

**\$4,670,000**

**VARIABLE RATE DEMAND REVENUE BONDS  
(MISSOURI GAS UTILITY, INC. PROJECT)  
SERIES 2008B**

**Dated: Date of Delivery****Due: April 1, 2038****Price: 100%****CUSIP® No.: 866318 AB4\***

The Series 2008B Bonds are being issued pursuant to a Master Trust Indenture, as amended and supplemented by the Series 2008B Bonds Supplement, between Summit Utilities, Inc., a Colorado corporation, and The Bank of New York Mellon Trust Company, N.A., Denver, Colorado, as Trustee. The proceeds of the Series 2008B Bonds will be loaned by the Company to Missouri Gas Utility, Inc., a Colorado corporation and wholly-owned subsidiary of the Company, pursuant to the Series 2008B Loan Agreement between the Company and the Borrower, and used by the Borrower to redeem and pay outstanding indebtedness, finance the costs of acquiring, constructing and installing additional natural gas distribution facilities and pay the costs of issuing the Series 2008B Bonds, as well as for any other lawful purpose, as described herein. Capitalized terms used on this cover page have the meanings specified herein.

The Series 2008B Bonds will be issued in fully registered form and registered initially in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York, the securities depository for the Series 2008B Bonds. Beneficial Interests in the Series 2008B Bonds, in non-certificated book-entry only form, may be purchased in denominations of \$5,000 and integral multiples thereof by or through participants in the DTC system. Beneficial Interests will be governed as to the payment of principal and interest and the receipt of notices and other communications, prior redemption, transfers and various other matters with respect to the Series 2008B Bonds by the rules and operating procedures applicable to the DTC book-entry system as described herein. *References in this Offering Memorandum to the Series 2008B Bonds means the Beneficial Interests therein unless the context clearly indicates otherwise.*

The 2008B Bonds will be issued as variable rate securities that will be dated and mature on the dates specified above, subject to tender for purchase and redemption prior to maturity as described herein. The Series 2008B Bonds will bear interest initially at the Weekly Interest Rate as described herein, but may be converted from time to time, at the direction of the Borrower and subject to the conditions described herein, to the One Month Interest Rate, the Three Month Interest Rate, a Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate, although no conversion from the Fixed Interest Rate is permitted. While bearing interest at the Weekly Interest Rate, interest on the Series 2008B Bonds will be payable on the first Business Day of each calendar month, commencing with the first Business Day of December 2008. The interest rates for the Series 2008B Bonds will be determined initially by Gates Capital Corporation, as Remarketing Agent for the Series 2008B Bonds.

The Series 2008B Bonds are special, limited obligations of the Company, subject to the provisions of the Series 2008B Indenture, payable solely from the Series 2008B Pledged Revenues described herein, which are pledged to the payment of the Series 2008B Bonds. There is also required to be maintained at all times a Series 2008B Credit Facility to provide both security and liquidity for the Series 2008B Bonds as described herein. The initial Series 2008B Credit Facility will be an irrevocable direct pay letter of credit to be issued by

**U.S. BANK NATIONAL ASSOCIATION**

The U.S. Bank Letter of Credit will permit the Trustee to draw an amount sufficient to pay (i) the principal or redemption price or (if not paid from remarketing proceeds) the purchase price of the outstanding Series 2008B Bonds, plus, (ii) up to 35 days' accrued interest on the outstanding Series 2008B Bonds computed at an assumed rate of 10% per annum. The U.S. Bank Letter of Credit will expire on November 24, 2011, unless extended or, under certain circumstances described herein, terminated prior to its stated expiration date. Unless the U.S. Bank Letter of Credit is extended or replaced by a Substitute Series 2008B Credit Facility as provided herein, the Series 2008B Bonds will be subject to mandatory tender for purchase prior to the termination of the U.S. Bank Letter of Credit. The Borrower will be obligated to reimburse U.S. Bank for amounts drawn under the U.S. Bank Letter of Credit and for certain fees and expenses of U.S. Bank. Failure by the Borrower to make such reimbursements, or the occurrence of certain other defaults under the agreement pursuant to which the U.S. Bank Letter of Credit is issued, unless waived by U.S. Bank, will constitute a default under the Series 2008B Indenture and may result in the mandatory tender of the Series 2008B Bonds.

**The purchase and ownership of the Series 2008B Bonds involves investment risk. Prospective investors are urged to read this Offering Memorandum in its entirety in order to make an informed investment decision, giving particular attention to the matters discussed under "INVESTMENT CONSIDERATIONS."**

*This Offering Memorandum describes the Series 2008B Bonds only while secured by the U.S. Bank Letter of Credit and held in DTC book-entry form. If the U.S. Bank Letter of Credit is replaced with a Substitute Series 2008B Credit Facility, or the Series 2008B Bonds cease to be held in DTC book-entry form, a remarketing memorandum or other disclosure document will be prepared in connection therewith.*

The Series 2008B Bonds are offered when, as and if issued and accepted by the Underwriter. Certain legal matters in connection with the issuance of the Series 2008B Bonds will be passed upon for the Company by its in-house counsel, by Brydon Swearingen & England, PC, Jefferson City, Missouri, as special counsel to the Company for Missouri regulatory matters, and by Peck, Shaffer & Williams LLP, Denver, Colorado, as special counsel to the Company in connection with the issuance of the Series 2008B Bonds; and for U.S. Bank by Kutak Rock LLP, Denver, Colorado. Delivery of the Series 2008B Bonds to DTC is expected on or about November 25, 2008.



Dated: November 20, 2008

\* The CUSIP® number is included for the convenience of the purchasers of the Series 2008B Bonds but is not guaranteed as to accuracy.

## **PRELIMINARY NOTICES**

This Offering Memorandum does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation. No dealer, salesman, or other person has been authorized to give any information or to make any representation, other than the information contained in this Offering Memorandum, in connection with the offering of the Series 2008B Bonds, and, if given or made, such information or representation must not be relied upon as having been authorized by the Company, the Borrower, the Trustee, U.S. Bank, the Underwriter or the Remarketing Agent. The information in this Offering Memorandum is subject to change, and neither the delivery of this Offering Memorandum nor any sale hereunder shall under any circumstances create any implication that there has been no change in such information since the date hereof.

The information contained in this Offering Memorandum has been obtained from sources that are deemed to be reliable. The Underwriter has provided the following sentence for inclusion in this Offering Memorandum. The Underwriter has reviewed the information in this Offering Memorandum in accordance with, and as a part of, its respective responsibilities under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information, and this Offering Memorandum is not to be construed as the promise or guarantee of the Underwriter.

The order and placement of materials in this Offering Memorandum, including the appendices, are not to be deemed a determination of relevance, materiality or importance, and this Offering Memorandum, including the appendices, must be considered in its entirety. The captions and headings in this Offering Memorandum are for convenience only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provisions or sections of this Offering Memorandum. The offering of the Series 2008B Bonds is made only by means of this entire Offering Memorandum.

This Offering Memorandum is submitted in connection with the initial offering and sale of the Series 2008B Bonds and may not be reproduced or used, in whole or in part, for any other purpose.

In making any investment decision, investors must rely on their own examination of the terms of the offering, including the merits and risks involved. Neither the Securities and Exchange Commission nor any state securities regulatory authority has approved or disapproved of the Series 2008B Bonds or passed upon the adequacy or accuracy of this Offering Memorandum. Any representation to the contrary is a criminal offense.

The Series 2008B Bonds have not been registered under the Securities Act of 1933, as amended, or any state securities laws, nor has the Series 2008B Indenture been qualified under the Trust Indenture Act of 1939, as amended, in reliance upon exemptions contained in such laws. The Series 2008B Bonds cannot be resold unless they are registered under such laws or unless an exemption from registration is available.

**THE SERIES 2008B BONDS ARE BEING OFFERED SOLELY ON THE BASIS OF THE U.S. BANK LETTER OF CREDIT AND THE FINANCIAL STRENGTH OF U.S. BANK, AND ARE NOT BEING OFFERED ON THE BASIS OF THE FINANCIAL STRENGTH OF THE COMPANY OR THE BORROWER OR ANY OTHER SECURITY. ACCORDINGLY, THIS OFFERING MEMORANDUM PROVIDES ONLY LIMITED INFORMATION WITH RESPECT TO THE COMPANY AND THE BORROWER. SEE "THE COMPANY AND THE BORROWER." ADDITIONAL INFORMATION REGARDING THE COMPANY AND THE BORROWER IS AVAILABLE TO PROSPECTIVE INVESTORS FROM THE SOURCES SPECIFIED IN THIS OFFERING MEMORANDUM.**

This Offering Memorandum contains statements relating to future results that are “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995. When used in this Offering Memorandum, the words “estimate,” “forecast,” “intend,” “expect,” “plan” and similar expressions identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material.

THE TRUSTEE ASSUMES NO RESPONSIBILITY FOR THIS OFFERING MEMORANDUM AND HAS NOT REVIEWED OR UNDERTAKEN TO VERIFY ANY INFORMATION CONTAINED HEREIN.

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## **OFFICIAL STATEMENT**

### **RELATING TO**

## **SUMMIT UTILITIES, INC.**

**A COLORADO CORPORATION**

**\$4,670,000**

### **VARIABLE RATE DEMAND REVENUE BONDS (MISSOURI GAS UTILITY, INC. PROJECT) SERIES 2008B**

## **INTRODUCTION**

This Offering Memorandum, including the cover page and appendices, is provided to furnish information in connection with the issuance and sale by Summit Utilities, Inc. (the “Company”), of \$4,670,000 aggregate principal amount of Variable Rate Demand Revenue Bonds (Missouri Gas Utility, Inc. Project) (the “Series 2008B Bonds”).

Unless otherwise defined herein, capitalized terms used in this Offering Memorandum are defined in “APPENDIX A – GLOSSARY OF TERMS.”

**THE FOLLOWING INFORMATION IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE DETAILED INFORMATION CONTAINED IN THIS OFFERING MEMORANDUM. EACH PROSPECTIVE INVESTOR SHOULD READ THE OFFERING MEMORANDUM IN ITS ENTIRETY.**

### **The Issuer**

The Company is a Colorado corporation, formerly known as CNG Holdings, Inc., that owns all of the capital stock of Missouri Gas Utility, Inc. (“MGU” or the “Borrower”), Colorado Natural Gas, Inc. (“CNG”) and Colorado Water Utility, Inc. (“CWU”), each of which is a public utility that distributes either natural gas or water primarily to residential customers. See “THE COMPANY AND THE BORROWER – The Company.”

### **The Series 2008B Bonds**

**Authorization.** The Series 2008B Bonds are being issued pursuant to a Master Trust Indenture dated as of August 7, 2008 (the “Master Indenture”), as amended and supplemented by the Series 2008B Bonds Supplement dated as of the date of delivery of the Series 2008B Bonds (the “Closing Date”) Closing Date (the “Series 2008B Bonds Supplement”), referred to herein collectively as the “Series 2008B Indenture,” by and between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”). Under the Series 2008B Indenture, the Trustee also serves as registrar (the “Registrar”) and paying agent (the “Paying Agent”) for the Series 2008B Bonds, but may appoint an additional Registrar or Paying Agent for the Series 2008B Bonds. See “THE SERIES 2008B BONDS – Authorization” and “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE.”

**Purpose.** The proceeds of the Series 2008B Bonds will be loaned by the Company (the “Series 2008B Loan”) to the Borrower pursuant to the Series 2008B Loan Agreement dated as of the Closing

Date (the “Series 2008B Loan Agreement”) to be entered into by and between the Company and the Borrower. The Borrower will execute and deliver to the Company a promissory note (the “Series 2008B Promissory Note”) dated as of the Closing Date to evidence its obligations under the Series 2008B Loan Agreement. The Company will assign its rights to receive payments from the Borrower under the Series 2008B Loan Agreement and the Series 2008B Promissory Note (the “Series 2008B Loan Payments”) to the Trustee pursuant to the Series 2008B Indenture to secure the payment of the Series 2008B Bonds.

The proceeds of the Series 2008B Loan may be used by the Borrower for any lawful purpose of the Borrower, and are expected to be used to redeem and pay outstanding indebtedness of the Borrower, finance the costs of acquiring, constructing and installing additional natural gas distribution facilities and pay the costs of issuing the Series 2008B Bonds.

See generally “THE COMPANY AND THE BORROWER – The Borrower,” “APPLICATION OF SERIES 2008B BOND PROCEEDS,” “SECURITY AND SOURCES OF PAYMENT – The Series 2008B Loan Agreement,” “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE” and “APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B LOAN AGREEMENT.”

**General Provisions.** The Series 2008B Bonds will be dated the Closing Date and will be issued in the principal amount and will mature on the date set forth on the cover page hereof, subject to tender for purchase and redemption prior to maturity as described in “THE SERIES 2008B BONDS – Tenders – Redemption Prior to Maturity.”

**Book-Entry Only System.** The Series 2008B Bonds will be issued in book-entry only form and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), which will serve as securities depository (the “Depository”) for the Series 2008B Bonds. Beneficial ownership interests in the Series 2008B Bonds (“Beneficial Interests”), in non-certificated book-entry form, may be purchased in denominations of \$5,000 and integral multiples thereof by or through participants in the DTC system (“DTC Participants”). Beneficial Interests will be recorded in the name of the purchasers thereof (“Beneficial Owners”) on the books of the DTC Participants from whom they are acquired, and will be governed as to payment of principal and interest (the “Series 2008B Bonds Debt Service Requirements”), receipt of notices and other communications, prior redemption, transfers and various other matters with respect to the Series 2008B Bonds by the rules and operating procedures applicable to the DTC book-entry system as discussed in “THE SERIES 2008B BONDS – Book-Entry System” and “APPENDIX D – DTC BOOK-ENTRY SYSTEM.”

Cede & Co. will be the sole registered owner (the “Owner”) of the Series 2008B Bonds for all purposes of the Series 2008B Indenture. References herein to the Owners of the Series 2008B Bonds mean Cede & Co. or such other nominee as may be designated by DTC, and not the Beneficial Owners.

*References in this Offering Memorandum to the Series 2008B Bonds means the Beneficial Interests therein unless the context clearly indicates otherwise.*

**Interest Rates.** The Series 2008B Bonds will bear interest from time to time in one of several interest rate modes (each an “Interest Rate Mode” or “Mode”), with interest to be determined on a weekly basis (the “Weekly Interest Rate Mode” or the “Weekly Interest Rate”), a monthly basis (the “One Month Interest Rate Mode” or the “One Month Interest Rate”), a three month basis (the “Three Month Interest Rate Mode” or the “Three Month Interest Rate”), a six month basis (the “Six Month Interest Rate Mode” or the “Six Month Interest Rate”), a yearly basis (the “One Year Interest Rate Mode” or the “One Year Interest Rate”), a five year basis (the “Five Year Interest Rate Mode” or the “Five Year Interest Rate”), a ten year basis (the “Ten Year Interest Rate Mode” or the “Ten Year Interest Rate”), referred to herein



collectively as the “Adjustable Interest Rate Modes” or the “Adjustable Rates,” or a fixed rate basis (the “Fixed Interest Rate Mode” or the “Fixed Interest Rate”). At the direction of the Borrower and subject to certain conditions, the Company may from time to time convert the Series 2008B Bonds to a different Interest Rate Mode (“Conversion”), except that no Conversion from the Fixed Interest Rate Mode is permitted. The Series 2008B Bonds are subject to mandatory tender for purchase by the Trustee on the date of Conversion (the “Interest Period Reset Date”), subject to the right of the Beneficial Owners to elect to retain their Series 2008B Bonds. See “THE SERIES 2008B BONDS – Interest Rates – Interest Rate Modes – Conversion Between Interest Rate Modes – Tenders – *Mandatory Tender Upon Conversion to a New Interest Rate Mode.*”

The Series 2008B Bonds will bear interest initially in the Weekly Interest Rate Mode and at interest rates to be determined as described herein, with a maximum rate of 10% (the “Maximum Rate”). The interest rates for the Series 2008B Bonds will be determined by the “Remarketing Agent,” initially Gates Capital Corporation. See “THE SERIES 2008B BONDS – Interest Rates – The Remarketing Agent and the Series 2008B Remarketing Agreement.”

Interest on the Series 2008B Bonds is payable (1) on the first Business Day of each month during any period that the Series 2008B Bonds bear interest in the Weekly Interest Rate Mode or the One Month Interest Rate Mode, (2) quarterly on the first Business Day of each January, April, July and October during any period that the Series 2008B Bonds bear interest in the Three Month Interest Rate Mode, and (3) semiannually on the first Business Day of each January and July during any period that the Series 2008B Bonds bear interest in the Six Month Interest Rate Mode, the One Year Interest Rate Mode, the Five Year Interest Rate Mode, the Ten Year Interest Rate Mode or the Fixed Interest Rate Mode. The first Interest Payment Date for the Series 2008B Bonds will be the first Business Day of December 2008. See “THE SERIES 2008B BONDS – Interest.”

***Tender for Purchase and Redemption Prior to Maturity.*** Under certain circumstances, the Series 2008B Bonds are subject to mandatory tender for purchase prior to maturity, and during any period that the Series 2008B Bonds bear interest at an Adjustable Rate the Series 2008B Bonds also are subject to tender for purchase at the option of the Beneficial Owners thereof as described herein. The Series 2008B Indenture provides for the remarketing of tendered Series 2008B Bonds by the Remarketing Agent. If the proceeds of remarketing are not sufficient to purchase the Series 2008B Bonds tendered for purchase, the Trustee is required to draw on the Series 2008B Credit Facility (defined below) to pay the applicable purchase price. See “THE SERIES 2008B BONDS – Tenders – The Remarketing Agent and the Series 2008B Remarketing Agreement.” The Series 2008B Bonds are also subject to redemption prior to maturity at the option of the Borrower. See “THE SERIES 2008B BONDS – Redemption Prior to Maturity.”

## **Security and Sources of Payment**

***Limited Obligations.*** The Series 2008B Bonds constitute special, limited obligations of the Company payable solely, equally and ratably from the revenues pledged thereto under the Series 2008B Indenture (the “Series 2008B Pledged Revenues”), including: (a) the Series 2008B Loan Payments; (b) all moneys received or to be received by the Company or the Trustee in respect of repayment of the Series 2008B Loan; (c) all moneys and investments in the Series 2008B Debt Service Account and the Series 2008B Credit Facility Account of the Bond Fund established by the Series 2008B Indenture, including, without limitation, moneys received by the Trustee under or pursuant to the Series 2008B Credit Facility; (d) any moneys and investments in the Series 2008B Account of the Project Fund established by the Series 2008B Indenture; (e) any other moneys or assets pledged to the payment of Series 2008B Bonds by the Series 2008B Indenture; and (f) all income and profit from the investment of the foregoing. The Series 2008B Bonds are secured by and are entitled equally and ratably to the protection given by the

Series 2008B Indenture. See “SECURITY AND SOURCES OF PAYMENT – Limited Obligations” and “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE – Funds and Accounts.”

***The Series 2008B Credit Facility.*** The Series 2008B Indenture requires that there is to be maintained at all times, for the benefit of the Trustee, as beneficiary, a credit facility (the “Series 2008B Credit Facility”) to provide both security and liquidity for the Series 2008B Bonds. A Series 2008B Credit Facility is required to be an irrevocable letter of credit issued by a bank within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), or a savings and loan association or similar institution within the meaning of Section 3(a)(5) of the Securities Act (the “Series 2008B Credit Facility Provider”), delivered in accordance with the terms of the Series 2008B Indenture, to secure the payment of the principal of and interest on the Series 2008B Bonds and, under the circumstances described herein, the purchase price of Series 2008B Bonds tendered for purchase and not paid from remarketing proceeds.

The initial Series 2008B Credit Facility will be an irrevocable direct pay letter of credit (the “U.S. Bank Letter of Credit”) to be issued in favor of the Trustee on the Closing Date by U.S. Bank National Association (“U.S. Bank”). The U.S. Bank Letter of Credit secures the Series 2008B Bonds only while bearing interest at the Weekly Interest Rate or the One Month Interest Rate, and will permit the Trustee to draw an amount sufficient to pay (1) the principal or redemption price or (if not paid from remarketing proceeds) the purchase price of the outstanding Series 2008B Bonds, plus, (2) up to 35 days’ accrued interest on the outstanding Series 2008B Bonds computed at the Maximum Rate. The U.S. Bank Letter of Credit will be issued pursuant to a Reimbursement and Pledge Agreement dated as of the Closing Date (the “U.S. Bank Reimbursement Agreement”) by and among U.S. Bank, the Borrower and the Company (as guarantor of the obligations of the Borrower thereunder), pursuant to which the Borrower is obligated to repay amounts drawn under the U.S. Bank Letter of Credit and to pay certain fees and expenses of U.S. Bank. *Failure of the Borrower and the Company to meet such reimbursement obligations, as well as certain other defaults, under the U.S. Bank Reimbursement Agreement, unless waived by U.S. Bank, will constitute a default under the Series 2008B Indenture (a “Series 2008B Indenture Default”) and may result in the mandatory tender of the Series 2008B Bonds.*

The U.S. Bank Letter of Credit expires on November 24, 2011 (the “Stated Expiration Date”), but may be extended or, under certain circumstances specified therein, terminated in advance of the Stated Expiration Date. Unless the U.S. Bank Letter of Credit is extended or replaced by another Series 2008B Credit Facility (a “Substitute Series 2008B Credit Facility”), the Series 2008B Bonds will be subject to mandatory tender for purchase prior to the termination of the U.S. Bank Letter of Credit. The U.S. Bank Letter of Credit and any Substitute Series 2008B Credit Facility are referred to herein collectively as the “Series 2008B Credit Facilities.”

Certain information relating to U.S. Bank has been furnished by U.S. Bank for use in this Offering Memorandum.

THE SERIES 2008B BONDS ARE BEING OFFERED SOLELY ON THE BASIS OF THE U.S. BANK LETTER OF CREDIT AND THE FINANCIAL STRENGTH OF U.S. BANK, AND ARE NOT BEING OFFERED ON THE BASIS OF THE FINANCIAL STRENGTH OF THE BORROWER, THE COMPANY OR ANY OTHER SECURITY. ACCORDINGLY, THIS OFFERING MEMORANDUM PROVIDES ONLY LIMITED INFORMATION WITH RESPECT TO THE BORROWER AND THE COMPANY.

See generally “THE SERIES 2008B BONDS – Tenders,” “SECURITY AND SOURCES OF PAYMENT – The Series 2008B Credit Facility,” “THE SERIES 2008B CREDIT FACILITY,” “THE

U.S. BANK REIMBURSEMENT AGREEMENT” and “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Defaults and Remedies.”

### **Investment Considerations**

The purchase and ownership of the Series 2008B Bonds involves investment risk. Prospective investors are urged to read this Offering Memorandum in its entirety in order to make an informed investment decision, giving particular attention to the matters discussed in “INVESTMENT CONSIDERATIONS.”

### **Additional Information**

This Offering Memorandum includes brief descriptions of the Company, the Borrower, U.S. Bank, the Series 2008B Bonds, the Series 2008B Indenture, the Series 2008B Loan Agreement, the U.S. Bank Letter of Credit, the U.S. Bank Reimbursement Agreement, the Series 2008B Remarketing Agreement and various other documents, statutes and instruments. The descriptions of documents, statutes and other instruments do not purport to be comprehensive or definitive and are qualified in their entirety by reference to each such document, statute or other instrument. During the offering period, copies of the Series 2008B Indenture, the Series 2008B Loan Agreement, the U.S. Bank Letter of Credit, the U.S. Bank Reimbursement Agreement, the Series 2008B Remarketing Agreement and related documents may be obtained from Municipal Capital Markets Group, Inc. (the “Underwriter”), and thereafter may be obtained from the Trustee. Additional information concerning the Company and the Borrower may be obtained from the sources specified in “THE COMPANY AND THE BORROWER – Additional Information.”

### **Forward Looking Statements**

This Offering Memorandum contains statements relating to future results that are “forward looking statements” as defined in the federal Private Securities Litigation Reform Act of 1995. When used in this Offering Memorandum, the words “estimate,” “anticipate,” “forecast,” “project,” “intend,” “propose,” “plan,” “expect,” “assume” and similar expressions identify forward looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward looking statements. See “FORWARD LOOKING STATEMENTS” and “INVESTMENT CONSIDERATIONS – Forward Looking Statements.”

### **Miscellaneous**

The cover page, prefatory information and appendices to this Offering Memorandum are integral parts hereof and must be read together with all other parts of this Offering Memorandum.

Information contained herein has been obtained from sources believed to be reliable but is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation of, the Company, the Borrower, the Trustee, the Underwriter or the Remarketing Agent. Further, the information herein is subject to change without notice, and neither the delivery of this Offering Memorandum, nor any sale made hereunder, shall under any circumstances create an implication that there has been no change in the affairs of the Company, the Borrower or U.S. Bank since the date hereof. So far as any statements made in this Offering Memorandum involve matters of opinion, forecasts, projections or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact.

This Offering Memorandum is not to be construed as a contract or agreement between the Company, the Underwriter or any other party and the Owners or Beneficial Owners of the Series 2008B Bonds.

*This Offering Memorandum describes the Series 2008B Bonds only while secured by the U.S. Bank Letter of Credit and held in DTC book-entry form. If the U.S. Bank Letter of Credit is replaced with a Substitute Series 2008B Credit Facility or the Series 2008B Bonds cease to be held in DTC book-entry form, a remarketing memorandum or other disclosure document will be prepared in connection therewith.*

## **THE COMPANY AND THE BORROWER**

### **The Company**

The issuer of the Series 2008B Bonds is Summit Utilities, Inc., formerly known as CNG Holdings, Inc., a Colorado corporation that owns all of the capital stock of three public utilities: Colorado Natural Gas, Inc., Missouri Gas Utility, Inc., and Colorado Water Utility, Inc. All three subsidiaries are distribution utilities distributing either natural gas or water primarily to residential customers. CNG is the largest subsidiary with approximately 9,500 customers, MGU serves approximately 1,000 customers and CWU serves approximately 350 customers. All three utilities have territories granted to them by the respective state utility commission in which they may distribute either natural gas or water, as applicable. CNG's distribution territory is in the mountain area located west of Denver and Colorado Springs, Colorado, and it is currently expanding into an area west of Pueblo, Colorado. MGU's distribution territory is in northwestern Missouri in Caldwell, Daviess and Harrison Counties. CWU's distribution territory is in Elbert County, Colorado, southeast of the Denver metropolitan area.

### **The Borrower**

The proceeds of the Series 2008B Bonds will be loaned by the Company pursuant to the Series 2008B Loan Agreement to MGU, a Colorado corporation and wholly-owned subsidiary of the Company. The Borrower was formed in 2004 to acquire the natural gas distribution systems formerly owned by the towns of Gallatin and Hamilton, Missouri, and for the purpose of developing and operating natural gas local distribution systems and intrastate gas transmission lines. The Borrower is an operating public utility subject to the jurisdiction of the Missouri Public Service Commission with respect to its retail gas operations. The Borrower provides natural gas to residential and commercial customers in authorized service areas through natural gas distribution systems acquired, constructed and installed by the Borrower. See "APPLICATION OF SERIES 2008B BOND PROCEEDS" and "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B LOAN AGREEMENT."

### **Additional Information**

*THE SERIES 2008B BONDS ARE BEING OFFERED SOLELY ON THE BASIS OF THE U.S. BANK LETTER OF CREDIT AND THE FINANCIAL STRENGTH OF U.S. BANK, AND NOT ON THE BASIS OF THE FINANCIAL STRENGTH OF THE COMPANY OR THE BORROWER. ACCORDINGLY, THIS OFFERING MEMORANDUM PROVIDES ONLY LIMITED INFORMATION WITH RESPECT TO THE COMPANY AND THE BORROWER. SEE "THE SERIES 2008B BONDS – SECURITY AND SOURCE OF PAYMENT" AND "APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE."*

Each prospective purchaser of the Series 2008B Bonds is hereby offered the opportunity, prior to purchasing any Series 2008B Bonds and at any time the Series 2008B Bonds are outstanding, to ask

questions of, and receive answers from, the Company and the Borrower concerning the terms and conditions of the offering, and to obtain any additional relevant information, to the extent the Company and the Borrower possess the same or can acquire it without unreasonable effort or expense. Each purchaser, by purchasing the Series 2008B Bonds, represents to the Company, the Borrower and the Underwriter that it has had an opportunity to ask questions of, and has received answers from, and that it has received all information and materials it regards as necessary to evaluate all merits and risks of its investment from, the Company and the Borrower. Additional information concerning the Company and the Borrower may be obtained from Michael P. Earnest, Chief Executive Officer and President, Summit Utilities, Inc., 7810 Shaffer Parkway, Suite 120, Littleton, Colorado 80127; telephone: (720) 981-2117 or (800) 720-8193, fax: (720) 981-2129.

## **APPLICATION OF SERIES 2008B BOND PROCEEDS**

The proceeds of the Series 2008B Bonds will be deposited in the Series 2008B Bonds Account of the Project Fund and used by the Company to make the Series 2008B Loan to the Borrower pursuant to the Series 2008B Loan Agreement. See “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE – Revenues and Funds – *The Project Fund*” and “APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B LOAN AGREEMENT.”

The Borrower may use the proceeds of the Series 2008B Loan for any lawful purpose. A portion of the proceeds of the Series 2008B Loan, together with other funds of the Borrower, will be used on the Closing Date to retire outstanding bank loans. The balance of the proceeds of the Series 2008B Loan is planned to be used by the Borrower to (1) acquire, construct and install additional natural gas distribution facilities in Caldwell, Daviess and Harrison Counties, Missouri, in order to allow the Borrower to increase its customer base, and (2) pay the costs of issuing the Series 2008B Bonds. See also “THE COMPANY AND THE BORROWER – The Borrower.”

The proceeds of the Series 2008B Loan are expected to be expended by the Borrower substantially as follows:

Retire outstanding bank loans .....	\$1,265,546
Acquire, construct and install natural gas distribution facilities .....	3,324,483
Costs of issuance of the Series 2008B Bonds <sup>1</sup> .....	<u>79,971</u>
Par amount of the Series 2008B Bonds and the Series 2008B Loan.....	<u>\$4,670,000</u>

<sup>1</sup> This amount includes underwriting discount, the initial fees applicable to the U.S. Bank Letter of Credit, legal fees, Trustee and Remarketing Agent fees and other costs of issuing the Series 2008B Bonds and making the Series 2008B Loan. See also “THE SERIES 2008B CREDIT FACILITY – The U.S. Bank Letter of Credit,” “THE U.S. BANK REIMBURSEMENT AGREEMENT” and “UNDERWRITING.”

## **THE SERIES 2008B BONDS**

The following is a summary of certain provisions of the Series 2008B Bonds during such time as the Series 2008B Bonds are held in DTC book-entry form. Reference is made to the Series 2008B Indenture in its entirety for the detailed provisions pertaining to the Series 2008B Bonds, including provisions applicable upon discontinuance of participation in the DTC book-entry system. See also “APPENDIX A – GLOSSARY OF TERMS,” “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE” and “APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B LOAN AGREEMENT” for a summary of certain provisions of the Series 2008B Indenture, including, without limitation, descriptions of the Funds established by the Master Indenture and Accounts thereof established by the Series 2008B Bonds Supplement in connection with the Series 2008B Bonds (the “Series 2008B Accounts”), certain

provisions applicable to the Series 2008B Credit Facility, certain covenants of the Company and the Trustee, the rights and remedies of the Owners of the Series 2008B Bonds upon the occurrence of a Series 2008B Indenture Default, provisions relating to amendments of the Series 2008B Indenture and procedures for defeasance of the Series 2008B Bonds.

### **Authorization**

The Series 2008B Bonds are being issued pursuant to the Series 2008B Indenture. See “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE.”

### **General Provisions**

The Series 2008B Bonds will be issued in the aggregate principal amount and will mature on the date specified on the cover page hereof, and will be subject to tender for purchase and redemption prior to maturity as described in “Tenders – Redemption Prior to Maturity” below.

### **DTC Book-Entry System**

The Series 2008B Bonds will be issued in fully registered form and registered initially in the name of Cede & Co., as nominee of DTC, which will serve as Depository for the Series 2008B Bonds. Beneficial Interests in the Series 2008B Bonds, in non-certificated book-entry form, may be purchased in denominations of \$5,000 and integral multiples thereof by or through DTC Participants. Beneficial Interests will be recorded in the name of the Beneficial Owners on the books of the DTC Participants from whom they are acquired, and transfers thereof will be effected by entries made on the books of the DTC Participants acting on behalf of the Beneficial Owners. References herein to the Owners of the Series 2008B Bonds mean Cede & Co. or such other nominee as may be designated by DTC, and not the Beneficial Owners. For a more detailed description of the DTC book-entry system, see “APPENDIX D – DTC BOOK-ENTRY SYSTEM.”

The Series 2008B Bonds Debt Service Requirements will be payable by wire transfer by the Trustee or other Paying Agent to Cede & Co., as the Owner of the Series 2008B Bonds, for subsequent credit to the accounts of the Beneficial Owners as discussed in “APPENDIX D – DTC BOOK-ENTRY SYSTEM.”

*None of the Company, the Borrower, the Trustee, the Remarketing Agent, any additional Registrar or Paying Agent, the Series 2008B Credit Facility Provider or the Underwriter has any responsibility or obligation to any Beneficial Owner with respect to (1) the accuracy of any records maintained by DTC or any DTC Participant, (2) the distribution by DTC or any DTC Participant of any notice that is permitted or required to be given to the Registered Owners under the Series 2008B Indenture, (3) the selection by DTC or any DTC Participant of the recipient of payment in the event of a partial redemption of the Series 2008B Bonds, (4) the payment by DTC or any DTC Participant of any amount received under the Series 2008B Indenture with respect to the Series 2008B Bonds, (5) any consent given or other action taken by DTC or its nominee as the Registered Owner of the Series 2008B Bonds or (6) any other related matter.*

### **Interest**

**General.** The Series 2008B Bonds will bear interest from time to time in the Weekly Interest Rate Mode (being the initial Interest Rate Mode), the One Month Interest Rate Mode, the Three Month Interest Rate Mode, the Six Month Interest Rate Mode, the One Year Interest Rate Mode, the Five Year Interest Rate Mode, the Ten Year Interest Rate Mode or the Fixed Interest Rate Mode. All Series 2008B

Bonds are required to be in the same Interest Rate Mode. The Interest Rate Mode may be changed from time to time at the direction of the Borrower and subject to certain conditions, although no Conversion from the Fixed Interest Rate is permitted. The Series 2008B Bonds are subject to mandatory tender for purchase on the Interest Period Reset Date. See “Interest Rate Modes,” “Conversion Between Interest Rate Modes” and “Tenders – *Mandatory Tender Upon Conversion to a New Interest Rate Mode*” below.

The “Interest Rate Period” for an Interest Rate Mode is that period of time for which the interest rate on the Series 2008B Bonds has been determined by the Remarketing Agent or otherwise as provided in the description of the applicable Interest Rate Mode below, commencing on the applicable Interest Rate Adjustment Date (being the date on which the interest rate on the Series 2008B Bonds may be adjusted, either as the result of the Conversion to a different Interest Rate Mode or by adjustment of the interest rate on the Series 2008B Bonds within the applicable Interest Rate Mode), and terminating on the day immediately preceding the following Interest Rate Adjustment Date.

The interest rate for Series 2008B Bonds in an Adjustable Interest Rate Mode for each Interest Rate Period is to be determined by the Remarketing Agent on the dates specified in “Interest Rate Modes” below (the “Interest Rate Determination Date”) and will be effective on the Interest Rate Adjustment Date for the succeeding Interest Rate Period. The interest rate for the Series 2008B Bonds determined on the Interest Rate Determination Date is to be that rate of interest per annum which the Remarketing Agent determines to be the lowest interest rate, for the Interest Rate Period commencing on the next Interest Rate Adjustment Date, which in the judgment of the Remarketing Agent, taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions, would enable the Series 2008B Bonds to be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period; provided that in no event may any interest rate on the Series 2008B Bonds exceed the Maximum Rate. See also “The Remarketing Agent and the Series 2008B Remarketing Agreement” below.

In the event the Remarketing Agent has been removed or has resigned and no successor has been appointed, the Remarketing Agent fails to determine the interest rate or the method of determining the interest rate is held to be unenforceable by a court of law of competent jurisdiction, until such time as the Remarketing Agent again makes such determination or until there is delivered an Opinion of Counsel (see “APPENDIX A – GLOSSARY OF TERMS”) to the effect that the method of determining such rate is enforceable, the Series 2008B Bonds will bear interest from the last date on which interest was legally paid at the “Alternate Rate” for the Interest Rate Mode in effect. The Alternate Rate is the rate per annum specified in the index (the “Index”) published by the Indexing Agent (see “APPENDIX A – GLOSSARY OF TERMS”), initially being Kenny Information Systems, and in effect on such Interest Rate Determination Date, but in no event in excess of the Maximum Rate. The Index is to be based upon yield evaluations at par of bonds, the interest on which is included in gross income for purposes of federal income taxation, of not less than five “high grade” component issuers on bonds selected by the Indexing Agent. The specific issuers included among the component issuers may be changed from time to time by the Indexing Agent in its discretion. When the Series 2008B Bonds bear interest at the Weekly Interest Rate or the One Month Interest Rate, the yield evaluation period for the Index is to be 30-day yield evaluations. When the Series 2008B Bonds bear interest at the Three Month Interest Rate or the Six Month Interest Rate, the yield evaluation period for the Index is to be 180-day yield evaluations. When the Series 2008B Bonds bear interest at the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate, the yield evaluation period for the Index is to be one-year yield evaluations. If at any particular time no Indexing Agent publishes an Index satisfying the foregoing requirements, the Alternate Rate for an Interest Rate Period is to be the rate per annum specified in the most recently published Index for a comparable Interest Rate Period.

On the Interest Rate Determination Date, the Remarketing Agent is to give the Trustee, the Paying Agent, the Borrower and the Company notice of the interest rate to be borne by the Series 2008B

Bonds for the following Interest Rate Period, except that if the interest rate is an Alternate Rate, on the Interest Rate Determination Date the Trustee is to give notice to the Company, the Borrower, the Paying Agent and the Series 2008B Credit Facility Provider. After any Interest Rate Determination Date, any Beneficial Owner may contact the Trustee or the Remarketing Agent in order to be advised of the applicable interest rate. No notice of the applicable interest rate will be sent to the Owners or Beneficial Owners.

The determination of any interest rate by the Remarketing Agent is binding and conclusive upon the Company, the Borrower, the Trustee, the Series 2008B Credit Facility Provider and the Owners and Beneficial Owners of the Series 2008B Bonds, except for manifest error.

Interest on the Series 2008B Bonds, other than Series 2008B Bonds tendered for purchase and purchased with moneys paid under the Series 2008B Credit Facility (“Pledged Series 2008B Bonds”), will be calculated and be payable as provided in the description of the applicable Interest Rate Mode below.

***Pledged Series 2008B Bonds.*** Pledged Series 2008B Bonds will bear interest at the rates calculated in the manner and payable on the dates specified in the U.S. Bank Reimbursement Agreement or similar agreement entered into in connection with any Substitute Series 2008B Credit Facility (each a the “Series 2008B Credit Facility Agreement”), but in no event greater than the Maximum Rate. Pledged Series 2008B Bonds may be remarketed when and as provided in the Series 2008B Credit Facility Agreement and the Series 2008B Indenture, and if remarketed will no longer bear interest as Pledged Series 2008B Bonds. See “THE SERIES 2008B CREDIT FACILITY.”

## **Interest Rate Modes**

***Weekly Interest Rate.*** The Interest Rate Period for the Weekly Interest Rate is a period of one week commencing on an Interest Rate Adjustment Date of Thursday of each week, and the Interest Rate Determination Date is not later than 2:00 p.m., Denver, Colorado time, on Wednesday of each week (or the next preceding Business Day if Wednesday is not a Business Day). In the event of a conversion to the Weekly Interest Rate from a different Interest Rate Mode, the first Interest Rate Period may be less than one week. Such first Interest Rate Period commences on the Interest Period Reset Date, which is required to be the first Business Day of a month (or the first day of a month upon conversion from a Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate or the Ten Year Interest Rate) and ends on the next succeeding Wednesday. In such event, the Interest Rate Determination Date is not to be later than 2:00 p.m., Denver, Colorado time, on the Business Day preceding the Interest Period Reset Date. In the event of a conversion from the Weekly Interest Rate to a different Interest Rate Mode, the last Interest Rate Period may be less than one week as a result of such last Interest Rate Period ending on the day preceding the first Business Day or the first day of a month.

Interest on Series 2008B Bonds bearing interest at the Weekly Interest Rate will be calculated on the basis of a 365/366 day year and will be payable on the first Business Day of each month.

The Series 2008 Bonds will be issued initially in the Weekly Interest Rate Mode and will continue to bear interest at the Weekly Interest Rate unless converted to a different Interest Rate Mode as discussed in “Conversion Between Interest Rate Modes” below. The first Interest Rate Period will be from the Closing Date through the following Wednesday, and the first Interest Payment Date for the Series 2008B Bonds will be the first Business Day of December 2008.

***One Month Interest Rate.*** The Interest Rate Adjustment Date for the One Month Interest Rate is the first Business Day of the month, and the Interest Rate Period is one month commencing on the first



Business Day of the month to and including the day preceding the first Business Day of the next month. The Interest Rate Determination Date is the 7<sup>th</sup> Business Day preceding the first Business Day of the month.

Interest on Series 2008B Bonds bearing interest at the One Month Interest Rate will be calculated on the basis of a 365/366 day year and will be payable on the first Business Day of each month.

***Three Month Interest Rate.*** The Interest Rate Adjustment Date for the Three Month Interest Rate is the first day of the first month of the Interest Rate Period, and the Interest Rate Period commences on the Interest Rate Adjustment Date and continues to and including the day preceding the next Interest Rate Adjustment Date. The Interest Rate Determination Date is the 10<sup>th</sup> Business Day before the Interest Rate Adjustment Date. In the event of a conversion to the Three Month Interest Rate from another Interest Rate Mode, the first Interest Rate Adjustment Date is to be the Interest Period Reset Date for the Three Month Interest Rate, which may be the first Business Day or the first day of any month. Accordingly, the first Interest Rate Period may be shorter than a full three months.

Interest on Series 2008B Bonds bearing interest at the Three Month Interest Rate will be calculated on the basis of a 365/366 day year and will be payable on the first Business Day of each January, April, July and October.

***Six Month Interest Rate.*** The Interest Rate Adjustment Date for the Six Month Interest Rate is the first day of the first month of the Interest Rate Period, and the Interest Rate Period is a six month period commencing on the appropriate Interest Rate Adjustment Date and ending on either June 30 or December 31. The Interest Rate Determination Date is the 10<sup>th</sup> Business Day preceding the Interest Rate Adjustment Date. Upon a conversion to a Six Month Interest Rate from another Interest Rate Mode, the first Interest Rate Adjustment Date is the Interest Period Reset Date for the Six Month Interest Rate mode of interest, which may be the first Business Day or the first day of any month. Accordingly, the first Interest Rate Period may be shorter than a full six months.

Interest on Series 2008B Bonds bearing interest at a Six Month Interest Rate will be calculated on the basis of a 360 day year consisting of twelve 30-day months and will be payable on the first Business Day of each January and July.

***One Year Interest Rate.*** The Interest Rate Adjustment Date for the One Year Interest Rate is the first day of the first month of the Interest Rate Period, and the Interest Rate Period is a one year period commencing on the appropriate Interest Rate Adjustment Date and ending on either June 30 or December 31. The Interest Rate Determination Date is the 10<sup>th</sup> Business Day preceding the Interest Rate Adjustment Date. Upon a conversion to the One Year Interest Rate from another Interest Rate Mode, the first Interest Rate Adjustment Date is to be the Interest Period Reset Date for the One Year Interest Rate, which may be the first Business Day or the first day of any month. Accordingly, the first Interest Rate Period may be shorter than one full year.

Interest on Series 2008B Bonds bearing interest at the One Year Month Interest Rate will be calculated on the basis of a 360 day year consisting of twelve 30-day months and will be payable on the first Business Day of each January and July.

***Five Year Interest Rate.*** The Interest Rate Adjustment Date for the Five Year Interest Rate is the first day of the first month of the Interest Rate Period, and the Interest Rate Period is a five year period commencing on the appropriate Interest Rate Adjustment Date and ending on either June 30 or December 31. The Interest Rate Determination Date is the 10<sup>th</sup> Business Day preceding the Interest Rate Adjustment Date. Upon a conversion to the Five Year Interest Rate from another Interest Rate Mode, the

first Interest Rate Adjustment Date is to be the Interest Period Reset Date for the Five Year Interest Rate, which may be the first Business Day or the first day of any month. Accordingly, the first Interest Rate Period may be shorter than five full years.

Interest on Series 2008B Bonds bearing interest at the Five Year Month Interest Rate will be calculated on the basis of a 360 day year consisting of twelve 30-day months and will be payable on the first Business Day of each January and July.

***Ten Year Interest Rate.*** The Interest Rate Adjustment Date for the Five Year Interest Rate is the first day of the first month of the Interest Rate Period, and the Interest Rate Period is a ten year period commencing on the appropriate Interest Rate Adjustment Date and ending on either June 30 or December 31. The Interest Rate Determination Date is the 10<sup>th</sup> Business Day preceding the Interest Rate Adjustment Date. Upon a conversion to the Ten Year Interest Rate from another Interest Rate Mode, the first Interest Rate Adjustment Date is to be the Interest Period Reset Date for the Ten Year Interest Rate, which may be the first Business Day or the first day of any month. Accordingly, the first Interest Rate Period may be shorter than ten full years.

Interest on Series 2008B Bonds bearing interest at the Ten Year Month Interest Rate will be calculated on the basis of a 360 day year consisting of twelve 30-day months and will be payable on the first Business Day of each January and July.

***Fixed Interest Rate.*** In the Fixed Interest Rate, there is only one Interest Rate Adjustment Date, which is the Interest Period Reset Date upon which such Interest Rate Mode commences. The Interest Rate Period commences on such Interest Rate Adjustment Date and continues to the final maturity of the Series 2008B Bonds. The Interest Rate Determination Date is the 10<sup>th</sup> Business Day preceding the Interest Rate Adjustment Date.

Interest on Series 2008B Bonds bearing interest at the Fixed Interest Rate will be calculated on the basis of a 360 day year consisting of twelve 30-day months and will be payable on the first Business Day of each January and July.

### **Conversion Between Interest Rate Modes**

The Interest Rate Mode of the Series 2008B Bonds may be converted from time to time, at the direction of the Borrower and subject to certain conditions, between Adjustable Interest Rate Modes or to the Fixed Interest Rate Mode, although no Conversion from the Fixed Interest Rate is permitted. The date on which the Series 2008B Bonds convert to a different Interest Rate Mode is referred to as the “Interest Period Reset Date.” An Interest Period Reset Date is required to be the first Business Day of a month, except that upon Conversion from a Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate or the Ten Year Interest Rate, the Interest Period Reset Date is to be the first day of a month, and except when converting from the Weekly Interest Rate, the Interest Period Reset Date may not occur prior to the end of the preceding Interest Rate Period.

The Series 2008B Bonds may be converted to a different Interest Rate Mode on any Interest Period Reset Date upon receipt by the Trustee and the Remarketing Agent of written direction from the Borrower, approved in writing by the Series 2008B Credit Facility Provider, given on behalf of the Company, not less than 45 days prior to such Interest Period Reset Date, to convert the Series 2008B Bonds to a different Interest Rate Mode. Except when converting from the Weekly Interest Rate or the One Month Interest Rate, the Interest Period Reset Date is not to be earlier than the day after the end of the last Interest Rate Period for the Interest Rate Mode in effect on the date of direction from the Borrower, the end of such Interest Rate Period to be determined as if such direction had not been given.

The direction to convert the Series 2008B Bonds to a different Interest Rate Mode is to be accompanied by (1) an Opinion of Counsel delivered to the Company, the Trustee, the Series 2008B Credit Facility Provider and the Remarketing Agent stating that such conversion is authorized by the Series 2008B Indenture and complies with its terms, (2) a written certificate of the Remarketing Agent stating that it has determined that the interest coverage period provided by the Series 2008B Credit Facility is appropriate for the Interest Rate Mode directed to be in effect and (3) a written certificate of the Remarketing Agent stating that it has received certifications, opinions or other evidence satisfactory to it that there has been or will be compliance with any applicable state or federal securities law requirements. If the Series 2008B Bonds bear interest at the Weekly Interest Rate or the One Month Interest Rate, the interest coverage period for the Series 2008B Credit Facility must be at least 35 days of interest at the Maximum Rate; if the Series 2008B Bonds bear interest at the Three Month Interest Rate, the interest coverage period for the Series 2008B Credit Facility must be at least 105 days of interest at the Maximum Rate; and if the Series 2008B Bonds bear interest at a Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate, the interest coverage period for the Series 2008B Credit Facility must be at least 195 days of interest at the Maximum Rate.

A proposed Conversion to the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate will not be effective if (1) the Borrower makes an election, in writing, to the Trustee and the Remarketing Agent on or prior to the day immediately succeeding any Interest Rate Determination Date not to proceed with the proposed conversion, (2) the Trustee does not receive on the effective date of such Conversion an Opinion of Counsel to the same effect as described in clauses (1) and (2) of the previous paragraph or (3) the Trustee does not receive on the effective date of such Conversion a Series 2008B Credit Facility meeting the requirements of the Series 2008B Indenture and appropriate for the Interest Rate Mode directed to be in effect. In either event, the existing Interest Rate Mode for the Series 2008B Bonds will remain in effect, the Series 2008B Bonds will continue to be subject to tender for purchase on the scheduled effective date of the proposed Conversion without regard to the failure of such proposed Conversion and if the Trustee has sent any notice to Owners regarding the proposed Conversion, the Trustee is to promptly notify all Owners of the failed Conversion, the reason therefor and the continuation of the Interest Rate Mode then in effect.

At least 30 days prior to an Interest Period Reset Date, the Trustee is to notify the Owners of all outstanding Series 2008B Bonds by Electronic Means (as defined in “APPENDIX A – GLOSSARY OF TERMS”), provided that applicable contact information with which to do so has been provided to the Trustee, promptly confirmed by first class mail to all such Owners, that upon the Interest Period Reset Date the Series 2008B Bonds will be converted to a specified Interest Rate Mode and that all Series 2008B Bonds will be subject to a mandatory tender as discussed in “Tenders – *Mandatory Tender Upon Conversion to a New Interest Rate Mode*” below, subject to the right of the Beneficial Owners to affirmatively elect to waive such mandatory tender and retain their Series 2008B Bonds.

The Series 2008B Indenture does not require the Series 2008B Credit Facility Provider to extend the Stated Expiration Date of its Series 2008B Credit Facility or to increase the interest coverage provided by a Series 2008B Credit Facility because of a Conversion to a different Interest Rate Mode.

*Notices of Conversion will be sent by the Trustee only to Cede & Co. (or subsequent nominee of DTC) as the Owner of the Series 2008B Bonds. Any corresponding notice to the Beneficial Owners is the responsibility of DTC and the applicable Participant. Each Beneficial Owner of a Series 2008B Bond may desire to make arrangements with a Participant to receive notices or communications with respect to this matter.*

## Summary of Certain Provisions Applicable to Adjustable Interest Rate Modes

The following table sets forth a brief summary of the Interest Rate Adjustment Dates, Interest Rate Determination Dates and Interest Rate Periods for the Adjustable Interest Rate Modes.

Interest Rate Mode	Interest Rate Adjustment Date	Interest Rate Determination Date	Interest Rate Period
Weekly	Thursday of each week	2:00 p.m., Denver, Colorado time on Wednesday of each week, or the preceding Business Day if Wednesday is not a Business Day <sup>1</sup>	1 week commencing Thursday <sup>1</sup>
One Month	1 <sup>st</sup> Business Day of each month	7 <sup>th</sup> Business Day preceding the Interest Rate Adjustment Date	1 month commencing the 1 <sup>st</sup> Business Day of the month
Three Month	1 <sup>st</sup> day of any month, and thereafter the 1 <sup>st</sup> Business Day of January, April, July and October	10 <sup>th</sup> Business Day preceding the Interest Rate Adjustment Date	3 months commencing the 1 <sup>st</sup> Business Day of January, April, July and October <sup>2</sup>
Six Month	1 <sup>st</sup> day of any month, and thereafter January 1 and July 1	10 <sup>th</sup> Business Day preceding the Interest Rate Adjustment Date	6 months commencing January 1 or July 1 <sup>2</sup>
One Year	1 <sup>st</sup> day of any month, and thereafter January 1 and July 1	10 <sup>th</sup> Business Day preceding the Interest Rate Adjustment Date	1 year commencing January 1 or July 1 <sup>2</sup>
Five Year	1 <sup>st</sup> day of any month, and thereafter January 1 and July 1	10 <sup>th</sup> Business Day preceding the Interest Rate Adjustment Date	5 years commencing January 1 or July 1 <sup>2</sup>
Ten Year	1 <sup>st</sup> day of any month, and thereafter January 1 and July 1	10 <sup>th</sup> Business Day preceding the Interest Rate Adjustment Date	10 years commencing January 1 or July 1 <sup>2</sup>

<sup>1</sup> When converting to the Weekly Interest Rate Mode, the Interest Rate Determination Date is to be not later than 2:00 p.m., Denver, Colorado, time on the Business Day before the Interest Period Reset Date, and the first Interest Rate Period will be from the Interest Period Reset Date through the following Wednesday.

<sup>2</sup> The first Interest Rate Period following Conversion to the Three Month Interest Rate Mode, a Six Month Interest Rate Mode, the One Year Interest Rate Mode, the Five Year Interest Rate Mode or the Ten Year Interest Rate Mode may be less than the indicated period.

## Tenders

The Series 2008B Bonds are subject to tender for purchase at the option of the Beneficial Owners thereof, and to mandatory tender for purchase, under the following circumstances. *References in this section to the Series 2008B Bonds means the Beneficial Interests therein unless the context clearly indicates otherwise.*

**Optional Tenders.** Series 2008B Bonds are subject to tender for purchase prior to stated maturity at the option of the Beneficial Owners thereof.

While the Series 2008B Bonds bear interest at the Weekly Interest Rate, each Beneficial Owner will have the option to tender for purchase, at 100% of the principal amount thereof plus accrued interest to the date upon which Series 2008B Bonds are required to be purchased by the Trustee (the “Purchase Date”), all or a portion (in denominations of \$5,000 and integral multiples thereof) of the Series 2008B Bonds owned by such Owner. To exercise such option, the Beneficial Owner is required to (1) give notice to the Trustee either by Electronic Means or in writing that states (a) the name and address of the Owner, (b) the principal amount, CUSIP number and identifying numbers of the Series 2008B Bonds to be purchased, (c) the date on which such Series 2008B Bonds are to be purchased (which is to be a Business Day not prior to the 7<sup>th</sup> day next succeeding the date of giving of such notice to the Trustee and, if the interest rate on the Series 2008B Bonds is to be converted from the Weekly Interest Rate to a new Interest Rate Mode, a date prior to the Interest Period Reset Date with respect to the new Interest Rate Mode), and (d) that such notice is irrevocable; (2) provide the Trustee with evidence satisfactory to the Trustee of such Beneficial Owner’s ownership of the tendered Series 2008B Bonds; and (3) no later than

10:00 a.m., Denver, Colorado time, on the Purchase Date, cause the transfer of the tendered Series 2008B Bonds on the records of the Depository in accordance with the instructions of the Trustee.

While the Series 2008B Bonds bear interest at any other Adjustable Rate, on each Interest Rate Adjustment Date each Beneficial Owner will have the option to tender for purchase at 100% of the principal amount thereof plus accrued interest thereon, all or a portion (in denominations of \$5,000 and integral multiples thereof) of the Series 2008B Bonds owned by such Beneficial Owner. To exercise such option, the Beneficial Owner is required to (1) no later than 10:00 a.m., Denver, Colorado time, on the 15<sup>th</sup> Business Day prior to the Purchase Date, or in the event the Series 2008B Bonds bear interest at the One Month Interest Rate, the 7<sup>th</sup> Business Day prior to the Purchase Date, give notice to the Trustee either by Electronic Means or in writing which states (a) the name and address of the Beneficial Owner, (b) the principal amount, CUSIP number and identifying numbers of the Series 2008B Bonds to be purchased, (c) that such Series 2008B Bonds are to be purchased on such Purchase Date pursuant to the terms of the Series 2008B Indenture, and (d) that such notice is irrevocable; (2) provide the Trustee with evidence satisfactory to the Trustee of such Beneficial Owner's ownership of the tendered Series 2008B Bonds; and (3) no later than 10:00 a.m., Denver, Colorado time, on the Purchase Date, cause the transfer of the tendered Series 2008B Bonds on the records of the Depository, in accordance with the instructions of the Trustee.

Upon the giving of the notice of tender of Series 2008B Bonds or portions thereof, such tender will be irrevocable and the tendering Beneficial Owners will be obligated to transfer such tendered Series 2008B Bonds on the records of the Depository.

***Mandatory Tender Upon Conversion to a New Interest Rate Mode.*** Upon any conversion of the Series 2008B Bonds to a different Interest Rate Mode, the Series 2008B Bonds will be subject to mandatory tender for purchase on the applicable Interest Period Reset Date (a "Purchase Date") at a price of 100% of the principal amount thereof plus accrued interest to the Purchase Date.

At least 30 days prior to the Interest Period Reset Date, the Trustee is to notify the Owners of all the outstanding Series 2008B Bonds by Electronic Means (provided that applicable contact information with which to do so has been provided in writing to the Trustee), immediately confirmed by first class mail to all Owners, that upon such Interest Period Reset Date the Series 2008B Bonds will be converted to a different specified Interest Rate Mode and that all Series 2008B Bonds are subject to mandatory tender, subject to the right of the Beneficial Owners to affirmatively elect to waive the mandatory tender and retain their Series 2008B Bonds.

***Mandatory Tender Upon Delivery of a Substitute Series 2008B Credit Facility.*** Upon the delivery to the Trustee of a Substitute Series 2008B Credit Facility (see "THE SERIES 2008B CREDIT FACILITY – Substitute Series 2008B Credit Facility"), the Series 2008B Bonds will be subject to mandatory tender for purchase on the replacement date (a "Purchase Date") at a price of 100% of the principal amount thereof plus accrued interest to the Purchase Date.

At least 30 days prior to such Purchase Date, the Trustee is to notify the Owners of all the outstanding Series 2008B Bonds by Electronic Means (provided that applicable contact information with which to do so has been provided in writing to the Trustee), immediately confirmed by first class mail to all Owners, that a Substitute Series 2008B Credit Facility is to be delivered to the Trustee. Such notice is to advise the Owners of the Purchase Date, that the requirements of the Series 2008B Indenture relating to a Substitute Series 2008B Credit Facility have been met, the name of the new Series 2008B Credit Facility Provider, the rating on the Series 2008B Bonds upon substitution of the Substitute Series 2008B Credit Facility and that all Series 2008B Bonds are subject to mandatory tender, subject to the right of the Beneficial Owners to affirmatively elect to waive the mandatory tender and retain their Series 2008B Bonds.

***Mandatory Tender Upon Expiration of the Series 2008B Credit Facility.*** The Series 2008B Bonds will be subject to mandatory tender 15 days preceding the Stated Expiration Date of the Series 2008B Credit Facility (a “Purchase Date”) at a price of 100% of the outstanding principal amount thereof plus accrued interest to such Purchase Date, unless at least 30 days prior to such Stated Expiration Date, the Series 2008B Credit Facility Provider has agreed to an extension or further extension of the applicable Stated Expiration Date. The mandatory tender of Series 2008B Bonds upon expiration or termination of the Series 2008B Credit Facility may not be waived by the Owners and Beneficial Owners thereof.

At least 15 days prior to the Purchase Date, the Trustee is to notify the Owners of all outstanding Series 2008B Bonds by Electronic Means (provided that applicable contact information with which to do so has been provided in writing to the Trustee), promptly confirmed by first class mail to all such Owners), of the Purchase Date of the Series 2008B Bonds, that all Series 2008B Bonds and Beneficial Interests therein are subject to mandatory tender on the Purchase Date and that such mandatory tender may not be waived.

***Mandatory Tender Upon the Occurrence of an Event of Default Under the Series 2008B Credit Facility Agreement.*** Upon receipt by the Trustee of written notice from the Series 2008B Credit Facility Provider that an event of default under the Series 2008B Credit Facility Agreement has occurred and directing the Trustee to cause a mandatory tender of the Series 2008B Bonds, all the Series 2008B Bonds and Beneficial Interests therein are subject to mandatory tender for purchase on the date specified in such notice (the “Purchase Date”) at a price of 100% of the principal amount thereof plus accrued interest to the Purchase Date. The mandatory tender of Series 2008B Bonds or Beneficial Interests therein pursuant to this provision may not be waived by the Owners or Beneficial Owners thereof.

At least five days prior to the Purchase Date (or on the date of receipt of the notice from the Series 2008B Credit Provider if the Purchase Date is to be sooner than five days thereafter), the Trustee is to notify the Owners of all outstanding Series 2008B Bonds by Electronic Means (provided that applicable contact information with which to do so has been provided in writing to the Trustee), promptly confirmed by first class mail to all such Owners, of the Purchase Date of the Series 2008B Bonds and advise such Owners that all Series 2008B Bonds and Beneficial Interests therein shall be subject to mandatory tender on such Purchase Date and that such mandatory tender may not be waived.

***Series 2008B Bonds Deemed Tendered.*** Series 2008B Bonds will be deemed to have been tendered for purposes of mandatory tenders without further action by the Owners or Beneficial Owners. Subject to the right of the Beneficial Owners to receive the purchase price of the Series 2008B Bonds, such Series 2008B Bonds will be null and void and, in the case of mandatory tenders upon conversion to a new Interest Rate Mode or upon delivery of a Substitute Series 2008B Credit Facility, new Series 2008B Bonds are to be recorded on the records of the Depository pursuant to the remarketing of such Series 2008B Bonds or the pledge of such Series 2008B Bonds to the Series 2008B Credit Facility Provider in lieu of remarketing such Series 2008B Bonds as discussed in “*Remarketing of Tendered Beneficial Interests*” below.

*The tender options granted to the Beneficial Owners and all mandatory tenders of Series 2008B Bonds are subject to the additional condition that any tendered Series 2008B Bonds will not be purchased if the Series 2008B Bonds mature or are redeemed on or prior to the applicable Purchase Date.*

***Remarketing of Tendered Series 2008B Bonds.*** Whenever Series 2008B Bonds are tendered for purchase (other than a mandatory tender pursuant to the expiration of the Series 2008B Credit Facility) as described above, the Remarketing Agent is to use its best efforts to remarket such Series 2008B Bonds.

If Series 2008B Bonds tendered for purchase are not remarketed by the Remarketing Agent, the Trustee is to draw on the Series 2008B Credit Facility to pay the purchase price of such Series 2008B

Bonds, which thereupon become Pledged Series 2008B Bonds and are to be delivered or transferred to the Series 2008B Credit Facility Provider or its designee or, at the direction of the Series 2008B Credit Facility Provider, held by the Trustee for the benefit of the Series 2008B Credit Facility Provider. Pledged Series 2008B Bonds are to be remarketed by the Remarketing Agent or redeemed by the Borrower, or may be sold by the Series 2008B Credit Facility Provider, as provided in the Series 2008B Credit Facility Agreement and the Series 2008B Indenture, and if remarketed will no longer bear interest as Pledged Series 2008B Bonds. See “THE SERIES 2008B CREDIT FACILITY.”

***Written Acknowledgment by Beneficial Owners.*** The affirmative election of Beneficial Owners to waive the mandatory tender of and retain their Series 2008B Bonds in the event of a mandatory tender upon Conversion to a new Interest Rate Mode or the delivery of a Substitute Series 2008B Credit Facility is required to include the written acknowledgment by such Beneficial Owners that the rating, if any, on the Series 2008B Bonds could be reduced or withdrawn after the applicable Purchase Date.

### **The Remarketing Agent and the Series 2008B Remarketing Agreement**

***General.*** The Series 2008B Indenture provides that a single entity is to serve as Remarketing Agent for all Series of Bonds issued under the Master Indenture and that a Remarketing Agreement is to be entered into in connection with the Series 2008B Bonds by and between the Remarketing Agent and the Company. Gates Capital Corporation has been appointed as the initial Remarketing Agent for the Series 2008B Bonds pursuant to the Series 2008B Remarketing Agreement to be entered into with the Company. See “*The Series 2008B Remarketing Agreement*” below.

The Series 2008B Indenture provides that the Remarketing Agent is to, among other things: (1) compute the interest rates for the Series 2008B Bonds in the various Interest Rate Modes and give notices of such computations to the Trustee and any separate Paying Agent on each applicable Interest Rate Determination Date in accordance with this Indenture; and (2) keep such records relating to its computations of interest rates for the Series 2008B Bonds as is consistent with prudent industry practice and to make such records available for inspection by the Company, the Trustee, the Borrower and the Series 2008B Credit Facility Provider at all reasonable times.

The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by the Master Indenture by giving at least 30 days’ notice of such resignation to the Company, the Trustee and the parties specified in the Master Indenture, including, among others, the Borrower and the Series 2008B Credit Facility Provider. The Remarketing Agent may also be removed at any time by the Company, with the written consent of the parties specified in the Master Indenture, including, among others, the Borrower and the Series 2008B Credit Facility Provider, upon a minimum of 30 days’ notice. In the event of the resignation, removal or incapacity of the Remarketing Agent to perform its obligations under the Series 2008B Remarketing Agreement, a successor Remarketing Agent is to be appointed by the Company, with the written consent of the parties specified in the Master Indenture, including, among others, the Borrower and the Series 2008B Credit Facility Provider. The Trustee will be deemed to be the Remarketing Agent until the appointment of a successor Remarketing Agent, provided that the Trustee will not remarket Series 2008B Bonds or fix the interest rates for the Series 2008B Bonds, but will be required only to implement the purchase of Series 2008B Bonds pursuant to draws on the Series 2008B Credit Facility. Within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, the Trustee is to give notice thereof by registered or certified mail to each applicable Rating Service (see “APPENDIX A – GLOSSARY OF TERMS”) then rating the Series 2008B Bonds and to the Owners of the Series 2008B Bonds. Every successor Remarketing Agent is required to be authorized by law to perform all the duties imposed upon it by the Master Indenture and be in compliance with all standards and requirements of the National Association of Securities Dealers, Inc. and the Securities and Exchange Commission.

See also “INVESTMENT CONSIDERATIONS – Factors Relating to the Remarketing Agent.”

***The Series 2008B Remarketing Agreement.*** The following is a summary of certain provisions of the Series 2008B Remarketing Agreement to be entered into between the Company and Gates Capital Corporation as the initial Remarketing Agent for the Series 2008B Bonds. The following summary does not purport to be a full and complete statement of the provisions of the Series 2008B Remarketing Agreement, which should be read in full for a complete understanding of all the terms and provisions thereof. During the offering period of the Series 2008B Bonds, copies of the Series 2008B Remarketing Agreement may be obtained upon request from the Underwriter.

The Remarketing Agent agrees to perform the duties and obligations imposed upon it as Remarketing Agent under the Series 2008B Indenture and the Series 2008B Remarketing Agreement, provided that the Remarketing Agent is required to remarket tendered Series 2008B Bonds only on a best efforts basis.

The Series 2008B Remarketing Agreement will continue in full force and effect until the earlier of the date that all the Series 2008B Bonds have been remarketed and bear interest at the Fixed Interest Rate or the final maturity of the Series 2008B Bonds, subject to the prior resignation or removal of the Remarketing Agent as provided in the Master Indenture and the Series 2008B Remarketing Agreement.

### **Redemption Prior to Maturity**

The Series 2008B Bonds are callable for redemption prior to maturity in the manner described below. The following is a discussion of the procedures for prior redemption of the Series 2008B Bonds and Beneficial Interests during such time as the Series 2008B Bonds are subject to the DTC book-entry system. Reference is made to the Series 2008B Indenture in its entirety for the provisions applicable to the tender of Series 2008B Bonds by the Owners thereof.

***Optional Redemption.*** The Series 2008B Bonds are subject to redemption, at the option of the Borrower and with the prior written consent of the Series 2008B Credit Facility Provider (subject to compliance with the provisions of “*Company’s Election to Redeem*” below), in whole or in part (in integral multiples of \$5,000) (1) if the Series 2008B Bonds bear interest in an Adjustable Interest Rate Mode, on any Interest Rate Adjustment Date at a redemption price of 100% of the principal amount redeemed plus accrued interest thereon to the redemption date, and (2) if the Series 2008B Bonds bear interest in the Fixed Interest Rate Mode, on any day on or after the First Optional Redemption Date (being the July 1<sup>st</sup> occurring on or after the 5<sup>th</sup> anniversary of the Interest Period Reset Date from and after which the Series 2008B Bonds bear interest at the Fixed Interest Rate (the “Fixed Interest Rate Commencement Date”) at a redemption price of 100% of the principal amount redeemed plus accrued interest to the redemption date. Pledged Series 2008B Bonds are to be redeemed prior to or simultaneously with the redemption of any other Series 2008B Bonds.

In the event of a partial call, the Beneficial Interests to be redeemed will be determined in accordance with the rules and procedures of the DTC book-entry system as discussed in “APPENDIX D – DTC BOOK-ENTRY SYSTEM.”

***Company’s Election to Redeem.*** Series 2008B Bonds are to be redeemed only by written notice from the Borrower, on behalf of the Company, to the Trustee and the Series 2008B Credit Facility Provider. Such notice is to specify the redemption date and the principal amount of each maturity of Series 2008B Bonds to be redeemed, and is to be given at least 35 days prior to the redemption date or such shorter period as is acceptable to the Trustee. Prior to the giving of the notice or redemption specified in “*Notice of Redemption*” hereafter, either (a) there are to be Eligible Funds on deposit with the Trustee in an amount which will be sufficient to redeem at the redemption price thereof and interest



accrued to the redemption date, all of the Series 2008B Bonds for which notice of redemption is to be given, or (b) the Trustee is to have received written notice from the Series 2008B Credit Facility Provider specifying (i) the principal amount of Series 2008B Bonds to be redeemed, and (ii) the accrued interest to the redemption date to be paid, all with moneys to be drawn under the Series 2008B Credit Facility.

**Notice of Redemption.** Unless waived by any Owner of Series 2008B Bonds to be redeemed, official notice of redemption of Series 2008B Bonds, containing the information specified in the Series 2008B Indenture, is to be given by the Trustee or the Registrar, if any, on behalf of the Company by first class mail at least 30 days and not more than 60 days prior to the date fixed for redemption to each Owner of a Series 2008B Bond to be redeemed, and to the Series 2008B Credit Facility Provider.

*Notice of redemption of the Series 2008B Bonds is required to be sent by the Trustee or the Registrar, if any, only to Cede & Co. (or subsequent nominee of DTC) as the Owner of the Series 2008B Bonds. Receipt of such notice will initiate DTC's standard call. DTC Participants are responsible for notifying the Beneficial Owners of the redemption of their Beneficial Interests and for remitting the redemption price thereof to such Beneficial Owners. Any failure by DTC or DTC Participants to notify a Beneficial Owner of any such notice of redemption and its content or effect will not affect the validity of the redemption of the Series 2008B Bonds properly called for redemption or any other action premised on that notice.*

**Payment of Redeemed Series 2008B Bonds.** Upon the mailing of notice of redemption in the manner provided in “Notice of Redemption” above, and upon Eligible Funds being deposited with the Trustee as and if required as provided in “Company’s Election to Redeem” above, the Series 2008B Bonds and portions thereof called for redemption will become due and payable on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice are to be paid at the redemption price, including interest accrued to the redemption date. The Trustee is to draw on the Series 2008B Credit Facility to pay the redemption price of and accrued interest due on the Series 2008B Bonds being redeemed if and to the extent sufficient Eligible Funds are not on deposit with the Trustee and available therefor. Any moneys received by the Trustee from the Borrower to pay the redemption price of and accrued interest on the Series 2008B Bonds being redeemed and not applied for such purpose are to be paid to the Series 2008B Credit Facility Provider to reimburse the Series 2008B Credit Facility Provider for any drawing made on the Series 2008B Credit Facility to pay such redemption price and accrued interest.

Subject to the provisions of the Series 2008B Indenture regarding payments due on Saturdays, Sundays and holidays, if money for the redemption of all of the Series 2008B Bonds and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by the Trustee or Paying Agent, if any, on the redemption date so as to be available therefor on that date, and if notice of redemption has been mailed to the Owners of the Series 2008B Bonds to be redeemed as provided in “Notice of Redemption” above, then from and after the redemption date the Series 2008B Bonds called for redemption will cease to bear interest and no longer be considered to be outstanding under the Series 2008B Indenture; otherwise, such Series 2008B Bonds will continue to bear interest, until they are paid, at the same rate or rates as they would have borne had they not been called for redemption.

All moneys deposited in the Series 2008B Accounts of the Bond Fund and held by the Trustee or the Paying Agent, if any, for the redemption of particular Series 2008B Bonds are to be held in trust for the account of the Owners thereof and are to be paid to them, respectively, upon presentation and surrender of such Series 2008B Bonds, except as provided in the Series 2008B Indenture with respect to a transfer of Series 2008B Bonds. See “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE – Revenues and Funds – *The Bond Fund.*”

## **SECURITY AND SOURCES OF PAYMENT**

### **Limited Obligations**

The Series 2008B Bonds constitute special, limited obligations of the Company, subject to the provisions of the Series 2008B Indenture, payable solely, equally and ratably from the Series 2008B Pledged Revenues pledged thereto under the Series 2008B Indenture, including: (1) the Series 2008B Loan Payments; (2) all of the moneys received or to be received by the Company or the Trustee in respect of repayment of the Series 2008B Loan; (3) all moneys and investments in the Series 2008B Accounts of the Bond Fund, including, without limitation, moneys received by the Trustee under or pursuant to the Series 2008B Credit Facility; (4) any moneys and investments in the Series 2008B Account of the Project Fund; (5) any other moneys or assets pledged to the payment of Series 2008B Bonds by the Series 2008B Indenture; and (6) all income and profit from the investment of the foregoing.

The Series 2008B Bonds are secured by and are entitled equally and ratably to the protection given by the Series 2008B Indenture and the assignment by the Company to the Trustee of the Series 2008B Pledged Revenues as security for the Series 2008B Bonds, as well as by the Series 2008B Loan Agreement, the Series 2008B Promissory Note and the Series 2008B Credit Facility. The Series 2008B Bonds also constitute a valid claim of the Owners thereof against the Series 2008B Accounts and the moneys held by the Trustee therein under the Series 2008B Indenture, which are also pledged and assigned for the equal and proportionate benefit of the Owners of the Series 2008B Bonds and, so long as the Series 2008B Credit Facility Provider is not in default under the related Series 2008B Credit Facility Agreement, for the repayment of all amounts due and owing to such Series 2008B Credit Facility Provider under the Series 2008B Credit Facility Agreement, and may be used for no purpose other than payment of the Series 2008B Bonds and payment to such Series 2008B Credit Facility Provider.

The obligations of the Company to make the payments required under the Series 2008B Bonds from and to the extent of the Series 2008B Pledged Revenues is absolute and unconditional, and the Company is to make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever, including, without limitation, any defense or right of set-off, counterclaim or recoupment arising out of any breach by the Trustee, the Borrower or the Series 2008B Credit Facility Provider of any obligation to the Company or otherwise with respect to the Series 2008B Bonds, or out of any indebtedness or liability at any time owing to the Company by the Trustee, the Borrower or the Series 2008B Credit Facility Provider, provided that the Company may contest or dispute the amount of any such obligation so long as such contest or dispute does not result in a Series 2008B Indenture Default. Until such time as all of the Series 2008B Bonds have been fully paid or redeemed, the Company may not suspend or discontinue any payments provided for in the Series 2008B Indenture with respect to the Series 2008B Bonds.

See also “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE,” “APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B LOAN AGREEMENT” and “INVESTMENT CONSIDERATIONS.”

### **The Series 2008B Credit Facility**

The Series 2008B Indenture requires that at all times with respect to the outstanding Series 2008B Bonds, there is to be continuously available to the Trustee, as beneficiary, a Series 2008B Credit Facility to provide both security and liquidity for the Series 2008B Bonds. A Series 2008B Credit Facility is required to be an irrevocable letter of credit, delivered in accordance with the terms of the Series 2008B Indenture, to secure the payment of the principal of and interest on the Series 2008B Bonds and, under the circumstances described herein, the Purchase Price of Series 2008B Bonds tendered for purchase and not paid from remarketing proceeds.

The initial Series 2008B Credit Facility will be an irrevocable direct pay letter of credit to be issued in favor of the Trustee on the Closing Date by U.S. Bank National Association. The U.S. Bank Letter of Credit secures the Series 2008B Bonds only while bearing interest at the Weekly Interest Rate or the One Month Interest Rate, and will permit the Trustee to draw an amount sufficient to pay (1) the principal or redemption price or (if not paid from remarketing proceeds) the purchase price of the outstanding Series 2008B Bonds, plus, (2) up to 35 days' accrued interest on the outstanding Series 2008B Bonds computed at the Maximum Rate. The U.S. Bank Letter of Credit will be issued pursuant to a Reimbursement and Pledge Agreement to be entered into in the Closing Date by and among U.S. Bank, the Borrower and the Company (as guarantor of the obligations of the Borrower thereunder). *Failure of the Borrower and the Company to meet its reimbursement obligations, as well as certain other defaults, under the U.S. Bank Reimbursement Agreement, unless waived by U.S. Bank, will constitute a Series 2008B Indenture Default and may result in the mandatory tender of the Series 2008B Bonds.*

The U.S. Bank Letter of Credit expires on November 24, 2011, but may be extended or, under certain circumstances specified therein, terminated in advance of such Stated Expiration Date. Unless the U.S. Bank Letter of Credit is extended or replaced by a Substitute Series 2008B Credit Facility, the Series 2008B Bonds will be subject to mandatory tender for purchase prior to the termination of the U.S. Bank Letter of Credit.

Certain information relating to U.S. Bank has been furnished by U.S. Bank for use in this Offering Memorandum.

See "THE SERIES 2008B BONDS – Tenders," "THE SERIES 2008B CREDIT FACILITY," "THE U.S. BANK REIMBURSEMENT AGREEMENT," "INVESTMENT CONSIDERATIONS – Factors Relating to the U.S. Bank Letter of Credit" and "APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Defaults and Remedies."

## **Funds and Accounts**

The Master Indenture establishes with the Trustee the Project Fund, the Bond Fund and the Remarketing Reimbursement Fund. For the purpose of administering the proceeds of the Series 2008B Bonds, the Series 2008B Pledged Revenues and other moneys received pursuant to the Series 2008B Indenture, the Series 2008B Bonds Supplement establishes within the Project Fund the Series 2008B Project Account, establishes within the Bond Fund the Series 2008B Debt Service Account and the Series 2008B Credit Facility Account and establishes within the Remarketing Reimbursement Fund the Series 2008B Remarketing Proceeds Account and the Series 2008B Credit Facility Purchase Account (collectively, the "Series 2008B Accounts"). The Trustee is to hold moneys in the Series 2008B Accounts in trust for the benefit of the Owners of the Series 2008B Bonds and the Series 2008B Credit Facility Provider. For a discussion of these Funds and Accounts and the application of the Series 2008B Pledged Revenues and other moneys, see "APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE – Funds and Accounts."

## **Additional Bonds**

The Master Indenture authorizes the issuance of additional series of variable rate demand revenue bonds thereunder (each a "Series" and collectively with the Series 2008B Bonds, the "Bonds"), subject to various conditions precedent, for any lawful and proper purposes of the Company. Each Series of Bonds will be issued pursuant to a supplement to the Master Indenture (a "Series Supplement") and will have terms that are substantially the same as those applicable to the Series 2008B Bonds, with such variations as may be provided in the related Series Supplement, but will be as independent of and secured and be payable from sources independent of those pledged to the payment of the Series 2008B Bonds. The Master Indenture, together with all amendments and supplements thereto from time to time, including the

Series 2008B Bonds Supplement and all other Series Supplements, are referred to herein as the “Indenture.” Additional Series of Bonds may be issued without notice to or the consent of the Owners of the outstanding Bonds. However, no additional Series of Bonds may be issued under the Indenture if such issuance would result, by itself, in a reduction or withdrawal of the then current rating, if any, on the Series 2008B Bonds.

A default with respect to any Series of Bonds does not constitute a default under any other Series of Bonds unless specifically provided in the documents executed and delivered in connection with the issuance, sale and delivery of a Series of Bonds (the “Series Documents”). See “THE U.S. BANK REIMBURSEMENT AGREEMENT – Defaults and Remedies.”

## **THE SERIES 2008B CREDIT FACILITY**

### **Requirement to Maintain a Series 2008B Credit Facility**

The Series 2008B Indenture requires that at all times with respect to the outstanding Series 2008B Bonds, there is to be continuously available to the Trustee, as beneficiary, a Series 2008B Credit Facility to provide both security and liquidity for the Series 2008B Bonds, and provides procedures for making draws thereon. The Series 2008B Credit Facility is required to be an irrevocable letter of credit issued by a bank within the meaning of Section 3(a)(2) of the Securities Act, or a savings and loan association or similar institution within the meaning of Section 3(a)(5) of the Securities Act and constituting the obligation of the Series 2008B Credit Facility Provider to make payment to the Trustee of up to the amounts therein specified with respect to: (1) the principal amount of the Series 2008B Bonds outstanding to enable the Trustee to pay (a) the principal amount of the Series 2008B Bonds when due at maturity or upon redemption or acceleration, and (b) an amount equal to the principal portion of the purchase price of any Series 2008B Bonds tendered for purchase; plus (2) the amount of interest due on the Series 2008B Bonds but not less than 35 days’ accrued interest (105 days’ accrued interest if the Series 2008B Bonds bear interest at the Three Month Interest Rate, or 195 days’ accrued interest if the Series 2008B Bonds bear interest in any other Interest Rate Mode) at the Maximum Rate to enable the Trustee to pay (a) interest on the Series 2008B Bonds when due, and (b) an amount equal to the interest portion, if any, of the purchase price of any Series 2008B Bonds tendered for purchase. The Series 2008B Credit Facility may not be drawn upon to pay Debt Service Requirements with respect to any Pledged Bonds, or to pay premium, if any, on the Series 2008B Bonds. See also “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE – Drawings on the Series 2008B Credit Facility.”

### **The U.S. Bank Letter of Credit**

The following is a summary of certain provisions of the U.S. Bank Letter of Credit to be issued by U.S. Bank pursuant to the U.S. Bank Reimbursement Agreement and which constitutes the initial Series 2008B Credit Facility with respect to the Series 2008B Bonds. The following summary does not purport to be a full and complete statement of the provisions of the U.S. Bank Letter of Credit, which should be read in full for a complete understanding of all the terms and provisions thereof. During the offering period of the Series 2008B Bonds, a copy of the U.S. Bank Letter of Credit may be obtained upon request from the Underwriter. See “U.S. Bank National Association” below for certain information regarding U.S. Bank, as well as “THE U.S. BANK REIMBURSEMENT AGREEMENT” and “INVESTMENT CONSIDERATIONS – Factors Relating to the U.S. Bank Letter of Credit.”

The U.S. Bank Letter of Credit is issued by U.S. Bank in favor of the Trustee and for the benefit of the Owners and Beneficial Owners of the Series 2008B Bonds as security for the payment of principal of, accrued interest on and the purchase price of the Series 2008B Bonds.

The U.S. Bank Letter of Credit is an obligation of U.S. Bank to pay to the Trustee, upon request made with respect to the Series 2008B Bonds and in accordance with the terms thereof, a maximum aggregate amount of \$4,714,780.82 (the “Stated Amount”) to pay the principal of and accrued interest on, or the purchase price of, the Series 2008B Bonds. The Original Stated Amount consists of: (1) the original principal amount of the Series 2008B Bonds (the “Principal Portion”); plus (2) \$44,780.82 to pay up to 35 days’ accrued interest on the outstanding Series 2008B Bonds calculated on the basis of a 365-day year at the Maximum Rate (the “Interest Portion”). No draw may be made under the U.S. Bank Letter of Credit for any payment with respect to Series 2008B Bonds owned by or pledged to U.S. Bank.

Drawings on the U.S. Bank Letter of Credit are to be paid from funds of U.S. Bank and not directly or indirectly from funds or collateral on deposit with or for the account of, or pledged with or for the account of, U.S. Bank by the Borrower.

Upon each payment under the U.S. Bank Letter of Credit with respect to principal of the Series 2008B Bonds, the Principal Portion will be decreased by the amount of the payment and immediately thereafter the Interest Portion will be decreased proportionally.

If U.S. Bank is notified by the Trustee that the Remarketing Agent has identified purchasers of Pledged Series 2008B Bonds and that U.S. Bank has notified the Trustee that it has been reimbursed in full within the Reimbursement Period (as defined in the Reimbursement Agreement) for any drawings made to purchase tendered Series 2008B Bonds (a “Liquidity Drawing”), the Principal Portion and Interest Portion are to be reinstated by the amounts by which they were decreased upon such payment; provided that such amounts will only be reinstated only if U.S. Bank has not delivered a notice to the Trustee terminating the U.S. Bank Letter of Credit by reason of an event of default under the U.S. Bank Reimbursement Agreement (a “U.S. Bank Reimbursement Agreement Default”) and directing the Trustee to effect a mandatory tender of the Series 2008B Bonds as described in *THE SERIES 2008B BONDS – Tenders – Mandatory Tender Upon the Occurrence of an Event of Default Under the Series 2008B Credit Facility Agreement.*

The Interest Portion will be decreased upon, and to the extent of, each payment under the U.S. Bank Letter of Credit with respect to interest. The Interest Portion will be automatically reinstated by the amount by which it was decreased upon such payment; provided, however, that such reinstatement will not prejudice the right of U.S. Bank to deliver a notice to the Trustee terminating the U.S. Bank Letter of Credit by reason of a U.S. Bank Reimbursement Agreement Default occurring as the result of the Borrower’s failure to reimburse U.S. Bank for such payment under the U.S. Bank Letter of Credit.

The U.S. Bank Letter of Credit will expire at the close of business of U.S. Bank on the earliest of the following (each a “Termination Date”): (1) November 24, 2011; (2) the first Business Day immediately following the date the Series 2008B Bonds are remarketed in the Fixed Rate Mode (without regard to the credit enhancement provided by the U.S. Bank Letter of Credit) as specified by the Trustee in a notice to U.S. Bank; (3) the first Business Day immediately following the date specified by the Trustee in a notice to U.S. Bank as being the date on which all outstanding Series 2008B Bonds have been paid or will be paid with funds deposited with the Trustee; (4) the date specified by the Trustee in a notice to U.S. Bank as being the date on which a Substitute Series 2008B Credit Facility meeting the requirements of the Indenture takes effect; or (5) the close of business on the date specified by U.S. Bank in a notice to the Trustee as the date on which the U.S. Bank Letter of Credit will terminate by reason of the occurrence and continuance of a U.S. Bank Reimbursement Agreement Default, which date is the day on which U.S. Bank honors a draw on the U.S. Bank Letter of Credit in connection with a mandatory tender and purchase of the Series 2008B Bonds resulting from an the occurrence and continuance of a U.S. Bank Reimbursement Agreement Default.

To the extent not inconsistent with the express terms of the U.S. Bank Letter of Credit, the U.S. Bank Letter of Credit will be governed by and construed in accordance with Uniform Customs and Practice for Documentary Credits – 2007 Revision, ICC Publication No. 600, or any revision thereto (the “UCP”) as interpreted under the laws of the State of New York; provided, however, that: (1) notwithstanding the provisions of Article 36 of the UCP, if the U.S. Bank Letter of Credit expires during an interruption of business (as described in Article 36 of the UCP), U.S. Bank agrees to effect payment under the U.S. Bank Letter of Credit if a drawing which strictly conforms to the terms and conditions of the U.S. Bank Letter of Credit is made within 15 days after U.S. Bank’s resumption of business; and (2) the U.S. Bank Letter of Credit will not terminate because of a failure to make any permitted drawings thereunder as provided in Article 32 of the UCP. As to matters not covered by the UCP, the U.S. Bank Letter of Credit will be governed by the laws of the State of New York, including, to the extent not inconsistent with the UCP, the Uniform Commercial Code as in effect in the State of New York.

### **U.S. Bank**

The U.S. Bank Letter of Credit will be issued by U.S. Bank National Association. The following information has been provided solely by U.S. Bank for inclusion in this Offering Memorandum and is believed to be reliable. No other party has independently verified or assumes any responsibility for such information, and none of the Company, the Borrower, the Trustee or the Underwriter makes any representation as to the accuracy or completeness of such information, nor have any of such entities made an independent determination of the financial position of U.S. Bank or determined whether U.S. Bank is or will be financially capable of fulfilling its obligations under the U.S. Bank Letter of Credit.

*The delivery of this Offering Memorandum does not imply that there has been no change in the affairs of U.S. Bank since the date hereof, or that the information contained or referred to in this Offering Memorandum is correct as of any time subsequent to its date.*

THE U.S. BANK LETTER OF CREDIT IS SOLELY AN OBLIGATION OF U.S. BANK AND IS NEITHER AN OBLIGATION OF NOR GUARANTEED BY U.S. BANK’S HOLDING COMPANY (“U.S. BANCORP”) OR ITS OTHER AFFILIATES.

U.S. Bank is a national banking association organized under the laws of the United States and is the largest subsidiary of U.S. Bancorp. At September 30, 2008, the Bank reported total assets of \$243 billion, total deposits of \$147 billion and total shareholders’ equity of \$22 billion. The foregoing financial information regarding U.S. Bank has been derived from and is qualified in its entirety by the unaudited financial information contained in the Federal Financial Institutions Examination Council report Form 031, Consolidated Report of Condition and Income for a Bank with Domestic and Foreign Offices (“Call Report”), for the quarter ended September 30, 2008. The publicly available portions of the quarterly Call Reports with respect to U.S. Bank are on file with, and available upon request from, the FDIC, 550 17<sup>th</sup> Street NW, Washington, D.C. 20429 or by calling the FDIC at (877) 275-3342. The FDIC also maintains an Internet website at [www.fdic.gov](http://www.fdic.gov) that contains reports and certain other information regarding depository institutions such as U.S. Bank. Reports and other information about U.S. Bank are available to the public at the offices of the Comptroller of the Currency at One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, Illinois 60605.

U.S. Bancorp is subject to the informational requirements of the Securities Exchange Act of 1934, as amended, and, in accordance therewith, files reports and other information with the Securities and Exchange. U.S. Bancorp is not guaranteeing the obligations of U.S. Bank and is not otherwise liable for the obligations of U.S. Bank.

Except for the contents of this section, U.S. Bank and U.S. Bancorp assume no responsibility for the nature, contents, accuracy or completeness of the information set forth in this Offering Memorandum.

### **Substitute Series 2008B Credit Facility**

The Borrower may, at its option, provide for the delivery to the Trustee of a Substitute Series 2008B Credit Facility meeting the requirements of the Indenture. If the Series 2008B Bonds bear interest at the Weekly Interest Rate or the Fixed Interest Rate, the Substitute Series 2008B Credit Facility is to take effect (the “Replacement Date”) on any date selected by the Borrower, and if the Series 2008B Bonds bear interest in any other Adjustable Interest Rate Mode, the Replacement Date is to be (1) an Interest Rate Adjustment Date selected by the Company, or (2) the Fixed Interest Rate Commencement Date if the Series 2008B Bonds are to bear interest at the Fixed Interest Rate, provided that in each case such date allows the Trustee reasonable time to comply with the notice provisions specified in “Tenders – *Mandatory Tender Upon Delivery of a Substitute Series 2008B Credit Facility*.” The Substitute Series 2008B Credit Facility is to have a term of not less than one year or until the maturity date of the Series 2008B Bonds if sooner than one year.

Prior to the replacement of a Series 2008B Credit Facility with a Substitute Series 2008B Credit Facility, the Trustee is to give notice of such event to the Owners of the Series 2008B Bonds and each Rating Service then rating the Series 2008B Bonds, and is to receive the following on or prior to the Replacement Date, provided that the Trustee must receive the items in (4) below prior to the date that it is required to give notice of mandatory tender of the Series 2008B Bonds: (1) an Opinion of Counsel addressed to the Trustee and the Company to the effect that: (a) delivery of the Substitute Series 2008B Credit Facility complies with the provisions of the Series 2008B Indenture; and (b) the Substitute Series 2008B Credit Facility is a legal and binding obligation of the related Series 2008B Credit Facility Provider, enforceable against such Series 2008B Credit Facility Provider in accordance with its terms, except as limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally as such laws may be applied in the event of a reorganization, insolvency, liquidation, readjustment of debt or other similar proceeding of or moratorium applicable to such Series 2008B Credit Facility Provider and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); (2) the Substitute Series 2008B Credit Facility; (3) a certificate from the existing Series 2008B Credit Facility Provider to the effect that the new Series 2008B Credit Facility Provider has either purchased from the existing Series 2008B Credit Facility Provider, or satisfactory provision has been made for the purchase from the existing Series 2008B Credit Facility Provider, of all Pledged Series 2008B Bonds then held by the existing Series 2008B Credit Facility Provider or its designee, and that all obligations owing to the existing Series 2008B Credit Facility Provider under the Series 2008B Credit Facility Agreement have been paid or duly provided for; and (4) written evidence from each Rating Service then rating the Series 2008B Bonds of the rating to be assigned to the Series 2008B Bonds upon replacement of the existing Series 2008B Credit Facility with the Substitute Series 2008B Credit Facility.

### **Supplemental Series 2008B Credit Facility**

Upon the request of the Borrower, the Trustee is required to accept a credit facility, agreement or arrangement in addition to or in substitution of the Series 2008B Credit Facility, including, without limitation, a bond insurance policy, collateral arrangement, surety bond, standby bond purchase agreement or similar arrangement, for the purpose of enhancing the credit of Series 2008B Bonds in order to obtain or maintain a rating on the Series 2008B Bonds (a “Supplemental Series 2008B Credit Facility”), provided that the Trustee is provided with: (1) written evidence, reasonably satisfactory to the Trustee, that upon issuance and delivery of the Supplemental Series 2008B Credit Facility, the Series 2008B Bonds will be rated by a Rating Service in one of its three highest rating categories; and (2) the written consent of the Series 2008B Credit Facility Provider.

## **THE U.S. BANK REIMBURSEMENT AGREEMENT**

The following is a summary of certain provisions of the U.S. Bank Reimbursement Agreement by and among the Borrower, the Company (as guarantor of the Borrower's obligations thereunder) and U.S. Bank pursuant to which the U.S. Bank Letter of Credit will be issued. The U.S. Bank Reimbursement Agreement may be amended at any time without the consent of or notice to the Owners of the Series 2008B Bonds. Any Series 2008B Credit Facility Agreement pursuant to which a Substitute Series 2008B Credit Facility is issued may have terms substantially different from those of the U.S. Bank Reimbursement Agreement. The following summary is qualified in its entirety by reference to the U.S. Bank Reimbursement Agreement.

### **General**

The U.S. Bank Reimbursement Agreement, among other things, sets forth the terms and conditions for the issuance of the U.S. Bank Letter of Credit by U.S. Bank, the reimbursement to U.S. Bank by the Borrower of any amounts drawn by the Trustee under the U.S. Bank Letter of Credit and the guaranty of such reimbursement obligation by the Company. The U.S. Bank Reimbursement Agreement also includes provisions applicable to any line of credit that may be established in the future from U.S. Bank to the Borrower (the "Line of Credit") and, in connection with a Line of Credit, the issuance by U.S. Bank to the Borrower from time to time of letters of credit for the benefit of public entities to guarantee the completion of certain projects (the "Improvement Letters of Credit"), and contemplates the issuance from time to time of letters of credit to secure other bonds issued by the Company pursuant to the Master Indenture that are secured by loan payments to be made by the Borrower to the Company ("Borrower Bonds"). The U.S. Bank Letter of Credit and any letters of credit issued by U.S. Bank to secure other Borrower Bonds are referred to in the U.S. Bank Reimbursement Agreement collectively as the "Letters of Credit."

Under the U.S. Bank Reimbursement Agreement, the Borrower agrees to pay or reimburse U.S. Bank for the following "Obligations": (1) all unpaid principal and accrued and unpaid interest under the Letters of Credit, the Line of Credit, the Improvement Letters of Credit and any other credit facilities that may be provided by U.S. Bank to the Borrower (collectively, the "Facilities"); (2) actual and contingent reimbursement obligations under the Letters of Credit, the Line of Credit, the Improvement Letters of Credit and the Reimbursement Documents (consisting of the U.S. Bank Reimbursement Agreement, the Letters of Credit, the promissory notes delivered by the Borrower to evidence the reimbursement obligations with respect to the Letters of Credit and the Line of Credit, the security documents delivered by the Borrower in connection therewith and all other documents executed and delivered by the Borrower, the Company or any other party to govern, evidence or secure the Obligations); (3) all accrued and unpaid fees under the U.S. Bank Reimbursement Agreement and the Reimbursement Documents; (4) all other obligations of the Borrower to U.S. Bank of every type and description, direct or indirect, absolute or contingent, joint, several, or joint and several, primary or secondary, due or to become due, now existing or hereafter arising, whether or not contemplated by the Borrower or U.S. Bank as of the date of the U.S. Bank Reimbursement Agreement, which Obligations arise in connection with the Facilities; (5) obligations owed to U.S. Bank or an affiliate in respect of Rate Hedging Obligations (as defined in the U.S. Bank Reimbursement Agreement), which obligations arise in connection with the Facilities; (6) any and all advances made under the U.S. Bank Reimbursement Agreement; and (7) all reasonable costs of collection and enforcement of any and all thereof, including reasonable attorney fees. The Obligations of the Borrower to U.S. Bank are guaranteed by the Company and secured in the manner provided in the U.S. Bank Reimbursement Agreement. The Borrower and the Company also agree to comply with various affirmative and negative covenants regarding their existence, operations, finances and financial and other informational reporting.



## Defaults and Remedies

Each of the following events, acts or occurrences constitutes a U.S. Bank Reimbursement Agreement Default:

(1) any representation or warranty made by or on behalf of the Company, the Borrower or any Affiliate of the Borrower (as defined in the U.S. Bank Reimbursement Agreement) to U.S. Bank under or in connection with any Reimbursement Document or any Borrower Bond Documents (consisting of the Master Indenture, the Series 2008B Bonds Supplement and all other Series Supplements related to Borrower Bonds, the Bond Purchase Agreement between the Company and the Underwriter relating to the Series 2008B Bonds (the “2008B Bond Purchase Agreement”), the Series 2008B Remarketing Agreement and all other Remarketing Agreements related to Borrower Bonds and any other document (other than the Letters of Credit and the Reimbursement Documents) executed in connection with the Borrower Bonds) is false in any material respect as of the date on which made;

(2) the Borrower fails to maintain sufficient balances in the Reimbursement Account (which is required to be maintained with U.S. Bank for the purpose of facilitating reimbursements to U.S. Bank for draws on the Letters of Credit plus certain associated transaction fees) or in any other demand deposit account with U.S. Bank to pay amounts when due on account of the Borrower Bonds and amounts when due to reimburse U.S. Bank for any drawing on the Letters of Credit, or the Borrower otherwise fails to pay U.S. Bank when due any amount due to reimburse U.S. Bank on account of any drawing under the Letters of Credit pursuant to the U.S. Bank Reimbursement Agreement or the Indenture, or otherwise fails to make payment of any fee or other payment of the Obligations when due under the U.S. Bank Reimbursement Agreement; provided, however, that with respect to a Liquidity Drawing, a failure to reimburse U.S. Bank as provided in the U.S. Bank Reimbursement Agreement will not constitute a U.S. Bank Reimbursement Agreement Default if the Borrower fully reimburses U.S. Bank for such Liquidity Drawing together with interest thereon within 90 days following the date of such Liquidity Drawing (the “Reimbursement Period”) and if on the date of such Liquidity Drawing and through the Reimbursement Period (a) the Borrower is current in the payment of all fees and other sums due and owing to U.S. Bank under the U.S. Bank Reimbursement Agreement, (b) the Borrower is in full compliance with all of its covenants under the U.S. Bank Reimbursement Agreement and U.S. Bank is in receipt of evidence satisfactory to it of such compliance, (c) all representations and warranties made by the Borrower in the U.S. Bank Reimbursement Agreement are true in all material respects and (d) and no U.S. Bank Reimbursement Agreement Default, or event that with notice, or lapse of time, or both, would constitute a U.S. Bank Reimbursement Agreement Default, has occurred and is continuing;

(3) the breach of any of the negative covenants contained in the U.S. Bank Reimbursement Agreement;

(4) the breach of any of the affirmative covenants contained in the U.S. Bank Reimbursement Agreement that are not cured within 30 days after written notice from U.S. Bank to the Borrower or the Company specifying such breach;

(5) the breach by the Borrower or the Company of any other terms or provisions of the U.S. Bank Reimbursement Agreement and the other Reimbursement Documents, other than a breach that constitutes a U.S. Bank Reimbursement Agreement Default under paragraphs (1), (2) or (3) above and is not cured within 30 days after written notice from U.S. Bank to the Borrower or the Company specifying such breach;

(6) the failure of the Borrower or the Company, respectively, to pay any other material Indebtedness (as defined in the U.S. Bank Reimbursement Agreement) when due or within any applicable grace or cure period (including, without limitation, any Indebtedness regardless of the amount owed to U.S. Bank), or the default by the Borrower or the Company, respectively, in the performance of any other term, provision or condition contained in any agreement under which any such Indebtedness was created or is governed, the effect of which is to permit the holder or holders of such Indebtedness to cause such Indebtedness to become due prior to its stated maturity, unless such default is waived in writing by the holder or holders of such Indebtedness; or any such Indebtedness is validly declared to be due and payable or required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity thereof, provided that it is not a default under the U.S. Bank Reimbursement Agreement if the Company defaults under an agreement that guarantees a credit facility related to bonds issued under the Master Indenture for the benefit of CNG (see “THE COMPANY AND THE BORROWER – The Company”) or there is a default or acceleration of bonds issued under the Master Indenture for the benefit of CNG;

(7) the Borrower or the Company (a) has an order for relief entered with respect to it under the Federal Bankruptcy Code, (b) fails to pay, or admits in writing its inability to pay, its debts generally as they become due, (c) makes an assignment for the benefit of creditors, (d) applies for, seeks, consents to or acquiesces in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (e) institutes any proceeding seeking an order for relief under the Federal Bankruptcy Code or seeking to adjudicate it bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (f) suspends operations as presently conducted or discontinues doing business as an ongoing concern;

(8) without the application, approval or consent of the Borrower or the Company, a receiver, trustee, examiner, liquidator or similar official is appointed for the Borrower or the Company or any substantial part of their respective property, or a proceeding described in paragraph (7) above is instituted against the Borrower or the Company and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of 60 consecutive days;

(9) any Governmental Authority (as defined in the U.S. Bank Reimbursement Agreement) condemns, seizes or otherwise appropriates, or takes custody or control of, all or any substantial portion of the property of the Borrower or the Company;

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

(11) the Company fails within 60 days to pay, bond or otherwise discharge any judgment in excess of \$250,000 or order for the payment of money that is not stayed on appeal, or any attachment, levy or garnishment is issued against any collateral for the Obligations;

(12) there occurs a “reportable event” or a “prohibited transaction” under the Employee Retirement Income Security Act of 1974, as amended from time to time, relative to the Borrower;

(13) there occurs an event of default under any of the Borrower Bond Documents, or any of the Borrower Bond Documents are amended or modified without the prior written consent of U.S. Bank;

(14) the Borrower deliberately abandons the Project (consisting of (a) financing the costs of acquiring, constructing, installing and completing improvements to the Borrower's natural gas distribution facilities with the proceeds of the Series 2008B Bonds, as set forth in the Cost Budget submitted by the Company to U.S. Bank, (b) refunding, paying and defeasing the Refunded Obligations and (c) paying certain costs associated with the issuance of the Series 2008B Bonds) and such abandonment continues for a period of 30 days;

(15) any Reimbursement Document ceases to be in full force and effect or is declared null and void, or is revoked or terminated, or the validity or enforceability thereof is contested by the Borrower or the Company, or the Borrower or the Company denies that it has any or further liability thereunder; or

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

Upon the occurrence of a U.S. Bank Reimbursement Agreement Default, U.S. Bank may take any or all of the following actions: (1) give written notice to the Trustee that a U.S. Bank Reimbursement Agreement Default has occurred and direct the Trustee to immediately declare all Series 2008B Bonds then outstanding to be subject to mandatory tender and purchase as discussed in "THE SERIES 2008B BONDS – Tenders – *Mandatory Tender Upon the Occurrence of an Event of Default Under the Series 2008B Credit Facility Agreement*" on the date that is not later than the 5<sup>th</sup> Business Day following receipt by the Trustee of such notice, and further directing the Trustee to terminate the U.S. Bank Letter of Credit (or other Letters of Credit) on the Business Day on which U.S. Bank honors a draw on the U.S. Bank Letter of Credit (or other Letters of Credit) for such purpose; (2) direct the Trustee to exercise any remedies that U.S. Bank has under the Indenture and any other Borrower Bond Documents; (3) exercise any other remedy available to U.S. Bank under any of the Reimbursement Documents or the Borrower Bond Documents; and (5) refuse to approve any request for disbursements from the Accounts of the Project Fund or any advance under the Line of Credit and/or refuse to issue any Improvement Letter of Credit.

U.S. Bank may also: (1) demand that the Borrower immediately pay to U.S. Bank an amount equal to the aggregate outstanding amount of the Letters of Credit and Improvement Letters of Credit; (2) declare all other Indebtedness of the Borrower or the Company owing to U.S. Bank immediately due and payable; (3) demand in writing that the Company pay U.S. Bank, without further demand or notice and whether or not there had been any other default under the Reimbursement Documents, all outstanding Obligations and any unpaid interest thereof, together with interest thereon at the rate specified in the U.S. Bank Reimbursement Agreement and the costs and expense of collection, including reasonable compensation to U.S. Bank, its agents, attorneys and counsel, and any expenses or liabilities incurred by U.S. Bank under the U.S. Bank Reimbursement Agreement; and (4) pursue any other remedies available to it under any other Reimbursement Document, Borrower Bond Document or otherwise under applicable law.

To the extent that U.S. Bank makes any payments under the U.S. Bank Letter of Credit, it will be subrogated to all rights of the Trustee as to all obligations of the Borrower or the Company with respect to which such payment has been made by U.S. Bank.

## **INVESTMENT CONSIDERATIONS**

In addition to factors set forth elsewhere in this Offering Memorandum, purchasers of Series 2008B Bonds should carefully consider the following risk factors in connection with investment in the Series 2008B Bonds.

### **Series 2008B Credit Facility Primary Security; Limited Information Regarding the Borrower and the Company**

The primary security and source of payment for the Series 2008B Bonds will be the Series 2008B Credit Facility. As a consequence, only limited information with respect to the Borrower and the Company is included herein and no additional information will be provided in the future. In making an investment decision to purchase the Series 2008B Bonds, prospective investors should consider the financial condition of U.S. Bank. However, it is possible that, in the event of the insolvency of the Series 2008B Credit Facility Provider or the occurrence of some other event precluding the Series 2008B Credit Facility Provider from honoring its obligations to make payments as stated in the Series 2008B Credit Facility, the Company and the Borrower will be the only source of payment on the Series 2008B Bonds. There can be no assurance that the financial resources of the Company and the Borrower would be sufficient to pay the Series 2008B Bonds in such event. See “THE COMPANY AND THE BORROWER,” “SECURITY AND SOURCE OF PAYMENT” and “THE SERIES 2008B CREDIT FACILITY.”

### **Factors Affecting the U.S. Bank Letter of Credit**

***Performance by the Trustee.*** Performance by the Series 2008B Credit Facility Provider of its obligations under its Series 2008B Credit Facility will be subject to the satisfaction of certain conditions by the Trustee as set forth in the Series 2008B Credit Facility. Owners are thus dependent upon the Trustee to properly satisfy such conditions before they will receive the benefit of the Series 2008B Credit Facility. Furthermore, the question of whether the Trustee has properly satisfied such conditions is a question of fact which, if disputed, could delay or defeat the Trustee’s rights of enforcement of the Series 2008B Credit Facility. See “THE SERIES 2008B BONDS – Security and Source of Payment – *Drawings on the Series 2008B Credit Facility*” and “THE SERIES 2008B CREDIT FACILITY.”

***Expiration of the U.S. Bank Letter of Credit.*** The U.S. Bank Letter of Credit expires on November 24, 2011, subject to extension or earlier termination under certain circumstances as described therein. If the U.S. Bank Letter of Credit is not extended or a Substitute Series 2008B Credit Facility is not obtained by the Borrower, the Beneficial Interests will be subject to mandatory tender for purchase. There can be no assurance that the Borrower will be able to obtain either an extension of the U.S. Bank Letter of Credit or a Substitute Series 2008B Credit Facility. U.S. Bank is not under any obligation to extend the U.S. Bank Letter of Credit beyond the Stated Expiration Date thereof. See “THE SERIES 2008B BONDS – Tenders – *Mandatory Tender Upon Delivery of a Substitute Series 2008B Credit Facility – Mandatory Tender Upon Expiration of the Series 2008B Credit Facility*” and “THE SERIES 2008B CREDIT FACILITY.”

***Obligations of U.S. Bank Unsecured.*** The ability of U.S. Bank to honor draws on the U.S. Bank Letter of Credit is based solely upon the general credit of such financial institution, and is not collateralized or otherwise guaranteed by the United States of America or any agency or instrumentality

thereof. None of the Company, the Borrower or U.S. Bank assumes any liability to any purchaser of the Series 2008B Bonds or Beneficial Interests as a result of any deterioration of the financial condition of U.S. Bank. Upon any insolvency of U.S. Bank, any claim by the Trustee against U.S. Bank would be subject to bank receivership proceedings. No insurance proceeds from the FDIC or any other governmental agency, instrumentality or authority will be available to pay the Series 2008B Bonds Debt Service Requirements in the event of a default by U.S. Bank under the U.S. Bank Letter of Credit. See “THE SERIES 2008B CREDIT FACILITY – U.S. Bank National Association”

***General Factors Affecting U.S. Bank.*** U.S. Bank is subject to regulation and supervision by various regulatory bodies. New regulations could impose restrictions upon U.S. Bank that would restrict its ability to respond to competitive pressures. Various legislative or regulatory changes could dramatically impact the banking industry as a whole and U.S. Bank specifically. The banking industry is highly competitive in many of the markets in which U.S. Bank operates. Such competition directly impacts the financial performance of U.S. Bank. Any significant increase in such competition could adversely impact U.S. Bank. Prospective investors should evaluate the financial strength of U.S. Bank based upon the information contained in and referred to in “THE SERIES 2008B CREDIT FACILITY – U.S. Bank National Association” and other information available upon request from U.S. Bank, and should not rely upon any governmental supervision by any regulatory entity.

***Ability of Borrower and Company to Meet Reimbursement Obligations.*** No representation or assurance is made that any revenues or profits will be realized by the Borrower and the Company in amounts sufficient to make the payments required under the U.S. Bank Reimbursement Agreement. Future revenues and expenses are subject to, among other things, the capabilities of the Borrower and the Company and future economic and other conditions that are unpredictable. If the Borrower and the Company are unable to make the payments required under the U.S. Bank Reimbursement Agreement, U.S. Bank will have the right to cause the mandatory tender of the Series 2008B Bonds. See “THE SERIES 2008B BONDS – Tenders – Mandatory Tender Upon the Occurrence of an Event of Default Under the Series 2008B Credit Facility Agreement,” “THE U.S. BANK REIMBURSEMENT AGREEMENT,” and “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE – Defaults and Remedies.”

## **Factors Affecting the Remarketing Agent**

***The Remarketing Agent is Paid by the Company.*** The Remarketing Agent’s responsibilities include determining the interest rate from time to time and remarketing the Series 2008B Bonds that are optionally or mandatorily tendered by the Owners thereof (subject, in each case, to the terms of the Series 2008B Indenture and the Remarketing Agreement), all as further described in this Offering Memorandum. The Remarketing Agent is appointed by the Company and is paid by the Company for its services. As a result, the interests of the Remarketing Agent may differ from those of current Beneficial Owners and potential purchasers of the Series 2008B Bonds.

***The Remarketing Agent Routinely Purchases Bonds for its Own Account.*** The Remarketing Agent acts as remarketing agent for a variety of variable rate demand obligations and, in its sole discretion, routinely purchases such obligations for its own account. The Remarketing Agent is permitted, but not obligated, to purchase tendered Series 2008B Bonds for its own account and, in its sole discretion, may routinely acquire tendered Series 2008B Bonds in order to achieve a successful remarketing of such tendered Series 2008B Bonds (*i.e.*, because there otherwise are not enough buyers to purchase the tendered Series 2008B Bonds) or for other reasons. However, the Remarketing Agent is not obligated to purchase tendered Series 2008B Bonds and may cease doing so at any time without notice. The Remarketing Agent may also make a market in the Series 2008B Bonds by routinely purchasing and selling Series 2008B Bonds other than in connection with an optional or mandatory tender and remarketing. Such purchases and sales may be at or below par. However, the Remarketing Agent is not

required to make a market in the Series 2008B Bonds. The Remarketing Agent may also sell any Series 2008B Bonds that it has purchased to one or more affiliated investment vehicles for collective ownership or enter into derivative arrangements with affiliates or others in order to reduce its exposure to the Series 2008B Bonds. The purchase of Series 2008B Bonds by the Remarketing Agent may create the appearance that there is greater third party demand for the Series 2008B Bonds in the market than is actually the case. The practices described above also may result in fewer Series 2008B Bonds being tendered in a remarketing.

***Series 2008B Bonds May be Offered at Different Prices on Any Date Including an Interest Rate Determination Date.*** Pursuant to the Series 2008B Indenture and the Remarketing Agreement, the Remarketing Agent is required to determine the applicable rate of interest that, in its judgment, is the lowest rate that would permit the sale of the Series 2008B Bonds at par plus accrued interest, if any, on and as of the applicable interest rate determination date. The interest rate will reflect, among other factors, the level of market demand for such Series 2008B Bonds (including whether the Remarketing Agent is willing to purchase such Series 2008B Bonds for its own account). There may or may not be Series 2008B Bonds tendered and remarketed on an interest rate determination date, the Remarketing Agent may or may not be able to remarket any tendered Series 2008B Bonds on such date at par and the Remarketing Agent may sell the Series 2008B Bonds at varying prices to different investors on such date or any other date. The Remarketing Agent is not obligated to advise purchasers in a remarketing if it does not have third party buyers for all of the tendered Series 2008B Bonds at the remarketing price. In the event the Remarketing Agent owns any Series 2008B Bonds for its own account, it may, in its sole discretion in a secondary market transaction outside the tender process, offer such Series 2008B Bonds on any date, including the interest rate determination date, at a discount to par to some investors.

***The Ability to Sell the Series 2008B Bonds Other Than Through the Tender Process May Be Limited.*** The Remarketing Agent may buy and sell Series 2008B Bonds other than through the tender process. However, it is not obligated to do so and may cease doing so at any time without notice. Thus, investors who purchase the Series 2008B Bonds, whether in a remarketing or otherwise, should not assume that they will be able to sell their Series 2008B Bonds other than by tendering the Series 2008B Bonds in accordance with the tender process.

***The Remarketing Agent May Resign Without a Successor Being Named.*** The Remarketing Agent may resign upon 30 days' prior written notice and without a successor having been named. See "THE REMARKETING AGREEMENT."

## **Enforcement of Remedies**

Enforcement of remedies provided in the Series 2008B Indenture with respect to payments to be made by the Series 2008B Credit Facility Provider under the Series 2008B Credit Facility may be limited by insolvency, bankruptcy or other laws relating to creditors' rights generally. The security provided by the U.S. Bank Letter of Credit for payment of the Series 2008B Bonds Debt Service Requirements or the purchase price of the Beneficial Interests may be impaired in the event of a deterioration of the financial condition of U.S. Bank as the U.S. Bank Letter of Credit represents a general unsecured claim against the assets of U.S. Bank.

The Bankruptcy Code generally stays the enforcement of claims against the estate of a bankrupt once a petition in bankruptcy is filed. The Series 2008B Indenture requires that the Series 2008B Credit Facility is to provide for the payment of the principal of and accrued interest on the Series 2008B Bonds in the event the Series 2008B Bonds are accelerated due to the bankruptcy of the Company or the Borrower. However, it is possible in the event of a bankruptcy of the Company or the Borrower that a bankruptcy court could enjoin payments under the Series 2008B Credit Facility.

The various legal opinions to be delivered concurrently with the delivery of the Series 2008B Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by the valid exercise of the constitutional powers of the state, the United States of America and other governmental authorities, including police powers exercised for the benefit of the public health and welfare, and by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

### **Potential Conflict of Interest**

The Underwriter may have a conflict of interest with respect to the offering and sale of the Series 2008B Bonds. James M. Anderson, Senior Vice President of the Underwriter, owns stock in the Company, is a member of the Company's Board of Directors and also serves as a consultant to the Company.

## **LITIGATION**

There is no litigation now pending, to the knowledge of the Company or the Borrower, which questions the validity of the Series 2008B Bonds or any documents to be entered into in connection therewith.

## **FORWARD LOOKING STATEMENTS**

This Offering Memorandum contains statements relating to future results that are "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995. When used in this Offering Memorandum, the words "estimate," "forecast," "intend," "expect," "plan" and similar expressions identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material.

## **RATINGS**

Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies ("Standard & Poor's") has assigned to the Series 2008B Bonds the long term and short term ratings set forth on the cover page of this Offering Memorandum with the understanding that upon the delivery of the Series 2008B Bonds, the U.S. Bank Letter of Credit will be issued by U.S. Bank. The ratings reflect only the view of Standard & Poor's, from whom an explanation of the significance of such ratings may be obtained. The Company has furnished to Standard & Poor's certain information and materials relating to the Series 2008B Bonds, including certain information and materials that have not been included in this Offering Memorandum. There is no assurance that the currently assigned ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by Standard & Poor's if, in its judgment, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Series 2008B Bonds.

## **LEGAL MATTERS**

### **Legal Opinions**

Certain legal matters in connection with the issuance of the Series 2008B Bonds will be passed upon for the Company by its in-house counsel, by Brydon Swearngen & England, PC, Jefferson City, Missouri, as special counsel to the Company for Missouri regulatory matters, and by Peck, Shaffer & Williams LLP, Denver, Colorado, as special counsel to the Company in connection with the issuance of the Series 2008B Bonds; and for U.S. Bank by Kutak Rock LLP, Denver, Colorado.

The various legal opinions to be delivered concurrently with the delivery of the Series 2008B Bonds express the professional judgment of the attorneys rendering the opinions on the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to such transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

### **Changes in Law**

Various federal and state laws and regulations apply to the obligations created by the execution and delivery of the Series 2008B Indenture, the Series 2008B Loan Agreement and the Series 2008B Promissory Note, the issuance of the Series 2008B Bonds and the operations of the parties involved in this financing. There can be no assurance that there will not be changes in interpretation of or additions to the applicable laws and provisions that would have a material adverse effect, directly or indirectly, on the Series 2008B Indenture, the Series 2008B Bonds or the affairs of such parties.

## **TAX MATTERS**

Prospective investors should consult their own tax advisors concerning the tax implications of purchasing, holding and disposing of the Series 2008B Bonds under applicable federal, state and local laws. Prospective foreign investors should also consult their own tax advisors regarding the tax consequences unique to investors who are not United States persons.

## **UNDERWRITING**

The Series 2008B Bonds are being purchased for reoffering by the Underwriter at a discount of \$11,675 from the principal amount of the Series 2008B Bonds pursuant to a Bond Purchase Agreement between the Company and the Underwriter. The Series 2008B Bond Purchase Agreement sets forth the provisions for the purchase of the Series 2008B Bonds by the Underwriter and the conditions to such purchase, including the requirement that the Underwriter purchase all the Series 2008B Bonds if any are purchased.

In accordance with its responsibilities under the federal securities laws, the Underwriter has reviewed the information in this Offering Memorandum but does not guarantee its accuracy or completeness.

The Underwriter may have a conflict of interest with respect to this financing as discussed in “INVESTMENT CONSIDERATIONS – Potential Conflict of Interest.”



## MISCELLANEOUS

The appendices are integral parts of this Offering Memorandum and must be read together with all other parts of this Offering Memorandum. The descriptions of the Series 2008B Indenture, the Series 2008B Loan Agreement, the Series 2008B Promissory Note, the Series 2008B Bonds, the U.S. Bank Letter of Credit, the U.S. Bank Reimbursement Agreement and any other documents or materials not stated to be quoted in full herein are only summaries of certain provisions thereof and do not purport to be comprehensive or definitive. Prospective investors are referred to such documents for a recital of the complete terms thereof. Copies of the Series 2008B Indenture, the U.S. Bank Letter of Credit and the U.S. Bank Reimbursement Agreement may be obtained from the Underwriter or the Trustee. So far as any statements made in this Offering Memorandum involve matters of opinion, forecasts or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact.

The Trustee, by acceptance of its duties as Trustee under the Series 2008B Indenture, has not reviewed this Offering Memorandum and makes no representations as to the information contained herein.

## OFFERING MEMORANDUM APPROVAL

The delivery of this Offering Memorandum has been duly approved by the Board of Directors of the Company.

**SUMMIT UTILITIES, INC.**

By: /s/ Michael P. Earnest  
President

\* \* \*

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## APPENDIX A

### GLOSSARY OF TERMS

Set forth below are definitions of certain terms used in this Offering Memorandum.

*“Additional Payments”* means the amounts required to be paid by the Borrower, in addition to the Series 2008B Loan Payments, pursuant to the provisions of the Series 2008B Loan Agreement.

*“Adjustable Rate”* means any interest rate to be borne by the Series 2008B Bonds other than the Fixed Interest Rate.

*“Alternate Rate”* means, on any Interest Rate Determination Date, the rate per annum specified in the index (the “Index”) published by the Indexing Agent and in effect on such Interest Rate Determination Date, not to exceed the Maximum Rate. The Index is to be based upon yield evaluations at par of bonds, the interest on which is included in gross income for purposes of federal income taxation, of not less than five “high grade” component issuers on bonds selected by the Indexing Agent. The specific issuers included among the component issuers may be changed from time to time by the Indexing Agent in its discretion. When Series 2008B Bonds are in the Weekly Interest Rate Mode or the One Month Interest Rate Mode, the yield evaluation period for the Index is to be 30-day yield evaluations. When Series 2008B Bonds are in the Three Month Interest Rate Mode or the Six Month Interest Rate Mode, the yield evaluation period for the Index is to be 180-day yield evaluations. When Series 2008B Bonds are in the One Year Interest Rate Mode, the Five Year Interest Rate Mode, the Ten Year Interest Rate Mode or the Fixed Interest Rate Mode, the yield evaluation period for the Index is to be one-year yield evaluations. If at any particular time no Indexing Agent publishes an Index satisfying the foregoing requirements, the Alternate Rate for an Interest Rate Period is to be the rate per annum specified in the most recently published Index for a comparable Interest Rate Period.

*“Authorized Borrower Representative”* means a person at the time designated to act on behalf of the Borrower for purposes of the Series 2008B Indenture by a certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by any of its officers. The certificate may designate an alternate or alternates.

*“Authorized Company Representative”* means a person at the time designated to act on behalf of the Company for purposes of the Series 2008B Indenture by a certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Company by any of its officers. The certificate may designate an alternate or alternates.

*“Bankruptcy Code”* means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

*“Beneficial Interest”* means the beneficial right to receive payments and notices with respect to the Series 2008B Bonds that are held by the Depository under a book-entry system.

*“Beneficial Owner”* means a Person owning a Beneficial Interest in the Series 2008B Bonds, as evidenced to the satisfaction of the Trustee.

*“Bond Fund”* means the Bond Fund created by the Series 2008B Indenture, including therein with respect to the Series 2008B Bonds the Series 2008B Debt Service Account and the Series 2008B Credit Facility Account.

“*Bond Register*” means the books kept and maintained by the Registrar for registration and transfer of Series 2008B Bonds pursuant to the Series 2008B Indenture.

“*Bonds*” means all Series of Bonds issued under the Master Indenture.

“*Book-Entry System*,” “*book-entry system*” or “*book-entry form*” means a form or system, as applicable, under which (a) the Beneficial Interests may be transferred only through a book-entry only system and (b) physical Series 2008B Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Owner, with the physical Series 2008B Bond certificates “immobilized” in the custody of the Depository.

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

“*Borrower Bonds*” means all Bonds issued under the Indenture that are secured by loan payments to be made by the Borrower to the Company.

“*Borrower Bond Documents*” means the Master Indenture, the Series 2008B Bonds Supplement and all other Series Supplements related to Borrower Bonds, the Bond Purchase Agreement, the Series 2008B Remarketing Agreement and all other Remarketing Agreements related to Borrower Bonds and any other document (other than the Letters of Credit and the Reimbursement Documents).

“*Business Day*” means: (1) for purposes of the Series 2008B Indenture, the Series 2008B Loan Agreement and the U.S. Bank Reimbursement Agreement, a day of the year other than (a) a Saturday or Sunday, (b) a day on which commercial banks located in the city or cities in which the corporate trust office of the Trustee in Denver, Colorado, the Paying Agent, the Remarketing Agent or the Series 2008B Credit Facility Provider is located are required or authorized to remain closed or (c) a day on which the New York Stock Exchange is closed; and (2) for purposes of the U.S. Bank Letter of Credit, any day that is not (a) either a Saturday or a Sunday or a day on which banking institutions are authorized or required by law or executive order to close in the city in which the corporate trust office of the Trustee, the principal corporate office of the Remarketing Agent or the office of U.S. Bank at which drawings under the U.S. Bank Letter of Credit are to be honored is located or (b) a day on which the New York Stock Exchange is closed.

“*Closing Date*” means the date of initial delivery of and payment for the Series 2008B Bonds.

“*Company*” means Summit Utilities, Inc., a Colorado corporation.

“*Depository*” means any securities depository that is a clearing agency or corporation under federal and state law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book-entry interests in bonds, and to effect transfers of book-entry interests in bonds in book-entry form, and includes and means initially DTC.

“*DTC*” means The Depository Trust Company (a limited purpose trust company), New York, New York.

“*DTC Participants*” means Participants in the DTC System.

“*Electronic Means*” means telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission and receipt.

*“Eligible Account”* means an account that is either: (a) maintained with a federal or state-chartered depository institution or trust company that has a Standard & Poor’s short-term debt rating of at least “A-2” (or, if no short-term debt rating, a long-term debt rating of “BBB+”); or (b) maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the U.S. Code of Federal Regulations Section 9.10(b), which, in either case, has corporate trust powers and is acting in its fiduciary capacity. In the event that an account required to be an “Eligible Account” no longer complies with such requirement, the Trustee is to promptly (and in no event within 30 calendar days) move such account to another financial institution so that the Eligible Account requirement is again satisfied.

*“Eligible Funds”* means, with respect to the Series 2008B Bonds, moneys which are (a) continuously on deposit with the Trustee in trust for the benefit of the Owners of the Series 2008B Bonds in a separate and segregated subaccount of the Series 2008B Debt Service Account in which only Eligible Funds are held, and (b) proceeds of (i) the Series 2008B Bonds received contemporaneously with the issuance and sale of the Series 2008B Bonds, (ii) a drawing under the Series 2008B Credit Facility, (iii) the remarketing by the Remarketing Agent of the Series 2008B Bonds tendered for purchase prior to maturity at the option of the Owners and Beneficial Owners pursuant to the Series 2008B Indenture or upon mandatory tender upon conversion to a new Interest Rate Mode or upon mandatory tender upon delivery of a Substitute Series 2008B Credit Facility, (iv) any other moneys as to which the Trustee has received a written Opinion of Bankruptcy Counsel, which opinion is acceptable to each Rating Service then rating the Series 2008B Bonds, if any, or (v) the investment of funds qualifying as Eligible Funds under the foregoing clauses.

*“Eligible Investments”* means, with respect to each Series of Bonds, any of the following investments, so long as such investments at the time of investment are legal investments for the moneys proposed to be invested therein: (a) Government Obligations; (b) shares of a money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940 whose shares are registered under the Securities Act, has assets of at least \$100,000,000 and has a rating “AAAm” or “AAAm-G” by a Rating Service, including money market mutual funds including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent and/or custodian or sub-custodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee; (c) commercial paper having, at the time of investment or contractual commitment to invest therein, a rating from Standard & Poor’s and Moody’s in the highest investment category granted thereby; (d) repurchase and reverse repurchase agreements collateralized with securities described in (a) above, including those of the Trustee or any of its affiliates; (e) demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits and certificates of deposit or bankers acceptances of depository institutions, including the Trustee or any of its affiliates, rated in the “AA” long-term ratings category or higher by Standard & Poor’s or Moody’s; and (f) any other investments approved in writing by the related Series Credit Facility Provider.

*“Exchange Act”* means the federal Securities Exchange Act of 1934, as amended.

*“Extraordinary Services”* and *“Extraordinary Expenses”* means all services rendered and all reasonable expenses properly incurred by the Trustee under the Series 2008B Indenture, other than Ordinary Services and Ordinary Expenses. Such Extraordinary Services and Extraordinary Expenses include, but are not limited to, services rendered and expenses incurred in connection with a Series 2008 Indenture Default.

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

“*First Optional Redemption Date*” means the July 1 occurring on or after the 5<sup>th</sup> anniversary of the Fixed Interest Rate Commencement Date.

“*Five Year Interest Rate*” means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate, for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the June 30 or December 31 nearest to but not later than the date which is five years from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Series 2008B Bonds could be remarketed at par, plus accrued interest (if any), on the Interest Rate Adjustment Date for that Interest Rate Period, or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the Five Year Interest Rate for whatever reason, or the Five Year Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event may the Five Year Interest Rate exceed the Maximum Rate.

“*Fixed Interest Rate*” means (a) the fixed rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Period Reset Date, to be the lowest interest rate, for the period from the Interest Period Reset Date to the final maturity date of the Series 2008B Bonds, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Series 2008B Bonds could be remarketed at par plus accrued interest (if any) on the Interest Period Reset Date or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the Fixed Interest Rate for whatever reason, or the Fixed Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event may the Fixed Interest Rate exceed the Maximum Rate.

“*Fixed Interest Rate Commencement Date*” means the Interest Period Reset Date from and after which the Series 2008B Bonds bear interest at the Fixed Interest Rate, as that date is established as provided in the Series 2008B Indenture.

“*Government Obligations*” means: (a) direct obligations of the United States of America for the timely payment of which is fully and unconditionally guaranteed by the United States government; (b) obligations issued by a person controlled or supervised by and acting as an agency, establishment or instrumentality of the United States of America the payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (a) or (b) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America or a Federal Reserve Bank); and (c) securities which represent an interest in the obligations described in clauses (a) and (b) above.

“*Improvement Letters of Credit*” means, as part of a Line of Credit, letters of credit issued by U.S. Bank to the Borrower from time to time of certain for the benefit of public entities to guarantee the completion of certain projects.

“*Indenture*” means the Master Indenture, together with all amendments and supplements thereto from time to time, including the Series 2008B Bonds Supplement and all other Series Supplements.

*“Indexing Agent”* means Kenny Information Systems, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation is dissolved or liquidated or no longer publishes the indices referred to in the definition of Alternate Rate, then the term *“Indexing Agent”* will be deemed to refer to any other entity publishing similar indices selected by the Company and approved by the Series 2008B Credit Facility Provider and the Remarketing Agent (neither of whom will have any liability by reason of such approval).

*“Interest Payment Date”* means, (i) while the Series 2008B Bonds bear interest at the Weekly Interest Rate or the One Month Interest Rate, the first Business Day of each month; (ii) while the Series 2008B Bonds bear interest at the Three Month Interest Rate, the first Business Day of each January, April, July and October; and (iii) while the Series 2008B Bonds bear interest at a Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate, the first day of each January and July.

*“Interest Period Reset Date”* means the date on which the interest rate on the Series 2008B Bonds converts from the Interest Rate Mode applicable to the Series 2008B Bonds prior to such date to a new Interest Rate Mode. An Interest Period Reset Date will be the first Business Day of a month; provided that upon conversion from a Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate or the Ten Year Interest Rate, an Interest Period Reset Date will be the first day of a month; and provided further, that except when converting from the Weekly Interest Rate, an Interest Period Reset Date may not occur prior to the end of the preceding Interest Rate Period and will be the first day or Business Day after the end of such preceding Interest Rate Period.

*“Interest Rate Adjustment Date”* means any date on which the interest rate on the Series 2008B Bonds may be adjusted, either as the result of the conversion of the interest rate on the Series 2008B Bonds to a different Interest Rate Mode or by adjustment of the interest rate on the Series 2008B Bonds within the applicable Interest Rate Mode. Except as otherwise provided with respect to an Interest Rate Adjustment Date which is also an Interest Period Reset Date, the Interest Rate Adjustment Date will be Thursday of each week if the Series 2008B Bonds bear interest at the Weekly Interest Rate, the Interest Rate Adjustment Date will be the first Business Day of a month if the Series 2008B Bonds bear interest at the One Month Interest Rate, and the Interest Rate Adjustment Date will be the first day of the first month of the Interest Rate Period if the Series 2008B Bonds bear interest at the Three Month Interest Rate, a Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate or the Ten Year Interest Rate.

*“Interest Rate Determination Date”* means: (a) with respect to the Weekly Interest Rate, not later than 2:00 p.m., Denver, Colorado time, on Wednesday of each week, or the next preceding Business Day if such Wednesday is not a Business Day; (b) with respect to the One Month Interest Rate, the 7<sup>th</sup> Business Day preceding an Interest Rate Adjustment Date; and (c) with respect to the Three Month Interest Rate, the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate and the Fixed Interest Rate, the 10<sup>th</sup> Business Day preceding an Interest Rate Adjustment Date; provided that upon any conversion to the Weekly Interest Rate from a different Interest Rate Mode, the first Interest Rate Determination Date means not later than 2:00 p.m., Denver, Colorado time, on the Business Day preceding the Interest Period Reset Date.

*“Interest Rate Mode”* or *“Mode”* means any of those modes of interest with respect to the Series 2008B Bonds authorized by the Series 2008B Indenture, specifically the Weekly Interest Rate, the One Month Interest Rate, the Three Month Interest Rate, the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate and the Fixed Interest Rate.

*“Interest Rate Period”* means that period of time for which the interest rate with respect to the Series 2008B Bonds has been determined by the Remarketing Agent or otherwise as provided in the

definition of the applicable Interest Rate Mode, commencing on the applicable Interest Rate Adjustment Date, and terminating on the day immediately preceding the following Interest Rate Adjustment Date.

*“Letters of Credit”* means the U.S. Bank Letter of Credit and the letters of credit securing any other Borrower Bonds.

*“Line of Credit”* means any revolving line of credit established with U.S. Bank by the Borrower.

*“Master Indenture”* means the Master Trust Indenture dated August 7, 2008, by and between the Company and the Trustee, as amended or supplemented from time to time.

*“Maximum Rate”* means 10.00% per annum.

*“Moody’s”* means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, then the term *“Moody’s”* will be deemed to refer to any other nationally recognized securities rating agency selected by the Company and approved by the Series 2008B Credit Facility Provider (which will not have any liability by reason of such approval).

*“Obligations”* means: (1) all unpaid principal and accrued and unpaid interest under the Facilities); (2) actual and contingent reimbursement obligations under the Letters of Credit, the Line of Credit, the Improvement Letters of Credit and the Reimbursement Documents; (3) all accrued and unpaid fees under the U.S. Bank Reimbursement Agreement and the Reimbursement Documents; (4) all other obligations of the Borrower to U.S. Bank of every type and description, direct or indirect, absolute or contingent, joint, several, or joint and several, primary or secondary, due or to become due, now or in the future, whether or not contemplated by the Borrower or U.S. Bank as of the date of the U.S. Bank Reimbursement Agreement, which Obligations arise in connection with the Facilities; (5) obligations owed to U.S. Bank or an affiliate in respect of Rate Hedging Obligations (as defined in the U.S. Bank Reimbursement Agreement), which obligations arise in connection with the Facilities; (6) any and all advances made under the U.S. Bank Reimbursement Agreement; and (7) all reasonable costs of collection and enforcement of any and all thereof, including reasonable attorney fees.

*“One Month Interest Rate”* means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate, for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date to and including the day preceding the first Business Day of the next month, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Series 2008B Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the One Month Interest Rate for whatever reason, or the One Month Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event may the One Month Interest Rate exceed the Maximum Rate.

*“One Year Interest Rate”* means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate, for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the June 30 or December 31 nearest to but not later than the date which is one year from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent



(taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Series 2008B Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the One Year Interest Rate for whatever reason, or the One Year Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event may the One Year Interest Rate exceed the Maximum Rate.

*“Opinion of Bankruptcy Counsel”* means the written opinion of nationally recognized counsel experienced in bankruptcy law matters and acceptable to the Trustee that the deposit and use of certain moneys will not constitute an avoidable preferential payment pursuant to Section 547 of the Bankruptcy Code or an avoidable post-petition transfer pursuant to Section 549 of the Bankruptcy Code, recoverable from Owners of the Series 2008B Bonds pursuant to Section 550 of the Bankruptcy Code in the event of an act of bankruptcy by or in respect of the Company or the Borrower, any guarantor or any obligor of the Company or the Borrower or any general partner of any obligor of the Company or the Borrower were to become a debtor under the Bankruptcy Code.

*“Opinion of Counsel”* means a written opinion of an attorney-at-law or firm of attorneys satisfactory to the Trustee and licensed to practice law in the State who is engaged by the Company to deliver the opinions that may be required under the Series 2008B Indenture.

*“Ordinary Services”* and *“Ordinary Expenses”* means those standard and customary services normally rendered, and those reasonable expenses normally incurred, by a trustee under instruments similar to the Series 2008B Indenture, and does not include services rendered and expense incurred in connection with a Series 2008B Indenture Default.

*“Outstanding”* or *“outstanding”* means, with respect to the Series 2008B Bonds, as of the applicable date, all Series 2008B Bonds that have been authenticated and delivered, or that are being delivered by the Trustee under the Series 2008B Indenture, except:

(a) Series 2008B Bonds canceled upon surrender, exchange or transfer, or canceled because of payment or redemption on or prior to that date;

(b) Series 2008B Bonds, or the portion thereof, the payment, redemption or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee or any Paying Agent pursuant to the Series 2008B Indenture on or prior to that date for that purpose (whether upon or prior to the maturity or redemption date of those Series 2008B Bonds); provided that if any of those Series 2008B Bonds are to be redeemed prior to their maturity, notice of that redemption has been given or arrangements satisfactory to the Trustee have been made for giving notice of that redemption, or waivers by the affected Owners of that notice satisfactory in form to the Trustee have been filed with the Trustee;

(c) Series 2008B Bonds, or the portion thereof, that are deemed to have been paid and discharged, or caused to have been paid and discharged, pursuant to the provisions of the Series 2008B Indenture; and

(d) Series 2008B Bonds in lieu of which others have been authenticated under the Series 2008B Indenture;

provided, however, that in determining whether the Owners of the requisite percentage of Series 2008B Bonds have concurred in any demand, direction, request, notice, consent, waiver or other action under the

Series 2008B Indenture, Series 2008B Bonds (other than Pledged Series 2008B Bonds) that are owned by the Company or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company are to be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that for the purposes of determining whether the Trustee will be protected in relying on any such direction, consent or waiver, only such Series 2008B Bonds which a Responsible Officer of the Trustee (as defined in “APPENDIX A – GLOSSARY OF TERMS”) actually knows are so owned are to be disregarded. Series 2008B Bonds so owned that have been pledged in good faith may be regarded as Outstanding for such purpose if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right to vote such Series 2008B Bonds and the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel will be full protection to the Trustee.

“*Owner*” means the Person in whose name a Series 2008B Bond is registered on the Bond Register.

“*Paying Agent*” means the Trustee or any bank or trust company designated as a Paying Agent by or in accordance with the Series 2008B Indenture.

“*Person*” or words importing persons means firms, associations, corporations, partnerships (including, without limitation, general and limited partnerships), limited liability companies, limited liability partnerships, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“*Pledged Series 2008B Bonds*” means Series 2008B Bonds purchased with funds drawn under a Series 2008B Credit Facility and registered or recorded in the name of the related Series 2008B Credit Facility Provider or its designee, as pledgee, and securing obligations of the Company under the related Series 2008B Credit Facility Agreement.

“*Project Fund*” means the Project Fund created pursuant to the Series 2008B Indenture, including therein with respect to the Series 2008B Bonds the Series 2008B Project Account.

“*Purchase Date*” means any date upon which tendered Series 2008B Bonds are required to be purchased by the Trustee.

“*Rating Requirement*” means a Standard & Poor’s rating of the Series 2008B Credit Facility Provider of “A-1” or better (short term) and “A” or better (long term).

“*Rating Service*” mean Standard & Poor’s and/or Moody’s, according to which of such rating agencies is then rating the Series 2008B Bonds; provided that if neither of such rating services then rates the Series 2008B Bonds, the term “Rating Service” means any other nationally recognized rating service from which a rating on the Series 2008B Bonds has been sought and which is then rating the Series 2008B Bonds, and its successors and assigns. All references to the Rating Service in the Series 2008B Indenture are inapplicable and of no effect if the Series 2008B Bonds are not then rated by a Rating Service.

“*Registrar*” means the Trustee or any bank or trust company designated as a Registrar by or in accordance with the Series 2008B Indenture.

“*Reimbursement Documents*” or “*Series 2008B Credit Facility Documents*” means the U.S. Bank Reimbursement Agreement, the Letters of Credit, the promissory notes delivered by the Borrower to evidence the reimbursement obligations with respect to the Letters of Credit and the Line of Credit, the

security documents delivered by the Borrower in connection therewith and all other documents executed and delivered by the Borrower and the Company to govern, evidence or secure the Obligations.

*“Remarketing Agent”* means the Remarketing Agent for the Bonds appointed in accordance with the Master Indenture, initially, Gates Capital Corporation, the principal office of which is located in New York, New York.

*“Remarketing Reimbursement Fund”* means the Remarketing Reimbursement Fund created in the Series 2008B Indenture, including therein with respect to the Series 2008B Bonds the Series 2008B Remarketing Proceeds Account and the Series 2008B Credit Facility Purchase Account.

*“Replacement Date”* means the date on which a Substitute Series 2008B Credit Facility is to take effect.

*“Responsible Officer”* means, when used with respect to the Trustee, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer or any other officer of the Trustee within the corporate trust office of the Trustee designated in the Series 2008B Indenture (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time are such officers, respectively, or to whom any corporate trust matter is referred at the corporate trust office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of the Series 2008B Indenture.

*“Securities Act”* means the federal Securities Act of 1933, as amended.

*“Series”* or *“Series of Bonds”* means a series of Bonds issued pursuant to the Master Indenture and related Series Supplement.

*“Series 2008B Accounts”* means the Series 2008B Project Account, the Series 2008B Debt Service Account, the Series 2008B Credit Facility Account, the Series 2008B Remarketing Proceeds Account and the Series 2008B Credit Facility Purchase Account.

*“Series 2008B Bonds”* means the Company’s “Variable Rate Demand Revenue Bonds (Missouri Gas Utility, Inc. Project), Series 2008B” authorized in the Series 2008B Indenture in the principal amount of \$4,670,000.

*“Series 2008B Bond Purchase Agreement”* means the Bond Purchase Agreement between the Company and the Underwriter concerning the purchase of the Series 2008B Bonds from the Company by the Underwriter.

*“Series 2008B Bonds Debt Service Requirements”* means the principal of and interest on the Series 2008B Bonds for any period or payable at any time, whether due on an Interest Payment Date, at maturity or upon redemption or acceleration.

*“Series 2008B Bonds Supplement”* means the Series 2008B Bonds Supplement to the Master Indenture, dated as of the Closing Date, by and between the Company and the Trustee, as amended or supplemented from time to time, authorizing the issuance of the Series 2008B Bonds.

*“Series 2008B Credit Facility”* means the U.S. Bank Letter of Credit and any Substitute Series 2008B Credit Facility.

“*Series 2008B Credit Facility Agreement*” means the U.S. Bank Reimbursement Agreement or a similar agreement entered into by and between the Borrower and/or the Company and the Series 2008B Credit Facility Provider with respect to the issuance of a Substitute Series 2008B Credit Facility.

“*Series 2008B Credit Facility Provider*” means the issuer of the Series 2008B Credit Facility, and its successors and assigns.

“*Series 2008B Credit Facility Account*” means the account of the Bond Fund so defined and created by the Series 2008B Indenture.

“*Series 2008B Credit Facility Purchase Account*” means the account of the Remarketing Reimbursement Fund so defined and created by the Series 2008B Indenture.

“*Series 2008B Debt Service Account*” means the account of the Bond Fund so defined and created by the Series 2008B Indenture.

“*Series 2008B Documents*” means the Series 2008B Bonds Supplement, the Series 2008B Loan Agreement, the Series 2008B Promissory Note, the Series 2008B Credit Facility Agreement, the Series 2008B Remarketing Agreement, the 2008B Bond Purchase Agreement and such other documents executed and delivered in connection with the issuance, sale and delivery of the Series 2008B Bonds.

“*Series 2008B Indenture*” means the Master Trust Indenture and the Series 2008B Bonds Supplement, as amended or supplemented from time to time.

“*Series 2008B Indenture Default*” means an event of default under the Series 2008B Indenture.

“*Series 2008B Loan*” means the loan made by the Company to the Borrower of the proceeds received from the sale of the Series 2008B Bonds pursuant to the Series 2008B Loan Agreement.

“*Series 2008B Loan Agreement*” means the Series 2008B Loan Agreement entered into by and between the Company and the Borrower in connection with the Series 2008B Loan, as amended or supplemented from time to time.

“*Series 2008B Loan Agreement Default*” means an event of default under the Series 2008B Loan Agreement.

“*Series 2008B Loan Payments*” means the amounts required to be paid by the Borrower in repayment of the Series 2008B Loan pursuant to the provisions of the Series 2008B Loan Agreement and the Series 2008B Promissory Note.

“*Series 2008B Pledged Revenues*” means (a) the Series 2008B Loan Payments, (b) all of the moneys received or to be received by the Company or the Trustee in respect of repayment of the Series 2008B Loan, (c) all moneys and investments in the Series 2008B Accounts of the Bond Fund, including, without limitation, moneys received by the Trustee under or pursuant to the Series 2008B Credit Facility, (d) any moneys and investments in the Series 2008B Account of the Project Fund, (e) any other moneys or assets pledged by this Series Supplement to the payment of Series 2008B Bonds and the Series 2008B Credit Facility Provider and (f) all income and profit from the investment of the foregoing.

“*Series 2008B Project*” means the purpose for which the Series 2008B Bonds are being issued, which is to provide funds to make the Series 2008B Loan.

“*Series 2008B Project Account*” means the account of the Project Fund so defined and created by the Series 2008B Indenture.

“*Series 2008B Project Costs*” means all lawful costs attributable to the Series 2008B Project, including the costs of issuing the Series 2008B Bonds.

“*Series 2008B Promissory Note*” means the promissory note of the Borrower evidencing the obligation of the Borrower to make the Series 2008B Loan Payments under the Series 2008B Loan Agreement.

“*Series 2008B Remarketing Agreement*” means the Series 2008B Remarketing Agreement dated as of the Closing Date by and between the Company and the Remarketing Agent in connection with the Series 2008B Bonds.

“*Series 2008B Remarketing Proceeds Account*” means the account of the Remarketing Reimbursement Fund so defined and created by the Series 2008B Indenture.

“*Series 2008B Series Supplement*” means the Series 2008B Bonds Supplement to the Master Indenture dated as of the Closing Date which authorizes the issuance of the Series 2008B Bonds and provides the terms and form thereof.

“*Series Borrower*” means, with respect to a Series of Bonds, the borrower under the related Series Loan Agreement.

“*Series Credit Facility*” means, with respect to each Series of Bonds: (a) the irrevocable, direct pay letter of credit to be issued by a Series Credit Facility Provider and delivered to the Trustee on the Closing Date in accordance with the Series 2008B Indenture, as the same may be transferred, reissued, extended, amended to change the interest coverage period as contemplated by the Series 2008B Indenture or replaced in accordance with the indenture, the Series Credit Facility Agreement and such Series Credit Facility, and (b) upon the issuance and effectiveness of a Substitute Series Credit Facility.

“*Series Credit Facility Agreement*” means, with respect to each Series of Bonds, the agreement pursuant to which the related Series Credit Facility or Substitute Series Credit Facility is issued, as amended and supplemented from time to time.

“*Series Credit Facility Provider*” means, with respect to each Series of Bonds, the issuer of the related Series Credit Facility or Substitute Series Credit Facility, which is either to be a bank within the meaning of Section 3(a)(2) of the Securities Act or a savings and loan association or similar institution within the meaning of Section 3(a)(5) of the Securities Act.

“*Series Documents*” means, with respect to each Series of Bonds, the documents executed and delivered in connection with the issuance, sale and delivery of such Series of Bonds.

“*Series Loan*” means, with respect to a Series of Bonds, the loan made by the Company to the Series Borrower of the proceeds received from the sale of such Series of Bonds pursuant to the related Series Loan Agreement to finance the related Series Project.

“*Series Loan Agreement*” means, with respect to a Series of Bonds, the Loan Agreement entered into by and between the Company and the related Series Borrower in connection with the related Series Loan, as amended or supplemented from time to time.

“*Series Loan Payments*” means, with respect to a Series of Bonds, the amounts required to be paid by the related Series Borrower in repayment of the related Series Loan pursuant to the provisions of the related Series Loan Agreement and Series Promissory Note.

“*Series Project*” means, with respect to a Series of Bonds, the purposes for which such Series of Bonds is issued as described in the related Series Supplement.

“*Series Promissory Note*” means, with respect to a Series of Bonds, the promissory note of the related Series Borrower evidencing the obligation of such Series Borrower to make the Series Loan Payments under the related Series Loan Agreement.

“*Series Supplement*” means the Supplemental Indenture authorized and executed pursuant to the terms of the Master Indenture for the purpose of creating a series of Bonds.

“*Six Month Interest Rate*” means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate, for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the June 30 or December 31 nearest to but not later than the date which is six months from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Series 2008B Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Six Month Interest Rate for whatever reason, or the Six Month Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event may the Six Month Interest Rate exceed the Maximum Rate.

“*Standard & Poor’s*” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such division is dissolved or liquidated or no longer performs the functions of a securities rating agency, then the term “Standard & Poor’s” will be deemed to refer to any other nationally recognized securities rating agency selected by the Company and approved by the Series 2008B Credit Facility Provider (which will not be under any liability by reason of such approval).

“*State*” means the State of Colorado.

“*Stated Expiration Date*” means the stated expiration date of the U.S. Bank Letter of Credit, initially being November 24, 2011, as it may be extended from time to time pursuant to its terms.

“*Substitute Series 2008B Credit Facility*” means an irrevocable direct pay letter of credit issued in replacement of the then-existing Series 2008B Credit Facility and meeting the requirements of the Series 2008B Indenture.

“*Substitute Series Credit Facility*” means, with respect to each Series of Bonds, an irrevocable direct pay letter of credit issued in replacement of the then-existing Series Credit Facility and meeting the requirements of the Series 2008B Indenture.

“*Supplemental Series 2008B Credit Facility*” means a credit facility, agreement or arrangement in addition to the Series 2008B Credit Facility, including, without limitation, a bond insurance policy, collateral arrangement, surety bond, standby bond purchase agreement or similar arrangement the purpose

of which is to enhance the credit of the Series 2008B Bonds in order to obtain or maintain a rating on the Series 2008B Bonds.

*“Supplemental Indenture”* means any indenture supplemental to the Master Indenture or the Series Supplements entered into by and between the Company and the Trustee in accordance with the Master Indenture.

*“Ten Year Interest Rate”* means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate, for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the June 30 or December 31 nearest to but not later than the date which is ten years from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Series 2008B Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period, or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the Ten Year Interest Rate for whatever reason, or the Ten Year Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event may the Ten Year Interest Rate exceed the Maximum Rate.

*“Three Month Interest Rate”* means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate, for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date to and including the day preceding the first Business Day of the January, April, July or October nearest to but not later than the date which is three months from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Series 2008B Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Three Month Interest Rate for whatever reason, or the Three Month Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event may the Three Month Interest Rate exceed the Maximum Rate.

*“Trust Estate”* means, with respect to the Series 2008B Bonds, the property conveyed to the Trustee pursuant to the Granting Clauses of the Series 2008B Indenture to secure the Series 2008B Bonds and the Series 2008B Credit Facility Provider.

*“Trustee”* means the trustee at the time acting as such under the Series 2008B Indenture, originally The Bank of New York Mellon Trust Company, N.A., as Trustee thereunder, and any successor Trustee as determined or designated under or pursuant to the Series 2008B Indenture.

*“Unassigned Company Rights”* means all of the rights of the Company to receive Additional Payments, to be held harmless and indemnified, to be reimbursed for attorney’s fees and expenses and to give or withhold consent to amendments, changes, modifications, alterations and termination of the Series 2008B Loan Agreement, all as provided under the Series 2008B Loan Agreement, and further includes the Company’s rights regarding limited liability, payment or reimbursement of expenses, indemnification, notices, approvals, consents, requests and other communications to the extent set forth in the Series 2008B Indenture or in the Series 2008B Loan Agreement.

“*Underwriter*” means, with respect to the Series 2008B Bonds, Municipal Capital Markets Group, Inc.

“*U.S. Bank*” means U.S. Bank National Association, a national banking association, and its successors and assigns, the principal office of which, for purposes of the Series 2008B Indenture, is located in New York, New York, unless otherwise noticed to the parties hereto.

“*U.S. Bank Letter of Credit*” means the Irrevocable Transferable Letter of Credit issued by U.S. Bank pursuant to the U.S. Bank Reimbursement Agreement and delivered to the Trustee on the Closing Date in accordance with the Series 2008B Indenture, as the same may be transferred, reissued, extended, amended to change the interest coverage period as contemplated in the Series 2008B Indenture or replaced in accordance with the Series 2008B Indenture, the U.S. Bank Reimbursement Agreement and the U.S. Bank Letter of Credit.

“*U.S. Bank Reimbursement Agreement*” means the Reimbursement and Pledge Agreement dated as of the Closing Date by and among U.S. Bank National Association, the Borrower and the Company, as amended and supplemented from time to time.

“*U.S. Bank Reimbursement Agreement Default*” means a default under the U.S. Bank Reimbursement Agreement.

“*Weekly Interest Rate*” means (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate, for the Interest Rate Period of one week (or less in the case of any such Interest Rate Period commencing on an Interest Period Reset Date which is not a Thursday or ending on the day preceding an Interest Period Reset Date) commencing on the applicable Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Series 2008B Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period, or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Weekly Interest Rate for whatever reason, or the Weekly Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event may the Weekly Interest Rate exceed the Maximum Rate.

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## **APPENDIX B**

### **SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE**

The following is a summary of certain provisions of the Series 2008B Indenture, and is in addition and complementary to the summaries found elsewhere in this Offering Memorandum. The following summary does not purport to be a full and complete statement of the provisions of the Series 2008B Indenture, which should be read in full for a complete understanding of all the terms and provisions thereof. During the offering period of the Series 2008B Bonds, copies of the Series 2008B Indenture may be obtained upon request from the Underwriter.

The Master Indenture authorizes the issuance of additional Series of Bonds thereunder, subject to various conditions precedent, each of which is required to have provisions that are substantially the same as the Series 2008B Bonds, with such variations as may be provided in the related Series Supplement, but otherwise will be secured by and payable from sources that are independent of those pledged to the payment of the Series 2008B Bonds. The following summary describes certain provisions of the Master Indenture and the Series 2008B Bonds Supplement only insofar as it relates to the Series 2008B Bonds, but unless otherwise indicated, such summary applies equally to any additional Series of Bonds that may be issued pursuant to the Master Indenture.

#### **Assignment and Security**

The Company assigns to the Trustee, in trust, for the equal and ratable benefit, security and protection of all present and future Owners of the Series 2008B Bonds, without privilege, priority or distinction as to lien or otherwise of any Series 2008B Bond over any other Series 2008B Bond, except as expressly provided therein, and, so long as the Series 2008B Credit Facility Provider is not in default under the related Series 2008B Credit Facility Agreement, for the equal and ratable benefit, security and protection of such Series 2008B Credit Facility Provider to the extent of amounts owed by the Company to such Series 2008B Credit Facility Provider under the related Series 2008B Credit Facility Agreement: (1) all right, title and interest in the funds, accounts or property, including all moneys and securities, from time to time held by the Trustee under the terms of the Series 2008B Indenture as security for the Series 2008B Bonds; (2) all right, title and interest of the Company in and to all Series 2008B Pledged Revenues, including, without limitation, amounts receivable by or on behalf of the Company under the Series 2008B Loan Agreement in respect of the payment of the Series 2008B Loan; (3) the Series 2008B Loan Agreement (except for the Unassigned Company Rights as defined in “APPENDIX A – GLOSSARY OF TERMS”); (4) the Series 2008B Promissory Note; and (5) any and all property, rights and interests of every kind or description which from time to time are sold, transferred, conveyed, assigned, pledged, mortgaged or delivered to the Trustee under the Series 2008B Indenture as additional security for the Series 2008B Bonds (except Pledged Series 2008B Bonds and amounts held by the Trustee in the Series 2008B Accounts of the Remarketing Reimbursement Fund).

#### **General Provisions of the Series 2008B Bonds**

See “THE SERIES 2008B BONDS,” “SECURITY AND SOURCES OF PAYMENT” and “THE SERIES 2008B CREDIT FACILITY” for description of the general provisions of the Series 2008B Bonds.

#### **Revenues and Funds**

***The Project Fund.*** The Master Indenture creates and establishes with the Trustee the Project Fund, and upon the issuance of the Series 2008B Bonds the Trustee is to establish within the Project Fund

the Series 2008B Project Account. All moneys received from the sale of the Series 2008B Bonds are to be deposited in the Series 2008B Account of the Project Fund and disbursed therefrom to pay all lawful costs attributable to the Series 2008B Project (being the purpose for which the Series 2008B Bonds are being issued, which is to provide funds to make the Series 2008B Loan), including the costs of issuing the Series 2008B Bonds (the “Series 2008B Project Costs”).

Pending disbursement pursuant to the Series 2008B Loan Agreement, the moneys and Eligible Investments (as defined in “APPENDIX A – GLOSSARY OF TERMS”) held to the credit of the Series 2008B Account of the Project Fund constitute a part of the Trust Estate assigned to the Trustee as security for the payment of the Series 2008B Bonds Debt Service Requirements and amounts owed to the Series 2008B Credit Facility Provider under the Series 2008B Reimbursement Agreement.

So long as no Series 2008B Indenture Default has occurred and is continuing, all moneys credited to the Series 2008B Project Account of the Project Fund are to be applied solely to pay the Series 2008B Project Costs pursuant to requisitions submitted by the Borrower meeting the requirements of the Series 2008B Indenture, or to redeem the Series 2008B Bonds. Upon receipt of a certificate from the Borrower that all Series 2008B Project Costs have been paid or reimbursed, the Trustee is to transfer any amounts remaining in the Series 2008B Project Account of the Project Fund to the Series 2008B Debt Service Account of the Bond Fund to be used to redeem Series 2008B Bonds on the earliest possible date.

Upon the occurrence and continuance of a Series 2008B Indenture Default that results in the principal amount of the Series 2008B Bonds being declared to be due and payable immediately, any moneys remaining in the Series 2008B Project Account of the Project Fund are to be promptly transferred by the Trustee to the Series 2008B Debt Service Account of the Bond Fund.

***The Bond Fund.*** The Master Indenture also creates and establishes with the Trustee the Bond Fund, and the Series 2008B Bonds Supplement provides that upon the issuance of the Series 2008B Bonds the Trustee is to establish within the Bond Fund the Series 2008B Debt Service Account and the Series 2008B Credit Facility Account. Except as otherwise provided in the Series 2008B Indenture, the Trustee is to deposit in the Series 2008B Accounts of the Bond Fund upon receipt all Series 2008B Revenues other than Series 2008B Bond proceeds deposited in the Series 2008B Account of the Project Fund, including all moneys received upon drawings made on the Series 2008B Credit Facility and any other amounts that under the terms of the Series 2008B Indenture, the Series 2008B Loan Agreement, the Series 2008B Promissory Note or the Series 2008B Credit Facility Agreement are to be applied to the payment of the Series 2008B Bonds Debt Service Requirements. Except as otherwise provided in the Series 2008B Indenture, the Series 2008B Accounts of the Bond Fund and the moneys and Eligible Investments therein are to be used solely and exclusively for the payment of the Series 2008B Bonds Debt Service Requirements when due at stated maturity or upon prior redemption or acceleration, or to reimburse the Series 2008B Credit Facility Provider for draws on the Series 2008B Credit Facility as provided in the Series 2008B Indenture and in the Series 2008B Loan Agreement.

The Trustee is to deposit in the Series 2008B Debt Service Account from time to time upon receipt all amounts received from the Company or otherwise for payment principal of, premium, if any, on and interest on the Series 2008B Bonds, which moneys are not to be commingled with other moneys in the Bond Fund. Amounts in the Series 2008B Debt Service Account are to be applied to the payment when due of the Series 2008B Bonds Debt Service Requirements in accordance with the Series 2008B Indenture, or to reimburse the Series 2008B Credit Facility Provider for draws on the Series 2008B Credit Facility.

The Trustee is to establish separate subaccounts within the Series 2008B Debt Service Account for each source of deposit (including any investment income thereon) made into the Series 2008B Debt

Service Account so that the Trustee may at all times ascertain the date of deposit, the amounts and the source of the funds in each subaccount, and whether the funds constitute Eligible Funds.

All moneys (and only those moneys) received by the Trustee from drawings under the Series 2008B Credit Facility to pay principal of and interest on the Series 2008B Bonds are to be deposited to the Series 2008B Credit Facility Account and are not to be commingled with other moneys in the Bond Fund. Moneys in the Series 2008B Credit Facility Account are to be applied to the payment when due of principal of and interest on the Series 2008B Bonds (other than Pledged Series 2008B Bonds or as otherwise provided in “Drawings on the Series 2008B Credit Facility” below and the Series 2008B Bonds Supplement). Moneys in the Series 2008B Credit Facility Account may not be applied to pay premiums, if any, on the Series 2008B Bonds.

Moneys in the Series 2008B Accounts of the Bond Fund are to be used to pay the Series 2008B Bonds Debt Service Requirements and for the redemption of Series 2008B Bonds prior to maturity and as otherwise provided in the Series 2008B Indenture only in the following order:

FIRST, amounts drawn by the Trustee under the Series 2008B Credit Facility and deposited into the Series 2008B Credit Facility Account of the Bond Fund;

SECOND, any Eligible Funds on deposit in the Series 2008B Debt Service Account of the Bond Fund; or

THIRD, any other amounts available in the Bond Fund.

Except with respect to moneys constituting the proceeds of draws on the Series 2008B Credit Facility or the proceeds from the remarketing of the Series 2008B Bonds, upon request of the Borrower and with the written consent of the Series 2008B Credit Facility Provider, the Trustee is to pay to the Borrower any amounts on deposit in the Series 2008B Debt Service Account of the Bond Fund on September 30<sup>th</sup> of each year during the term of the Series 2008B Bonds.

***Remarketing Reimbursement Fund.*** The Series 2008B Indenture also creates and establishes with the Trustee the Remarketing Reimbursement Fund, and upon the issuance of the Series 2008B Bonds the Trustee is to establish within the Remarketing Reimbursement Fund the Series 2008B Remarketing Proceeds Account and the Series 2008B Credit Facility Purchase Account. The Series 2008B Accounts of the Remarketing Reimbursement Fund are to be used for the deposit of amounts derived from the remarketing of Series 2008B Bonds or from the payment of the purchase price of Series 2008B Bonds by the Series 2008B Credit Facility Provider under the Series 2008B Credit Facility.

Upon receipt of the proceeds of a remarketing of Series 2008B Bonds on a Purchase Date, the Trustee is to deposit such proceeds in the Series 2008B Remarketing Proceeds Account for application to the purchase price of tendered Series 2008B Bonds. Such proceeds may not be commingled with other moneys in the Remarketing Reimbursement Fund. Upon the receipt of the proceeds of a remarketing of Pledged Series 2008B Bonds, the Trustee is to pay such proceeds to the Series 2008B Credit Facility Provider to the extent of any amount owing to such Series 2008B Credit Facility Provider.

All moneys (and only those moneys) received by the Trustee from drawings under the Series 2008B Credit Facility to pay the purchase price of tendered Series 2008B Bonds are to be deposited in the Series 2008B Credit Facility Purchase Account and may not be commingled with other moneys in the Remarketing Reimbursement Fund. Moneys in the Series 2008B Credit Facility Purchase Account are to be applied to the purchase price of the tendered Series 2008B Bonds to the extent that moneys on deposit in the Series 2008B Remarketing Proceeds Account are not sufficient for such purpose. Any amounts

deposited in the Series 2008B Credit Facility Purchase Account and not needed with respect to any Purchase Date for the payment of the purchase price of any tendered Series 2008B Bonds are to be returned to the Series 2008B Credit Facility Provider.

***Investment of Funds.*** Moneys in the Series 2008B Accounts of the Bond Fund and the Project Fund that may be invested pursuant to the Series 2008B Indenture are to be invested and reinvested by the Trustee in Eligible Investments at the oral or written direction of the Company. Investment of moneys in the Series 2008B Accounts of the Bond Fund are to mature or be redeemable without penalty at the option of the Trustee at the times and in the amounts necessary to provide moneys to pay the Series 2008B Bonds Debt Service Requirements as they become due at stated maturity or upon prior redemption. Each investment of moneys in the Series 2008B Accounts of the Bond Fund and the Project Fund are to mature or be redeemable without penalty at such time as may be necessary to make payments when necessary from such Series 2008B Accounts.

Investments made from moneys credited to any Series 2008B Account is to constitute part of such Series 2008B Account, and each such Series 2008B Account is to be credited with all proceeds of sale and income from investment of moneys credited thereto.

Moneys drawn on the Series 2008B Credit Facility and deposited in the Series 2008B Accounts of the Bond Fund or the Remarketing Reimbursement Fund are to be held in cash and not invested. Such funds are to be applied only to the satisfaction of the specific Series 2008B Bonds Debt Service Requirements for which they were drawn, and any funds not so applied are to be returned to the Series 2008B Credit Facility Provider.

Moneys in the Remarketing Reimbursement Fund are to be held in cash and not invested.

The Trustee has no obligation to invest and reinvest any cash held by it under the Series 2008B Indenture in the absence of timely and specific written direction from the Company. The Trustee is not liable for the selection of investments or for investment losses incurred thereon. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by the Series 2008B Indenture, and may conclusively rely upon such written direction from the Company as to both the suitability and legality of the directed investments.

***Moneys to be Held in Eligible Accounts and in Trust.*** Except where moneys have been deposited with or paid to the Trustee pursuant to an instrument restricting their application to particular Series 2008B Bonds, all moneys required or permitted to be deposited with or paid to the Trustee or any Paying Agent under any provision of the Series 2008B Indenture, the Series 2008B Loan Agreement or the Series 2008B Credit Facility and to be used to pay Series 2008B Bonds Debt Service Requirements or the Series 2008B Promissory Note, and any investments thereof, are to be held by the Trustee or that Paying Agent in Eligible Accounts and in trust for the benefit of the Owners and Beneficial Owners of the Series 2008B Bonds and the Series 2008B Credit Facility Provider. Except for (a) moneys deposited with or paid to the Trustee or any Paying Agent for the redemption of Series 2008B Bonds, notice of the redemption of which has been duly given, (b) moneys held by the Trustee as provided in “*Nonpresentment of Series 2008B Bonds*” hereafter or (c) moneys in the Series 2008B Accounts of the Remarketing Reimbursement Fund, all moneys described in the preceding sentence held by the Trustee or any Paying Agent will be subject to the lien of the Series 2008B Indenture while so held.

***Nonpresentment of Series 2008B Bonds.*** In the event that any Series 2008B Bond is not presented for payment when the principal thereof becomes due in whole or in part, either at stated maturity or upon prior redemption, or a check or draft for interest is uncashed, if moneys sufficient to pay the principal then due on that Series 2008B Bond or to pay such check or draft has been made available to

the Trustee for the benefit of its Owner, all liability of the Company to that Owner for the payment of the principal then due on the Series 2008B Bond or interest on such Series 2008B Bond represented by such check or draft cease and be discharged completely. Thereupon, it will be the duty of the Trustee to hold those moneys, without liability for interest thereon, in a separate account in the Bond Fund for the exclusive benefit of the Owner, who will be restricted thereafter exclusively to those moneys for any claim of whatever nature on its part under the Series 2008B Indenture or on, or with respect to, the principal then due on that Series 2008B Bond or interest on such Series 2008B Bond represented by such check or draft.

Any of the moneys that are so held by the Trustee, and which remain unclaimed by the Owner of a Series 2008B Bond not presented for payment or check or draft not cashed for a period of three years after the due date thereof (subject to applicable escheat law), are to be paid (i) to the Trustee to the extent of any fees, charges and expenses, including Ordinary Services, Ordinary Expenses, Extraordinary Services and Extraordinary Expenses (each as defined in “APPENDIX A – GLOSSARY OF TERMS”), of the Trustee and its agents under the Series 2008B Indenture then due, (ii) to the Series 2008B Credit Facility Provider, free of any trust or lien, to the extent of any amounts then due to such Series 2008B Credit Facility Provider under the related Series 2008B Credit Facility Agreement and (iii) if such Series 2008B Credit Facility has been surrendered to the Series 2008B Credit Facility Provider, then to the Borrower. Thereafter, the Owner of that Series 2008B Bond may look only to the Borrower for payment and then only to the amounts so received by the Borrower or paid to or on behalf of the Borrower, without any interest thereon, and the Trustee will have no responsibility with respect to those moneys.

***Disposition of Excess Moneys.*** Except as provided above in “*Nonpresentment of Series 2008B Bonds*” above, any amounts remaining in the Series 2008B Accounts of the Bond Fund with respect to the Series 2008B Bonds (a) after all of the outstanding Series 2008B Bonds are deemed paid and discharged under the Series 2008B Indenture, (b) after payment of all fees, charges and expenses of the Trustee and any Registrar or Paying Agent, and of all other amounts required to be paid under the Series 2008B Indenture, the Series 2008B Loan Agreement and the Series 2008B Promissory Note, and (c) after the Series 2008B Credit Facility has been surrendered to the Series 2008B Credit Facility Provider are to be paid first to such Series 2008B Credit Facility Provider to the extent of any amounts then due to such Series 2008B Credit Facility Provider under the related Series 2008B Credit Facility Agreement, and thereafter to the Borrower, to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the outstanding Series 2008B Bonds.

### **Drawings on the Series 2008B Credit Facility**

The Trustee is to draw on the Series 2008B Credit Facility pursuant to its terms in the amounts and at the times necessary to pay when due Debt Service Requirements (excluding any premium) on the Series 2008B Bonds under the following circumstances.

Prior to 1:00 p.m. (Portland, Oregon (Pacific) time) on the Business Day prior to any Interest Payment Date for the Series 2008B Bonds (or prior to the maturity date or any date set for a redemption of the Series 2008B Bonds which is not an Interest Payment Date), or Purchase Date, the Trustee is to determine the amount necessary to make all required payments of principal and interest on such Series 2008B Bonds or purchase price payments on the next succeeding Interest Payment Date, maturity date, other redemption date or such Purchase Date, and present a sight draft to the Series 2008B Credit Facility Provider (together with the required certificates under the Series 2008B Credit Facility) in the amount provided below, so as to permit the timely transfer of funds from the Series 2008B Credit Facility Provider to the Trustee for payment of interest on the Series 2008B Bonds on each Interest Payment Date, for payment of the principal of and interest on such Series 2008B Bonds when due, whether at maturity or

upon prior redemption, or the payment of the purchase price of the Series 2008B Bonds therein when due on the applicable Purchase Date.

Upon acceleration of the Series 2008B Bonds upon the occurrence of a Series 2008B Indenture Default, the Trustee, prior to 1:00 p.m. (Portland, Oregon (Pacific) time) on the Business Day prior to the day on which principal and interest shall be due and payable pursuant to the declaration of the acceleration of the Series 2008B Bonds pursuant to the Series 2008B Indenture, is to present a sight draft to the Series 2008B Credit Facility Provider (together with required certificates under the Series 2008B Credit Facility) for payment of the entire amount due with respect to the Series 2008B Bonds.

In calculating the amount to be drawn on the Series 2008B Credit Facility for the payment of the purchase price of Series 2008B Bonds tendered for purchase upon expiration of the Series 2008B Credit Facility or upon the occurrence of an event of default under the Series 2008B Credit Facility, or for the payment of principal of and interest on Series 2008B Bonds, whether on an Interest Payment Date, at maturity or upon redemption or acceleration, the Trustee is not to take into account the receipt or potential receipt of funds from the Borrower under the Series 2008B Loan Agreement, or the existence of any other moneys in the Series 2008B Accounts of the Project Fund or the Bond Fund, but is to draw on the Series 2008B Credit Facility for the full amount of such purchase price or the full amount of the principal and interest coming due on the Series 2008B Bonds.

In calculating the amount, if any, to be drawn on the Series 2008B Credit Facility for the payment of the purchase price of Series 2008B Bonds tendered for purchase on a Purchase Date for any other reason, the Trustee is to take into account funds received from the purchasers of such tendered Series 2008B Bonds or from the Remarketing Agent by 12:30 p.m. (Portland, Oregon (Pacific) time) on the Business Day prior to such Purchase Date with respect to the remarketing of such Series 2008B Bonds or otherwise, and is to thereupon draw on the Series 2008B Credit Facility the amount necessary to purchase such Series 2008B Bonds on the Purchase Date after taking into account all such funds which are attributable to the remarketing of such Series 2008B Bonds. Upon receipt of such moneys from the Series 2008B Credit Facility Provider, the Trustee (i) is to deposit the amount representing a draw on the Series 2008B Credit Facility for the payment of principal and interest on Series 2008B Bonds in the Series 2008B Credit Facility Account of the Bond Fund and apply the same only to the payment of such principal and interest when due on such Series 2008B Bonds, (ii) is to deposit the amount representing a draw on the Series 2008B Credit Facility for the purchase of Series 2008B Bonds in the Series 2008B Credit Facility Purchase Account of the Remarketing Reimbursement Fund and disburse such amount only to the tendering Owners and Beneficial Owners of the Series 2008B Bonds being purchased and (iii) so long as there does not exist a Series 2008B Indenture Event of Default as described in paragraphs (h) or (i) of “Defaults and Remedies – *Series 2008B Indenture Events of Default*” below with respect to the Series 2008B Bonds, and subject to the prior satisfaction of all Series 2008B Bonds Debt Service Requirements and purchase price payments with respect to the Series 2008B Bonds then due or on account of which funds shall have been paid to the Trustee by the Borrower or have been obtained by the Trustee by a drawing or drawings on the Series 2008B Credit Facility, by wire transfer is to pay, on behalf of the Borrower, but only from and to the extent of Series 2008B Loan Payments or any moneys available in the Series 2008B Accounts of the Project Fund, the Bond Fund or the Remarketing Reimbursement Fund, amounts due and payable to the Series 2008B Credit Facility Provider under the related Series 2008B Credit Facility Agreement for any drawing made on such Series 2008B Credit Facility.

Under no circumstances is the Trustee to use moneys drawn on the Series 2008B Credit Facility to pay Series 2008B Bonds Debt Service Requirements with respect to any Pledged Series 2008B Bonds, or to pay premium, if any, on the Series 2008B Bonds. The Series 2008B Bonds Debt Service Requirements with respect to Pledged Series 2008B Bonds will be deemed made and correlative amounts withdrawn in satisfaction thereof from the payments made by the Borrower to the Series 2008B Credit

Facility Provider under the Series 2008B Credit Facility Agreement and as provided in the Series 2008B Loan Agreement, and, to the extent of such payments, the Borrower will receive a credit against its obligations to make Series 2008B Loan Payments under the Series 2008B Loan Agreement and the Series 2008B Promissory Note.

## **Fiduciaries and Agents**

***The Trustee.*** The Series 2008B Indenture includes provisions regarding the Trustee's responsibilities, rights and obligations. Among other things, the Trustee undertakes to perform such duties as are specifically set forth in the Series 2008B Indenture; and upon the occurrence of a Series 2008B Indenture Default and during the continuation thereof, the Trustee is to exercise such of the rights and powers vested in it by the Series 2008B Indenture, and to use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances.

The Series 2008B Indenture provides that the Trustee will be entitled to act upon opinions of counsel as specified in the Series 2008B Indenture and will not be responsible for any loss or damage resulting from reliance thereon in good faith. In addition, the Series 2008B Indenture provides that the Trustee is entitled to rely on certain other instruments and it will not be liable for any action reasonably taken or omitted to be taken by it in good faith and reasonably believed by it to be within the discretion or power conferred upon it in the Series 2008B Indenture.

The Series 2008B Indenture also contains provisions regarding the payment of fees, charges and expenses of the Trustee and any additional Registrar and Paying Agent; the appointment of a co-Trustee; the resignation or removal of the Trustee and the appointment of a successor Trustee; the right of the Trustee, the Series 2008B Credit Facility Provider and any Registrar and Paying Agent to deal in Series 2008B Bonds; certain representations, agreements and covenants of the Trustee; notification by the Trustee to the Rating Service of certain events regarding the Series 2008B Bonds; and indemnification of the Trustee for certain losses.

In addition, if the Series 2008B Credit Facility Provider fails to honor any properly presented and conforming draw on the Series 2008B Credit Facility, and in the event the Trustee and such Series 2008B Credit Facility Provider are the same institution or related institutions, then the Trustee is to resign from the trusts created by the Series 2008B Indenture by giving written notice of the resignation to the Company, the Series 2008B Credit Facility Provider, any Registrar and/or Paying Agent, the Remarketing Agent, the Borrower, the Underwriter and the successor Trustee, and by mailing written notice of such resignation to the Owners of the Series 2008B Bonds at the close of business 15 days prior to such mailing.

***Additional Registrars and Paying Agents.*** Under the Series 2008B Indenture, the Trustee also serves as Registrar and Paying Agent for the Series 2008B Bonds. However, with the consent of the Company, the Trustee may appoint additional Registrars or Paying Agents for the Series 2008B Bonds with power to act on its behalf and subject to its direction in performing the duties of the Registrar and/or Paying Agent under the Series 2008B Indenture. It is the responsibility of the Trustee to establish the duties and responsibilities of any additional Registrar or Paying Agent for the Series 2008B Bonds to the extent not specified in the Series 2008B Indenture.

***The Remarketing Agent.*** Gates Capital Corporation has been appointed the Remarketing Agent for the Series 2008B Bonds, and will enter into a Series 2008B Remarketing Agreement with the Company. The Series 2008B Indenture provides that the Remarketing Agent is to: (a) compute the interest rates for the Series 2008B Bonds and give notices of such computations to the Trustee on each applicable Interest Rate Determination Date, all in accordance with the Series 2008B Indenture; and (b)

keep such records relating to its computations of interest rates for the Series 2008B Bonds consistent with prudent industry practice and to make such records available for inspection by the Company, the Trustee, the Borrower and the Series 2008B Credit Facility Provider at all reasonable times.

The Series 2008B Indenture contains provisions regarding the appointment of co-Remarketing Agents to assist in the performance of the Remarketing Agent's duties under the Series 2008B Indenture, the resignation or removal of the Remarketing Agent and the appointment of a successor Remarketing Agent, the remarketing of the Series 2008B Bonds and Beneficial Interests, the delivery of purchased Series 2008B Bonds and the remarketing of Pledged Series 2008B Bonds.

## **Defaults and Remedies**

***Series 2008B Indenture Defaults.*** The Series 2008B Indenture provides that each of the following constitutes an "Event of Default" thereunder with respect to the Series 2008B Bonds:

- (a) failure to pay when due any interest on any Series 2008B Bond;
- (b) failure to pay the principal of any Series 2008B Bond when and as that principal is due and payable, whether at stated maturity, upon prior redemption, by acceleration or otherwise;
- (c) failure to pay on a Purchase Date amounts due to the Owner or Beneficial Owner of any Series 2008B Bonds tendered or deemed tendered to the Trustee for purchase;
- (d) subject to any rights to contest, failure by the Company to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in the Series 2008B Indenture or in the Series 2008B Bonds, which failure continues for a period of 30 days after written notice, either by registered or certified mail, is given to the Company, the Borrower and the Series 2008B Credit Facility Provider specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and is required to be given by the Trustee at the written request of the Series 2008B Credit Facility Provider or the Owners of not less than 25% in aggregate principal amount of Series 2008B Bonds then outstanding;
- (e) the occurrence and continuation of a Series 2008B Loan Agreement Default;
- (f) receipt by the Trustee of a written notice from the Series 2008B Credit Facility Provider that an event of default or termination has occurred and is continuing under the related Series 2008B Credit Facility, Series 2008B Credit Facility Agreement or related documents and directing the Trustee to cause a mandatory tender of the Series 2008B Bonds in accordance with the Indenture;
- (g) failure of the Series 2008B Credit Facility Provider to honor any drawing properly made in strict compliance with the terms of the Series 2008B Credit Facility;
- (h) the Series 2008B Credit Facility Provider commences a proceeding under any federal or state insolvency, reorganization or similar law, or has such a proceeding commenced against it and either has an order of insolvency or reorganization entered against it or has the proceeding remain undismissed and unstayed for 90 days; or has a receiver, conservator, liquidator or trustee appointed for it or for the whole or any substantial part of its property; and



(i) receipt by the Trustee of written notice from the Series 2008B Credit Facility Provider by the 5<sup>th</sup> Business Day following an interest drawing under the Series 2008B Credit Facility that the amount drawn to pay interest on the Series 2008B Bonds will not be reinstated.

The terms “default” or “failure” as used in this section mean (i) a default or failure by the Company in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in the Series 2008B Indenture or in the Series 2008B Bonds, or (ii) a default or failure by the Borrower under the Series 2008B Loan Agreement, in either case exclusive of any period of grace or notice required for such default or failure to constitute a Series 2008B Indenture Default or a Series 2008B Loan Agreement Default.

The provisions of paragraph (h) above are subject to the conditions that: (i) none of the acts or circumstances specified therein will constitute a Series 2008B Indenture Default if, within 60 days thereafter, a Substitute Series 2008B Credit Facility is provided and the Trustee complies with the mandatory tender notice provisions of the Series 2008B Indenture; and (ii) the declaration of a Series 2008B Indenture Default due to any of the acts or circumstances specified therein, and the exercise of remedies upon any such declaration, will be subject to any applicable limitations of bankruptcy, insolvency or receivership laws applicable to the Series 2008B Credit Facility Provider affecting or precluding such declaration or exercise during the pendency of or immediately following any bankruptcy, insolvency, receivership, liquidation or reorganization proceedings.

Notwithstanding the foregoing, if, by reason of *Force Majeure* (defined below), the Company is unable to perform or observe any agreement, term or condition hereof which would give rise to a Series 2008B Indenture Default under paragraph (d) above (provided that such failure is other than the payment of money), the Company will not be deemed to be in default during the continuance of such inability. However, the Company is to promptly give notice to the Trustee, the Series 2008B Credit Facility Provider and the Borrower of the existence of an event of *Force Majeure* and use its best efforts to remove the effects thereof, provided that the settlement of strikes or other industrial disturbances are entirely within the Company’s discretion. The term *Force Majeure* means, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation.

Except as may otherwise be provided in the Series Documents for a particular Series of Bonds, a default under the Indenture with respect to another Series of Bonds will not, in and of itself, constitute a Series 2008B Indenture Default, nor will a default under any other Series Loan Agreement, in and of itself, constitute a Series 2008B Loan Agreement Default.

If a Series 2008B Indenture Default occurs, within five days of a Responsible Officer of the Trustee obtaining actual knowledge of such Series 2008B Indenture Default, the Trustee is to give written notice of the Series 2008B Indenture Default, by registered or certified mail, to the Company, the Borrower, the Series 2008B Credit Facility Provider, any Registrar, any Paying Agent, the Remarketing Agent and the Owners.

**Remedies.** Subject to the discussion in “Waivers of Events of Default” below, upon the occurrence of a Series 2008B Indenture Default, except for the occurrence of a Series 2008B Indenture Default specified in paragraphs (d), (e) or (f) under the caption “*Series 2008B Indenture Defaults*” above,

the Trustee, by notice in writing delivered to the Company and the Borrower, is to declare the principal of all Series 2008B Bonds then outstanding (if not then due and payable), together with interest accrued thereon, to be due and payable immediately. Subject to the discussion in “Waivers of Series 2008B Indenture Defaults” below, upon the occurrence of a Series 2008B Indenture Default described in paragraphs (d) or (e) above, the Trustee, upon written direction of the Series 2008B Credit Facility Provider, is to declare the principal of all Series 2008B Bonds then outstanding (if not then due and payable), together with interest accrued thereon, to be due and payable immediately. Interest will accrue to the date of declaration of acceleration by the Trustee, and but no interest will accrue on the Series 2008B Bonds from and after the date of such declaration of acceleration.

Upon the occurrence and continuation of a Series 2008B Indenture Default, the Trustee may, in addition to accelerating the maturity of the Series 2008B Bonds, pursue any other available remedy to enforce the payment of the Series 2008B Bonds Debt Service Requirements or the observance and performance of any other covenant, agreement or obligation under the Series 2008B Indenture, the Series 2008B Loan Agreement and the Series 2008B Promissory Note or any other instrument providing security, directly or indirectly, for the Series 2008B Bonds, provided, however, that the Trustee is to pursue any such remedy only with the prior written consent of the Series 2008B Credit Facility Provider (if no Series 2008B Indenture Default described in paragraphs (g) or (h) under the caption “*Series 2008B Indenture Defaults*” above (hereafter a “Series 2008B Credit Facility Provider Default”) has occurred and is continuing).

If, upon the occurrence and continuance of a Series 2008B Indenture Default, the Trustee is properly directed by: (a) the Owners of at least a majority in aggregate principal amount of Series 2008B Bonds outstanding (with the consent of the Series 2008B Credit Facility Provider if no Series 2008B Credit Facility Provider Default has occurred and is continuing; or (b) by the Series 2008B Credit Facility Provider (if no Series 2008B Credit Facility Provider Default has occurred and is continuing); the Trustee (subject to the provisions of the Series 2008B Indenture) is to exercise any rights and powers conferred by the Series 2008B Indenture, including acceleration of the maturity of the Series 2008B Bonds. Anything in this or the following paragraph to the contrary notwithstanding, so long as no Series 2008B Credit Facility Provider Default has occurred and is continuing, the Series 2008B Credit Facility Provider will have the exclusive right to give any such directions to the Trustee.

No remedy conferred upon or reserved to the Trustee (or to the Owners) by the Series 2008B Indenture is intended to be exclusive of any other remedy; and each remedy is to be cumulative and in addition to every other remedy given under the Series 2008B Indenture or otherwise to the Trustee or to the Owners now or hereafter existing.

No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Series 2008B Indenture Default under the Series 2008B Indenture is to impair that remedy, right or power or be construed to be a waiver of any default or Series 2008B Indenture Default under the Series 2008B Indenture or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

No waiver of any default or Series 2008B Indenture Default under the Series 2008B Indenture, whether by the Trustee or by the Owners, is to extend to or affect any subsequent default or Series 2008B Indenture Default under the Series 2008B Indenture or impair any remedy, right or power consequent thereon.

As the assignee of all right, title and interest of the Company in and to the Series 2008B Loan Agreement (except for the Unassigned Company Rights), the Trustee is empowered to enforce each remedy, right and power granted to the Company under the Series 2008B Loan Agreement.

If the Series 2008B Bonds are then rated by a Rating Service, no remedy conferred upon or reserved to the Trustee or to the Owners by the Series 2008B Indenture may be exercised in lieu of acceleration unless each such Rating Service confirms in writing that its rating of the Series 2008B Bonds will not be reduced or withdrawn as the result of the exercise of such remedy.

***Right of Owners to Direct Proceedings.*** The Owners of at least a majority in aggregate principal amount of Series 2008B Bonds then outstanding have the right at any time to direct, by an instrument or document or instruments or documents in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Series 2008B Indenture or any other proceedings under the Series 2008B Indenture, provided that such direction is in accordance with the provisions of law and the Series 2008B Indenture and the Trustee is indemnified to its satisfaction. However, so long as no Series 2008B Credit Facility Provider Default has occurred and is continuing, the Series 2008B Credit Facility Provider will have the exclusive right to give any such directions to the Trustee.

Nothing in the Series 2008B Indenture authorizes the Trustee to authorize or consent to or accept or adopt on behalf of any Owner of the Series 2008B Bonds any plan of reorganization, arrangement, adjustment or composition affecting the Series 2008B Bonds or the rights of any Owner of the Series 2008B Bonds thereof, or authorizes the Trustee to vote in respect of the claim of any Owner of the Series 2008B Bonds in any such proceeding without the approval of the Owner of the Series 2008B Bonds so affected.

***Application of Moneys.*** All moneys received by the Trustee after acceleration of the maturity of the Series 2008B Bonds and derived from any drawing made upon the Series 2008B Credit Facility are to be applied by the Trustee to and only to the payment of principal of or interest on the Series 2008B Bonds. Subject to the foregoing, after payment of or creation of a reserve satisfactory to the Trustee for any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of moneys pursuant to any right given or action taken under the provisions of the Series 2008B Indenture, the Series 2008B Loan Agreement and the Series 2008B Promissory Note (including, without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under the default and remedies provisions of the Series 2008B Indenture) and all fees owing to the Trustee for Ordinary Services, Ordinary Expenses, Extraordinary Services and Extraordinary Expenses, all moneys received by the Trustee are to be applied as follows, subject to any provision made as provided in "THE SERIES 2008B BONDS – Redemption Prior to Maturity – *Payment of Redeemed Series 2008B Bonds*," and in "Revenues and Funds – *Moneys to be Held in Trust – Nonpresentment of Series 2008B Bonds*" above.

(a) Unless the principal of all of the Series 2008B Bonds has become or has been declared to be due and payable, all of those moneys are to be deposited in the Series 2008B Accounts of the Bond Fund and are to be applied:

FIRST, to the payment to the Owners entitled thereto of all installments of interest then due on the Series 2008B Bonds, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Owners entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Series 2008B Bonds;

SECOND, to the payment to the Owners entitled thereto of the unpaid principal of any of the Series 2008B Bonds that has become due (other than Series 2008B Bonds

previously called for redemption for the payment of which moneys are held pursuant to the provisions of the Series 2008B Indenture), in the order of their due dates, beginning with the earliest due date, with interest on such Series 2008B Bonds from the respective dates upon which they become due at the rates specified in such Series 2008B Bonds, and if the amount available is not sufficient to pay in full all the Series 2008B Bonds due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Owners entitled thereto, without any discrimination or privilege; and

THIRD, to the Series 2008B Credit Facility Provider in accordance with the Series 2008B Indenture.

(b) If the principal of all of the Series 2008B Bonds has become due or has been declared to be due and payable pursuant to the Series 2008B Indenture, all of those moneys are to be deposited into the Series 2008B Accounts of the Bond Fund and applied to the payment of the principal and interest then due and unpaid upon the Series 2008B Bonds, without preference or priority of principal over interest, of interest over principal, of any installment of interest over any other installment of interest or of any Series 2008B Bond over any other Series 2008B Bond, ratably, according to the amounts due respectively for principal and interest, to the Owners entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Series 2008B Bonds.

(c) If the principal of all of the Series 2008B Bonds has been declared to be due and payable pursuant to the Series 2008B Indenture, and if that declaration thereafter is rescinded and annulled under the provisions of the Series 2008B Indenture, subject to the provisions of paragraph (b) above in the event that the principal of all of the Series 2008B Bonds becomes due and payable later, the moneys are to be deposited in the Series 2008B Accounts of the Bond Fund and be applied in accordance with the provisions of the Series 2008B Indenture.

(d) Whenever moneys are to be applied pursuant to the provisions of this section, those moneys are to be applied at such times, and from time to time, as the Trustee determines, having due regard to the amount of moneys available for application and the likelihood of additional moneys becoming available for application in the future. Whenever the Trustee directs the application of those moneys, it is to fix the date upon which the application is to be made, and upon that date interest will cease to accrue on the amounts of principal, if any, to be paid on that date, provided the moneys are available therefor. The Trustee is to give notice of the deposit with it of any moneys and of the fixing of that date, all consistent with the requirements of the Series 2008B Indenture for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee is not required to make payment of principal of a Series 2008B Bond to the Owner thereof until such Series 2008B Bond is presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully, subject to the provisions of the Series 2008B Indenture regarding transfer and exchange of Series 2008B Bonds.

***Rights and Remedies of Owners.*** Owners may institute any suit, action or proceeding for the enforcement of the Series 2008B Indenture, for the execution of any trust thereof or for the exercise of any other remedy thereunder, only if: (a) there has occurred and is continuing a Series 2008B Indenture Default of which the Trustee has been notified or of which it is deemed to have notice under the Series 2008B Indenture; (b) the Owners of at least 25% in aggregate principal amount of the Series 2008B Bonds then outstanding have made written request to the Trustee and have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted in the Series 2008B Indenture or to institute the suit, action or proceeding in its own name, and have offered indemnity to the

Trustee as provided in the Series 2008B Indenture; and (c) the Trustee thereafter fails or refuses to exercise the remedies, rights and powers granted in the Series 2008B Indenture or to institute the suit, action or proceeding in its own name.

At the option of the Trustee, the aforementioned notice, request, opportunity and offer of indemnity are conditions precedent in every case to the institution of any suit, action or proceeding described above. Owners may not institute any suit, action or proceeding at law or in equity for the enforcement of the Series 2008B Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy thereunder with respect to the Series 2008B Bonds unless a Series 2008B Credit Facility Provider Default with respect to the Series 2008B Bonds has occurred and is continuing.

The Owners may not affect, disturb or prejudice in any manner whatsoever the security or benefit of the Series 2008B Indenture by its or their action, or enforce, except in the manner provided therein, any remedy, right or power thereunder. Any suit, action or proceedings is to be instituted, had and maintained in the manner provided in the Series 2008B Indenture for the benefit of the Owners of all the Series 2008B Bonds then outstanding as to which the Series 2008B Indenture Default has occurred. However, nothing in the Series 2008B Indenture is intended to affect or impair the right of any Owner to enforce the payment of the Series 2008B Bonds Debt Service Requirements with respect to any Series 2008B Bond owned by that Owner at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Series 2008B Bond.

***Waivers of Events of Default.*** The Trustee is required to waive any Series 2008B Indenture Default described in paragraphs (d), (e) or (f) under “*Series 2008B Indenture Defaults*” above and its consequences, and to rescind and annul any declaration of maturity of principal of the Series 2008B Bonds, upon the written request of the Series 2008B Credit Facility Provider.

The Trustee may, at any time, in its discretion, waive any Series 2008B Indenture Default and its consequences, and rescind and annul any declaration of maturity of principal of the Series 2008B Bonds, provided that: (i) the express written consent of the Series 2008B Credit Facility Provider is required in order to waive a Series 2008B Indenture Default described in paragraphs (d), (e) or (f) under “*Series 2008B Indenture Defaults*” above; and (ii) the express written consent of the Owners of all the outstanding Series 2008B Bonds is required in order to waive a Series 2008B Indenture Default described clauses (a), (b), (c), (g), (h) or (i) under the caption “*Series 2008B Indenture Defaults*” above.

Notwithstanding the foregoing, (a) prior to waiving any Series 2008B Indenture Default described in paragraph (f) under the caption “*Series 2008B Indenture Defaults*” above, the Trustee is to have received written notice from the Series 2008B Credit Facility Provider that it has rescinded the notice of an event of default or termination giving rise to such Series 2008B Indenture Default and that the Series 2008B Credit Facility has been reinstated to the amount required by the Series 2008B Indenture; and (b) prior to waiving any Series 2008B Indenture Default described in paragraph (i) under the caption “*Series 2008B Indenture Defaults*” above, the Trustee is to have received written confirmation from the Series 2008B Credit Facility Provider that the Series 2008B Credit Facility has been reinstated to the amount required by the Series 2008B Indenture.

In the case of the waiver or rescission and annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Series 2008B Indenture Default under the Series 2008B Indenture is discontinued, abandoned or determined adversely to it, the Company, the Trustee, the Series 2008B Credit Facility Provider and the Owners are to be restored to their former positions and rights under the Series 2008B Indenture. No waiver or rescission will extend to any subsequent or other Series 2008B Indenture Default under the Series 2008B Indenture or impair any right consequent thereon.

***Subrogation Rights.*** In the event the Series 2008B Credit Facility Provider pays, through a draw under the Series 2008B Credit Facility, the principal of any Series 2008B Bond, the Series 2008B Credit Facility Provider will be subrogated to the rights of the Owner of such Series 2008B Bond.

### **Amendments and Supplements to the Series 2008B Indenture**

***No Consent of Owners Required.*** The Company and the Trustee, without the consent of, or notice to, any of the Owners, Beneficial Owners, the Borrower or the Series 2008B Credit Facility Provider, may enter into Supplemental Indentures that are not, in the opinion of the Company, inconsistent with the terms and provisions of the Master Indenture, for any one or more of the following purposes:

- (a) to cure any ambiguity, inconsistency or formal defect or omission in the Master Indenture or the Series 2008B Bonds Supplement;
- (b) to grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon such registered owners or the Trustee;
- (c) to provide for the issuance of a Series of Bonds in accordance with the terms of the Master Indenture;
- (d) to subject to the Series 2008B Indenture additional revenues, property or collateral;
- (e) to add to the covenants, agreements and obligations of the Company under the Series 2008B Indenture other covenants, agreements and obligations to be observed for the protection of the Owners or to surrender or limit any right, power or authority reserved to or conferred upon the Company in the Series 2008B Indenture;
- (f) to evidence any succession to the Company and the assumption by its successor of the covenants, agreements and obligations of the Company under the Series 2008B Indenture, the Series 2008B Loan Agreement, the Series 2008B Promissory Note and the Series 2008B Bonds;
- (g) to permit the Trustee to comply with any obligations imposed upon it by law;
- (h) to specify further the duties and responsibilities of, and to define further the relationship among, the Trustee, the Remarketing Agent and any Registrars or Paying Agents;
- (i) to achieve compliance of the Series 2008B Indenture with any applicable federal securities or tax law;
- (j) to evidence the appointment of a new Remarketing Agent;
- (k) to permit any other amendment which, in the judgment of the Trustee, is not to the prejudice of the Trustee or, as evidenced by the Opinion of Counsel delivered as discussed in “*Conditions to Effectiveness of Supplemental Indentures*” below, is not to the prejudice of the Owners, including, but not limited to, changes required in order to obtain or maintain a rating on the Series 2008B Bonds from a Rating Service; and

- (l) to accept a Supplemental Credit Facility for the Series 2008B Bonds.

The Trustee may also accept, without the consent of or notice to any of the Owners, a Substitute Series 2008B Credit Facility or any amendments to the Series 2008B Credit Facility necessary to continue the effectiveness of such Series 2008B Credit Facility as originally intended or which, as evidenced by an Opinion of Counsel delivered to the Trustee, are not to the prejudice of the Owners.

The provisions of paragraphs (g) and (i) above will not be deemed to constitute a waiver by the Trustee, the Company, any Registrar or any Owner of any right which they may have in the absence of those provisions to contest the application of any change in law to the Series 2008B Indenture or the Series 2008B Bonds.

***Owner Consent Required.*** Exclusive of the amendments or supplements discussed above in “*No Consent Required*,” and subject to the terms, provisions and limitations discussed hereafter, the Owners of not less than a majority in aggregate principal amount of the Series 2008B Bonds then outstanding have the right, from time to time, to approve the execution by the Company and the Trustee of Supplemental Indentures deemed necessary and desirable by the Company for the purposes of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Series 2008B Indenture affecting only the Series 2008B Bonds. Supplemental Indentures that affect more than one Series of Bonds requires the consent and approval of the registered owners of not less than a majority in aggregate principal amount of each affected Series of Bonds.

The consent and approval of the Owners of all of the Series 2008B Bonds then outstanding is required to permit the following; provided that any Supplemental Indenture that affects more than one Series of Bonds requires the consent of the registered owners of all the Bonds of the affected Series:

- (a) an extension of the maturity of the principal of, or the time for payment of any redemption premium or interest on, any Series 2008B Bond, or a reduction in the principal amount of any Series 2008B Bond, or the rate of interest or redemption premium thereon, or a reduction in the amount of, or extension of the time of any payment required by, any Series 2008B Bond, or a material modification in the optional tender rights granted by the Series 2008B Indenture;
- (b) a privilege or priority of any Series 2008B Bond over any other Series 2008B Bond (except as otherwise provided in the Series 2008B Indenture);
- (c) a reduction in the aggregate principal amount of the Series 2008B Bonds required for consent to such a Supplemental Indenture;
- (d) the deprivation of the Owner of any Series 2008B Bond of the lien created by the Series 2008B Indenture;
- (e) except as provided in “Modification of the Series 2008B Credit Facility” below, an alteration of the obligations of the Series 2008B Credit Facility Providers under the Series 2008B Credit Facilities; or
- (f) the amendment of this section of the Master Indenture.

If the Company requests the Trustee to enter into a Supplemental Indenture requiring the consent of the registered owners of a Series of Bonds, the Trustee, upon receipt of consent from the related Series Borrowers and Series Credit Facility Providers discussed in “*Consent of Other Parties*” below, and upon

being satisfactorily indemnified with respect to expenses, is to cause notice of the proposed execution of the Supplemental Indenture, containing the information required by the Series 2008B Indenture, to be mailed by certified mail to the affected registered owners. If, within 60 days, or such longer period as is prescribed by the Company, following the mailing of such notice, the registered owners of the requisite percentage in aggregate principal amount of affected Series of Bonds have consented to and approved the execution of such Supplemental Indenture, no registered owner of any Bond will have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Company (subject to “*Consent of Other Parties*”) from executing the same or from taking any action pursuant to the provisions thereof.

***Consent of Other Parties.*** An amendment or Supplemental Indenture may not become effective unless and until the required Series Borrowers and Series Credit Facility Providers have consented in writing to the execution and delivery thereof, provided that if the Series Credit Facility Provider in default under the Indenture, the consent of such Series Credit Facility Provider is not required with respect to such amendment.

The Trustee is to inform the Remarketing Agent and any Registrar and Paying Agent of any amendment or supplement to the Master Indenture and/or the Series Supplements, and such amendment or supplement may not become effective unless and until the Remarketing Agent and each such Registrar and Paying Agent have consented in writing to the provisions thereof which affect its rights and obligations.

***Conditions to Effectiveness of Supplemental Indentures.*** Except for the Series 2008B Bonds Supplement, no amendment or supplement to the Master Indenture and/or a Series Supplement may be entered into without the Trustee and the Company first receiving (a) an Opinion of Counsel (who may be counsel to the Company or a Series Borrower) to the effect that such Supplemental Indenture is authorized under the Master Indenture; and (b) written evidence from each Rating Agency then rating the Bonds of the affected Series (if the Bonds of such Series are then rated) to the effect that the appropriate Rating Agency has reviewed the amendment or supplement and that the effectiveness thereof will not, by itself, result in a reduction or withdrawal of such Rating Agency’s then current rating on such Series of Bonds.

***Modification by Unanimous Consent.*** The rights and obligations of the Company and of the Owners, and the terms and provisions of the Series 2008B Bonds and the Series 2008B Indenture, may be modified or altered in any respect with the consent of (a) the Company, (b) the Owners of all the Series 2008B Bonds then Outstanding, (c) the Borrower, (d) the Series 2008B Credit Facility Provider and (e) if such modifications or alterations contain provisions adverse to the Trustee, the Trustee.

**Modification of the Series 2008B Loan Agreement, the Series 2008B Promissory Note and the Series 2008B Credit Facility**

***No Consent of Owners Required.*** Without the consent of or notice to the Owners, but with the prior written consent of the Trustee, the Series 2008B Loan Agreement, the Series 2008B Promissory Note or the Series 2008B Credit Facility may be amended, changed or modified as may be required (a) by the provisions of such Series 2008B Loan Agreement, Series 2008B Promissory Note, Series 2008B Credit Facility, Series 2008B Credit Facility Agreement or the Series 2008B Indenture, (b) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in such Series 2008B Loan Agreement, the Series 2008B Promissory Note, Series 2008B Credit Facility or the Series 2008B Indenture, (c) in connection with an amendment or to effect any purpose for which there could be an amendment of the Series 2008B Indenture as provided in “Amendments and Supplements to



the Series 2008B Indenture – *No Consent of Owners Required*” above, (d) to extend the maturity of the Series 2008B Credit Facility or transfer the Series 2008B Credit Facility to a successor Trustee or (e) in connection with any other change therein which is not to the prejudice or, as evidenced by an Opinion of Counsel delivered to the Trustee, not to the prejudice of the Owners, provided that if the Series 2008B Bonds are then rated by a Rating Service, no amendment, change or modification of the Series 2008B Credit Facility (other than an extension thereof) is permitted unless each such Rating Service has confirmed in writing that its rating of the Series 2008B Bonds will not be reduced or withdrawn as the result of such amendment, change or modification.

An amendment, change or modification to the Series 2008B Loan Agreement or the Series 2008B Promissory Note will not become effective unless and until the Company, the Trustee and the Series 2008B Credit Facility Provider consent in writing to the execution and delivery thereof, provided that if a Series 2008B Credit Facility Provider Default has occurred is continuing, the consent of the Series 2008B Credit Facility Provider is not required. An amendment, change or modification to the Series 2008B Credit Facility will not become effective unless and until the Company, the Trustee and the Borrower consent in writing to the execution and delivery thereof. The Trustee is entitled to receive an Opinion of Counsel (who may be counsel to the Company or the Borrower) to the effect that such amendment, change or modification to the Series 2008B Loan Agreement, Series 2008B Promissory Note or Series 2008B Credit Facility, as applicable, is authorized under the Series 2008B Indenture and such other document.

***Consent of Owners Required.*** Except for the amendments, changes or modifications permitted in “*No Consent of Owners Required*” above, neither the Company nor the Trustee is permitted to consent to: (a) any amendment, change or modification of the Series 2008B Loan Agreement, the Series 2008B Promissory Note or the Series 2008B Credit Facility that would change the amount or times as of which Series 2008B Loan Payments or drawings on such Series 2008B Credit Facility are required to be paid, without the giving of notice of the proposed amendment, change or modification and receipt of the written consent thereto of the Series 2008B Credit Facility Provider and the Owners of all of the then outstanding Series 2008B Bonds affected by such amendment, change or modification; or (b) any other amendment, change or modification of the Series 2008B Loan Agreement, the Series 2008B Promissory Note or the Series 2008B Credit Facility without the giving of notice of the proposed amendment, change or modification and receipt of the written consent thereto of the Series 2008B Credit Facility Provider and the Owners of at least a majority in aggregate principal amount of the Series 2008B Bonds then outstanding affected by such amendment, change or modification.

If the Company and the Borrower request the consent of the Trustee to any proposed amendment, change or modification of the Series 2008B Loan Agreement, the Series 2008B Promissory Note or the Series 2008B Credit Facility contemplated in paragraph (a) or (b) above, upon receipt of the written consent thereto from the Series 2008B Credit Facility Provider and upon being indemnified satisfactorily with respect to fees and expenses, the Trustee is to cause notice of the proposed amendment, change or modification to be provided to the Owners in the manner provided in “*Amendments and Supplements to the Series 2008B Indenture – Owner Consent Required*” above.

## **Defeasance**

***Release of Series 2008B Indenture.*** If (a) the Company pays all of the outstanding Series 2008B Bonds, or causes them to be paid and discharged, or if there is paid to the Owners all Series 2008B Bonds Debt Service Requirements due or to become due thereon, and (b) provision also is made for the payment of all other sums payable under the Series 2008B Indenture or under the Series 2008B Loan Agreement and Series 2008B Promissory Note, including all fees and expenses of the Trustee and any Registrar or Paying Agent and any amounts due to the Series 2008B Credit Facility Provider under the Series 2008B

Credit Facility Agreement, and (c) the Series 2008B Credit Facility has been surrendered to the Series 2008B Credit Facility Provider, then the interests in the Trust Estate and rights granted in the Series 2008B Indenture with respect to the Series 2008B Bonds will cease, determine and become null and void (except for the fees, charges and expenses of the Trustee and any Registrar and Paying Agent and those provisions surviving as provided in “*Survival of Certain Provisions*” below in the event the Series 2008B Bonds are deemed paid and discharged as provided in “*Payment and Discharge of Series 2008B Bonds*” below), and the covenants, agreements and obligations of the Company under the Series 2008B Indenture with respect to such Series 2008B Bonds will be released, discharged and satisfied.

***Payment and Discharge of Series 2008B Bonds.*** All or any Series 2008B Bonds will be deemed to have been paid and discharged within the meaning of the Series 2008B Indenture if:

(a) the Trustee or any other Paying Agent receives, in trust for and irrevocably committed thereto, sufficient moneys that are Eligible Funds or the proceeds of drawings under the Series 2008B Credit Facility used to make such payment, or other moneys if accompanied by an Opinion of Bankruptcy Counsel (as defined in “APPENDIX A – GLOSSARY OF TERMS”) in a form acceptable to the Trustee and the Rating Service (if any) for the Series 2008B Bonds; or

(b) the Trustee receives, in trust for and irrevocably committed thereto, noncallable Government Obligations (as defined in “APPENDIX A – GLOSSARY OF TERMS”), purchased either with Eligible Funds or the proceeds of drawings under the Series 2008B Credit Facility, or other moneys if accompanied by an Opinion of Bankruptcy Counsel in a form acceptable to the Trustee and the Rating Service (if any) for the Series 2008B Bonds, that are certified by an independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any moneys to which reference is made in paragraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held in trust and so committed, except as otherwise provided in the Series 2008B Indenture), for the payment of all Series 2008B Bonds Debt Service Requirements with respect to such Series 2008B Bonds, on and to the next Interest Rate Adjustment Date, or prior redemption date, as the case may be; provided, however, that:

(i) if any of such Series 2008B Bonds are to be redeemed prior to the maturity thereof, notice of that redemption is to have been duly given or irrevocable provision satisfactory to the Trustee is to have been duly made for the giving of that notice; and

(ii) no Series 2008B Bonds, or any portion thereof, will be deemed to have been paid and discharged within the meaning of this paragraph (b) if either (A) such Series 2008B Bonds are in an Adjustable Interest Rate Mode, unless such Series 2008B Bonds are to be redeemed on or prior to the next Interest Rate Adjustment Date and notice of that redemption has been duly given or irrevocable provision satisfactory to the Trustee has been duly made for the giving of that notice, or (ii) such Series 2008B Bonds are in the Weekly Interest Rate Mode; and

(c) the Trustee has received written confirmation from each Rating Agency, if any, then rating the Series 2008B Bonds that the then-existing rating on the Series 2008B Bonds will not be lowered or withdrawn as a result of the action proposed to be taken.

Any moneys held by the Trustee as provided above may be invested by the Trustee only in noncallable Government Obligations having maturity dates, or having redemption dates which, at the

option of the owner of those obligations, may be not later than the date or dates at which moneys will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held by the Trustee as provided above is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of paying and discharging the Series 2008B Bonds, that income, interest or increment is to be transferred at the time of that determination in the manner provided in “Revenues and Funds – *Disposition of Excess Moneys*” above for transfers of amounts remaining in the Series 2008B Accounts of the Bond Fund.

If any Series 2008B Bonds are deemed paid and discharged pursuant to the Series 2008B Indenture, then within 15 days after such Series 2008B Bonds are so deemed to be paid and discharged the Trustee is to cause a written notice to be given to each Owner thereof as shown on the Bond Register on the date on which such Series 2008B Bonds are deemed to be paid and discharged. Such notice is to state the numbers of the Series 2008B Bonds deemed paid and discharged or state that all Series 2008B Bonds are deemed paid and discharged, set forth a description of the Government Obligations held pursuant to paragraph (b) above and specify any date or dates on which any of the Series 2008B Bonds are to be called for redemption pursuant to notice of redemption given or irrevocable provisions made for such notice as provided above.

***Survival of Certain Provisions.*** Notwithstanding the foregoing, any provisions of the Series 2008B Indenture that relate to the maturity of Series 2008B Bonds, interest payments and dates thereof, prior redemption provisions, exchange, transfer and registration of Series 2008B Bonds, replacement of mutilated, destroyed, lost or stolen Series 2008B Bonds, the safekeeping and cancellation of Series 2008B Bonds, non-presentment of Series 2008B Bonds, the holding of moneys in trust and repayments to the Series 2008B Credit Facility Provider from the Series 2008B Accounts of the Bond Fund, and the rights and duties of the Trustee, any additional Registrar or Paying Agent and the Remarketing Agent in connection with all of the foregoing are to remain in effect and be binding upon such parties and the Owners notwithstanding the release and discharge of the Series 2008B Indenture. The provisions of the Series 2008B Indenture regarding payment of the fees and expenses of the Trustee and any additional Registrar or Paying Agent will survive the release, discharge and satisfaction of the Series 2008B Indenture.

## **Covenants and Agreements of the Company**

In addition to the covenants and agreements of the Company contained in the Series 2008B indenture and discussed elsewhere in this Offering Memorandum, the Company covenants and agrees with the Owners, the Borrower, the Series 2008B Credit Facility Provider and the Trustee as follows:

***Maintenance of Existence.*** Throughout the term of the Series 2008B Indenture, the Company will maintain its legal existence and domicile in the United States and will be qualified to conduct business in the State; provided, however, that the Company may consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it, or dispose of all or substantially all of its assets, provided that any surviving, resulting or transferee entity or the entity purchasing all or substantially all of the assets of the Company is qualified to conduct business in the State and assumes in writing or by operation of law all of the obligations of the Company under the Series 2008B Indenture, the Series 2008B Loan Agreement, the Series 2008B Promissory Note, the Series 2008B Remarketing Agreement, the Series 2008B Credit Facility Agreement, the Series 2008B Bond Purchase Agreement and such the other documents executed and delivered in connection with the issuance, sale and delivery of the Series 2008B Bonds and such documents.

***Payment of Series 2008B Bonds Debt Service Requirements.*** The Company will duly and punctually pay or cause to be paid all Series 2008B Bonds Debt Service Requirements with respect to all

Series 2008B Bonds issued under the Series 2008B Indenture at the place, on the dates and in the manner provided in the Series 2008B Indenture and the Series 2008B Bonds according to the true intent and meaning thereof.

***Performance of Covenants; Company Warranties.*** The Company will faithfully comply with the stipulations and provisions required to be performed by it and contained in the Series 2008B Indenture, the Series 2008B Bonds, the Series 2008B Loan Agreement, the Series 2008B Promissory Note, the Series 2008B Remarketing Agreement, the Series 2008B Credit Facility Agreement, the Series 2008B Bond Purchase Agreement and such the other documents executed and delivered in connection with the issuance, sale and delivery of the Series 2008B Bonds and such documents, and under all proceedings of the Company pertaining thereto.

***Inspection of Books.*** All books, instruments and documents in the Company's possession relating to the Series 2008B Project and the Series 2008B Bonds will be open to inspection and copying (at the expense of the Person making such copies) at all times during the Company's regular business hours by any accountants or other agents of the Trustee, the Borrower and the Series 2008B Credit Facility Provider which such entities may designate from time to time.

***Rights and Enforcement of the Series 2008B Loan Agreement.*** The Trustee may enforce, in its own name or in the name of the Company, all rights for and on behalf of the Owners, except for Unassigned Company Rights, and may enforce all covenants, agreements and obligations of the Borrower under and pursuant to the Series 2008B Loan Agreement and the Series 2008B Promissory Note, regardless of whether the Company is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations.

***Further Assurances.*** The Company will execute and deliver such Supplemental Indentures and such further instruments, and do such further acts, as the Trustee may reasonably require for better assuring and confirming to the Trustee the amounts from the sources available under the Series 2008B Indenture for the payment of the Series 2008B Bonds and the amounts due to the Series 2008B Credit Facility Provider under the related Series 2008B Credit Facility Agreement.

## **Miscellaneous**

***Limitation of Rights.*** With the exception of rights conferred expressly in the Series 2008B Indenture, nothing expressed or mentioned in or to be implied from the Series 2008B Indenture or the Series 2008B Bonds is intended or is to be construed to give to any Person other than the Company, the Trustee, the Borrower, any Registrar or Paying Agent, the Remarketing Agent, the Series 2008B Credit Facility Providers, the Owners and the Beneficial Owners of the Series 2008B Bonds any legal or equitable right, remedy, power or claim under or with respect to the Series 2008B Indenture or any covenants, agreements, conditions and provisions contained therein. The Series 2008B Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Company, the Trustee, the Borrower, the Series 2008B Credit Facility Providers, the Remarketing Agent, any Registrar or Paying Agent, the Owners and the Beneficial Owners of the Series 2008B Bonds as provided therein.

A Series 2008B Credit Facility Provider will have no rights under the Series 2008B Indenture, including, without any limitation, any right to give any direction or to give or withhold consent, unless (a) the related Series 2008B Credit Facility is in full force and effect and no Series 2008B Credit Facility Provider Default has occurred and is continuing under paragraphs (g) or (h) under the caption "Defaults and Remedies – *Series 2008B Indenture Defaults*" above, or (b) amounts are owed to such Series 2008B

Credit Facility Provider for reimbursement of drawings under the related Series 2008B Credit Facility, but then only to the extent of such unreimbursed amounts.

***Suspension of Mail.*** If because of the suspension of delivery of first class mail, or for any other reason, the Trustee or any other Person is unable to mail by the required class of mail any notice required to be mailed by the provisions of the Series 2008B Indenture, the Trustee or any other Person is to give such notice in such other manner as in the judgment of the Trustee or such Person will most effectively approximate mailing thereof, and the giving of the notice in that manner for all purposes of the Series 2008B Indenture will be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided in the Series 2008B Indenture, the giving of any notice will be deemed to be complete upon receipt of such notice by the intended recipient thereof.

***Payments Due on Saturdays, Sundays and Holidays.*** If any Interest Payment Date, Purchase Date, date of maturity of the principal of any Series 2008B Bonds or date fixed for the redemption of any Series 2008B Bonds is not a Business Day, then payment of interest, principal and any redemption premium or any purchase price payment need not be made by the Trustee or any Paying Agent on that date, but that payment may be made on the next succeeding Business Day with the same force and effect as if that payment were made on the Interest Payment Date, Purchase Date, date of maturity or date fixed for redemption, and no interest will accrue for the period after that date, provided that if the Series 2008B Bonds bear interest at the Weekly Interest Rate, the One Month Interest Rate or the Three Month Interest Rate, interest is to accrue from the scheduled date of purchase of the Beneficial Interests or from the scheduled date of any maturity or redemption due date of the Series 2008B Bonds until the Business Day on which such payment is made.

***Priority of Lien.*** The lien of the Master Indenture and the Series Supplements on the Trust Estate is superior to any other liens that may be placed on the Trust Estate, or any portion thereof, by any party.

***Limitation of Liability.*** No covenant, agreement or obligation contained in the Series 2008B Indenture is to be deemed to be a covenant, agreement or obligation of any present or future member of the Company's Board of Directors or any officer, employee or agent of the Company in his or her individual capacity, and neither any officer of the Company executing the Series 2008B Bonds will be liable personally on the Series 2008B Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No member of the Company's Board of Directors or any officer, employee or agent of the Company will incur any personal liability with respect to any other action taken by him or her pursuant to any document executed by the Company in connection with the issuance, sale and delivery of the Series 2008B Bonds, provided that such person acts in good faith.

No agreements or provisions contained in the Series 2008B Indenture, nor any agreement, covenant or undertaking by the Company contained in any document executed by the Company in connection with the issuance, sale and delivery of the Series 2008B Bonds will give rise to any pecuniary liability of the Company or a charge against its general credit or obligate the Company financially in any way except as may be payable from the Series 2008B Pledged Revenues. No failure of the Company to comply with any term, condition, covenant or agreement herein or in any document executed by the Company in connection with the issuance and sale of the Series 2008B Bonds will subject the Company to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the Series 2008B Pledged Revenues. Nothing in the Series 2008B Indenture precludes a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Company for any failure to comply with any term, condition, covenant or agreement in any document executed by the Company in connection with the issuance, sale and delivery of the Series 2008B Bonds, provided that that no costs, expenses or other monetary relief

will be recoverable from the Company except as may be payable from the Series 2008B Pledged Revenues.

No recourse under or upon any obligation, covenant, acceptance or agreement contained in any document executed by the Company in connection with the issuance, sale and delivery of the Series 2008B Bonds, or under any judgment obtained against the Company, the Company's Board of Directors or any officer, employee or agent of the Company, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be permitted against any member of Company's Board of Directors or any officer, employee or agent of the Company, as such, past, present or future, whether directly or through the Company or otherwise, for the payment for or to the Company or any receiver thereof, or for or to any Owner of any Series 2008B Bond, or otherwise, of any sum that may be due and unpaid by the Company upon any of the Series 2008B Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member of the Company's Board of Directors or officer, employee or agent of the Company, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Company or any receiver thereof, or for or to the Owner of any Series 2008B Bond, or otherwise, of any sum that may remain due and unpaid upon any Series 2008B Bond, will be deemed to be and is expressly waived and released as a condition of and consideration for the execution and delivery of the Series 2008B Indenture and the issuance of the Series 2008B Bonds.

The Company's rights to immunities and protection from liability under the Series 2008B Indenture and any related document will survive final payment or defeasance of the Series 2008B Bonds.

***Binding Effect.*** The Series 2008B Indenture will inure to the benefit of and be binding upon the Company and the Trustee and their respective successors and assigns, subject to the limitations contained therein. The Series 2008B Credit Facility Provider is a third party beneficiary of the Series 2008B Indenture.

***Governing Law.*** The Series 2008B Indenture and the Series 2008B Bonds are deemed to be contracts made under the laws of the State and for all purposes are to be governed by and construed in accordance with the laws of the State.

***Jurisdiction and Venue.*** Any suit, action or proceeding involving the rights and obligations of the Company under the Series 2008B Indenture, the Series 2008B Remarketing Agreement and any related document is to be brought in the District Court of the County of Jefferson in the State or the United States District Court for the District of Colorado.

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## **APPENDIX C**

### **SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B LOAN AGREEMENT**

The following is a summary of certain provisions of the Series 2008B Loan Agreement, and is in addition and complementary to the summaries found elsewhere in this Offering Memorandum. The following summary does not purport to be a full and complete statement of the provisions of the Series 2008B Loan Agreement, which should be read in full for a complete understanding of all the terms and provisions thereof. During the offering period of the Series 2008B Bonds, copies of the Series 2008B Loan Agreement may be obtained upon request from the Underwriter.

#### **The Series 2008B Loan**

The Company will issue, sell and deliver the Series 2008B Bonds to provide funds to make the Series 2008B Loan. The proceeds from the sale of the Series 2008B Bonds will be loaned to the Borrower upon the terms and conditions of the Series 2008B Loan Agreement and are to be paid over to the Trustee for the benefit of the Borrower and the Owners and deposited by the Trustee as provided in the Series 2008B Indenture. The proceeds of the Series 2008B Loan will be disbursed solely to fund the Series 2008B Project and pay the Series 2008B Project Costs in accordance with the Series 2008B Indenture and the U.S. Bank Reimbursement Agreement.

#### **Series 2008B Loan Payments**

In consideration of and in repayment of the Series 2008B Loan, the Borrower is to make, or cause to be made, as Series 2008B Loan Payments, payments sufficient in time and amount to pay when due all Series 2008B Bonds Debt Service Requirements. The Series 2008B Promissory Note will be executed and delivered by the Borrower concurrently with the execution and delivery of the Series 2008B Loan Agreement. All Series 2008B Loan Payments are to be paid to the Trustee in accordance with the terms of the Series 2008B Promissory Note for the account of the Company and are to be held and applied by the Trustee in accordance with the provisions of the Series 2008B Indenture and the Series 2008B Loan Agreement. To the extent of payments made with respect to Series 2008B Bonds Debt Service Requirements pursuant to draws upon the Series 2008B Credit Facility, the Borrower is to receive a credit against its obligation to make Series 2008B Loan Payments under the Series 2008B Loan Agreement and the Series 2008B Promissory Note and is to make its payments to the Series 2008B Credit Facility Provider pursuant to the terms of the Series 2008B Reimbursement Agreement.

With certain exceptions, neither the Borrower nor the Company has any interest in the Series 2008B Accounts of the Bond Fund, and any moneys deposited therein are to be in the custody of and held by the Trustee in trust for the benefit of the Owners and, to the extent of amounts due under the Series 2008B Credit Facility Agreement, the Series 2008B Credit Facility Provider.

#### **Additional Payments**

The Borrower is obligated to pay or cause to be paid to the Company, as Additional Payments under the Series 2008B Loan Agreement, within five days after request therefor made in writing and specifying such costs and expenses with reasonable particularity, any and all costs and expenses actually incurred or to be paid by the Company, including fees and expenses of its legal counsel, in connection with the issuance and delivery of the Series 2008B Bonds or otherwise related to actions taken by the Company under the Series 2008B Loan Agreement or the Series 2008B Indenture. The Borrower is also obligated to pay, as Additional Payments, the reasonable fees, charges and expenses of the Trustee and any additional Registrar and Paying Agent for acting as such under the Series 2008B Indenture in

connection with the Series 2008B Bonds, and the reasonable fees, charges and expenses of the Remarketing Agent pursuant to the Series 2008B Remarketing Agreement. In the event the Borrower fails to make any of such Additional Payments, such Additional Payments will continue as obligations of the Borrower until such amounts have been fully paid, and will bear interest from the date of demand therefor at the prime interest rate quoted by *The Wall Street Journal* from time to time plus 4.0%.

### **Obligations Unconditional**

The obligation of the Borrower to make Series 2008B Loan Payments, Additional Payments and any other payments required of the Borrower under the Series 2008B Loan Agreement are absolute and unconditional, and the Borrower is to make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Borrower may have or assert against the Company, the Trustee, the Remarketing Agent, any or Registrar or Paying Agent, the Series 2008B Credit Facility Provider or any other Person. However, that the Borrower may contest or dispute the amount of any such obligation (other than Series 2008B Loan Payments) in accordance with the Series 2008B Loan Agreement so long as such contest or dispute does not result in a Series 2008B Indenture Default.

### **Series 2008B Credit Facility**

Prior to the initial delivery of the Series 2008B Bonds, the Borrower is to cause U.S. Bank to issue and deliver to the Trustee the U.S. Bank Letter of Credit, and may replace such U.S. Bank Letter of Credit with a Substitute Series 2008B Credit Facility. The Borrower is to take whatever action as may be necessary to maintain a Series 2008B Credit Facility in full force in accordance with the Series 2008B Indenture, including the payment to the Series 2008B Credit Facility Provider of all amounts due and payable under the related Series 2008B Credit Facility Agreement.

### **Other Covenants and Agreements of the Borrower**

In addition to any other covenants and agreements of the Borrower contained in the Series 2008B Loan Agreement, the Borrower also covenants and agrees with the Company, the Series 2008B Credit Facility Provider, the Trustee and the Owners as follows:

***Application of Loan Proceeds.*** The proceeds of the Series 2008B Loan will be used solely to fund the Series 2008B Project, including payment of the costs of issuing the Series 2008B Bonds.

***Maintenance of Existence.*** Throughout the term of the Series 2008B Loan Agreement, the Borrower will maintain its legal existence and domicile in the United States and be qualified to conduct business in the State. However, the Borrower may consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it, or dispose of all or substantially all of its assets as long that any surviving, resulting or transferee entity or the entity purchasing all or substantially all of the assets of the Borrower are qualified to conduct business in the State and assume in writing or by operation of law all of the obligations of the Borrower under the Series 2008B Loan Agreement, the Series 2008B Credit Facility Agreement and the Series 2008B Credit Facility Documents (as defined in "APPENDIX A – GLOSSARY OF TERMS").

***Payment of Series 2008B Loan Payments and Additional Payments.*** The Borrower will duly and punctually pay or cause to be paid all Series 2008B Loan Payments and Additional Payments under the Series 2008B Loan Agreement and the Series 2008B Promissory Note at the places, on the dates and in the manner provided in the Series 2008B Loan Agreement and the Series 2008B Promissory Note.



***Performance of Covenants.*** The Borrower will fully and faithfully comply with the stipulations and provisions required to be performed by it and contained in the Series 2008B Loan Agreement, the Series 2008B Promissory Note and the Series 2008B Credit Facility Documents, and under all proceedings of the Borrower pertaining thereto, including all of the duties and obligations that the Company has covenanted and agreed in the Series 2008B Indenture to cause the Borrower to perform and any duties and obligations that the Borrower is required in the Series 2008B Indenture to perform. The foregoing does not apply to any duty or undertaking of the Company that by its nature cannot be delegated or assigned.

***Additional Debt.*** The Borrower will not create or authorize to be created any unsecured debt ranking senior to or on parity with the Series 2008B Loan Agreement and the Series 2008B Promissory Note other than as authorized in the Series 2008B Loan Agreement or in the Series 2008B Credit Facility Agreement without the prior written consent of the Series 2008B Credit Facility Provider.

***Recordings and Filings.*** At the direction of the Company or the Series 2008B Credit Facility Provider, and at the expense of the Borrower, the Borrower will cause the Series 2008B Loan Agreement, the Series 2008B Promissory Note and the Series 2008B Credit Facility Documents to be recorded and filed in the manner and in the places (if any) which may be required by law in order to preserve and protect fully the security of the Company, the Trustee, the Series 2008B Credit Facility Provider and the Owners and the rights of the Company under the Series 2008B Loan Agreement.

***Records and Financial Statements of the Borrower.*** The Borrower will at all times to keep, or cause to be kept, proper books of record and account, prepared in accordance with generally accepted accounting principles, in which complete and accurate entries are to be made of all transactions of or in relation to the business, properties and operations of the Borrower. All books, instruments and documents in the Borrower's possession relating to the Series 2008B Project, the Series 2008B Loan Agreement, the Series 2008B Promissory Note and the Series 2008B Credit Facility Documents will be open to inspection and copying (at the expense of the Person making such copies) at all times during the Borrower's regular business hours by any accountants or other agents of the Company, the Trustee or the Series 2008B Credit Facility Provider which such entities may designate from time to time.

***Enforcement by the Trustee.*** The Borrower agrees that the Trustee may enforce, in its name or in the name of the Company, all rights of the Company, the Trustee and the Owners, except for Unassigned Company Rights, and may enforce all covenants, agreements and obligations of the Borrower, under and pursuant to the Series 2008B Loan Agreement and the Series 2008B Promissory Note, regardless of whether the Borrower is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations.

***Further Assurances.*** The Borrower will execute and deliver such amendments or supplements to the Series 2008B Loan Agreement and such further instruments, and do such further acts, as the Company or the Trustee, as assignee of the Company, may reasonably require for the better assuring and confirming to the Company or the Trustee the amounts from the sources available under the Series 2008B Loan Agreement and the Series 2008B Promissory Note for the payment of the Series 2008B Loan Payments and Additional Payments and the amounts due to the Series 2008B Credit Facility Provider under the Series 2008B Credit Facility Agreement.

***Right of Inspection.*** Subject to reasonable safety regulations and upon reasonable notice, the Company, the Series 2008B Credit Facility Provider, the Trustee and their respective agents and employees will have the right during normal business hours and upon reasonable notice to the Borrower to inspect the Series 2008B Project.

***Compliance with Laws.*** The Borrower, throughout the term of this Series 2008B Loan Agreement, will promptly comply or cause compliance in all material respects with all applicable laws, ordinances, orders, rules, regulations and requirements, including, but not limited to, environmental laws, ordinances, orders, rules, regulations and requirements. The Borrower has the right to contest or cause to be contested the legality or the applicability of any such law, ordinance, order, rule, regulation or requirement so long as, in the opinion of counsel satisfactory to the Trustee, the Company and the Series 2008B Credit Facility Provider, such contest will not in any way materially adversely affect or impair the obligations of the Borrower under the Series 2008B Loan Agreement or any right or interest of the Trustee, the Company or the Series 2008B Credit Facility Provider in, to and under the Series 2008B Indenture, the Series 2008B Loan Agreement, the Series 2008B Promissory Note or the Series 2008B Credit Facility Documents.

## **Defaults and Remedies**

***Series 2008B Loan Agreement Defaults.*** The Series 2008B Loan Agreement provides that each of the following constitutes an “Event of Default” thereunder:

(a) The Borrower fails to pay or cause to be paid when due any Series 2008B Loan Payment or Additional Payment.

(b) Any representation or warranty by the Borrower contained in the Series 2008B Loan Agreement or in any certificate or instrument delivered by the Borrower pursuant to the Series 2008B Loan Agreement or in connection with the issuance of the Series 2008B Bonds is false or misleading in any material respect.

(c) Subject to the Borrower’s rights to contest, the Borrower fails to observe and perform any other agreement, term, covenant or condition contained in the Series 2008B Loan Agreement, and the continuation of such failure for a period of 30 days after written notice thereof has been given to the Borrower by the Series 2008B Credit Facility Provider, the Company or the Trustee, or for such longer period as the Company, the Trustee and the Series 2008B Credit Facility Provider may agree to in writing, provided that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, such failure will not constitute a Series 2008B Loan Agreement Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion.

(d) The Borrower: (i) admits in writing its inability to pay its debts generally as they become due; (ii) has an order for relief entered in any case commenced by or against it under the federal bankruptcy laws as in effect from time to time; (iii) commences a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or has such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for 90 days; (iv) makes an assignment for the benefit of creditors; or (v) has a receiver or trustee appointed for it or for the whole or any substantial part of its property.

(e) There occurs a Series 2008B Indenture Default.

Notwithstanding the foregoing, if, by reason of *Force Majeure* (as defined below), the Borrower is unable to perform or observe any agreement, term or condition hereof which would give rise to a Series 2008B Loan Agreement Default under paragraph (c) above (provided that such failure is other than the payment of money), the Borrower will not be deemed in default during the continuance of such inability. However, the Borrower is to promptly give notice to the Trustee, the Company and the Series 2008B

Credit Facility Provider of the existence of an event of *Force Majeure* and is to use its best efforts to remove the effects thereof, provided that the settlement of strikes or other industrial disturbances will be entirely within the Borrower's discretion. For purposes of the Series 2008B Loan Agreement, *Force Majeure* means, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation.

Except as may otherwise be provided in a Series 2008B Credit Facility Agreement, a default or event of default under a Series Loan Agreement with respect to any other Series of Bonds will not, in and of itself, constitute a Series 2008B Loan Agreement Default.

**Remedies.** Whenever a Series 2008B Loan Agreement Default occurs and is continuing, any one or more of the following remedial steps may be taken:

(a) If and only if acceleration of the principal amount of the Series 2008B Bonds has been declared pursuant to the Series 2008B Indenture, the Trustee is to declare all Series 2008B Loan Payments and the Series 2008B Promissory Note immediately due and payable;

(b) The Company and the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Borrower pertaining to the Series 2008B Loan and the Series 2008B Project; and

(c) The Company or the Trustee (subject to its rights under the Indenture) may pursue all remedies existing at law or in equity to collect all amounts then due and thereafter to become due under the Series 2008B Loan Agreement or the Series 2008B Promissory Note or to enforce the performance and observance of any other obligation or agreement of the Borrower under those instruments.

The rescission by the Trustee of its declaration that all of the Series 2008B Bonds are immediately due and payable also constitutes an annulment of any corresponding declaration made pursuant to paragraph (a) above and a waiver and rescission of the consequences of that declaration and of the Series 2008B Loan Agreement Default with respect to which that declaration has been made, provided that no such waiver or rescission is to extend to or affect any subsequent or other default or impair any right consequent thereon.

**Notice of Default.** The Borrower or the Company are to notify the Trustee and the Series 2008B Credit Facility Provider promptly if it becomes aware of the occurrence of any Series 2008B Loan Agreement Default or of any fact, condition or event which, with the giving of notice or passage of time or both, would become a Series 2008B Loan Agreement Default.

**Remedies Subject to Series 2008B Credit Facility Provider's Direction.** Except in the case of a Series 2008B Indenture Default described in paragraphs (g) or (h) under the caption "APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2008B INDENTURE – Defaults and Remedies – *Series 2008B Indenture Defaults*," the Series 2008B Credit Facility Provider has the right to direct the remedies to be exercised by the Trustee.

## Miscellaneous

***Extent of Covenants of the Company; No Personal Liability.*** No covenant, agreement or obligation contained in the Series 2008B Loan Agreement or the Series 2008B Indenture is to be deemed to be a covenant, agreement or obligation of any present or future member of the Company's Board of Directors or any officer, employee or agent of the Company in his or her individual capacity, and neither any officer of the Company executing the Series 2008B Bonds will be liable personally on the Series 2008B Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Company contained in the Series 2008B Loan Agreement or in the Series 2008B Indenture.

***Amendments and Supplements.*** Except as otherwise provided in the Series 2008B Loan Agreement, the Series 2008B Promissory Note or the Series 2008B Indenture, subsequent to the issuance of the Series 2008B Bonds and prior to all conditions provided for in the Series 2008B Indenture for release of the Series 2008B Indenture having been met, this Series 2008B Loan Agreement or the Series 2008B Promissory Note may not be amended, changed, modified, altered or terminated except in accordance with the applicable provisions of the Series 2008B Indenture.

***Limitation of Rights of the Series 2008B Credit Facility Provider.*** After the expiration or termination of the Series 2008B Credit Facility and payment of all amounts payable under the Series 2008B Credit Facility Agreement with respect thereto, or for so long as the Series 2008B Credit Facility Provider fails to honor any draw on the Series 2008B Credit Facility made in strict compliance with the terms thereof, the Series 2008B Credit Facility Provider will not be entitled to exercise any rights and remedies granted to it under the Series 2008B Loan Agreement.

***Survival of Rights.*** The Company's rights to immunities and protection from liability under the Series 2008B Loan Agreement or any related documents are to survive final payment or defeasance of the Series 2008B Bonds.

***Construction of Agreement.*** As between the Borrower and the Series 2008B Credit Facility Provider, in the event of any conflict between the provisions of the Series 2008B Loan Agreement and the provisions of the Series 2008B Credit Facility Agreement, the provisions of the Series 2008B Credit Facility Agreement are to prevail.

***Amounts Remaining in Funds.*** Any amounts in the Series 2008B Accounts of the Bond Fund remaining unclaimed by the Owners of Series 2008B Bonds for four years after the due date thereof (whether at stated maturity, by redemption or pursuant to any mandatory sinking fund requirements or otherwise), are to be paid to the Borrower, provided that if the Trustee has drawn on the Series 2008B Credit Facility and the Series 2008B Credit Facility Provider is owed any amount by the Borrower pursuant to the Series 2008B Credit Facility Agreement, such amounts remaining in the Series 2008B Accounts of the Bond Fund are to be paid first to the Series 2008B Credit Facility Provider to the extent of such unpaid amounts. With respect to the principal of and interest on the Series 2008B Bonds to be paid from moneys paid to the Borrower or the Series 2008B Credit Facility Provider pursuant to the preceding sentence, the Owners of the Series 2008B Bonds entitled to those moneys may look solely to the Borrower for the payment of those moneys. Further, any amounts remaining in the Series 2008B Accounts of the Bond Fund (subject to any limitations in the Series 2008B Indenture) and any other special funds or accounts created under the Series 2008B Loan Agreement or the Series 2008B Indenture after all of the outstanding Series 2008B Bonds are deemed to have been paid and discharged under the provisions of the Series 2008B Indenture, and all other amounts required to be paid under the Series 2008B Loan Agreement, the Series 2008B Promissory Note and the Series 2008B Indenture have been paid, are to be paid (to the extent that those moneys are in excess of the amounts necessary to effect the payment and discharge of the outstanding Series 2008B Bonds) first to the Series 2008B Credit Facility

Provider to the extent that any amount is owed by the Borrower to the Series 2008B Credit Facility Provider under the terms of the Series 2008B Credit Facility Agreement, and then to the Borrower.

***No Liability for Consents or Appointments.*** Whenever any provision in the Series 2008B Loan Agreement provides for the giving of consent or direction by the Company, the Company will not be liable to the Series 2008B Credit Facility Provider, the Borrower, the Trustee, the Remarketing Agent or to any Owner of Series 2008B Bonds for the giving of such consent or direction or for the withholding of such consent or direction. The Company has no liability for appointments required to be made by it under the Series 2008B Indenture, the Series 2008B Loan Agreement, the Series 2008B Remarketing Agreement or any related documents.

***Limitation of Rights.*** Nothing in the Series 2008B Loan Agreement, expressed or implied, is intended or is to be construed to confer upon, or to give to, any person other than the Company and the Trustee, including their respective agents, the Borrower, the Series 2008B Credit Facility Provider or the Owners of the Series 2008B Bonds any right, remedy or claim under or by reason of the Series 2008B Loan Agreement or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements in the Series 2008B Loan Agreement contained by or on behalf of the Company or the Borrower are for the sole benefit of the Company, the Borrower and the Trustee, including their respective agents, the Series 2008B Credit Facility Provider and the Owners of the Series 2008B Bonds.

***Binding Effect.*** The Series 2008B Loan Agreement will inure to the benefit of and be binding in accordance with its terms upon the Company, the Borrower and their respective successors and assigns, provided that the Series 2008B Loan Agreement may not be assigned by the Borrower and may not be assigned by the Company except to the Trustee pursuant to the Series 2008B Indenture or as otherwise may be necessary to enforce or secure payment of Series 2008B Bonds Debt Service Requirements and any assignment not permitted by the Series 2008B Loan Agreement is void. The Series 2008B Loan Agreement may be enforced only by the parties, their assignees and others who may, by law, stand in their respective places. The Series 2008B Credit Facility Provider is a third party beneficiary of the Series 2008B Loan Agreement.

***Governing Law.*** The Series 2008B Loan Agreement is deemed to be a contract made under the laws of the State and for all purposes is to be governed by and construed in accordance with the laws of the State.

***Venue.*** Except as otherwise agreed to by the Company or the Borrower in the Series 2008B Credit Facility Documents, any suit, action or proceeding involving the rights and obligations of the Company or the Borrower under the Series 2008B Loan Agreement and any related document is to be brought in the District Court of the County of Jefferson in the State of Colorado or the United States District Court for the District of Colorado.

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## APPENDIX D

### THE DTC BOOK-ENTRY SYSTEM

The information in this appendix concerning DTC and the DTC book-entry system has been obtained from sources believed to be reliable, but none of the Company, the Borrower or the Underwriter takes any responsibility for the accuracy or completeness thereof. Beneficial Owners should confirm the following information with DTC or the DTC Participants.

*None of the Company, the Borrower, the Trustee, the Remarketing Agent, any additional Registrar or the Paying Agent, U.S. Bank or the Underwriter has any responsibility or obligation to any Beneficial Owner with respect to (1) the accuracy of any records maintained by DTC or any DTC Participant (defined below), (2) the distribution by DTC or any DTC Participant of any notice that is permitted or required to be given to the Owners under the Series 2008B Indenture, (3) the selection by DTC or any DTC Participant of the recipient of payment in the event of a partial redemption of the Series 2008B Bonds, (4) the payment by DTC or any DTC Participant of any amount received under the Series 2008B Indenture with respect to the Series 2008B Bonds, (5) any consent given or other action taken by DTC or its nominee as the Owner of the Series 2008B Bonds or (6) any other related matter.*

DTC will act as securities depository for the Series 2008B Bonds. The Series 2008B Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Series 2008B Bond certificate will be issued for the Series 2008B Bonds, in the aggregate principal amount of the Series 2008B Bonds, and will be deposited with DTC or held by the Trustee or Paying Agent.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has S&P's highest rating: "AAA." The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org). The Company undertakes no responsibility for and makes no representations as to the accuracy or the completeness of the content of such material contained on such websites as described in the preceding sentence, including, but not limited to, updates of such information or links to other internet sites accessed through the aforementioned websites.

Purchases of Series 2008B Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each Beneficial Owner is in turn recorded on the records of Direct and Indirect Participants. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2008B Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2008B Bonds except in the event that use of the book-entry system for the Series 2008B Bonds is discontinued.

To facilitate subsequent transfers, all Series 2008B Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2008B Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2008B Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2008B Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2008B Bonds, such as redemptions, defaults and proposed amendments to the Series 2008B Indenture. For example, Beneficial Owners of Series 2008B Bonds may wish to ascertain that the nominee holding the Series 2008B Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Trustee and request that copies of the notices be provided directly to them.

Redemption notices will be sent to DTC. If less than all of the Series 2008B Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the Series 2008B Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Company as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2008B Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments with respect to the Series 2008B Bonds will be made to Cede & Co. or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Company, the Trustee or the Paying Agent on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participants and not of DTC, the Company, the Trustee or the Paying Agent, subject to any statutory or regulatory



requirements as may be in effect from time to time. Payments with respect to the Series 2008B Bonds to Cede & Co., or to such other nominee as may be requested by an authorized representative of DTC, is the responsibility of the Company, the Trustee or the Paying Agent, disbursement of such payments to Direct Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

A Beneficial Owner is to give notice to elect to have its Beneficial Ownership Interests purchased or tendered, through its Participant, to the Remarketing Agent, and is to effect delivery of such Beneficial Ownership Interests by causing the Direct Participant to transfer the Participant's interest in the Series 2008B Bonds, on DTC's records, to the Remarketing Agent. The requirement for physical delivery of the Series 2008B Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Series 2008B Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Series 2008B Bonds to the Remarketing Agent's DTC account.

DTC may discontinue providing its services as securities depository with respect to the Series 2008B Bonds at any time by giving reasonable notice to the Company or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2008B Bond certificates are required to be printed and delivered as provided in the Series 2008B Indenture.

The Company may at any time decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository) with respect to the Series 2008B Bonds. In that event, Bond certificates will be printed and delivered to DTC

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