessary steps to keep all goods, including equipment, inventory and fixtures included in the Collateral (including, without limitation, the Equipment) in good and effective repair, working order and operating condition and make all repairs, renewals, replacements, substitutions, additions and improvements thereto and thereof as are necessary and proper; (v) permit Secured Party, and its respective agents, employees, contractors, designees and consultants, to enter upon the Collateral for the purpose of investigating and inspecting the condition and operation of the Collateral, and do all things reasonably necessary or proper to enable Secured Party to exercise this right whenever Secured Party so desires; and (vi) do all other things necessary to keep unimpaired Secured Party's interests in the Collateral.

(e) Debtor shall acquire and continue to maintain, with financially sound and reputable insurers, insurance with respect to its properties and business against such liabilities, casualties, risks and contingencies in the manner and in such types and amounts as is customary in the case of parties engaged in the same or similar businesses and similarly situated; provided, that Debtor shall maintain liability insurance in the amount of not less than \$[1,000,000] per occurrence with a deductible not to exceed \$[5,000]. All policies shall name Secured Party as a loss payee, shall contain a standard lender's loss payable endorsement in the case of casualty insurance, shall name Secured Party as an additional insured in the case of liability insurance and shall contain a cancellation clause requiring 30 days' prior written notice to Secured Party prior to cancellations. Debtor shall furnish or cause to be furnished copies of certificates of insurance relating to such insurance to Secured Party prior to funding and from time-to-time a summary of the insurance coverage of Debtor in form and substance satisfactory to Secured Party and if requested will furnish Secured Party copies of the applicable policies. In the case of any fire, accident or other casualty causing loss or damage to the properties of Debtor, the proceeds of such policies shall be used (i) to

repair or replace the damaged property; or (ii) notwithstanding any restriction on prepayment, to prepay the Obligations in accordance with Section 3.02 below.

(f) **Records.** Debtor shall keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with generally accepted accounting principles and shall maintain adequate accounts and reserves for all taxes (including income taxes) and loan amortization.

(g) **Maintenance of Title.** Debtor shall maintain its title to the Collateral in its current state and as represented and warranted in Section 2.01(b) above. Debtor shall warrant and forever defend its right, title interest in and to the Collateral against the claims and demands of every person whatsoever claiming or which may claim the same or any part thereof, subject only to Permitted Encumbrances.

(h) **Authority of Power.** Debtor shall (i) do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights and franchises; and (ii) continue to be duly authorized to execute, acknowledge and deliver this Instrument and the documents and instruments executed in connection herewith and to observe and perform its duties hereunder and thereunder.

(i) **Place of Business.** Debtor shall not change its name or change its principal place of business, chief executive office, or the place where Debtor keeps its books and records concerning the Collateral (including, without limitation, the records with respect to the proceeds of production from the Collateral and other accounts and contract rights and general intangibles), unless it has provided not less than 30 days' prior written notice to Secured Party of such change and made all filing requested by Secured Party.

(j) **Accounts and General Intangibles.** Debtor shall collect, at its own expense, all amounts due or to become due under all of the accounts and general intangibles included in the Collateral. In connection with such collections, Debtor may (and, at Secured Party's direction, shall) take such action as Secured Party may deem necessary or advisable to enforce collection or performance of each of the accounts and general intangibles included in the Collateral to the extent the cost of such action does not exceed the amount of such accounts or general intangibles. Debtor shall duly perform and cause to be performed all of its obligations with respect to the goods or services, sale or lease or rendition of which gave rise or will give rise to each account included in the Collateral and shall duly perform or cause to be performed all of its obligations, if any, to be performed under or with respect to the general intangibles included in the Collateral. Debtor shall not adjust, settle, compromise, amend or modify any of the Collateral, other than (i) an adjustment, settlement, compromise, amendment or modification in good faith and in the ordinary course of business, other than during the continuance of an Event of Default, as hereinafter defined, of any account; and (ii) any adjustment, settlement, compromise, amendment or modification, other than during the continuance of an Event of Default, of any general intangible which does not detrimentally affect the rights or benefits of Secured Party hereunder or the value of such general intangible to Secured Party hereunder.

(k) ***Notification of Breach.*** Debtor shall promptly notify Secured Party (i) if any representation or warranty of Debtor contained in this Agreement is discovered to be or becomes untrue, or (ii) Debtor fails to perform or comply with any covenant or agreement contained in this Agreement or it is reasonably anticipated that Debtor will be unable to perform or comply with any covenant or agreement contained in this Agreement. Debtor shall cause all the representations and warranties of Debtor contained in this Agreement to be true and correct in all material respects from time-to-time and all times.

(l) ***Defense of Title.*** If the title or interest of Debtor or Secured Party to the Collateral or any part thereof, or the lien or encumbrance created by this Instrument, or the rights or powers of Secured Party hereunder, shall be attacked, either directly or indirectly, or if any legal proceedings are commenced against Debtor or the Collateral, Debtor shall promptly give written notice thereof to Secured Party and at Debtor's own expense shall take all reasonable steps diligently to defend against any such attack or proceedings, employing attorneys acceptable to Secured Party. Secured Party may take such independent action in connection therewith as they may in its discretion deem advisable, and all costs and expenses, including, without limitation, attorneys' fees and legal expenses, incurred by or on behalf of Secured Party in connection therewith shall be a demand obligation owing by Debtor to Secured Party and shall bear interest at the Overdue Rate, as defined in the Reimbursement Agreement, until paid, and shall constitute a part of the Obligations and be indebtedness secured and evidenced by this Instrument.

(m) ***Environmental Matters.*** Debtor shall comply with all environmental requirements as are set forth in the Reimbursement Agreement and the Environmental Indemnity.

(n) ***Further Assurances.*** Debtor shall execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, to Secured Party such other and further instruments and do such other acts as in the reasonable opinion of Secured Party may be necessary or desirable to effect the intent of this Instrument, promptly upon request of Secured Party and at Debtor's expense.

Section 2.03. Costs, Expenses and Indemnities. Debtor agrees to pay and indemnify Secured Party as follows:

(a) ***Costs and Expenses.*** Debtor shall indemnify Secured Party from and reimburse and pay Secured Party for all fees, costs and expenses (including, without limitation, attorneys' fees, court costs and legal expenses and consultant's and expert's fees and expenses), incurred or expended by Secured Party in connection with (i) the breach by Debtor of any representation or warranty contained in this Instrument, the Reimbursement Agreement, the Notes or any other documents and instruments evidencing, securing or otherwise relating to the Obligations; (ii) the failure by Debtor to perform any agreement, covenant, condition, indemnity or obligation contained in this Instrument, the Reimbursement Agreement, the Notes or any other documents and instruments evidencing, securing or otherwise relating to the Obligations; (iii) Secured

Party's exercise of any of its rights and remedies under this Instrument, the Reimbursement Agreement, the Notes and the other documents and instruments evidencing, securing or otherwise relating to the Obligations; or (iv) the protection of the Collateral and the liens thereon and security interests therein. All such fees, costs and expenses shall be a demand obligation owing by Debtor to Secured Party and shall bear interest at the Overdue Rate until paid, and shall constitute a part of the Obligations and be indebtedness secured and evidenced by this Instrument. The liabilities of Debtor as set forth in this Section 2.03(a) shall survive the termination of this Instrument.

(b) **Indemnity.** Debtor shall indemnify and hold harmless Secured Party and persons or entities owned or controlled by or affiliated with Secured Party and its respective directors, officers, shareholders, partners, employees, consultants and agents (herein individually, an "Indemnified Party," and collectively, "Indemnified Parties") from and against, and reimburse and pay Indemnified Parties with respect to, any and all claims, demands, liabilities, losses, damages (including, without limitation, actual, consequential, exemplary and punitive damages), causes of action, judgments, penalties, fees, costs and expenses (including, without limitation, attorneys' fees, court costs and legal expenses and consultant's and expert's fees and expenses), of any and every kind or character, known or unknown, fixed or contingent, that may be imposed upon, asserted against or incurred or paid by or on behalf of any Indemnified Party on account of, in connection with, or arising out of (i) any bodily injury or death or property damage occurring in or upon or in the vicinity of the Collateral through any cause whatsoever; (ii) any act performed or omitted to be performed hereunder or the breach of or failure to perform any warranty, representation, indemnity, covenant, agreement or condition contained in this Instrument, the Reimbursement Agreement, the Notes or any other documents and instruments evidencing, securing or relating to the Obligations; (iii) any transaction, act, omission, event or circumstance arising out of or in any way connected with the Collateral or with this Instrument, the Reimbursement Agreement, the Notes or any other documents and instruments evidencing, securing or relating to the Obligations, and (iv) the violation of or failure to comply with any statute, law, rule, regulation or order, including without limitation, Environmental Laws (as such term is defined in the Reimbursement Agreement) and statutes, laws, rules, regulations and orders relating to Hazardous Substances or Solid Waste. Without limiting the generality of the foregoing, it is the intention of Debtor and Debtor agrees that the foregoing indemnities shall apply to each Indemnified Party with respect to claims, demands, liabilities, losses, damages (including, without limitation, actual, consequential, exemplary and punitive damages), causes of action, judgments, penalties, fees, costs and expenses (including, without limitation, attorneys' fees, court costs and legal expenses and consultant's and expert's fees and expenses) of any and every kind or character, known or unknown, fixed or contingent, that in whole or in part are caused by or arise out of the negligence of such Indemnified Party; however, such indemnities shall not apply to any Indemnified Party to the extent the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of such Indemnified Party. The foregoing indemnities shall not terminate upon the release, foreclosure or other termination of this Instrument, but shall survive the foreclosure of the liens and security interests created by this Instrument or conveyance in lieu of foreclosure and the repayment and performance of the Obligations and the discharge and release of the liens and security interest created by

this Instrument and the other instruments and documents evidencing, securing or relating to the Obligations. Any amount to be paid hereunder by Debtor to Secured Party or for which Debtor has indemnified an Indemnified Party shall be a demand obligation owing by Debtor to Secured Party and shall bear interest at the Overdue Rate until paid, and shall constitute a part of the Obligations and be indebtedness secured and evidenced by this Instrument. The rights, powers and remedies herein conferred are cumulative, and not exclusive, of any and all other rights, powers and remedies existing at law or in equity (including, without limitation, rights, powers and remedies under Environmental Laws) or provided for in any other documents or instruments evidencing, securing or relating to the Obligations and nothing in this paragraph (b) or elsewhere in this Instrument or in any other documents or instruments evidencing, securing or relating to the Obligations shall limit or impair any rights, powers or remedies of Secured Party under any Environmental Laws, including without limitation any rights of contribution or indemnification available thereunder. The liabilities of Debtor as set forth in this Section 2.03(b) shall survive the termination of this Instrument.

Section 2.04. Performance by Secured Party. Debtor agrees that, if Debtor fails to perform any act which Debtor is required to perform hereunder, Secured Party may, but shall not be obligated to, perform or cause to be performed such act, and any expense so incurred by Secured Party in connection therewith shall be a demand obligation owing by Debtor to Secured Party and shall bear interest at the Overdue Rate until paid, and shall constitute a part of the Obligations and be indebtedness secured and evidenced by this Instrument, and Secured Party shall be subrogated to all of the rights of the party receiving such payment. Debtor hereby irrevocably appoints Secured Party as Debtor's attorney-in-fact and proxy, with full authority in the place and stead of Debtor and in the name of Debtor or otherwise, from time-to-time to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Instrument. Such appointment is coupled with an interest and shall be irrevocable from the date hereof and so long as any part of the Obligations is outstanding.

ARTICLE III

COLLECTION OF PROFITS

Section 3.01. Assignment of Profits. Pursuant to paragraph C of the granting clause of this Instrument, Secured Party is absolutely assigned and entitled to receive all of the Profits allocated or attributed to all of the Collateral, together with all of the proceeds thereof and payments in lieu thereof. Debtor acknowledges and agrees that said assignment is intended to be an absolute and unconditional assignment and not merely a pledge of or creation of a security interest in said Profits and proceeds or an assignment as additional security. All parties producing, purchasing, receiving or having in its possession any such Profits or proceeds are hereby authorized and directed by Debtor to treat and regard Secured Party as the party entitled in Debtor's place and stead to receive such Profits and proceeds; and said parties shall be fully protected in so treating and regarding Secured Party and shall be under no obligation to see to the application by Secured Party of any such proceeds received by it. For its convenience, Secured Party may, with respect to any or all such Profits or proceeds, permit Debtor to receive such Profits or proceeds until such time as Secured Party shall have made written demand therefor.

Such election by Secured Party shall not in any way waive the right of Secured Party to demand and receive such Profits and proceeds thereafter allocated or attributed to the Collateral and shall not in any way diminish the absolute and unconditional right of Secured Party to receive all of such Profits and proceeds and cash proceeds not theretofore expended or distributed by Debtor. Any such Profits or proceeds received by Debtor shall, when received, constitute trust funds in Debtor's hands and shall be held by Debtor for the benefit of Secured Party. Debtor hereby agrees that upon the first to occur of either (a) written demand of Secured Party, or (b) the occurrence of any event which constitutes an Event of Default, as hereinafter defined, or which upon the giving (or receiving) of notice or lapse of time, or both, would constitute such an Event of Default, all cash, proceeds, instruments and other property, of whatever kind or character, received by Debtor on account of the Collateral, whether received by Debtor in the exercise of its collection rights hereunder or otherwise, shall, in accordance with instructions then given by Secured Party, be remitted to Secured Party or deposited to an account designated by Secured Party, in the form received (properly assigned or endorsed to the order of Secured Party or for collection and in accordance with Secured Party's instructions) not later than the first banking business day following the day of receipt, to be applied as provided in Section 3.02 hereof and, until so applied, may be held by Secured Party in a separate account on which Debtor may not draw. Debtor agrees not to commingle any such property, following the receipt of any such demand from Secured Party or the occurrence of an Event of Default, with any of its other funds or property and agrees to hold the same upon an express trust for Secured Party until remitted to Secured Party.

Section 3.02. Application of Proceeds. Secured Party shall apply all of the proceeds received pursuant to Section 3.01 hereof in satisfaction of the Obligations as provided below, unless otherwise agreed to by Secured Party and Debtor. All such proceeds received and to be applied by Secured Party up to the close of business on the last day of each calendar month shall be applied by Secured Party on or before the fifth business day of the next succeeding calendar month as follows (with any balance remaining after such application to be paid to Debtor):

FIRST, to the payment to Secured Party of all outstanding or unreimbursed fees, costs and expenses incurred by Secured Party pursuant hereto, and any part of the Obligations not evidenced by written instrument, including without limitation, all charges and penalties, including interest thereon, due Secured Party;

SECOND, to the payment or prepayment of all interest accrued on the Obligations; and

THIRD, to the payment or prepayment of the principal of the Obligations in any order the Secured Party may elect from time-to-time.

If any date of application specified above shall be a Saturday, Sunday or legal holiday, the proceeds to be applied by Secured Party pursuant to this Section 3.02 shall be applied on the business day next succeeding such date which is not a Saturday, Sunday or legal holiday, and the amount to be applied as described above shall be the amount accrued up to such date. If the proceeds received by Secured Party pursuant to Section 3.01 during any month are not sufficient to make the minimum payments of principal of and interest on the Obligations required by the terms of the Reimbursement Agreement or the Notes, then Debtor on or before the due date shall

make payment to Secured Party of an amount sufficient when added to such proceeds received to make the minimum required payments of principal and interest of the Obligations.

Section 3.03. Inclusion in Sale. Upon any sale of any of the Collateral pursuant to Article V hereof and expiration of any mandatory redemption periods, the Profits thereafter produced from or attributed to the part of the Collateral so sold, and the proceeds thereof, shall be included in such sale and shall pass to the purchaser free and clear of the provisions of this Article III.

Section 3.04. No Liability in Secured Party. Secured Party is hereby absolved from all liability for failure to enforce collection of any such proceeds and from all other responsibility in connection therewith, except the responsibility to account to Debtor for proceeds actually received.

Section 3.05. Indemnity. Debtor shall indemnify Secured Party against all claims, actions, liabilities, judgments, costs, attorneys' fees or other charges of every kind or nature ("Claims") made against or incurred by Secured Party as a consequence of the assertion, either before or after the payment in full of the Obligations, that Secured Party received Profits or proceeds pursuant to this Article III which were claimed by third persons. Secured Party shall have the right to employ attorneys and to defend against any Claims, and unless furnished with reasonable indemnity, Secured Party shall have the right to pay or compromise and adjust all Claims. Debtor shall indemnify and pay to Secured Party all such amounts as may be paid with respect thereto or as may be successfully adjudicated against Secured Party, and such amounts shall be a demand obligation owing by Debtor to Secured Party and shall bear interest at the Overdue Rate until paid, and shall constitute a part of the Obligations and be indebtedness secured and evidenced by this Instrument. The liabilities of Debtor as set forth in this Section 3.05 shall survive the termination of this Instrument.

Section 3.06. Rights of Secured Party. Secured Party shall have the immediate and continuing right to demand, collect, receive and receipt for all production, proceeds and payments assigned hereunder, and Secured Party is hereby appointed agent and attorney-in-fact of Debtor (which appointment is coupled with an interest and is irrevocable) for the purpose of executing any release, receipt, division order, transfer order, relinquishment or other instrument that Secured Party deems necessary in order for Secured Party to collect and receive such production, proceeds and payments. In addition, Debtor agrees that, upon the request of Secured Party, it will promptly execute and deliver to Secured Party such transfer orders, payment orders, division orders and other instruments as Secured Party may deem necessary, convenient or appropriate in connection with the payment and delivery directly to Secured Party of all proceeds, production, and payments assigned hereunder. Debtor hereby authorizes and directs that, upon the request of Secured Party, all pipeline companies, purchasers, transporters and other parties now or hereafter purchasing oil, gas or other mineral production produced from or allocated or attributed to the Collateral or any other interest of Debtor (whether now owned or hereafter acquired by operation of law or otherwise), in, to or relating to the Gas Transportation and Processing Facilities or to any of the estates, property, rights or other interests included in the Collateral, or any part thereof, or now or hereafter having in its possession or control any production from or allocated to the Collateral or any other interest of Debtor (whether now owned or hereafter acquired by operation of law or otherwise), in, to or relating to the Gas

Transportation and Processing Facilities or to any of the estates, property, rights or other interests included in the Collateral, or any part thereof, or the proceeds therefrom, or now or hereafter otherwise owing moneys to Debtor under contracts and agreements herein assigned, shall, until Secured Party directs otherwise, pay and deliver such proceeds, production or amounts directly to Secured Party at Secured Party's address set forth in the introduction to this Instrument, or in such other manner as Secured Party may direct such parties in writing, and this authorization shall continue until the assignment of profits and proceeds contained herein is released and reassigned. Debtor agrees that all division orders, transfer orders, receipts and other instruments that Secured Party may from time-to-time execute and deliver for the purpose of collecting and receipting for such proceeds, production or payments may be relied upon in all respects, and that the same shall be binding upon Debtor and its successors and assigns. No payor making payments to Secured Party at its request under the assignment of production and proceeds contained herein shall have any responsibility to see to the application of any of such funds, and any party paying or delivering proceeds, production or amounts to Secured Party under such assignments shall be released thereby from any and all liability to Debtor to the full extent and amount of all payments, production or proceeds so delivered. Debtor agrees to indemnify and hold harmless any and all parties making payments to Secured Party, at the request of the Secured Party under the assignment of production and proceeds contained herein, against any and all liabilities, actions, claims, judgments, costs, charges and attorneys' fees and legal expenses resulting from the delivery of such payments to Secured Party. The indemnity agreement contained in the previous sentence is made for the direct benefit of and shall be enforceable by all such persons and shall survive the termination of this Instrument. Should Secured Party bring suit against any third party for collection of any amounts or sums included within the assignment of production and proceeds contained herein (and Secured Party shall have the right to bring any such suit), it may sue either in its own name or in the name of Debtor, or both.

Section 3.07. No Delegation or Assumption. Nothing in this Instrument shall be deemed or construed to create a delegation to or assumption by Secured Party, of the duties and obligations of Debtor under any agreement or contract relating to the Collateral or any portion thereof, and all of the parties to any such contract shall continue to look to Debtor for performance of all covenants and other obligations and the satisfaction of all representations, warranties, covenants, indemnities and other agreements of Debtor thereunder, notwithstanding the assignment of profits and proceeds contained herein or the exercise by Secured Party, prior to foreclosure, of any of its rights hereunder or under applicable law.

Section 3.08. Cumulative. The assignment of profits and proceeds contained herein shall not be construed to limit in any way the other rights and remedies of Secured Party hereunder, including, without limitation, its right to accelerate the indebtedness evidenced by the Obligations upon an Event of Default and the other rights and remedies herein conferred, conferred in the other documents and instruments evidencing, securing or relating to the Obligation, or conferred by operation of law. Moneys received under the assignment of profits and proceeds contained herein shall not be deemed to have been applied in payment of the Obligations unless and until such moneys actually are applied thereto by Secured Party.

ARTICLE IV

TERMINATION AND RELEASE

Section 4.01. Release Upon Termination. If all of the Obligations shall be paid in full and otherwise satisfied pursuant to the terms and conditions of this Instrument and the other documents and instruments evidencing, securing or relating to the Obligations, and if Debtor shall have well and truly performed all of the covenants and agreements herein contained, and if Secured Party has no further obligation to advance any amounts to Debtor, then all of the Collateral shall revert to Debtor, the liens and security interests created by this Instrument shall terminate and Secured Party shall, promptly after the request of Debtor, execute, acknowledge and deliver to Debtor a request to the Secured Party to release this Instrument, and Secured Party shall execute such other instruments as may be necessary to evidence the termination of the liens and security interests created by this Instrument.

Section 4.02. Partial Release. No partial release from the liens and security interests created by this Instrument of any part of the Collateral by Secured Party shall in any way alter, vary or diminish the force or effect of this Instrument or impair, release or subordinate the liens and security interests created by this Instrument on the remainder of the Collateral.

Except as specifically provided in any such partial release (a) this Instrument and liens and security interests created hereby shall remain in full force and effect; (b) such partial release will not modify or affect the terms, conditions or provisions of this Instrument; and (c) nothing contained in any such partial release or reconveyance shall be deemed to be, or construed as, a waiver of any such terms, conditions or provisions or as a waiver of any other term, condition or provision.

Section 4.03. Costs, Expenses and Effect. Debtor shall pay all legal fees and other fees, costs and expenses incurred by Secured Party for preparing and reviewing instruments of termination and release and the execution and delivery thereof and Secured Party may require payment of the same prior to delivery of such instruments. The release of this Instrument and the termination of the liens and security interests created by this Instrument, shall not terminate or otherwise affect Secured Party's right or ability to exercise any right, power or remedy relating to any claim for breach of warranty or representation, for failure to perform any covenant or other agreement, under any indemnity or for fraud, deceit or other misrepresentation or omission.

ARTICLE V

DEFAULT

Section 5.01. Events of Default. The occurrence of any of the following events shall constitute an event of default ("Event of Default") and upon the occurrence thereof the liens and security interests created hereby shall be subject to foreclosure in any manner provided for herein or provided for by applicable law:

- (a) failure of Debtor to pay as and when provided herein any fee or other amount due Secured Party under this Instrument when due;

(b) failure of Debtor to perform or observe any covenant, agreement, indemnity, condition or provision in this Instrument;

(c) any of Debtor's representations or warranties made in this Instrument or any statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be false or misleading in any material respect as of the date made or deemed made; or

(d) an "Event of Default" as defined in the Reimbursement Agreement, the General Security Agreement or the Environmental Indemnity shall occur.

Section 5.02. Treatment of Fixtures. Upon the occurrence of any Event of Default, or at any time thereafter, if deemed appropriate by Secured Party or if required by applicable law, Secured Party may elect to treat the fixtures included in the Collateral either as real property or as personal property, or both, and proceed to exercise such rights as apply to the type of property selected.

Section 5.03. Foreclosure. Upon the occurrence of any Event of Default, or at any time thereafter, in addition to any other rights, powers and remedies herein conferred or conferred by operation of law, Secured Party shall have all of the rights, powers and remedies of a secured party, and a mortgagee, granted under applicable law. Secured Party may, without notice, demand or declaration of default, which are hereby waived by Debtor, proceed by one or more actions in equity or at law for the seizure and sale of the Collateral or any portion thereof, and subject to any mandatory requirements of applicable law, sell or have sold the real property included in the Collateral or any part thereof at one or more sales, as an entirety or in parcels, at such place or places and otherwise in such manner and upon such notice as may be required by law, or, in the absence of any such requirement, as Secured Party may deem appropriate, for the foreclosure or sale of the Collateral or any portion thereof by judicial foreclosure by appropriate proceedings in any court of competent jurisdiction, or in any other manner then permitted by law, for the specific performance of any covenant or agreement of Debtor herein contained or in aid of the execution of any right, power or remedy herein granted, for the appointment of a receiver pending any foreclosure hereunder or the sale of such real property or any part thereof or for the enforcement of any other appropriate equitable or legal remedy and to recover judgment against Debtor. In furtherance, and not in limitation, thereof:

(a) ***Mortgage.*** This Instrument shall constitute a mortgage under applicable law, and upon the occurrence of an Event of Default and during the continuance thereof may be foreclosed as to any of the Collateral by judicial action or in any manner then permitted by applicable law; and to the extent, if any, required to cause this Instrument to be so effective as a mortgage as well as a deed of trust, Debtor hereby mortgages the Collateral to Secured Party.

(b) ***Additional Actions.*** This Instrument shall also constitute and may be enforced from time-to-time as an assignment, chattel mortgage, contract, mortgage, financing statement and security agreement, and from time-to-time as any one or more thereof as appropriate under applicable law. Secured Party shall be entitled to all of the rights, remedies and benefits of a secured party, mortgagee and a beneficiary granted

under applicable law; and, to the fullest extent of such law, shall be entitled to enforce such rights, remedies and benefits. Debtor intends and hereby grants to Secured Party all rights, powers and remedies accorded a secured party, mortgagee and a beneficiary under applicable law whether or not such rights, powers and remedies are expressly granted or reserved herein.

(c) ***Notice, Place and Manner of Sale.*** Any sale of the Collateral under this Article V shall take place at such place or places and otherwise in such manner and upon such notice as may be required by law; or, in the absence of any such requirement, as Secured Party may deem appropriate. Debtor expressly agrees that Secured Party may offer the Collateral as a whole or in such parcels or lots as Secured Party elects, regardless of the manner in which the Collateral may be described. Debtor agrees that each of the Easements, Contracts, Equipment and Permits are encumbered by this Instrument as separate and distinct parcels and lots, and Secured Party may, subject to mandatory provisions of applicable law, have such property sold at one or more sales, as an entirety or in parcels.

(d) ***Postponement of Sale.*** Any sale of the Collateral conducted under this Article V may be postponed from time-to-time as provided by applicable law; or, in the absence of any such provisions, Secured Party may postpone the sale of the Collateral or any part thereof by public announcement at the time and place of such sale, and from time-to-time thereafter may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement. Sale of a part of the Collateral will not exhaust the power of sale, and sales may be made from time-to-time until all Collateral is sold or the Obligations are paid in full.

(e) ***Secured Party's Right To Purchase.*** Secured Party shall have the right to bid or to become the purchaser at any sale made pursuant to the provisions of this Article V, and shall have the right to credit upon the amount of the bid made therefor the amount payable to it out of the net proceeds of such sale.

(f) ***Conveyance to Purchaser.*** Any deed, bill of sale or other conveyance executed by or on behalf of Secured Party, the sheriff or other official or party responsible for conducting the sale shall be prima facie evidence of the compliance with all statutory requirements for the sale and execution of such deed, bill of sale or other conveyance and will conclusively establish the truth and accuracy of the recitals and other matters stated therein, including, without limitation, nonpayment or nonperformance of the Obligations, violation of the terms and covenants contained herein and the advertisement and conduct of such sale in the manner provided herein or as provided by applicable law. Debtor hereby ratifies and confirms all legal acts that Secured Party may do in carrying out the provisions of this Instrument. Any sale of the Collateral or any portion thereof pursuant to the provisions of this Article V will operate to divest all, right, title, interest, claim and demand of Debtor in and to the property sold and will be a perpetual bar against Debtor and shall, subject to applicable law, vest title in the purchaser free and clear of all liens, security interests and encumbrances, including without limitation, liens, security interests and encumbrances junior or subordinate to the liens, security interests and encumbrances created by this Instrument. Upon any sale of

the Collateral or any portion thereof pursuant to the provisions of this Article V, the receipt by Secured Party, the sheriff or other official or party responsible for conducting the sale, shall be sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers and the heirs, devisees, personal representatives, successors and assigns thereof shall not, after paying such purchase money and receiving such receipt of Secured Party, the sheriff or such other official or party, be obliged to see to the application thereof or be in anywise answerable for any loss, misapplication or nonapplication thereof. Any purchaser at a sale will, subject to mandatory redemption periods, if any, receive immediate possession of the Collateral purchased, and Debtor agrees that if Debtor retains possession of the Collateral or any part thereof subsequent to such sale, Debtor will be considered tenants at sufferance of the purchaser, and will, if Debtor remains in possession after demand to remove, be guilty of forcible detainer, and will be subject to eviction and removal, forcible or otherwise, with or without process of law and all damages to Debtor by reason thereof are hereby expressly waived by Debtor.

Section 5.04. Personal Property. Upon the occurrence of any Event of Default, or at any time thereafter, in addition to all other rights, powers and remedies herein conferred or conferred by operation of law, Secured Party shall have all of the rights and remedies of an assignee and secured party granted by applicable law, including, without limitation, the applicable Uniform Commercial Code as then in effect, and shall, to the extent permitted by applicable law, have the right and power, but not the obligation, to take possession of the personal property included in the Collateral and any proceeds thereof wherever located, and for that purpose Secured Party may enter upon any premises on which any or all of such personal property is located and take possession of and operate such personal property or remove the same therefrom. Secured Party may require Debtor to assemble such personal property and make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties. The following presumptions shall exist and shall be deemed conclusive with regard to the exercise by Secured Party of any of its remedies with respect to personal property:

(a) if notice is required by applicable law, Debtor agrees that 10 calendar days' prior written notice of the time and place of any public sale or of the time after which any private sale or any other intended disposition thereof is to be made shall be deemed reasonable notice to Debtor. No such notice is necessary if such property is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market; and

(b) if Secured Party in good faith believes that the Securities Act of 1933 or any other state or federal law prohibits or restricts the customary manner of sale or distribution of any of such property, Secured Party may sell such property privately or in any other manner deemed advisable by Secured Party at such price or prices as Secured Party determines in its sole discretion. Debtor recognizes that such prohibition or restriction may cause such property to have less value than it otherwise would have and that, consequently, such sale or disposition by Secured Party may result in a lower sales price than if the sale were otherwise held.

Section 5.05. Possession. Upon the occurrence of any Event of Default, or at any time thereafter, in addition to all other rights, powers and remedies herein conferred or conferred by operation of law, Secured Party shall, to the extent not prohibited by applicable law, have the right and power, but not the obligation, to enter upon and take immediate possession of the Collateral or any portion thereof, to exclude Debtor therefrom, to hold, use, operate, manage, enjoy and control such Collateral, to make all such repairs, replacements, alterations, additions and improvements to the same as Secured Party may deem proper or expedient, to sell all Hydrocarbons, to demand, collect and retain all other earnings, rents, issues, profits, proceeds and other sums due or to become due with respect to such Collateral accounting for and applying to the payment of the Obligations only the net earnings arising therefrom after charging against the receipts therefrom all fees, costs, expenses, charges, damages and losses incurred by reason thereof plus interest thereon at the Overdue Rate without any liability to Debtor in connection therewith. Such possession shall at once be delivered to Secured Party upon request, and on refusal or failure to so deliver possession, the delivery of such possession may be enforced by Secured Party by any appropriate civil suit or proceeding.

Section 5.06. Appointment of Receiver. Upon the occurrence of any Event of Default, or at any time thereafter, in addition to all other rights, powers and remedies herein conferred or conferred by operation of law, Secured Party shall be entitled to the appointment of a receiver of the Collateral without the necessity of the posting of a bond or notice; and shall, to the extent not prohibited by applicable law, be entitled to such receiver as a matter of right, without regard to the solvency or insolvency of Debtor, the value or adequacy of the Collateral or the Collateral being in danger of being materially injured or reduced in value as security by removal, destruction, deterioration, accumulation of prior liens or otherwise; and such receiver may be appointed by any court of competent jurisdiction upon ex parte application, and without notice, notice being expressly waived. Debtor does hereby consent to the appointment of such receiver or receivers, waive any and all defenses to such appointment, and agree not to oppose any application therefor by Secured Party, and agree that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Secured Party under this Article V. Nothing herein is to be construed to deprive Secured Party of any other right, remedy or privilege it may now or hereafter have under law to have a receiver appointed. Any money advanced by Secured Party in connection with any such receivership shall be a demand obligation owing by Debtor to Secured Party and shall bear interest, from the date of making such advancement until paid, at the Overdue Rate. Any such receiver shall have all powers conferred by the court appointing such receiver, which powers shall, to the extent not prohibited by applicable law include, without limitation, the right to enter upon and take immediate possession of the Collateral or any part thereof, to exclude Debtor therefrom, to hold, use, operate, manage and control such Collateral, to make all such repairs, replacements, alterations, additions and improvements to the same as such receiver or Secured Party may deem proper or expedient, to lease, sell or otherwise transfer the Collateral or any portion thereof as such receiver or Secured Party may deem proper or expedient, to sell all Hydrocarbons, to demand and collect all of the other earnings, rents, issues, profits, proceeds and other sums due or to become due with respect to such Collateral (including, without limitation, Profits), accounting for only the net earnings arising therefrom after charging against the receipts therefrom all fees, costs, expenses, charges, damages and losses incurred by reason thereof plus interest thereon at the Overdue Rate without any liability to Debtor in connection therewith which net earnings shall be turned over by such receiver to Secured Party

to be applied by Secured Party to the payment of the Obligations in the order set forth in Section 5.10.

Section 5.07. Waiver by Grantors. To the extent not prohibited by applicable law, Debtor agrees that Debtor shall not at any time have, invoke, utilize or assert any right under any laws pertaining to the marshalling of assets or liens, the sale of property in the inverse order of alienation, the exemption of homesteads, the administration of estates of decedents, appraisement, moratorium, valuation, stay, extension or redemption now or hereafter in force, and Debtor hereby waives the benefit of all such laws to the fullest extent not prohibited by applicable law.

Section 5.08. Remedies Cumulative. All rights, powers and remedies herein conferred are cumulative, and not exclusive, of (a) any and all other rights and remedies herein conferred; (b) any and all rights, powers and remedies existing at law or in equity; and (c) any and all other rights, powers and remedies provided for in any other documents or instruments evidencing, securing or relating to the Obligations, and Secured Party shall, in addition to the rights, powers and remedies herein conferred, be entitled to avail itself of all such other rights, powers and remedies as may now or hereafter exist at law or in equity for the collection of and enforcement of the Obligations and the enforcement of the warranties, representations, covenants, indemnities and other agreements contained in this Instrument and the other documents and instruments evidencing, securing or relating to the Obligations and the foreclosure of the liens and security interests created by this Instrument. Each and every such right, power and remedy may be exercised from time-to-time and as often and in such order as may be deemed expedient by Secured Party and the exercise of any such right, power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. No delay or omission by Secured Party, the sheriff or other official or person in the exercise of any right, power or remedy will impair any such right, power or remedy or operate as a waiver thereof or of any other right, power or remedy then or thereafter existing.

Section 5.09. Costs and Expenses. All fees, costs and expenses (including, without limitation, attorneys' fees and legal expenses, court costs, filing fees, and mortgage, transfer, stamp and other excise taxes, inspection fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication, notice and advertising costs, postage, photocopies, telephone charges and costs of procuring all abstracts of title, title searches and examinations, title opinions, title insurance policies and similar title data and assurances as Secured Party may deem appropriate either to prosecute such suit or to evidence to bidders at the sales that may be had pursuant to such proceeding the condition of the title to or the value of the Collateral, sheriffs fees and expenses, receiver's fees and expenses, and fees and expenses of agents of Secured Party, costs and expenses of defending, protecting and maintaining the Collateral and Secured Party's interest therein including repair and maintenance costs and expenses and costs and expenses of protecting and securing the Collateral including insurance costs and all other fees, costs and expenses provided for or authorized by applicable law), incurred by or on behalf of Secured Party in protecting and enforcing its rights hereunder or incident to the enforcement of this Instrument and the liens and security interests created hereby, shall be a demand obligation owing by Debtor to Secured Party and shall bear interest at the Overdue Rate until paid, and shall constitute a part of the Obligations and be indebtedness secured and evidenced by this Instrument.

Section 5.10. Application of Proceeds. The proceeds of any sale of the Collateral or any part thereof made pursuant to this Article V shall be applied as may be required by applicable law, or in the absence of any such requirements, as follows:

FIRST, to the payment of all fees, costs and expenses incident to the enforcement of this Instrument and the liens and security interests created hereby, including, without limitation, the fees, costs and expenses described in Section 5.09 hereof;

SECOND, to the payment or prepayment of accrued interest remaining unpaid on the Notes;

THIRD, to the payment or prepayment of principal remaining unpaid on the Notes in such order as Secured Party may elect;

FOURTH, to the payment or prepayment of the Obligations other than the Obligations evidenced by the Notes in such order as Secured Party may elect; and

FIFTH, the remainder, if any, shall be paid to Debtor or such other person or persons as may be legally entitled thereto.

Section 5.11. Limitation on Rights and Waivers. All rights, powers and remedies herein conferred shall be exercisable by Secured Party only to the extent not prohibited by applicable law; and all waivers and relinquishments of rights and similar matters shall only be effective to the extent such waivers or relinquishments are not prohibited by applicable law.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.01. Waiver. Any and all covenants of Debtor in this Instrument may from time-to-time, be waived by Secured Party by an instrument in writing signed by Secured Party to such extent and in such manner as Secured Party may desire, but no such waiver will ever affect or impair Secured Party's rights hereunder, except to the extent specifically stated in such written instrument. All changes to, amendments and modifications of this Instrument must be in writing and signed by Secured Party.

Section 6.02. Severability. If any provision of this Instrument or of any of the instruments and documents evidencing, securing or relating to the Obligations is invalid or unenforceable in any jurisdiction, such provision shall be fully severable from this Instrument and the other provisions hereof and of said instruments and documents shall remain in full force and effect in such jurisdiction and the remaining provisions hereof shall be liberally construed in favor of Secured Party in order to carry out the provisions and intent hereof the invalidity of any provision of this Instrument in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

Section 6.03. Subrogation. This Instrument is made with full substitution and subrogation of Secured Party in and to all covenants and warranties by others heretofore given or made with respect to the Collateral or any part thereof.

Section 6.04. Financing Statement. This Instrument shall be deemed to be and may be enforced from time-to-time as an assignment, contract, deed of trust, mortgage, financing statement, real estate mortgage or security agreement, and from time-to-time as any one or more thereof is appropriate under applicable state law. A carbon, photographic or other reproduction of this Instrument or of any financing statement in connection herewith shall be sufficient as a financing statement for any and all purposes.

Section 6.05. Rate of Interest. All interest required hereunder and under the Obligations shall be calculated on the basis of a year of 360 days. Notwithstanding anything to the contrary contained herein, no rate of interest required hereunder or under the Obligations shall exceed the maximum legal rate under applicable law, and, in the event any such rate is found to exceed such maximum legal rate, Debtor shall be required to pay only such maximum legal rate.

Section 6.06. Governing Law. Insofar as not prohibited by otherwise applicable law, the parties agree that this Instrument (including, without limitation, the validity, creation, perfection and enforcement of the liens, security interests and other rights and remedies granted herein) shall be construed under and governed by the internal laws of the State of Missouri (without regard to its principles of conflicts of laws), and the parties hereby adopt and agree to be bound by such laws. Debtor hereby consents to venue and jurisdiction in the state and federal courts located in the State of Missouri and to jurisdiction and to service of process under the Missouri Statutes, as amended, in any action commenced to enforce this Instrument. The foregoing consent is not exclusive and shall not limit Secured Party's rights and Secured Party may bring any action to enforce this Instrument in any other jurisdiction where jurisdiction may lie under applicable law, and Secured Party may serve process under any applicable statutes.

Section 6.07. Recording. Any recording references describing the Collateral are to the official real property records of Daviess, Harrison, and Caldwell Counties, Missouri, and any additional counties noted in any amendment or supplement to this Instrument executed by the Debtor from time-to-time, and in which records such documents are or in the past have been customarily recorded, whether deed records, oil and gas records, oil and gas lease records or other records. The references in this Instrument and in the Exhibits hereto to liens, encumbrances and other burdens are for the purposes of defining the nature and extent of Debtor's warranties and shall not be deemed to ratify, recognize or create any rights in third parties.

Section 6.08. Execution in Counterparts. This Instrument may be executed in one or more original counterparts. Each counterpart shall be deemed to be an original for all purposes, and all counterparts shall together constitute but one and the same instrument.

Section 6.09. Notices. All notices given hereunder shall be in writing, shall be given by certified mail, return receipt requested, overnight courier service, facsimile or copy delivered by hand, and, (a) if mailed, shall be deemed received three business days after having been deposited in a receptacle for United States mail, postage prepaid; (b) if delivered by overnight air courier service, shall be deemed received one business day after having been deposited with such overnight air courier service, postage prepaid; and (c) if delivered by facsimile or hand delivery,

shall be deemed received on the day the notice is sent if the sender thereof exercises reasonable efforts to confirm receipt thereof, in each case addressed as follows:

to Debtor: Missouri Gas Utility, Inc.
Suite 120
7801 Shaffer Parkway
Post Office Box 270868
Littleton, CO 80127-0868
Facsimile: (303) 979-7892
Attention: Michael P. Earnest

to Secured Party: U.S. Bank National Association
950 – 17th Street
8th Floor
Denver, Colorado 80202
Facsimile: (303) 585.4181
Attention: Brett Siegel

Any party may, by written notice so delivered to the others, change the address or facsimile number to which delivery shall thereafter be made.

Section 6.10. Binding Effect. This Instrument shall bind and inure to the benefit of the respective successors and assigns of Debtor and Secured Party.

Section 6.11. References. All references in this Instrument to Exhibits, Articles, Sections, paragraphs, paragraphs, clauses and other subdivisions refer to the Exhibits, Articles, Sections, paragraphs, paragraphs, clauses and other subdivisions of this Instrument unless expressly provided otherwise. Titles and headings appearing at the beginning of any subdivision are for convenience only and do not constitute any part of any such subdivision and shall be disregarded in construing the language contained in this Instrument. The words “this Instrument,” “herein,” “hereof,” “hereby,” “hereunder” and words of similar import refer to this Instrument as a whole and not to any particular subdivision unless expressly so limited. The phrases “this Section,” “this paragraph,” “this clause,” “this paragraph” and similar phrases refer only to the Sections, paragraphs, paragraphs or clauses hereof in which the phrase occurs. Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Reimbursement Agreement. The word “or” is not exclusive. All references to days are to calendar days unless otherwise specifically stated. Pronouns in masculine, feminine and neuter gender shall be construed to include any other gender. Words in the singular form shall be construed to include the plural and words in the plural form shall be construed to include the singular, unless the context otherwise requires.

Section 6.12. Filing. Some of the above described goods are or are to become fixtures on the Land described in Exhibit “A.” This Instrument is to be filed for record in, among other places, the real estate records of each county identified in Exhibit “A.” This instrument covers fixtures and minerals or the like or other substances of value which may be extricated from the earth (including oil and gas) and the accounts relating thereto, including accounts resulting from

the sale thereof at the wellhead. Debtor is the owner of an interest of record in the real estate concerned.

[Remainder of page intentionally left blank]

EXECUTED AS OF THE DATE FIRST ABOVE WRITTEN.

MISSOURI GAS UTILITY, INC., a Colorado
corporation

By _____
Michael P. Earnest, President

Attest:

By _____
Kenneth C. Wolfe, Secretary

ACKNOWLEDGEMENT CERTIFICATES

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of August, 2008, by Michael P. Earnest as President and Kenneth C. Wolfe as Secretary of MISSOURI GAS UTILITY, INC., a Colorado corporation, for and on behalf of said corporation.

Notary Public

My Commission Expires:

[SEAL]

PREAMBLE TO

EXHIBITS

Attached to and made a part of that certain
Mortgage, Security Agreement, Assignment,
Financing Statement and Fixture Filing,
dated as of September ___, 2008 (the “Mortgage”),
from Missouri Gas Utility, Inc., as Debtor,
to and for the benefit of U.S. Bank National Association,
as Secured Party

Capitalized terms used herein without definition shall have the meaning ascribed thereto
in the Mortgage.

EXHIBIT A

PROPERTY

The collateral encumbered by the Mortgage includes, without limitation, all of the Debtor's right, title and interest in, to and under all the properties, assets and rights of the Debtor, wherever located, whether now existing or hereafter acquired or arising, including, without limitation, the properties, rights and assets of the Debtor located in the following Counties of the State of Missouri:

Daviess;

Harrison; and

Caldwell.

EXHIBIT B

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Certificate of Public Convenience and Necessity pursuant to Order Granting Certificate of Public Convenience and Necessity, Case No. GA-2008-0348, of the State of Missouri Public Service Commission, having an Issue Date of June 19, 2008 and an Effective Date of June 29, 2008.

Certificate of Public Convenience and Necessity pursuant to Order Granting Certificate of Public Convenience and Necessity, Case No. GA-2007-0421, of the State of Missouri Public Service Commission, having an Issue Date of June 26, 2007 and an Effective Date of July 6, 2007.

Certificate of Public Convenience and Necessity pursuant to Order Granting Certificate of Public Convenience and Necessity, Case No. GA-2008-0322, of the State of Missouri Public Service Commission, having an Issue Date of June 19, 2008 and an Effective Date of June 29, 2008.

Certificate of Public Convenience and Necessity pursuant to Order Granting Certificate of Public Convenience and Necessity, Case No. GA-2008-0321, of the State of Missouri Public Service Commission, having an Issue Date of June 19, 2008 and an Effective Date of June 29, 2008.

Certificate of Public Convenience and Necessity pursuant to Order Granting Certificate of Public Convenience and Necessity, Case No. GA-2008-0078, of the State of Missouri Public Service Commission, having an Issue Date of November 6, 2007 and an Effective Date of November 16, 2007.

Certificate of Public Convenience and Necessity pursuant to Order Approving Stipulation and Agreement, Case No. GO-2005-0120, of the State of Missouri Public Service Commission, having an Effective Date of December 18, 2004, together with the underlying instruments of sale, transfer and conveyance relating to the municipal natural gas distribution systems.