

This document is intended  
to be recorded in  
Shelby County, Alabama

MORTGAGE, ASSIGNMENT OF  
LEASES AND RENTS, SECURITY  
AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING

made by

AMERIGAS PROPANE, L.P.,  
doing business in Alabama as  
AmeriGas Propane, Limited Partnership

as Mortgagor,

to

Bank of America National Trust

and

Savings Association

as Collateral Agent,

as Mortgagee

RECORD AND RETURN TO:

Bank of America National Trust  
and Savings Association  
1445 Market Street, 12th Floor  
San Francisco, CA 94103  
Attention: Agency Management Services

THIS MORTGAGE SECURES FUTURE  
ADVANCES AND OBLIGATIONS.

NOTE TO RECORDER: This Instrument should be indexed  
against the following names:

- (i) Petrolane Gas Service Limited Partnership
- (ii) Petrolane Incorporated
- (iii) AmeriGas Propane, L.P.

Inst # 1995-13475

05/23/1995-13475  
12:32 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
101.50  
034 MCD

TA # SN9500-254 (P17)  
RECORD AND RETURN TO:  
TITLE ASSOCIATES INC.  
430 PARK AVENUE  
NEW YORK, NY 10022  
ATT: J. DILLON

MORTGAGE, ASSIGNMENT OF  
LEASES AND RENTS, SECURITY  
AGREEMENT, FINANCING  
STATEMENT AND FIXTURE FILING

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING, dated as of the date set forth on the signature page hereof (as amended and supplemented and in effect from time to time, this "Mortgage"), made by AMERIGAS PROPANE, L.P., doing business in Alabama as AmeriGas Propane, Limited Partnership, a Delaware limited partnership, having its principal office at 460 North Gulph Road, King of Prussia, Pennsylvania 19406 ("Mortgagor"), to Bank of America National Trust and Savings Association, a national banking association having its principal office at 1445 Market Street, 12th Floor, San Francisco, CA 94103, as Collateral Agent for the benefit of the Secured Creditors under the Intercreditor Agreement ("Mortgagee"). All capitalized terms used herein and not separately defined in the body of this Mortgage shall have the meanings provided in Appendix A attached to this Mortgage which is incorporated herein as part of this Mortgage.

W I T N E S S E T H :

WHEREAS, Mortgagor acquired the Land, Improvements (such terms as hereinafter defined), and appurtenances thereto, by deed from Petrolane Incorporated, a California corporation, dated April 19, 1995, recorded of even dated with this Mortgage in the land records of Shelby County, Alabama;

NOW, THEREFORE, in consideration of the benefits accruing to Mortgagor, the receipt and sufficiency of which are acknowledged, and

TO SECURE THE PAYMENT in accordance with the terms thereof of the Obligations in the amount of \$7,000.00 and to secure the due performance of and compliance with all of the Obligations, MORTGAGOR HEREBY GIVES, GRANTS, BARGAINS, CONVEYS, SELLS AND CONFIRMS TO MORTGAGEE, and grants to Mortgagee a security interest in, all of its estate, right, title and interest, whether now owned or hereafter acquired:

In and to that property described on Exhibit A hereto which is incorporated herein as a part of this Mortgage. The property described in Exhibit A includes either one or more fee estates and/or one or more leasehold estates in the land described in Exhibit A (collectively, the "Land") and in the buildings and improvements now or hereafter erected on the Land (collectively, the "Improvements") and all personal property, including, without limitation, that portion of the personal property that constitutes fixtures, attachments, appliances, equipment, machinery and other tangible personal property now or hereafter attached to the Improvements or now or at any time hereafter located on the Land and/or the

Improvements and included in the Collateral (hereinafter collectively referred to as the "Equipment"; the Land, the Improvements and the Equipment, together with the following properties, estates, rights, titles, interests and appurtenant rights and easements, are herein referred to collectively as "this Property" as well as the "Mortgaged Property");

TOGETHER with all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating to or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, property, possession, claim and demand whatsoever, both at law and in equity of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

TOGETHER with, if Exhibit A includes a leasehold estate, all right, title and interest of Mortgagor in, to and under leasehold estates, and in any lease or other agreements, as more particularly described on Exhibit A (the "Ground Lease"), relating to the use and occupancy of the Land and/or the Improvements or any portion thereof, including without limitation, all modifications, extensions and renewals of such Ground Lease and to all rights to renew or extend the term of such Ground Lease and all credits, deposits, options, privileges and rights of Mortgagor, as lessee thereunder, and any modifications, extensions and renewals thereof;

TOGETHER with all leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, other than the Ground Lease, if any (the "Leases") and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses, if any) from the Land and the Improvements (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right, as permitted hereunder or under the Financing Agreements, to receive and apply the Rents to the payment of the Obligations;

TOGETHER with all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Land and the Improvements, whether from the exercise of the right of eminent domain (including any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Land and/or the Improvements;

TOGETHER with all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right, as permitted hereunder or under the Financing Agreements, to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;



TOGETHER with the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee and the Secured Creditors in the Mortgaged Property as permitted hereunder;

TOGETHER with all accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code as in effect in the State in which this Property is located (the "Code"), in each case to the extent included in the Collateral, and all contract rights, franchises, books, records, plans, specifications, permits, licenses, approvals, actions, refunds of real estate taxes and assessments and causes of action which now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon and, in each case, as are included in the Collateral; and

TOGETHER with all proceeds, product, offspring, rents and profits from any of the foregoing, including, without limitation, those from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD as provided herein the above granted and described Mortgaged Property unto Mortgagee and to its successors and assigns forever, and Mortgagor hereby binds itself and its successors and assigns (i) to warrant and forever defend the Mortgaged Property unto Mortgagee and its successors and assigns against the claim or claims of all Persons claiming or to claim the same, or any part thereof (subject to the Permitted Encumbrances) and (ii) to waive and release any and all rights, privileges and exemptions under and by virtue of any applicable law providing for exemptions of homestead from sale or execution or otherwise.

PROVIDED, HOWEVER, that upon payment in full of the Obligations and the termination of all Financing Agreements and letters of credit and commitments thereunder, this Mortgage will be discharged and satisfied or assigned at Mortgagor's option, by Mortgagee (without recourse and without any representation or warranty), at the expense of Mortgagor at its written request.

This Mortgage is one of a number of mortgages, deeds to secure debt and/or deeds of trust given pursuant to the Financing Agreements.

This Mortgage constitutes a Security Agreement, Fixture Filing and Financing Statement as those terms are used in the Code.

AND TO PROTECT THE SECURITY OF THIS MORTGAGE, Mortgagor covenants and agrees with Mortgagee for the benefit of the Secured Creditors as follows:

## ARTICLE I

### REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF MORTGAGOR

1.01 Title to this Property. Mortgagor represents and warrants (a) that it has fee simple title to, or a valid leasehold interest pursuant to the Ground Lease in, this Property, free and clear of any liens and encumbrances other than Permitted Encumbrances; (b) that this Mortgage is a valid first lien upon this Property; (c) that Mortgagor has full power and lawful authority to encumber this Property in the manner set forth herein; and (d) that there are no defenses or offsets to this Mortgage or to the Obligations which it secures. Mortgagor shall, subject to the Permitted Encumbrances, preserve such title or interest and the validity and priority of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all Persons whatsoever.

1.02 Operation of this Property. Mortgagor, during the entire term of this Mortgage, will obtain and maintain all material licenses, authorizations, permits and/or approvals necessary for the ownership, operation and management of this Property, including, without limitation, all required environmental permits.

1.03 Payment and Performance of Obligations. Mortgagor shall pay all of the Obligations when due and without offset, counterclaim, or relief from applicable valuation and appraisal laws, and shall observe and comply in all respects with all of the terms, provisions, conditions, covenants and agreements to be observed and performed by it under this Mortgage, the Financing Agreements and all other documents evidencing or securing the Obligations or delivered in connection therewith.

1.04 Maintenance, Repair, Alterations, Etc. Except to the extent otherwise permitted by all, or required by any, of the Financing Agreements, Mortgagor will: keep and maintain this Property in good condition and repair; make or cause to be made promptly, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen which are necessary to so maintain this Property; restore any Improvement which may be damaged or destroyed so that the same shall, to the extent permitted by applicable law, be at least equal to its value, condition and character immediately prior to the damage or destruction, and promptly pay when due all claims for labor performed and materials furnished therefor; comply with all Legal Requirements and other contracts, agreements, restrictions and covenants now or hereafter affecting this Property or any part thereof or the use thereof or requiring any alterations or improvements except such instances of noncompliance as would not, individually or in the aggregate, have a material adverse effect on the Business, assets or financial condition of Mortgagor and its Restricted Subsidiaries taken as a whole; not commit or permit any waste or deterioration (usual wear and tear excepted) of this Property; comply with the provisions of any Lease, easement or other agreement affecting all or any part of this Property; and not permit the Improvements or any part thereof to become deserted or unguarded.



1.05 Required Insurance. Mortgagor will, at its expense, maintain insurance as provided in the Intercreditor Agreement.

1.06 Policy Provisions, Etc. Each policy of required insurance shall be in accordance with the requirements of the Intercreditor Agreement.

1.07 Insurance Proceeds. (a) Mortgagor shall give prompt written notice to Mortgagee of the occurrence of any damage to or destruction of the Improvements (which term as used in this Section 1.07 shall include Equipment) in excess of \$100,000.

(b) Unless otherwise required by a Ground Lease, if any, and subject to any Permitted Encumbrance, in the event of any damage to or destruction of the Improvements or any part thereof and, if Mortgagor shall elect not to repair or restore the Improvements (other than an election not to repair or restore the Improvements to the extent permitted under and in compliance with all Financing Agreements), or if a General Event of Default shall have occurred and be continuing Mortgagee shall receive all proceeds of casualty insurance and shall apply such proceeds to the payment of the Obligations in accordance with the Intercreditor Agreement.

(c) Unless otherwise required by a Ground Lease, if any, and subject to any Permitted Encumbrance, in the event of any damage to or destruction of the Improvements, and if either (i) Mortgagor shall elect to repair or restore the Improvements or (ii) Mortgagor has elected not to repair or restore the Improvements to the extent permitted under and in compliance with all Financing Agreements, and in either such case if a General Event of Default shall not have occurred and be continuing hereunder, Mortgagor shall be entitled to receive all insurance proceeds up to the Excess Taking Proceeds, if any, and Mortgagor shall apply such proceeds to the payment of the costs and expenses of repairing and restoring the Improvements (or, if Mortgagor has so elected not to repair or restore the Improvements, Mortgagor shall offer to prepay Obligations with such proceeds as and to the extent required by the Financing Agreements). Notwithstanding anything to the contrary contained herein, all insurance proceeds in excess of the Excess Taking Proceeds shall be applied in accordance with the Intercreditor Agreement.

(d) Unless otherwise required by a Ground Lease, and subject to any Permitted Encumbrance, if Section 1.07(b) shall be applicable, Mortgagee shall have the right to settle, adjust or compromise any claim under any policy of insurance. In all other cases, Mortgagor may settle, adjust or compromise any claim except as provided in the Intercreditor Agreement.

(e) Except to the extent otherwise permitted by all, or required by any, of the Financing Agreements Mortgagor shall repair and restore all damage or destruction to the Improvements, regardless of whether there are insurance proceeds available or whether any such proceeds are sufficient in amount.

1.08. Indemnification. If Mortgagee or any of the Secured Creditors or their respective officers, directors, trustees, employees, agents and representatives (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") are made a party to any litigation or proceeding concerning this Mortgage or this Property or any part thereof, or the construction, operation or occupancy of the Improvements by Mortgagor or anyone else, Mortgagor shall indemnify, defend and hold such Indemnified Parties harmless from all cost and liability by reason of said litigation or proceeding, including reasonable attorneys' fees and expenses incurred by such Indemnified Parties in any such litigation, whether or not any such litigation is prosecuted to judgment; provided, however, that nothing herein shall be deemed to require Mortgagor to indemnify, defend and hold harmless such Indemnified Parties with respect to the gross negligence or willful misconduct of such Indemnified Parties. If Mortgagor breaches any term of this Mortgage, the Indemnified Parties may employ an attorney or attorneys to protect their respective rights hereunder, and Mortgagor shall pay the reasonable attorneys' fees and expenses incurred by such Indemnified Parties, whether or not an action is actually commenced against Mortgagor by reason of such breach. The foregoing indemnification shall survive the repayment of the Obligations.

1.09 Impositions. (a) Subject to Section 1.18, Mortgagor will pay or cause to be paid when due all Impositions; provided, however, that if, by the applicable Legal Requirement, any such Imposition is payable, or may at the option of the payer be paid, in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same may become due.

(b) If under the provisions of any Legal Requirement now or hereafter in effect there shall be assessed or imposed: (i) a tax or assessment on this Property in lieu of or in addition to the Impositions payable by Mortgagor pursuant to subparagraph (a) of this Section 1.09, or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions", and Mortgagor shall pay and discharge or cause to be paid and discharged the same as herein provided or shall reimburse or otherwise compensate Mortgagee for the payment thereof. Mortgagor shall pay upon demand therefor "doing business" charges, fees or similar taxes imposed upon Mortgagee to the extent the same is attributable to any or all of the transactions contemplated hereby or by any Financing Agreements. Any determination or computation of such amount by Mortgagee, absent manifest error, shall be conclusively binding on Mortgagor. Mortgagee shall, upon Mortgagor's prior written request (which shall not be given more than once in any twelve month period), supply such information as is readily available to Mortgagee and reasonably necessary for Mortgagor to verify said determination or computation. Mortgagor shall pay the reasonable cost of compliance by Mortgagee with any such request. Anything to the contrary herein notwithstanding, Mortgagor shall not have any obligation to pay any franchise, income, or similar taxes levied on Mortgagee or on the Obligations.



(c) Mortgagor covenants to furnish to Mortgagee, promptly following Mortgagee's request, official receipts of the appropriate taxing or other authority, or other proof reasonably satisfactory to Mortgagee, evidencing the payment of Impositions.

(d) Mortgagor will pay all taxes, charges, filing, registration and recording fees, excises and levies imposed in connection with the recording of this Mortgage or imposed upon Mortgagee by reason of its ownership of this Mortgage, other than franchise, income or similar taxes, and shall pay any and all stamp taxes and other taxes required to be paid on any of the Obligations. In the event Mortgagor fails to make any such payment within thirty (30) days after written notice thereof from Mortgagee, then Mortgagee shall have the right, but shall not be obligated to, pay the amount due and Mortgagor shall, on demand, reimburse Mortgagee for said amount, together with interest thereon at the Default Rate from the date of such payment until reimbursed to Mortgagee.

1.10 Utilities. Mortgagor will pay when due all utility charges which are incurred by Mortgagor for the benefit of this Property or which may become a charge or lien against this Property for gas, electricity, steam, water or sewer services furnished to this Property and all other assessments or charges of a similar nature, whether public or private, affecting this Property whether or not such taxes, assessments or charges are liens thereon.

1.11 Actions Affecting this Property. Mortgagor will appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee and/or Secured Creditors hereunder; and Mortgagor will pay all costs and expenses incurred by Mortgagor, including cost of evidence of title and attorneys' fees, in any such action or proceeding.

1.12 Condemnation. (a) Should this Property or any part thereof or interest therein be taken or damaged by reason of any public improvements or condemnation proceeding or in any other similar manner ("Condemnation"), or should Mortgagor receive any notice or other information thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

(b) Unless otherwise required by a Ground Lease, if any, and subject to any Permitted Encumbrance, in the event of a Condemnation of this Property or any part thereof and, if Mortgagor shall elect not to repair or restore this Property (other than an election not to repair or restore to the extent permitted under and in compliance with all Financing Agreements), or if a General Event of Default shall have occurred and be continuing, Mortgagee shall receive all compensation, awards and other payments or relief therefor made or granted (the "Proceeds") and shall be entitled, at Mortgagee's option, to commence, appear in and prosecute in its own name any action or proceeding in connection therewith. All Proceeds are, and shall be deemed, assigned to Mortgagee, and Mortgagor shall execute such further assignments of the Proceeds as Mortgagee may require. Mortgagee shall have the right to receive and apply all such Proceeds in the manner set forth in Section 1.07(b) hereof as if the Proceeds were insurance proceeds. Such application shall not, by itself, cure or waive any



default hereunder or notice of default under this Mortgage or invalidate any act done pursuant to such notice, and shall affect the lien of this Mortgage only to the extent of a reduction in the amount of said lien by the amount so applied.

(c) Unless otherwise required by a Ground Lease, if any, and subject to any Permitted Encumbrance, in the event of a Condemnation and if either (i) Mortgagor shall elect to repair and restore this Property or (ii) if Mortgagor has elected not to repair or restore the Improvements to the extent permitted under and in compliance with all Financing Agreements, and in either such case if a General Event of Default shall not have occurred and be continuing hereunder, Mortgagor shall be entitled to receive all Proceeds and Mortgagor shall apply the Proceeds to the payment of the costs and expenses of repairing and restoring this Property (or if Mortgagor has elected not to repair or restore the Improvements, Mortgagor shall offer to prepay Obligations with such Proceeds as and to the extent required by the Financing Agreements). Notwithstanding anything to the contrary contained herein, all Proceeds in excess of the Excess Taking Proceeds shall be applied in accordance with the Intercreditor Agreement.

(d) If Section 1.12(b) shall govern, Mortgagee alone shall have the right to settle, adjust or compromise any claim in connection with a Condemnation of this Property. In all other cases Mortgagee and Mortgagor shall consult and cooperate with each other and each shall be entitled to participate in all meetings and negotiations with respect to the settlement of such claim.

(e) Except to the extent otherwise permitted by all, or required by any, of the Financing Agreements Mortgagor shall to the extent practicable repair and restore all damage or destruction to the Improvements by reason of a Condemnation, regardless of whether there are Proceeds available or whether any such Proceeds are sufficient in amount.

1.13 Additional Security. In the event Mortgagee at any time holds additional security for any of the Obligations, it may enforce, sell or otherwise realize upon all or any portion of the same to the extent permitted thereunder, at its option, either before or concurrently herewith or after enforcing its remedies hereunder.

1.14 Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds the parties hereto, the Secured Creditors and their respective successors and assigns (including the successors to Mortgagor pursuant to Section 10.7 of the Note Agreements and Section 8.8 of the Credit Agreement).

1.15 Inspections. Mortgagor hereby authorizes Mortgagee, its agents, representatives or workmen, to enter upon or in any part of this Property for the purpose of inspecting the same, and for the purpose of performing any of the acts which Mortgagee is authorized to perform under the terms of this Mortgage.

1.16 Fixture Filing and Financing Statement. This Mortgage, to the extent that it relates to items of personal property which may become fixtures, shall be a security agreement and shall constitute a financing statement filed as a fixture filing as those terms are used in the Code and, accordingly: (i) the address of Mortgagee as "secured party" is: Bank of America National Trust and Savings Association, 1455 Market Street, 12th Floor, San Francisco, CA 94103; (ii) the mailing address of Mortgagor, as "debtor" is 460 North Gulph Road, King of Prussia, Pennsylvania 19406; (iii) the types of collateral that now or hereafter may become fixtures are described in the recitals of the preamble hereof; and (iv) the Tax I.D. number of Mortgagor is 23-2787917.

1.17 Liens. (a) Subject to Section 1.18, Mortgagor will not directly or indirectly create or permit or suffer to be created or to remain, and will discharge, or promptly cause to be discharged, any Lien on this Property or any part thereof, other than this Mortgage, the other Security Documents and the Permitted Encumbrances.

(b) Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee or any Secured Creditor, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, nor as giving Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Mortgagee or any Secured Creditor in respect thereof or any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

1.18 Permitted Contests. Mortgagor at its expense may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien therefor or any lien for labor, services or materials supplied or claimed to have been supplied or the application of any instrument of record, provided that (a) such proceedings shall suspend the collection thereof from Mortgagor, Mortgagee, Secured Creditors and the Mortgaged Property, (b) neither the Mortgaged Property nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (c) neither Mortgagee nor any Secured Creditor would, by virtue of such permitted contest, be exposed to any risk of any criminal liability or civil liability as a result of the failure to comply with such Imposition, (d) Mortgagor shall have furnished such security, if any, as may be required in the proceedings or reasonably requested by Mortgagee and (e) such reserves or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor. Mortgagor shall give prompt written notice to Mortgagee prior to the commencement of any contest referred to in the preceding sentence.



## ARTICLE II

### ASSIGNMENT OF LEASES, RENTS AND PROFITS

2.01 Assignment. To further secure the indebtedness secured hereby, Mortgagor hereby sells, assigns and transfers unto Mortgagee for the benefit of the Secured Creditors all the Rents now due and which may hereafter become due under or by virtue of any Lease, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute, unconditional and present transfer and assignment of all such Leases, Rents and agreements, and all the avails thereunder, to Mortgagee and not merely the passing of a security interest and the existence or exercise of Mortgagor's revocable license to collect Rent absent an existence of a General Event of Default shall not operate to subordinate this assignment to any subsequent assignment, and such assignment shall be fully operative without any further action on the part of any party, and Mortgagee shall be entitled upon the occurrence of a General Event of Default to all Rents, whether or not Mortgagee takes possession of the Mortgaged Property or any part thereof. So long as there shall exist no General Event of Default, Mortgagor shall have a revocable exclusive license to collect the Rents and to deal with the Leases to the extent permitted by this Mortgage. Upon the occurrence of a General Event of Default, the license hereinabove granted shall automatically terminate without notice to Mortgagor. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name, place and stead (with or without taking possession of this Property as provided in Section 3.01(a) hereof) to rent, lease or let all or any portion of this Property to any party or parties at such rental and upon such terms as Mortgagee shall, in its discretion, determine, and to collect all of said Rents arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the Leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on this Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Section 3.01(a) hereof. Mortgagor represents and agrees that except with the prior written approval of Mortgagee, no Rent has been or will be paid by any Person in possession of any portion of this Property for more than one installment in advance (except for security deposits) and that the payment of none of the Rents to accrue for any portion of this Property will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor, except as may be approved in writing by Mortgagee, provided, however that Mortgagee's approval shall not be required with respect to any Lease pursuant to which the annual rent is less than \$50,000. Mortgagor waives any rights of set-off against any person in possession of any portion of this Property. Mortgagor agrees that it will not assign any of the Rents of this Property (other than pursuant to this Mortgage). Nothing herein contained shall be construed as constituting Mortgagee a mortgagee-in-possession in the absence of the taking of actual possession of this Property by Mortgagee pursuant to Section 3.01(a) hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor. Mortgagor further agrees to assign and transfer to Mortgagee all future Leases

upon all or any part of this Property and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in this Property as Mortgagee shall from time to time reasonably require.

### ARTICLE III

#### REMEDIES UPON GENERAL EVENTS OF DEFAULT

3.01 Remedies Upon Default. If a General Event of Default shall occur and be continuing, Mortgagee may:

(a) either in person or by agent with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of this Property or any part thereof, in its own name or in the name of Mortgagor, and do or cause to be done any acts which it deems necessary or desirable to preserve the value of this Property or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of this Property, make, cancel or modify Leases and sue for or otherwise collect the Rents thereof, including those past due and unpaid, and apply the same, less costs of operation and collection, including attorney's fees, to the payment of the Obligations in accordance with the Intercreditor Agreement. The entering upon and taking possession of this Property, the collection of such Rents and the application thereof as aforesaid, shall not, by itself, cure or waive any General Event of Default or notice of default hereunder or invalidate any act done in response to such General Event of Default or pursuant to such notice of default hereunder and, notwithstanding the continuance in possession of this Property or the collection, receipt and application of Rents, Mortgagee shall be entitled to exercise every right provided for herein or in the Intercreditor Agreement or in any other agreement or at law or in equity upon the occurrence of any General Event of Default;

(b) commence and maintain one or more actions at law or in equity or by any other appropriate remedy (i) to protect and enforce Mortgagee's rights, whether for the specific performance of any covenant or agreement herein contained (which covenants and agreements Mortgagor agrees shall be specifically enforceable by injunctive or other appropriate equitable remedy), (ii) to collect any sum then due hereunder, (iii) to aid the execution of any power herein granted, or (iv) to foreclose this Mortgage, without prejudice to the right of Mortgagee thereafter to pursue and enforce any other appropriate remedy against Mortgagor;

(c) exercise any or all of the remedies available to a secured party under the Alabama Uniform Commercial Code;



(d) make any payment or perform any act herein or therein required of Mortgagor, in any form and manner deemed expedient, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Mortgaged Property from any tax sale or forfeiture or contest any tax or assessment affecting the Mortgaged Property; and

(e) without formal demand, presentment, notice of intention to accelerate or of acceleration, protest or notice of protest, all of which are hereby waived by Mortgagor, (i) automatically, in the event of the occurrence of a General Event of Default as a result of a Bankruptcy Event and (ii) at Mortgagee's option, in the event of the occurrence of any other General Event of Default, declare all or any part of the indebtedness secured hereby to be immediately due and payable, and upon such declaration such indebtedness shall become and be immediately due and payable, anything in this Mortgage to the contrary notwithstanding.

3.02 Right of Foreclosure. If a General Event of Default shall occur and be continuing, Mortgagee shall have the right, at its option, to proceed at law or in equity to foreclose fully or partially this Mortgage, any statute or rule of law at any time existing to the contrary notwithstanding. Mortgagee may, to the extent permitted by law, adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by an applicable provision of law, Mortgagee may make such sale at the time and place to which the same shall be so adjourned. With respect to all components of the Mortgaged Property, Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor (coupled with an interest), in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with such power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Notwithstanding the foregoing, Mortgagor, if so requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable for such purpose, and as may be designated in such request. To the extent permitted by law, any such sale or sales made under or by virtue of this Article III shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all Persons claiming or who may claim the same, or any part thereof, from, through or under Mortgagor. Upon any sale made under or by virtue of this Article III, Mortgagee may, to the extent permitted by law, bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations secured hereby, in accordance with the Intercreditor Agreement, the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Mortgagee is authorized to deduct by Legal Requirement or under this Mortgage.

3.03 Sale of Mortgaged Property Pursuant to Power of Sale. If a General Event of Default shall have occurred Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given twenty-one (21) days' notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting the same for Mortgagee is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. The Mortgaged Property, whether real, personal or mixed, may be sold for cash or credit as an entirety or in parcels, by one sale or by several sales held at one time or at different times, all as Mortgagee, in its unrestricted discretion, may elect, and Mortgagor, for and on behalf of itself and all Persons claiming by, through or under Mortgagor, waives, to the fullest extent provided by law, any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure sale. The proceeds of any foreclosure sale pursuant to this Paragraph 3.03 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this mortgage;

(b) Second, to the repayment of any money, with interest thereon, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness and obligations hereby specially secured with interest to date of sale, and to the payment of any and all other debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations and liabilities be then due or not; and

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

3.04 Right of Mortgagee to Perform Mortgagor's Covenants. If Mortgagor shall fail to make any payment or Mortgagor shall fail to perform any act required to be made or performed hereunder, Mortgagee, subject to ten (10) days' prior written notice to Mortgagor (except that no prior notice shall be required in the case of an emergency or where the failure to make such payment or perform such obligation could adversely affect the priority of the lien of this Mortgage), without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and, subject to the Ground Lease, if any, may enter upon the Mortgaged Property or any part thereof for such purpose and take all such action



thereon as in Mortgagee's opinion may be necessary or appropriate therefor. All sums so paid by Mortgagee and all reasonable costs and expenses (including without limitation attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment, shall constitute additional indebtedness secured by this Mortgage and shall be paid by Mortgagor to Mortgagee on demand.

3.05 Appointment of Receiver. If a General Event of Default shall have occurred and be continuing, Mortgagee as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of this Property or the interest of Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of this Property, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in subparagraph 3.01(a) and shall continue as such and exercise all such powers until the date of confirmation of sale of this Property unless such receivership is sooner terminated.

3.06 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any Obligations secured hereby and to exercise all rights and powers under this Mortgage or under the Intercreditor Agreement or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said Obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed or trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this Mortgage and the Intercreditor Agreement to Mortgagee, or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies, to the extent permitted by applicable law.

3.07 Waiver of Redemption, Notice, Etc. Notwithstanding anything herein contained to the contrary, to the extent permitted by law, Mortgagor: (a) HEREBY WAIVES TRIAL BY JURY; (b) hereby waives any and all rights of redemption or reinstatement in connection with the sale under any judgment of foreclosure of this Mortgage; (c) will not (i) at any time insist upon, or plead, or in any manner whatever, claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of this Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage; nor (ii) claim, take

or insist upon any benefit or advantage or any law now or hereafter in force providing for the valuation or appraisal of this Property or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor (iii) Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby; and (d) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Anything contained herein to the contrary notwithstanding, no waiver made by Mortgagor in this Section 3.07 or anywhere else in this Mortgage or in any of the other terms and provisions of the Financing Agreements shall constitute the consideration for or be deemed to be a waiver or release by Mortgagee or any judgment holder of the indebtedness or Obligations hereby secured of the right to seek a deficiency judgment against Mortgagor or any other Person who may be personally liable for the indebtedness or Obligations hereby secured, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Mortgagee for its own behalf and its successors and assigns.

**3.08 Expenses of Enforcement.** In connection with any action to enforce any remedy of Mortgagee under this Mortgage following the occurrence and during the continuance of a default hereunder or a General Event of Default, Mortgagor agrees to pay all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee including, without limitation, reasonable attorneys' fees, receiver's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary, and neither Mortgagee nor any other Person shall be required to accept tender of any portion of the indebtedness then secured hereby unless the same be accompanied by a tender of all such expenses, costs and commissions. All expenditures and expenses of the nature in this Section 3.08 mentioned, and such reasonable expenses and fees as may be incurred in the protection of this Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding, including appellate proceedings, affecting this Mortgage or this Property (including, without limitation, the occupancy thereof or any construction work performed thereon), including bankruptcy proceedings, or in preparation for the commencement or defense of any such proceeding or threatened suit or proceeding whether or not an action is actually commenced, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate from the date of payment and shall be part of the indebtedness secured by this Mortgage.



## ARTICLE IV

### MISCELLANEOUS

4.01 Governing Law; Severability. (a) This Mortgage and all other Financing Agreements were negotiated in the State of New York and the parties agree that New York has a substantial relationship to the parties and the underlying transactions embodied hereby. In all respects, including, without limitation, matters of the performance of this Mortgage and the Obligations, this Mortgage shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to contracts made and to be performed in such state (without regard to principles of conflicts of laws) and any applicable law of the United States of America, provided, however, that with respect to the creation, validity, perfection, priority and enforceability of the lien created by this Mortgage and any warranties of title contained in this Mortgage with respect to the Mortgaged Property, and the provisions hereof which relate to realizing upon the security covered by this Mortgage, the applicable provisions of this Mortgage shall be governed by, and interpreted in accordance with, the laws of the State in which the Mortgaged Property is located (except for rights of recourse against Mortgagor to the extent provided herein which shall be governed by New York law), it being understood that, except as set forth above, the law of the State of New York shall govern the enforceability of the Obligations.

(b) In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. This Mortgage cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing in accordance with the terms of the Intercreditor Agreement.

4.02 Limitation on Interest. It is the intent of Mortgagor and Mortgagee in the execution of this Mortgage and all other instruments evidencing or securing the Obligations to contract in strict compliance with the relevant usury laws. In furtherance thereof, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained in this Mortgage shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by relevant law. In the event that Mortgagee shall collect any amount from Mortgagor that is in excess of the maximum interest rate permitted by relevant law, such excess shall be applied to a reduction of the principal amount of the Obligations in accordance with the Intercreditor Agreement, and not the payment of interest, and if such excess amount exceeds the principal amount of the Obligations, the amount of such excess shall be refunded to Mortgagor.

4.03 Notices. All notices and other communications hereunder shall be in writing and shall be delivered by hand, by express courier service, by registered or certified mail, return receipt requested, postage prepaid, by first-class mail or by telecopy, addressed,

(a) if to Mortgagor, at 460 North Gulph Road, King of Prussia, PA 19406, Attention: General Counsel, or at such other address as Mortgagor shall have furnished to Mortgagee and each Secured Creditor in writing, or (b) if to Mortgagee, at Bank of America National Trust & Savings Association, 1455 Market Street, 12th Floor, San Francisco, CA 94103, Attention: Agency Management Services or at such other address as Mortgagee shall have furnished to Mortgagor and each Secured Creditor in writing, or (c) if to any Note Holder, at the address listed in Schedule I of the Note Agreements or at such other address as such Note Holder shall have furnished to Mortgagor and Mortgagee in writing, (d) if to any Bank, at the address specified in the Credit Agreement or at such other address as such Bank shall have furnished to Mortgagor and Mortgagee in writing, or (e) if to any Parity Lender, at the most recent address of such Parity Lender maintained by or on behalf of Mortgagor pursuant to the Parity Debt Agreements. Any notice so addressed and mailed or delivered shall be deemed to be given (1) one Business Day after consignment to an express courier service, (2) three Business Days after being mailed by registered, certified or first-class mail, (3) on the same Business Day, if by hand and (4) when received, if by telecopy.

4.04 Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

4.05 Non-Waiver. No failure by Mortgagee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect, or the rights of Mortgagee with respect to any other then existing or subsequent breach.

4.06 Further Assurances. Mortgagor, at its own expense, will execute, acknowledge and deliver all such instruments and take all such action as may be necessary, or in the reasonable opinion of Mortgagee desirable, to assure to Mortgagee the interest in the Mortgaged Property herein described and the rights intended to be provided to Mortgagee herein.

4.07 Remedies Cumulative. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Mortgagee or to which Mortgagee may be otherwise entitled may be exercised from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies, to the extent permitted by applicable law.

4.08 Partial Invalidity. If any of the provisions of this Mortgage or the application thereof to any person, party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such provision or provisions to persons, parties or circumstances other than those as to whom or which it is held



invalid or unenforceable, shall not be affected thereby, and every provision of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

4.09 Additional Advances. This Mortgage shall secure not only presently existing indebtedness under the Financing Agreements, as may be modified, extended and/or renewed from time to time but also any and all other indebtedness now owing or which may hereafter be owing by Mortgagor to the Secured Creditors, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized (but only at the option of the Secured Creditors), including future advances pursuant to the Credit Agreement, as may be modified, extended and/or renewed from time to time, whether such advances are obligatory or to be made at the option of the Secured Creditors, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage; provided, however, that this mortgage shall not secure any revolving credit advances pursuant to the Credit Agreement or otherwise. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which this Property is located. The total unpaid principal balance of indebtedness secured hereby at any one time outstanding shall not exceed \$7,000.00, plus interest thereon, any Make Whole Amount or other prepayment or breakage fee and any disbursements which Mortgagee may make under this Mortgage, the Financing Agreements or any other document with respect hereto (e.g., for payment of Impositions or insurance on this Property) and interest on such disbursements (all such indebtedness being hereinafter referred to as the "maximum amount secured hereby"). This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens to the extent of the maximum amount secured hereby. The lien of this Mortgage with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date this Mortgage is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after the Mortgage is executed.

4.10 Attorneys Fees. At any time hereunder Mortgagee is entitled to reimbursement or payment of its attorneys' fees in connection with any matter relating to or arising out of this Mortgage and such reimbursement or payment shall include the allocable internal counsel fees of Mortgagee.

4.11 Leasehold Mortgage Provisions. If Exhibit A includes a leasehold estate pursuant to a Ground Lease, the terms and conditions set forth in Exhibit B annexed hereto and made a part hereof are incorporated into this Mortgage by this reference.

4.12 Satisfaction of Mortgage. If Mortgagor shall pay the indebtedness secured hereby and pay and perform the Obligations in full in accordance with their terms, and Mortgagor performs and complies with the applicable agreements, conditions and stipulations contained in the Financing Agreements then, upon the request of either Mortgagor or Mortgagee, this Mortgage shall be cancelled of record and surrendered at the expense of

Mortgagor, provided that these provisions which by their terms survive such cancellation and surrender shall remain in full force and effect.



IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed as of the 19<sup>th</sup> day of April, 1995 and is effective for all purposes as of the 19<sup>th</sup> day of April, 1995.

AMERIGAS PROPANE, L.P.,  
doing business in Alabama as  
AmeriGas Propane, Limited  
Partnership, a Delaware limited  
partnership

By: New AmeriGas Propane, Inc.,  
a Pennsylvania corporation  
its general partner

By: Lee C. Jordan  
Lee C. Jordan, Senior Vice  
President

Attest:

By: Robert H. Knauss  
Robert H. Knauss, Secretary

STATE OF TEXAS       )  
                                  ) SS:  
COUNTY OF HARRIS    )

I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that Lee C. Jordan and Robert H. Knauss, whose names as Senior Vice President and Secretary, respectively, of New AmeriGas Propane, Inc., a Pennsylvania corporation, the general partner of AmeriGas Propane, L.P., doing business in Alabama as AmeriGas Propane, Limited Partnership, a Delaware limited partnership, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as general partner of said limited partnership on the day same bears date.

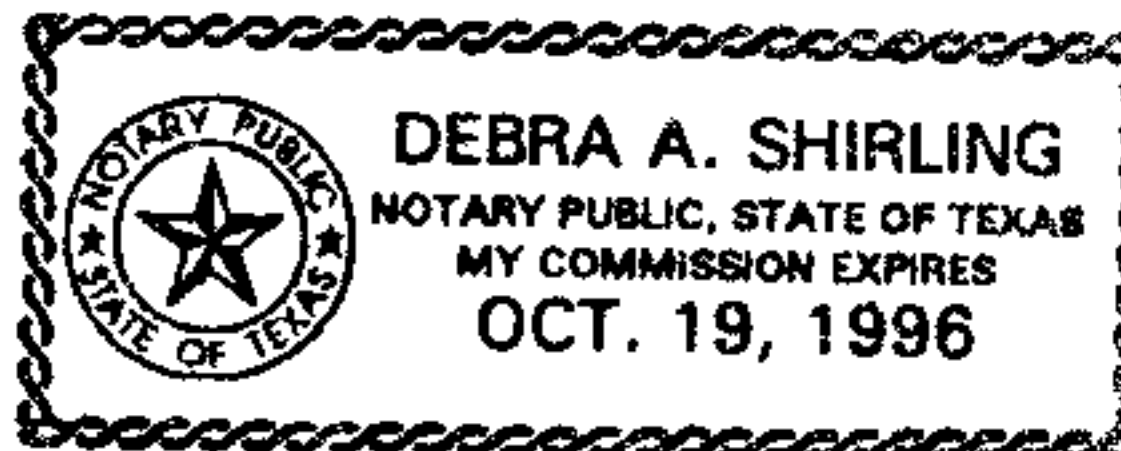
Given under my hand and official seal of office this 18<sup>th</sup> day of April, 1995.

Debra A. Shirling  
(signature)

Debra A. Shirling  
(printed name) NOTARY PUBLIC

My Commission Expires:

10-19-96





PETROLANE ALABAMA  
PROPERTY NO. P0017  
SHELBY COUNTY  
HIGHWAY 17  
MAYLENE, AL

**EXHIBIT A**

THAT TRACT OR PARCEL OF LAND IN THE SOUTHEAST CORNER OF THE  
SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 28, TOWNSHIP 21,  
RANGE 3 WEST, LYING BETWEEN THE MONTEVALLO-MAYLENE ROAD, SHELBY  
COUNTY NO. 17, ON THE EAST, THE SOUTHERN (AGS) RAILWAY ON THE  
WEST, LAND OF THE MONTEVALLO LIMESTONE COMPANY ON THE SOUTH, AND  
A LOCAL ROAD, OR DRIVE GOING FROM SHELBY COUNTY ROAD NO. 17  
ACROSS THE SOUTHERN RAILWAY TO HOUSE AND OTHER LANDS NOW OR FORMERLY  
OF OV. WOOD, CONTAINING 1.46 ACRES MORE OR LESS.

## EXHIBIT B

### Leasehold Mortgage Provisions

Notwithstanding anything contained herein to the contrary, and in addition to any rights, privileges and remedies granted to Mortgagee elsewhere in this Mortgage, Mortgagee shall have, and Mortgagor hereby grants to Mortgagee for the benefit of the Secured Creditors, any and all rights, privileges and remedies of the leasehold provided for in the Ground Lease (including without limitation, any renewal rights and options to purchase contained in the Ground Lease) without the necessity of particularly specifying any or all of such rights, privileges and remedies that are or could be granted to leasehold mortgagees pursuant to the Ground Lease.

Mortgagor hereby represents, covenants and agrees that:

(a) This Mortgage is lawfully executed and delivered in conformity with the Ground Lease.

(b) Mortgagor will pay when due the rents, taxes and other sums and charges mentioned in and made payable by Mortgagor under the Ground Lease.

(c) Mortgagor will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by it under the Ground Lease, within the periods (including any grace or cure periods) provided therein, and will do all things necessary to preserve and to keep unimpaired its rights under the Ground Lease. In the event of the failure of Mortgagor to make any payment required to be made by the lessee pursuant to the provisions of the Ground Lease or to observe, abide by, discharge or perform, or cause to be observed, kept, discharged or performed, any of the terms, obligations, covenants, conditions, agreements, indemnities, representations, warranties or liabilities of the Ground Lease on the part of lessee thereunder to be observed, kept, discharged and performed, Mortgagor does hereby irrevocably appoint and constitute Mortgagee as its true and lawful attorney in fact, which appointment is coupled with an interest, in its name, place and stead, to take any and all actions deemed necessary or desirable by Mortgagee to perform and comply with all of the obligations of Mortgagor under the Ground Lease, to do and take, but without any obligation so to do, any action which Mortgagee deems necessary or desirable to prevent or cure any default by Mortgagor under the Ground Lease, to enter into and upon this Property or any part thereof to such extent and as often as Mortgagee, in its sole discretion, deems necessary or desirable in order to prevent or cure any default of Mortgagor pursuant thereto, to the end that the rights of Mortgagor in and to the leasehold estate created by the Ground Lease shall be kept unimpaired and free from default, and all sums so expended by Mortgagee, with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Mortgagor to



Mortgagee promptly upon demand by Mortgagee and shall be added to the indebtedness secured hereby and Mortgagee shall have, in addition to any other remedy of Mortgagee, the same rights and remedies in the event of non-payment of any such sum by Mortgagor as in the case of a default by Mortgagor in the payment of any such similar sums due under the Financing Agreements. Mortgagor shall, within five (5) days after written request by Mortgagee, execute and deliver to Mortgagee, or to any Person designated by Mortgagee, such further instruments, agreements, powers, assignments, conveyances or the like as may be necessary to complete or perfect the interest, rights or powers of Mortgagee pursuant to this Exhibit B.

(d) Mortgagor will promptly (i) notify Mortgagee in writing of the receipt by it of any notice of default from the lessor under the Ground Lease; (ii) notify Mortgagee in writing of the receipt by it of any notice under the Ground Lease of the termination of the Ground Lease; (iii) cause a copy of each such notice received by Mortgagor from the lessor under the Ground Lease to be delivered to Mortgagee; and (iv) cause a copy of any notice of election or the exercise of any rights or option to, purchase or renewal under the Ground Lease sent by Mortgagor to the lessor under Ground Lease, to be delivered to Mortgagee.

(e) Mortgagor will not, without the prior written consent of Mortgagee, terminate or surrender or suffer or permit any termination or surrender of the Ground Lease, nor modify the Ground Lease, if the modification reduces the term, increases the rent, materially increases Mortgagor's obligations under the Ground Lease, materially decreases Mortgagor's rights under the Ground Lease or shall materially impair Mortgagee's security interest in this Property or the rights and remedies of Mortgagee under this Mortgage.

(f) Mortgagor will, within ten (10) days after written demand from Mortgagee, use best efforts (short of payment of money to the ground lessor other than all sums payable under or pursuant to the Ground Lease) to obtain from the lessor under or pursuant to the Ground Lease and deliver to Mortgagee an estoppel certificate in the form provided for in the Ground Lease.

(g) Mortgagor will furnish to Mortgagee upon demand, proof of payment of all items which are required to be paid by Mortgagor pursuant to the Ground Lease and a statement of any such payments which Mortgagor is contesting or arbitrating pursuant to the terms of the Ground Lease.

(h) Mortgagor will not consent to the subordination of the Ground Lease to any lien on the fee estate of the lessor under the Ground Lease.

(i) So long as any of the Obligations shall remain outstanding, Mortgagor shall not fail to exercise any option or right to renew or extend the term of the Ground Lease without the prior written consent of Mortgagee. Mortgagor shall give Mortgagee

simultaneous written notice of the exercise of any such option or right to renew or extend, together with a copy of the instrument given to the lessor under the Ground Lease exercising such option or right, and thereafter, shall promptly deliver to Mortgagee a copy of any acknowledgment by such lessor with respect to the exercise of such option or right. If any such option or right has not been exercised as aforesaid, then, not more than three hundred sixty (360) and not less than two hundred seventy (270) days before the right of Mortgagor to exercise any such option or right expires, Mortgagor shall give Mortgagee written notice specifying (i) the date on which, (ii) the term for which and (iii) the manner in which such option or renewal is to be exercised. Within ten (10) Business Days of written demand by Mortgagee, Mortgagor shall exercise any such option or renewal which is necessary to extend the term of the Ground Lease beyond the outside maturity date set forth in the Financing Agreements.

(j) Mortgagor represents and warrants to Mortgagee that Mortgagor has delivered to Mortgagee true and correct copies of the Ground Lease and all modifications, amendments and extensions executed in connection therewith.

-END-



## APPENDIX A

### DEFINITIONS

As used herein the following terms have the following respective meanings:

Agent: the agent under the Credit Agreement.

Banks: the several financial institutions from time to time party to the Credit Agreement in their capacities as a "Bank" thereunder, and any successors or assigns thereof.

Bank Accounts and Notes: collectively, (i) the several loan accounts or records maintained by each of the Banks which loan accounts or records evidence such Bank's funding of loans pursuant to the Credit Agreement or (ii) if requested by any Bank instead of loan accounts, the several promissory notes executed to each of the Banks which notes evidence such Bank's loans made pursuant to the Credit Agreement, as such notes may be amended, modified or restated from time to time, together with promissory notes taken in whole or partial renewal thereof.

Bankruptcy Event:

(a) filing by or on the behalf of the Company, the General Partner or any Significant Subsidiary Group of a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under any Bankruptcy Law, or any action by the Company, the General Partner or any Significant Subsidiary Group for, or consent or acquiescence to, the appointment of a receiver, trustee or other custodian of the Company, the General Partner or any Significant Subsidiary Group, or of all or a substantial part of its property; or the making by the Company, the General Partner or any Significant Subsidiary Group of any assignment for the benefit of creditors; or the admission by the Company, the General Partner or any Significant Subsidiary Group in writing of its inability to pay its debts as they become due; or

(b) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) reorganization, arrangement, adjustment of debts or other relief in respect of the Company, the General Partner or any Significant Subsidiary Group under any Bankruptcy Law or (ii) the appointment of a receiver, trustee or other custodian of the Company, the General Partner or any Significant Subsidiary Group, or of all or a substantial part of its property, and in each case such proceeding or petition shall continue undismissed for 60 days or an order or decree approving any of the foregoing shall be entered.

Bankruptcy Law: any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar act or law, state or federal, now or hereafter existing.

Business: the business of wholesale and retail sales, distribution and storage of propane gas and related petroleum derivative products and the retail sale and distribution of propane related supplies and equipment, including home appliances.

Business Day: any day other than a Saturday, a Sunday or a day on which commercial banks in New York City, San Francisco or Philadelphia are required or authorized by law to be closed.

Capital Lease: as applied to any Person, any lease of any property (whether real, personal or mixed) by such Person (as lessee or guarantor or other surety) which would, in accordance with GAAP, be required to be classified and accounted for as a capital lease on a balance sheet of such Person.

Cash Collateral Sub-Agent: Mellon Bank, N.A., a national banking association, as Cash Collateral Sub-Agent under the Intercreditor Agreement.

Closing: April 19, 1995.

Collateral: as defined in Section 1.1(a) of the General Security Agreement and in Section 1.1(a) of the Subsidiary Security Agreement.

Collateral Agent: Bank of America National Trust and Savings Association, a national banking association, as Collateral Agent under the Intercreditor Agreement.

Company: AmeriGas Propane, L.P., a Delaware limited partnership.

Credit Agreement: the Credit Agreement dated as of April 12, 1995 among the Company, the General Partner, Petrolane Incorporated, Bank of America National Trust and Savings Association as agent and the Banks, as the same shall be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

Credit Obligations: as defined in the definition of Obligations.

Default Rate: the highest of the default rates provided for in any of the Financing Agreements.

Deed of Trust: the instrument, if such instrument is a deed of trust, to which this Appendix A is attached.

Dollar and sign "\$": lawful money of the United States of America.



Environmental Laws: applicable federal, state, local and foreign laws, rules or regulations as amended from time to time, relating to emissions, discharges, releases, threatened releases, removal, remediation or abatement of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment (including without limitation air, surface water, ground water or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes.

Excess Taking Proceeds: the meaning specified in Section 9.3(b) of the Note Agreements.

Financing Agreements: the Financing Documents (as such term is defined in the Note Agreements), the Loan Documents (as such term is defined in the Credit Agreement) and the Parity Debt Agreements.

GAAP: the meaning specified in Section 13.2 of the Note Agreements and in Section 1.3 of the Credit Agreement.

General Event of Default: any Event of Default under, and as defined in, (i) the Note Agreements, (ii) the Credit Agreement or (iii) any Parity Debt Agreements.

General Partner: New AmeriGas Propane, Inc., a Pennsylvania corporation (to be known as AmeriGas Propane, Inc. from and after the Closing).

General Security Agreement: the General Security Agreement dated as of the date of the Closing, among the Company, the Cash Collateral Sub-Agent and the Collateral Agent, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

Governmental Authority: any governmental agency, authority, instrumentality or regulatory body, other than a court or other tribunal, in each case whether federal, state, local or foreign.

Impositions: all taxes (including, without limitation income, gross receipts, sales, use, doing business, excise, personal property (tangible and intangible) and stamp taxes), assessments (including without limitation all assessments for public improvements or benefits, whether or not commenced or completed prior to Closing), water, sewer or other rents, assessments, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including all interest and penalties thereon), which at any time may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon (a) the Mortgaged Property and the Collateral or any part thereof or any rent therefrom or any estate, right or interest therein, or (b) any occupancy, use or possession of or activity conducted on the Mortgaged Property or any part thereof.

Intercreditor Agreement: the Intercreditor and Agency Agreement, dated as of the date of Closing, by and among the Company, the General Partner, Petrolane Incorporated, the Restricted Subsidiaries, the Note Holders, the Agent, the Cash Collateral Sub-Agent and the Collateral Agent, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

Legal Requirements: any law, statute, ordinance, decree, requirement, order, judgment, rule or regulation (or published official interpretation of any of the foregoing by any Governmental Authority) of any Governmental Authority.

Lien: as to any Person, any mortgage, lien (statutory or otherwise), pledge, reservation, right of entry, encroachment, easement, right of way, restrictive covenant, license, charge, security interest or other encumbrance in or on, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease with respect to, any property or asset owned by such Person. A Person shall be deemed to be the owner of any asset which it has placed in trust for the benefit of the holders of Indebtedness (as defined in the Intercreditor Agreement) of such Person and such trust shall be deemed to be a Lien if such Indebtedness is deemed to be extinguished under GAAP and such Person remains legally liable therefor.

Make Whole Amount: the meaning specified in the Note Agreements.

Mortgage: the instrument, if such instrument is a deed to secure debt or a mortgage, to which this Appendix A is attached.

Mortgaged Property: the meaning specified in the Deed of Trust or Mortgage, as the case may be.

Note Agreements: the separate Note Agreements, each dated as of April 12, 1995, among the Company, the General Partner, Petrolane Incorporated and the Note Holders, as amended, modified or supplemented from time to time in accordance with the terms thereof.

Note Holders: the registered holders from time to time of the Notes.

Note Obligations: the meaning specified in the definition of Obligations.

Notes: the meaning specified in Section 1 of the Intercreditor Agreement as such notes may be amended, modified or restated from time to time, together with notes taken in whole or partial renewal thereof.

Obligations:

(i) (x) the principal of, prepayment charge, if any, with respect to, and interest on (including any interest accruing after a Bankruptcy Event, whether or not an allowable claim), the Notes and the Note Agreements (including all



reimbursement obligations thereunder) and (y) all other obligations and indebtedness (including without limitation indemnities, fees, expenses, the Make Whole Amount and interest on any such obligations and indebtedness) of the Company and its Restricted Subsidiaries or other parties to the Note Agreements (other than the Secured Creditors) to the Note Holders now existing or hereafter incurred under, arising out of, or in connection with, the Notes, the Note Agreements, the Agreement in Principle (as defined in the Note Agreements), the Registration Rights Agreement (as defined in the Note Agreements) and the Security Documents (all such principal, interest, obligations and indebtedness in this clause (i) being herein collectively called the **"Note Obligations"**);

(ii) (x) the principal of, prepayment charge, if any, with respect to, and interest on (including any interest accruing after a Bankruptcy Event, whether or not an allowable claim), the Bank Accounts and Notes and the Credit Agreement (including all reimbursement obligations thereunder) and (y) all other obligations and indebtedness (including without limitation indemnities, fees, expenses, prepayment or breakage fees and interest on any such obligations and indebtedness) of the Company and its Restricted Subsidiaries or other parties to the Credit Agreement (other than the Secured Creditors) to the Banks and the Agent, now existing or hereafter incurred under, arising out of, or in connection with, the Bank Accounts and Notes, the Credit Agreement, the Fee Letters (as defined in the Credit Agreement), the L/C Related Documents (as defined in the Credit Agreement) and the Security Documents (all such principal, interest, obligations and indebtedness in this clause (ii) being herein collectively called the **"Credit Obligations"**);

(iii) (x) the principal of, prepayment charge, if any, with respect to, and interest on (including any interest accruing after a Bankruptcy Event, whether or not an allowable claim), the Parity Debt and the Parity Debt Agreements (including all reimbursement obligations thereunder) and (y) all other obligations and indebtedness (including without limitation indemnities, fees, expenses, prepayment or breakage fees and interest on any such obligations and indebtedness) of the Company and its Restricted Subsidiaries or other parties to the Parity Debt Agreements (other than the Secured Creditors) to the Parity Lenders and the Parity Agents incurred under, arising out of, or in connection with any Parity Debt Agreement, whether such Parity Debt Agreement is now in existence or hereafter arising and the Security Documents (all such obligations and indebtedness in this clause (iii) being herein called the **"Parity Debt Obligations"**);

(iv) any and all sums advanced by the Collateral Agent in accordance with the terms of the Security Documents in order to preserve the Security or preserve its security interest in the Security, together with interest thereon at the Default Rate; and

(v) in the event of any proceeding for the collection or enforcement of any indebtedness, obligations, or liabilities of the Company, its Restricted



Subsidiaries and the other parties referred to in clauses (i) through (iv) above, after a General Event of Default shall have occurred and be continuing, the expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Security, or of any exercise by the Collateral Agent of its rights under any of the Security Documents, together with attorneys' fees and court costs and all amounts paid by any Secured Creditor or the Collateral Agent under any of the Security Documents, including without limitation, pursuant to Section 8.1 of the General Security Agreement, Section 8.1 of the Subsidiary Security Agreement, Sections 3.04 or 3.08 of this Deed of Trust or Mortgage, Section 12 of the Subsidiary Guarantee and Section 10 of the Intercreditor Agreement.

Parity Debt: Indebtedness of the Company that is (a) incurred in accordance with (i) Section 10.1(a), 10.1(b), 10.1(e) or 10.1(f) of the Note Agreements and (ii) Sections 8.1(a), 8.1(b), 8.1(e) and 8.1(f) of the Credit Agreement (other than Indebtedness evidenced by the Notes or the Bank Accounts and Notes, but including in any event the Public Notes (as defined in the Note Agreements)) and (b) secured by the respective Liens of the Security Documents in accordance with (i) Section 10.2(j), (k), (l) or (m) of the Note Agreements and (ii) Section 8.3(j), (k), (l) or (m) of the Credit Agreement.

Parity Debt Agreements: the agreements between the Company and each Parity Lender, providing for the incurrence of Parity Debt.

Parity Debt Obligations: the meaning specified in the definition of Obligations.

Parity Lenders: the original purchasers of Parity Debt under any Parity Debt Agreement, and any successors or assigns thereof.

Permitted Encumbrances: with respect to the Mortgaged Property, (a) liens for Impositions not yet due and payable or being contested as permitted by Section 1.18 of the Deed of Trust or Mortgage, (b) liens of mechanics, materialmen, suppliers or vendors, or rights thereto, incurred in the ordinary course of business for sums which under the terms of the related contracts are not yet due (but only if such contracts do not postpone payment for more than 60 days after completion of the work in question) or which are being contested as permitted by Section 1.18 of the Deed of Trust or Mortgage and for which such reserve or other appropriate provision, if any, as shall be required by GAAP, shall have been made, (c) leases, easements, exceptions, encumbrances or reservations in the Mortgaged Property, granted or reserved for the purpose of railroads, utilities, pipelines, plants, roads, telecommunication lines, electrical, water and pipeline transmission facilities, ditches, canals, surface operations, agricultural operations, the removal of oil, gas, coal or other minerals or timber and other like purposes, or for the joint or common use of real property, facilities and equipment, including covenants and conditions appurtenant to the Land, provided that none of the foregoing referred to in this clause (c), (i) either individually or in the aggregate, shall materially lessen the value of the Mortgaged Property for its use as part of the Business, (ii) materially interfere with the ordinary conduct of the business of the Company or the intended use of the Mortgaged Property or (iii) cause any of the representations of the Company set forth in Section 1.01 of

the Deed of Trust or Mortgage to be untrue in any respect (and with respect to the representation of the Company set forth in clause 1.01(a), such representation for purpose of this definition shall be deemed to be made without giving effect to the provision regarding the absence of liens and encumbrances), (d) defects and exceptions in the title to any portion of the Mortgaged Property which do not, (i) either individually or in the aggregate, materially lessen the value of the Mortgaged Property for its use as part of the Business, (ii) materially interfere with the ordinary conduct of the business of the Company or the intended use of the Mortgaged Property or (iii) cause any of the representations of the Company set forth in Section 1.01 of the Deed of Trust or Mortgage to be untrue in any respect (and with respect to the representation of the Company set forth in clause 1.01(a), such representation for purposes of this definition shall be deemed to be made without giving effect to the provision regarding the absence of liens and encumbrances). With respect to the portion of the Mortgaged Property which also constitutes the Collateral, the Permitted Encumbrances shall include, without duplication, the Liens permitted under Section 10.2 of the Note Agreements and Section 8.3 of the Credit Agreement.

Person: a corporation, a firm, a joint venture, an association, a partnership, an organization, a business, a trust or other entity or enterprise, a limited liability company, an individual, a government or political subdivision thereof or a Governmental Authority, department or instrumentality.

Restricted Subsidiaries: the meaning specified in the Note Agreements.

Secured Creditors: the Note Holders, the Banks the Agent, the Parity Agents and the Parity Lenders.

Security: any property held (including without limitation the Mortgaged Property and the Collateral) under the Security Documents and all rights of the Collateral Agent under the Security Documents or in respect of such property and the Security Documents, together with any additional property subject to and any additional rights under any of the Security Documents.

Security Documents: (a) the Intercreditor Agreement, (b) each of (i) the mortgage, assignment of leases and rents, security agreement, financing statement and fixture filings, (ii) the deed of trust, assignment of leases and rents, security agreement, financing statement and fixture filings, and (iii) the deed to secure debt, assignment of leases and rents, security agreement, financing statement and fixture filings, each made by the Company in favor of the Collateral Agent (or trustee under Deed of Trust), each dated as of the date of the Closing and covering the Mortgaged Properties (as defined in the Intercreditor Agreement) located in the counties listed on Schedule 5.8(b) of the Note Agreements, those executed after the Closing as required by Section 10.15 of the Note Agreements and those executed by Restricted Subsidiaries (rather than the Company) after the Closing as required by Section 10.14 of the Note Agreements, (c) the General Security Agreement, (d) the Subsidiary Security Agreement, (e) the Subsidiary Guarantee and (f) any other instrument or agreement which purports to grant to the Collateral Agent a security interest in or a lien on property to secure



any Note, Bank Note or Parity Debt, or which is stated therein to be a Security Document. All references to any Security Document shall mean such Security Document as at the time amended, supplemented or otherwise modified in accordance with the terms thereof.

Significant Subsidiary Group: the meaning specified in the Note Agreements and the Credit Agreement.

Subsidiary: with respect to any Person, any corporation, limited liability company, partnership, joint venture, association, trust or other entity of which (or in which) more than 50% of (a) the issued and outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time Capital Stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (b) the interests in the capital or profits of such partnership, limited liability company, joint venture or association with ordinary voting power to elect a majority of the board of directors (or Persons performing similar functions) of such partnership, limited liability company, joint venture or association, or (c) the beneficial interests in such trust or other entity with ordinary voting power to elect a majority of the board of trustees (or Persons performing similar functions) of such trust or other entity, is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries, or by one or more of such Person's other Subsidiaries.

Subsidiary Guarantee: the Restricted Subsidiary Guarantee dated as of the date of Closing by the Restricted Subsidiaries for the benefit of the Collateral Agent, as the same may be amended, supplemented (including without limitation in accordance with Section 10.14 of the Note Agreements or Section 7.9 of the Credit Agreement) or otherwise modified from time to time in accordance with the terms thereof.

Subsidiary Security Agreement: the Subsidiary Security Agreement dated as of the date of Closing by and among the Restricted Subsidiaries, the Cash Collateral Sub-Agent and the Collateral Agent, as the same may be amended, supplemented (including without limitation in accordance with Section 10.14 of the Note Agreements or Section 7.9 of the Credit Agreement) or otherwise modified from time to time in accordance with the terms thereof.

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