

EX-10.2 4 v115948_ex10-2.htm

Exhibit 10.2



LIBOR TERM NOTE New York

Buffalo, New York May 7, 2008

\$6,000,000.00**BORROWER:** Corning Natural Gas Corporationa(n) ☐ individual(s) ☐ partnership ☒ corporation ☐ trust ☐ _____ organized under the laws of New YorkAddress of residence/chief executive office: 330 West William Street, Corning, New York 14830**BANK:** **MANUFACTURERS AND TRADERS TRUST COMPANY**, New York banking corporation with its principal banking office at One M&T Plaza, Buffalo, New York 14240, Attention: Office of General Counsel**1. DEFINITIONS.** As used in this Note, each capitalized term shall have the meaning specified in the Note or as it appears in initial capitalization. Additionally, the following terms shall have the indicated meanings:

- a. **"Applicable Rate"** shall mean either the LIBOR Rate or the Base Rate, as the case may be.
- b. **"Adjustment Date"**, when applicable, shall mean:
 - (i) If the Interest Period duration selected below is "one day": the first day of the applicable Interest Period (or, if such date is not a Business Day, the immediately preceding Business Day).
 - (ii) If the Interest Period duration selected below is other than "one day": two (2) Business Days before the first day of the applicable Interest Period (each of which shall have a duration as selected below; see LIBOR Rate definition).
- c. **"Base Rate"** shall mean one (1) percentage point above the rate of interest announced by the Bank as its prime rate of interest.
- d. **"Business Day"** shall mean any day of the year on which banking institutions in New York, New York are not authorized or required by law or other governmental action to close and, to the extent the LIBOR Rate is applicable, on which dealings are carried on in the London Interbank market.
- e. **"Continuation Date"** shall mean the last day of each Interest Period.
- f. **"Interest Period"** shall mean, as to the LIBOR Rate, the period commencing on the date of this Note or Continuation Date (as the case may be) and ending on the date that shall be:
 - (i) If the Interest Period duration selected below is "one day": the following day; provided, however, that if an Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day.
 - (ii) If the Interest Period duration selected below is other than "one day": the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) of the calendar month that is one (1), two (2), three (3) or six (6) months thereafter (as selected below); provided, however, that if an Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the immediately preceding Business Day.
- g. **"LIBOR"** shall mean the rate per annum (rounded upward, if necessary, to the nearest 1/16th of 1%) obtained by dividing (i) the one-day, one-month, two-month, three-month or six-month interest period London Interbank Offered Rate (as selected below), fixed by the British Bankers Association for United States dollar deposits in the London Interbank Eurodollar Market at approximately 11:00 a.m. London, England time (or as soon thereafter as practicable) as determined by the Bank from any broker, quoting service or commonly available source utilized by

the Bank by (ii) a percentage equal to 100% minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency Liabilities" as specified in Regulation D (or against any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Rate loans is determined or any category of extensions of credit or other assets which includes loans by a non-United States' office of a bank to United States residents) on such date to any member bank of the Federal Reserve System. Notwithstanding any provision above, the practice of rounding to determine LIBOR may be discontinued at any time in the Bank's sole discretion.

- h. **"LIBOR Rate"** shall mean **1.80** percentage points above LIBOR with an Interest Period duration of:

☐ one day ☒ one month ☐ two months ☐ three months ☐ six months.

(Select applicable duration for each Interest Period. If no selection is made, the one-day Interest Period duration shall apply.)

- i. **"Maturity Date"** is **May 5, 2009**.
- j. **"Payment Due Date"**, when applicable, shall mean the same day of the calendar month as the date of this Note (or if there is no numerically corresponding day in a month, on the last day of such month); provided, however, if that day is not a Business Day, the Payment Due Day shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Payment Due Date shall be the immediately preceding Business Day.
- k. **"Principal Amount"** shall mean **Six Million and 00/100 Dollars (\$6,000,000.00)**.

2. PAYMENT OF PRINCIPAL, INTEREST AND EXPENSES.

a. Promise to Pay. For value received, and intending to be legally bound, Borrower promises to pay to the order of the Bank on the dates set forth below, the Principal Amount, plus interest as agreed below and all fees and costs (including without limitation attorneys' fees and disbursements whether for internal or outside counsel) the Bank incurs in order to collect any amount due under this Note, to negotiate or document a workout or restructuring, or to preserve its rights or realize upon any guaranty or other security for the payment of this Note ("Expenses").

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b. Initial Applicable Rate. The initial Applicable Rate shall be the LIBOR Rate (based on the Interest Period duration selected above) in effect on the date that is:

- (i) If the Interest Period duration selected above is "one day": the date of this Note (or, if such date is not a Business Day, the immediately preceding Business Day).
- (ii) If the Interest Period duration selected above is other than "one day": two (2) Business Days before the date of this Note.

In either case, the initial Interest Period shall start on the date of this Note.

c. Interest. Interest shall accrue on the outstanding Principal Amount calculated on the basis of a 360-day year for the actual number of days of each year (365 or 366) at the Applicable Rate that on each day shall be:

- i. **If the LIBOR Rate is the Applicable Rate.** Interest shall accrue on the Principal Amount from and including the first day of the Interest Period (with the duration selected above) until, but not including, the last day of such Interest Period or the day the Principal Amount is paid in full (if sooner), at a rate per annum equal to the LIBOR Rate determined and in effect on the applicable Adjustment Date.
- ii. **If the Base Rate is the Applicable Rate.** Interest shall accrue on the Principal Amount from and including the first date the Base Rate is the Applicable Rate to but not including, the day such Principal Amount is paid in full or the Applicable Rate is converted to the LIBOR Rate, at the rate per annum equal to the Base Rate. Any change in the Base Rate resulting from a change in the Bank's prime rate shall be effective on the date of such change.

d. Payment Schedule. (Check applicable box):

- ☒ Borrower shall pay the entire outstanding Principal Amount on the Maturity Date. In addition, until the outstanding Principal Amount is paid in full, Borrower shall pay all accrued and unpaid interest, in amounts which may vary, as follows: (i) if the LIBOR Rate is the Applicable Rate, on the last day of each Interest Period (except, however, if the Interest Period duration selected above is "one day", in which case such interest payments shall be made on the Payment Due Date for each month, or as otherwise invoiced by the Bank), (ii) if the Base Rate is the Applicable Rate, on the Payment Due Date for each month, and (iii) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand.
- ☐ Borrower shall pay the outstanding Principal Amount in _____ consecutive monthly, bi-monthly, quarterly or semi-annual installments (depending on the duration of the Interest Period selected above) as follows: (i) if the Interest Period duration is "one day", starting on the first Payment Due Date after the date of this Note and on each Payment Due Date thereafter, or (ii) if the Interest Period duration is other than "one day", starting on the last day of the Interest Period that commences on the date of this Note and on last day of each Interest Period thereafter; in either case, consisting of _____ equal installments of principal each in the amount of \$ _____ and ONE (1) FINAL INSTALLMENT on the Maturity Date in an amount equal to the outstanding Principal Amount at that time together with all other amounts outstanding hereunder including, without limitation, accrued interest, costs and Expense (the "Final Installment"); provided, however, if the Applicable Rate is converted to the Base Rate, Borrower shall pay the outstanding Principal Amount in consecutive monthly installments commencing on the first Payment Due Date after the date of such conversion and on the same Payment Due Date thereafter until conversion back to the LIBOR Rate (at which time Borrower shall resume the monthly, bi-monthly, quarterly or semi-annual installments in the amount set forth above or as otherwise agreed to by the Bank and Borrower in writing) or the Maturity Date (at which time Borrower shall pay the Final Installment) with each such installment being equal in an amount to fully amortize the outstanding Principal Amount of the Note in full by the Maturity Date or such other date agreed to by the Bank and Borrower in writing. The determination by the Bank of the foregoing amount shall, in the absence of

manifest error, be conclusive and binding upon Borrower. In addition, until the outstanding Principal Amount is paid in full, Borrower shall pay all accrued and unpaid interest, in amounts which may vary, as follows: (i) if the LIBOR Rate is the Applicable Rate, on the last day of each Interest Period (except, however, if the Interest Period duration selected above is "one day", in which case such interest payments shall be made on the Payment Due Date for each month, or as otherwise invoiced by the Bank), (ii) if the Base Rate is the Applicable Rate, on the Payment Due Date for each month, and (iii) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand.

e. Maximum Legal Rate. It is the intent of the Bank and Borrower that in no event shall interest be payable at a rate in excess of the maximum rate permitted by applicable law (the "Maximum Legal Rate"). If this Note is for a personal loan of less than \$2,500,000 and is secured primarily by a one- to four-family residence, the interest rate shall not exceed 16%. Solely to the extent necessary to prevent interest under this Note from exceeding the Maximum Legal Rate, any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Bank, shall be refunded to Borrower.

f. Default Rate. If an Event of Default (defined below) occurs, the interest rate on the unpaid Principal Amount shall immediately be automatically increased to 5 percentage points per year above the higher of the LIBOR Rate or the Base Rate, and any judgment entered hereon or otherwise in connection with any suit to collect amounts due hereunder shall bear interest at such default rate.

g. Repayment of Principal and Interest; Late Charge. Payments shall be made in immediately available United States funds at any banking office of the Bank. Interest will continue to accrue until payment is actually received. If payment is not received within five days of its due date, Borrower shall pay a late charge equal to the greatest of (a) \$50.00, (b) 5% of the delinquent amount or (c) the Bank's then current late charge as announced from time to time. If this Note is secured by a one to six-family owner-occupied residence, the late charge shall equal 2% of the delinquent amount and shall be payable if payment is not received within fifteen days of its due date. Payments may be applied in any order in the sole discretion of the Bank but, prior to default, shall be applied first to past due interest, Expenses, late charges and principal, then to current interest, Expenses, late charges and principal, and last to remaining principal.

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h. Prepayment.

- i. Subject to the following, during the term of this Note, Borrower shall have the option of paying the Principal Amount to the Bank in advance of the Maturity Date, in whole or in part, at any time and from time to time upon written notice received by the Bank at least three (3) business days prior to making such payment. If (i) Borrower prepays, in whole or in part, any Principal Amount when the Applicable Rate is the LIBOR Rate before the end of the Interest Period, (ii) there occurs an Event of Default or the Applicable Rate is converted from the LIBOR Rate to the Base Rate before the end of an Interest Period pursuant to Section 3, then Borrower shall be liable for and shall pay the Bank, on demand, the higher of \$250.00 or the actual amount of the liabilities, expenses, costs or funding losses that are a direct or indirect result of such prepayment (based on the entire Principal Amount pre-paid), failure to draw, early termination of the Interest Period, revocation, bankruptcy or otherwise. The determination by the Bank of the foregoing amount shall, in the absence of manifest error, be conclusive and binding upon Borrower. The provisions of this paragraph shall not be applicable if the Interest Period duration selected above is "one day".
- ii. Upon making any prepayment of the Principal Amount in whole, Borrower shall pay to the Bank all interest and Expenses owing pursuant to the Note and remaining unpaid. Each partial prepayment of the Principal Amount shall be applied in inverse order of maturity to the principal included in the installments provided herein.
- iii. In the event the Maturity Date is accelerated following an Event of Default by Borrower, any tender of payment of the amount necessary to satisfy the entire indebtedness made after such Event of Default shall be expressly deemed a voluntary prepayment. In such a case, to the extent permitted by law, the Bank shall be entitled to the amount necessary to satisfy the entire indebtedness, plus the appropriate prepayment premium calculated in accordance with this Section 2(h).

3. CONTINUATIONS AND CONVERSIONS.

a. Expiration of Interest Period. Subject to Section 3(b), upon the expiration of the first Interest Period and each Interest Period thereafter, on the Continuation Date the LIBOR Rate will be automatically continued with an Interest Period of the same duration as the Interest Period duration initially selected above.

b. Conversion Upon Default. Unless the Bank shall otherwise consent in writing, if (i) Borrower has failed to pay when due, in whole or in part, the indebtedness under the Note (whether upon maturity, acceleration or otherwise), or (ii) there exists a condition or event which with the passage of time, the giving of notice or both shall constitute an Event of Default, the Bank, in its sole discretion, may (i) permit the LIBOR Rate to continue until the last day of the applicable Interest Period at which time such the Applicable Rate shall automatically be converted to the Base Rate or (ii) convert the LIBOR Rate to the Base Rate before the end of the applicable Interest Period. Notwithstanding the foregoing, upon the occurrence of an Event of Default in Section 5(ix), the Applicable Rate shall be automatically converted to the Base Rate without further action by the Bank and Borrower shall have no right to have the Applicable Rate converted from the Base Rate to the LIBOR Rate. Nothing herein shall be construed to be a waiver by the Bank to have the Principal Amount accrue interest at the Default Rate or the right of the Bank to the amounts set forth in Section 2(h) of this Note, if any.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS. Borrower represents and warrants to and agrees and covenants with the Bank that now and until this Note is paid in full:

a. Business Purpose. The Loan proceeds shall be used only for a business purpose and not for any personal, family or household purpose.

b. Good Standing Authority. Borrower is an entity or sole proprietor (i) duly organized and existing and in good standing under the laws of the jurisdiction in which it was formed, (ii) duly qualified, in good standing and authorized to do business in every jurisdiction in which failure to be so qualified might have a material adverse effect on its business or assets and (iii) has the power and authority to own each of its assets and to use them as contemplated now or in the future.

c. Legality. The execution, issuance, delivery to the Bank and performance by Borrower of this Note (i) are in furtherance of Borrower's purposes and within its power and authority; (ii) do not (A) violate any statute, regulation or other law or any judgment, order or award of any court, agency or other governmental authority or of any arbitrator or (B) violate Borrower's certificate of incorporation or other governing instrument, constitute a default under any agreement binding on Borrower, or result in a lien or encumbrance on any assets of Borrower; and (iii) have been duly authorized by all necessary corporate or partnership action.

d. Compliance. The Borrower conducts its business and operations and the ownership of its assets in compliance with each applicable statute, regulation and other law, including without limitation environmental laws. All approvals, including without limitation authorizations, permits, consents, franchises, licenses, registrations, filings, declarations, reports and notices (the "Approvals") necessary to the conduct of Borrower's business and for Borrower's due issuance of this Note have been duly obtained and are in full force and effect. The Borrower is in compliance with all conditions of each Approval.

e. Financial and Other Information. For each year until this Note is paid in full, Borrower shall provide to the Bank in form and number of copies and by accountants satisfactory to the Bank, within 90 days after the end of each fiscal year of the Borrower, statements of income and cash flows and the financial position and balance sheet of the Borrower as of the fiscal year end, each in reasonable detail and certified by an officer or member of Borrower to have been prepared in accordance with generally accepted accounting principles to present fairly the results of Borrower's operations and cash flows and its financial position in conformity with such principles, and to be correct, complete and in accordance with Borrower's records. Promptly upon the request of the Bank from time to time, Borrower shall supply all additional information requested and permit the Bank's officers, employees, accountants, attorneys and other agents to (A) visit and inspect each of Borrower's premises, (B) examine, audit, copy and extract from Borrower's records and (C) discuss Borrower's or its affiliates' business, operations, assets, affairs or condition (financial or other) with its responsible officers and independent accountants.

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f. Accounting; Tax Returns and Payment of Claims. Borrower will maintain a system of accounting and reserves in accordance with generally accepted accounting principles, has filed and will file each tax return required of it and, except as disclosed in an attached schedule, has paid and will pay when due each tax, assessment, fee, charge, fine and penalty imposed by any taxing authority upon Borrower or any of its assets, income or franchises, as well as all amounts owed to mechanics, materialmen, landlords, suppliers and the like in the ordinary course of business.

g. Title to Assets; Insurance. Borrower has good and marketable title to each of its assets free of security interests and mortgages and other liens except as disclosed in its financial statements or on a schedule attached to this Note or pursuant to the Bank's prior written consent. Borrower will maintain its property in good repair and will maintain and on request provide the Bank with evidence of insurance coverage satisfactory to the Bank including without limitation fire and hazard, liability, worker's compensation and business interruption insurance and flood hazard insurance as required.

h. Judgments and Litigation. There is no pending or threatened claim, audit, investigation, action or other legal proceeding or judgment, order or award of any court, agency or other governmental authority or arbitrator (each an "Action") which involves Borrower or its assets and might have a material adverse effect upon Borrower or threaten the validity of this Note or any related document or transaction. Borrower will immediately notify the Bank in writing upon acquiring knowledge of any such Action.

i. Notice of Change of Address and of Default. Borrower will immediately notify the Bank in writing (i) of any change in its address or of the location of any collateral securing this Note, (ii) of the occurrence of any Event of Default defined below, (iii) of any material change in Borrower's ownership or management and (iv) of any material adverse change in Borrower's ability to repay this Note.

j. No Transfer of Assets. Until this Note is paid in full, Borrower shall not without the prior written consent of the Bank (i) sell or otherwise dispose of substantially all of its assets, (ii) acquire substantially all of the assets of another entity, (iii) if it is a corporation, participate in any merger, consolidation or other absorption or (iv) agree to do any of these things.

5. EVENTS OF DEFAULT; ACCELERATION. The following constitute an event of default ("Event of Default"): (i) failure by Borrower to make any payment when due (whether at the stated maturity, by acceleration or otherwise) of the amounts due under this Note, or any part thereof, or there occurs any event or condition which after notice, lapse of time or both will permit such acceleration; (ii) Borrower defaults in the performance of any covenant or other provision with respect to this Note or any other agreement between Borrower and the Bank or any of its affiliates or subsidiaries (collectively, "Affiliates"); (iii) Borrower fails to pay when due (whether at the stated maturity, by acceleration or otherwise) any indebtedness for borrowed money owing to the Bank (other than under this Note), any third party or any Affiliate, the occurrence of any event which could result in acceleration of payment of any such indebtedness or the failure to perform any agreement with any third party; (iv) the reorganization, merger, consolidation or dissolution of Borrower (or the making of any agreement therefor); the sale, assignment, transfer or delivery of all or substantially all of the assets of Borrower to a third party; or the cessation by Borrower as a going business concern; (v) the death or judicial declaration of incompetency of Borrower, if an individual; (vi) failure to pay, withhold or collect any tax as required by law; the service or filing against Borrower or any of its assets of any lien (other than a lien permitted in writing by the Bank), judgment, garnishment, order or award, other than a judgment, order or award for which Borrower is fully insured, if ten (10) days thereafter such judgment, order or awarded is not satisfied, vacated, bonded or stayed pending appeal; (vii) if Borrower becomes insolvent (however such insolvency is evidenced) or is generally not paying its debts as such debts become due; (viii) the making of any general assignment by Borrower for the benefit of creditors; the appointment of a receiver or similar trustee for Borrower or its assets; or the making of any, or sending notice of any intended, bulk sale; (ix) Borrower commences, or has commenced against it, any proceeding or request for relief under any bankruptcy, insolvency or similar laws now or hereafter in effect in the United States of America or any state or territory thereof or any foreign jurisdiction or any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of Borrower; (x) any representation or warranty made in this Note, any related document, any agreement between Borrower and the Bank or any Affiliate or in

any financial statement of Borrower proves to have been misleading in any material respect when made; Borrower omits to state a material fact necessary to make the statements made in this Note, any related document, any agreement between Borrower and the Bank or any Affiliate or any financial statement of Borrower not misleading in light of the circumstances in which they were made; or, if upon the date of execution of this Note, there shall have been any materially adverse change in any of the facts disclosed in any financial statement, representation or warranty that was not disclosed in writing to the Bank at or prior to the time of execution hereof; (xi) any pension plan of Borrower fails to comply with applicable law or has vested unfunded liabilities that, in the opinion of the Bank, might have a material adverse effect on Borrower's ability to repay its debts; (xii) the occurrence of any event described in sub-paragraph (i) through and including (xi) hereof with respect to any endorser, guarantor or any other party liable for, or whose assets or any interest therein secures, payment of any of the amounts due under this Note ("Guarantor"); (xiii) there occurs any change in the management or ownership of Borrower or any Guarantor which is, in the opinion of the Bank, materially adverse to its interest and which remains uncorrected for thirty days after the Bank notifies Borrower of its opinion; (xiv) Borrower fails to supply new or additional collateral within ten days of request by the Bank; or (xv) the Bank in good faith deems itself insecure with respect to payment or performance of under this Note. All amounts hereunder shall become immediately due and payable upon the occurrence of Section 5(ix) above, or at the Bank's option, upon the occurrence of any other Event of Default.

6. RIGHT OF SETOFF. The Bank shall have the right to set off against the amounts owing under this Note any property held in a deposit or other account with the Bank or any Affiliate or otherwise owing by the Bank or any Affiliate in any capacity to Borrower or any guarantor or endorser of this Note. Such set-off shall be deemed to have been exercised immediately at the time the Bank or such Affiliate elect to do so.

7. INABILITY TO DETERMINE LIBOR RATES, INCREASED COSTS, ILLEGALITY.

a. Increased Costs. If the Bank shall determine that, due to either (a) the introduction of any change (other than any change by way of imposition of or increase in reserve requirements included in the calculation of the LIBOR) in or in the interpretation of any requirement of law or (b) the compliance with any guideline or request from any central bank or other governmental authority (whether or not having the force of law), there shall be any increase in the cost to the Bank of agreeing to make or making, funding or maintaining any loans based on LIBOR, then Borrower shall be liable for, and shall from time to time, upon demand therefor by the Bank and pay to the Bank such additional amounts as are sufficient to compensate the Bank for such increased costs.

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b. Inability to Determine Rates. If the Bank shall determine that for any reason adequate and reasonable means do not exist for ascertaining LIBOR for the Interest Period specified above, the Bank will give notice of such determination to Borrower. Thereafter, the Bank may not maintain the loan hereunder at the LIBOR Rate until the Bank revokes such notice in writing and, until such revocation, the Bank may convert the Applicable Rate from the LIBOR Rate to the Base Rate.

c. Illegality. If the Bank shall determine that the introduction of any law (statutory or common), treaty, rule, regulation, guideline or determination of an arbitrator or of a governmental authority or in the interpretation or administration thereof, has made it unlawful, or that any central bank or other governmental authority has asserted that it is unlawful for the Bank to make loans at based on LIBOR then, on notice thereof by the Bank to Borrower, the Bank may suspend the maintaining of the loan hereunder at the LIBOR Rate until the Bank shall have notified Borrower that the circumstances giving rise to such determination shall no longer exist. If the Bank shall determine that it is unlawful to maintain the loan hereunder based on LIBOR, the Bank may convert the Applicable Rate from the LIBOR Rate to the Base Rate.

8. MISCELLANEOUS. This Note, together with any related loan and security agreements and guaranties, contains the entire agreement between the Bank and Borrower with respect to the Note, and supersedes every course of dealing, other conduct, oral agreement and representation previously made by the Bank. All rights and remedies of the Bank under applicable law and this Note or amendment of any provision of this Note are cumulative and not exclusive. No single, partial or delayed exercise by the Bank of any right or remedy shall preclude the subsequent exercise by the Bank at any time of any right or remedy of the Bank without notice. No waiver or amendment of any provision of this Note shall be effective unless made specifically in writing by the Bank. No course of dealing or other conduct, no oral agreement or representation made by the Bank, and no usage of trade, shall operate as a waiver of any right or remedy of the Bank. No waiver of any right or remedy of the Bank shall be effective unless made specifically in writing by the Bank. Borrower agrees that in any legal proceeding, a copy of this Note kept in the Bank's course of business may be admitted into evidence as an original. This Note is a binding obligation enforceable against Borrower and its successors and assigns and shall inure to the benefit of the Bank and its successors and assigns. If a court deems any provision of this Note invalid, the remainder of the Note shall remain in effect. Section headings are for convenience only. Borrower hereby waives protest, presentment and notice of any kind in connection with this Note. Singular number includes plural and neuter gender includes masculine and feminine as appropriate.

9. NOTICES. Any demand or notice hereunder or under any applicable law pertaining hereto shall be in writing and duly given if delivered to Borrower (at its address on the Bank's records) or to the Bank (at the address on page one and separately to the Bank officer responsible for Borrower's relationship with the Bank). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal delivery and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (*e.g.*, Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Borrower and the Bank.

10. JOINT AND SEVERAL. If there is more than one Borrower, each of them shall be jointly and severally liable for all amounts which become due under this Note and the term "Borrower" shall include each as well as all of them.

11. GOVERNING LAW; JURISDICTION. This Note has been delivered to and accepted by the Bank and will be deemed to be made in the State of New York. This Note will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. **BORROWER HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK IN A COUNTY OR JUDICIAL DISTRICT WHERE THE BANK MAINTAINS A BRANCH, AND CONSENTS THAT THE BANK MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT BORROWER'S ADDRESS SET FORTH ABOVE FOR PROVIDING NOTICE OR DEMAND; PROVIDED THAT NOTHING CONTAINED IN THIS NOTE WILL PREVENT THE BANK FROM BRINGING ANY ACTION, ENFORCING ANY AWARD OR**

JUDGMENT OR EXERCISING ANY RIGHTS AGAINST BORROWER INDIVIDUALLY, AGAINST ANY SECURITY OR AGAINST ANY PROPERTY OF BORROWER WITHIN ANY OTHER COUNTY, STATE OR OTHER FOREIGN OR DOMESTIC JURISDICTION. Borrower acknowledges and agrees that the venue provided above is the most convenient forum for both the Bank and Borrower. Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Note.

12. WAIVER OF JURY TRIAL. BORROWER AND THE BANK HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY BORROWER AND THE BANK MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS NOTE OR THE TRANSACTIONS RELATED HERETO. BORROWER REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF THE BANK HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. BORROWER ACKNOWLEDGES THAT THE BANK HAS BEEN INDUCED TO ENTER INTO THIS NOTE BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

☐ **Amended and Restated Note.** The Borrower acknowledges, agrees and understands that this Note is given in replacement of and in substitution for, but not in payment of, a prior note dated on or about _____, ____, in the original principal amount of \$_____, given by Borrower in favor of the Bank (or its predecessor-in-interest), as the same may have been amended or modified from time to time ("Prior Note"), and further, that: (a) the obligations of the Borrower as evidenced by the Prior Note shall continue in full force and effect, as amended and restated by this Note, all of such obligations being hereby ratified and confirmed by the Borrower; (b) any and all liens, pledges, assignments and security interests securing the Borrower's obligations under the Prior Note shall continue in full force and effect, are hereby ratified and confirmed by the Borrower, and are hereby acknowledged by the Borrower to secure, among other things, all of the Borrower's obligations to the Bank under this Note, with the same priority, operation and effect as that relating to the obligations under the Prior Note; and (c) nothing herein contained shall be construed to extinguish, release, or discharge, or constitute, create, or effect a novation of, or an agreement to extinguish, the obligations of the Borrower with respect to the indebtedness originally described in the Prior Note or any of the liens, pledges, assignments and security interests securing such obligations.

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Preauthorized Transfers from Deposit Account. If a deposit account number is provided in the following blank Borrower hereby authorizes the Bank to debit Borrower's deposit account # _____ with the Bank automatically for any amount which becomes due under this Note.

Acknowledgment. Borrower acknowledges that it has read and understands all the provisions of this Note, including the **Governing Law, Jurisdiction and Waiver of Jury Trial**, and has been advised by counsel as necessary or appropriate.

TAX ID/SS # 16-0397420 _____

CORNING NATURAL GAS CORPORATION

By: /s/ Michael I. German _____

Name: Michael I. German

Title: President

Signature of Witness

Typed Name of Witness

ACKNOWLEDGMENT

STATE OF NEW YORK)
 :SS.
COUNTY OF BROOME)

On _____ day of May, in the year 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared **MICHAEL I. GERMAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

FOR BANK USE ONLY

Authorization Confirmed: _____

Product Code: 22660

Disbursement of Funds:

Credit A/C # _____	Off Ck # _____	Payoff Obligation # _____
\$ _____	\$ _____	\$ _____

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EX-10.3 5 v115948_ex10-3.htm

Exhibit 10.3



SPECIFIC SECURITY AGREEMENT New York

Debtor (Name): Corning Natural Gas Corporation

(Organizational Structure): Corporation

(State Law organized under): New York

(Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number):

(Address of residence/chief executive office): 330 West William Street, Corning, New York 14830

Bank/Secured Party: Manufacturers and Traders Trust Company, a New York banking corporation with its banking offices at One M&T Plaza, Buffalo, New York 14203 Attention: Office of General Counsel.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, Debtor agrees with Secured Party as follows:

1. Security Interests.

1.1 Grant. As security for the prompt and complete payment and performance when due of all of the Obligations, Debtor does hereby grant to Secured Party a continuing security interest ("Security Interest") in all property of Debtor **listed on Exhibit A hereto** (or, if there is no Exhibit A or Exhibit A has not been completed, in all personal property and fixtures of Debtor, including, without limitation, all accounts, chattel paper, investment property, deposit accounts, documents, goods, equipment, farm products, general intangibles (including trademarks, service marks, trade names, patents, copyrights, licenses and franchises), instruments, **contract rights**, money, letter of credit rights, causes of action (including tort claims) and other personal property (including agreements and instruments not constituting chattel paper or a document, general intangible or instrument)), wherever located, whether now existing or owned or hereafter arising or acquired, whether or not subject to the Uniform Commercial Code, as the same may be in effect in the State of New York, as amended from time to time ("UCC"), and whether or not affixed to any realty, including (i) all additions to, accessions to, substitutions for, replacements of and supporting obligations of the foregoing; (ii) all proceeds and products of the foregoing, including, without limitation, insurance proceeds; and (iii) all business records and information relating to any of the foregoing and any software or other programs for accessing and manipulating such information (collectively, the "Collateral").

1.2 Obligations. The term "Obligations" means any and all indebtedness or other obligations of Debtor to Secured Party in any capacity, now existing or hereafter incurred, however created or evidenced, regardless of kind, class or form, whether direct, indirect, absolute or contingent (including obligations pursuant to any guaranty, endorsement, other assurance of payment or otherwise), whether joint or several, whether from time to time reduced and thereafter increased, or entirely extinguished and thereafter reincurred, together with all extensions, renewals and replacements thereof, and all interest, fees, charges, costs or expenses which accrue on or in connection with the foregoing, including, without limitation, any indebtedness or obligations (i) not yet outstanding but contracted for, or with regard to which any other commitment by Secured Party exists; (ii) arising prior to, during or after any pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding; (iii) owed by Debtor to others and which Secured Party obtained, or may obtain, by assignment or otherwise; or (iv) payable under this Agreement.

2. Covenants. So long as this Agreement is in effect, Debtor covenants and agrees:

2.1 Perfection of Security Interest. Debtor shall execute and deliver to Secured Party such financing statements, control agreements or other documents, in form and content satisfactory to Secured Party, as Secured Party may from time to time request to perfect and continue the Security Interest. Upon the request of Secured Party, Debtor shall deliver to Secured Party any and all instruments, chattel paper, negotiable documents or other documents evidencing or constituting any part of the Collateral properly endorsed or assigned, in a manner satisfactory to Secured Party. Until such delivery, Debtor shall hold such portion of the Collateral in trust for Secured Party. Debtor shall pay all expenses for the preparation, filing, searches and related costs in connection with the grant and perfection of the Security Interest. Debtor authorizes (both prospectively and retroactively) Secured Party to file financing statements, and any continuations and amendments thereof, with respect to the Collateral without Debtor's signature. A photocopy or other reproduction of any financing statement or this Agreement shall be sufficient as a financing statement for filing in any jurisdiction.

2.2 Negative Pledge; Disposition of Collateral. Debtor shall not grant or allow the imposition of any lien, security interest or encumbrance on, or assignment of, the Collateral unless consented to in writing by Secured Party. Debtor shall not make or permit to be made any sale, transfer or other disposition of the Collateral; provided, however, prior to the occurrence of an Event of Default, Debtor may in the ordinary course of business consistent with its past practices and with prudent and standard practices used in the industry that is the same or similar to that in which Debtor is engaged: (i) dispose of any Collateral consisting of equipment that is obsolete or worn-out; (ii) sell or exchange any Collateral consisting of equipment in connection with the acquisition of other equipment that is at least as valuable as such equipment, that Debtor intends to use for substantially the same purposes as such equipment and that is not subject to any security interest or other lien or encumbrance; or (iii) collect Collateral consisting of accounts or assign such Collateral for purposes of collection.

2.3 Condition of Collateral; Impermissible Use. Debtor shall keep the Collateral consisting of goods in good condition and shall not commit or permit damage or destruction (other than ordinary wear and tear) to such Collateral. Debtor shall not permit any Collateral consisting of goods (i) to be used in such a manner that would violate any insurance policy or warranty covering the Collateral or that would violate any applicable law of any governmental authority (including any environmental law) now or hereafter in effect; (ii) to become fixtures on any real property on which Secured Party does not have a first priority mortgage lien (unless Secured Party has been provided with an acceptable landlord/mortgagee waiver) or become an accession to any goods not included in the Collateral; or (iii) to be placed in any warehouse that may issue a negotiable document with regard to such Collateral.

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2.4 Modification to Collateral. Debtor shall not, without Secured Party's prior written consent, grant any extension on, compound, settle for less than the full amount of, release (in whole or in part), modify, cancel, or allow for any substitution, credit or adjustment on Collateral consisting of accounts, chattel paper, general intangibles, instruments, documents or investment property, except that in the absence of an Event of Default, Debtor may grant to account debtors, or other persons obligated with respect to the Collateral, extensions, credits, discounts, compromises or settlements in the ordinary course of business consistent with its past practices and consistent with prudent and standard practices used in the industries that are the same or similar to those in which Debtor is engaged.

2.5 Titled Goods. Debtor shall cause all goods included in the Collateral to be properly titled and registered to the extent required by applicable law. Upon the request of Secured Party, Debtor shall cause the interest of Secured Party to be properly indicated on any certificate of title relating to such goods and deliver to Secured Party each such certificate, and any additional evidence of ownership, certificates of origin or other documents evidencing any interest in such goods.

2.6 Insurance. Debtor shall, at its own expense and at all times, maintain effective insurance policies covering damage to persons and against fire, flood, theft and all other risks to which the Collateral may be subject, all in such amounts, with such deductibles and issued by such insurance company as shall be satisfactory to Secured Party. Such insurance policies shall have all endorsements that Secured Party may require and shall further (i) name Secured Party, exclusively, as the additional insured on the casualty insurance and the lender's loss payee and/or mortgagee on the hazard insurance; (ii) provide that Secured Party shall receive a minimum of thirty (30) days prior written notice of any amendment or cancellation; and (iii) insure Secured Party notwithstanding any act or neglect of Debtor or other owner of the property described in such insurance. If Debtor fails to obtain the required insurance as provided herein, Secured Party may, but is not obligated, to obtain such insurance as Secured Party may deem appropriate, including, without limitation, if Secured Party so chooses, "single interest insurance" which will cover only Secured Party's interest in the Collateral. Debtor shall pay or reimburse to Secured Party the cost of such insurance. Secured Party shall have the option, in its sole discretion, to hold insurance proceeds as part of the Collateral, apply any insurance proceeds toward the Obligations or allow the Debtor to apply the insurance proceeds towards repair or replacement of the item of Collateral in respect of which such proceeds were received. Upon the request of Secured Party, Debtor shall from time to time deliver to Secured Party such insurance policies, or other evidence of such policies satisfactory to Secured Party, and such other related information Secured Party may request.

2.7 Collateral Information. Debtor shall provide all information, in form and substance satisfactory to Secured Party, that Secured Party shall from time to time request to (i) identify the nature, extent, value, age and location of any of the Collateral, or (ii) identify any account debtor or other party obligated with respect to any chattel paper, general intangible, instrument, investment property, document or deposit account included in the Collateral.

2.8 Financial Information. Debtor shall furnish to Secured Party financial statements in such form (e.g., audited, reviewed, compiled) and at such intervals as Secured Party shall request from time to time plus any additional financial information that Secured Party may request. All such financial statements shall be in conformity with generally accepted accounting principles consistently applied.

2.9 Taxes; Licenses; Compliance with Laws. Before the end of any applicable grace period, Debtor shall pay each tax, assessment, fee and charge imposed by any governmental authority upon the Collateral, the ownership, disposition or use of any of the Collateral, this Agreement or any instrument evidencing any of the Obligations. Debtor shall maintain in full force and effect each license, franchise or other authorization needed for any ownership, disposition or use of the Collateral and the conduct of its business, operations or affairs. Debtor shall comply with all applicable law of any governmental authority (including any environmental law), now or hereafter in effect, applicable to the ownership, disposition or use of the Collateral or the conduct of its business, operations or affairs.

2.10 Records; Legend. Debtor shall maintain accurate and complete books and records relating to the Collateral in conformity with generally accepted accounting principles consistently applied. At Secured Party's request, Debtor will

legend, in form and manner satisfactory to Secured Party, its books and records to indicate the Security Interest.

2.11 Additional Collateral. If at any time the liquidation value of any of the Collateral is unsatisfactory to Secured Party, then, on demand of Secured Party, Debtor shall immediately (i) furnish such additional collateral satisfactory to Secured Party to be held by Secured Party as if originally pledged hereunder and execute such additional security agreements, financing statements or other agreements as requested by Secured Party, or (ii) repay the Obligations to bring the outstanding amount of the Obligations to within a satisfactory relationship to the liquidation value of the Collateral.

2.12 Notifications of Change. Immediately upon acquiring knowledge or reason to know of any of the following, Debtor shall notify Secured Party of the occurrence or existence of (i) any Event of Default; (ii) any event or condition that, after notice, lapse of time or after both notice and lapse of time, would constitute an Event of Default; (iii) any account or general intangible that arises out of a contract with any governmental authority (including the United States); (iv) any event or condition that has or (so far as can be foreseen) will or might have any material adverse effect on the Collateral (including a material loss destruction or theft of, or of any damage to, the Collateral, material decline in value of the Collateral or a material default by an account debtor or other party's performance of obligations with respect to the Collateral), on Debtor or its business, operations, affairs or condition (financial or otherwise).

2.13 Lien Law. If any account or general intangible included in the Collateral represents money owing pursuant to any contract for the improvement of real property or for a public improvement for purposes of the Lien Law of the State of New York (the "Lien Law"), Debtor shall (i) give Secured Party notice of such fact; (ii) receive and hold any money advanced by Secured Party with respect to such account or general intangible as a trust fund to be first applied to the payment of trust claims as such term is defined in the Lien Law (Section 71 or otherwise); and (iii) until such trust claim is paid, not use or permit the use of any such money for any purpose other than the payment of such trust claims.

2.14 Protection of Collateral; Further Assurances. Debtor shall, at its own cost, faithfully preserve, defend and protect the Security Interest as a prior perfected security interest in the Collateral under the UCC and other applicable law, superior and prior to the rights of all third parties (other than those permitted pursuant to Section 3.1) and shall defend the Collateral against all setoffs, claims, counterclaims, demands and defenses. At the request of Secured Party, Debtor shall do, obtain, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as Secured Party may deem necessary or advisable from time to time in order to attach, continue, preserve, perfect or protect the Security Interest and Secured Party's rights hereunder including obtaining waivers (in form and content acceptable to Secured Party) from landlords, warehousemen and mortgagees. Debtor hereby irrevocably appoints Secured Party, its officers, employees and agents, or any of them, as attorneys-in-fact for Debtor with full power and authority in the place and stead of Debtor and in the name of Debtor or its own name from time to time in Secured Party's discretion, to perform all acts which Secured Party deems appropriate to attach, continue, preserve or perfect and continue the Security Interest, including signing for Debtor (to the extent such signature may be required by applicable law) UCC-1 financing statements, UCC-3 amendment or other instruments and documents to accomplish the purposes of this Agreement. This power of attorney, being coupled with an interest, is irrevocable and shall not be affected by the subsequent disability or incompetence of Debtor.

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3. Representations and Warranties. Debtor represents, warrants and agrees as follows:

3.1 Title. Debtor holds good and marketable title to the Collateral free and clear from any security interest or other lien or encumbrance of any party, other than the Security Interest or such liens, security interests or other liens or encumbrances specifically permitted by Secured Party and set forth on Exhibit A hereto ("Permitted Liens"). Debtor has not made any prior sale, pledge, encumbrance, assignment or other disposition of any of the Collateral except for the Permitted Liens.

3.2 Authority. If Debtor is a business entity, it is duly organized, validly existing and in good standing under the laws of the above-named state of organization. Debtor has the full power and authority to grant the Security Interest and to execute, deliver and perform its obligations in accordance with this Agreement. The execution and delivery of this Agreement will not (i) violate any applicable law of any governmental authority or any judgment or order of any court, other governmental authority or arbitrator; (ii) violate any agreement governing Debtor or to which Debtor is a party; or (iii) result in a security interest or other lien or encumbrance on any of Debtor's assets, except in favor of Secured Party. Debtor's certificate of incorporation, by-laws or other organizational documents do not prohibit any term or condition of this Agreement. Each authorization, approval or consent from, each registration and filing with, each declaration and notice to, and each other act by or relating to, any party required as a condition of Debtor's execution, delivery or performance of this Agreement (including any shareholder or board of directors or similar approvals) has been duly obtained and is in full force and effect. Debtor has the power and authority to transact the business in which it is engaged and is duly licensed or qualified and in good standing in each jurisdiction in which the conduct of its business or ownership of property requires such licensing or such qualification.

3.3 Judgments and Litigation. There is no pending or threatened claim, audit, investigation, action or other legal proceeding or judgment or order of any court, agency or other governmental authority or arbitrator which involves Debtor or the Collateral and which might have a material adverse effect upon the Collateral, the Debtor, its business, operations, affairs or condition (financial or otherwise), or threaten the validity of this Agreement or any related document or action. Debtor will immediately notify Secured Party upon acquiring knowledge of the foregoing.

3.4 Enforceability of Collateral. Instruments, chattel paper, accounts or documents which constitute any part of the Collateral are genuine and enforceable in accordance with their terms, comply with the applicable law of any governmental authority concerning form, content, manner of preparation and execution, and all persons appearing to be obligated on such Collateral have authority and capacity to contract and are in fact obligated as they appear to be on such Collateral. There are no restrictions on any assignment or other transfer or grant of the Security Interest by Debtor. Each sum represented by Debtor from time to time as owing on accounts, instruments, deposit accounts, chattel paper and general intangibles constituting any part of the Collateral by account debtors and other parties with respect to such Collateral is the sum actually and unconditionally owing by account debtors and other parties with respect thereto at such time, except for applicable normal cash discounts. None of the Collateral is subject to any defense, set-off, claim or counterclaim of a material nature against Debtor except as to which Debtor has notified Secured Party in writing.

3.5 Location of Chief Executive Office, Records, Collateral. The locations of the following are listed on page one of this Agreement or, if different or additional, on Exhibit A hereto: (i) Debtor's residence, principal place of business and chief executive office; (ii) the office in which Debtor maintains its books or records relating to the Collateral; (iii) the facility (including any storage facility) at which now owned or subsequently acquired equipment and fixtures constituting any part of the Collateral shall be kept; and (iv) the real property on which any crop included in the Collateral is growing or is to be grown, or on which any timber constituting any part of the Collateral is or is to be standing. Debtor will not effect or permit any change in any of the foregoing locations (or remove or permit the removal of the records or Collateral therefrom, except for mobile equipment included in the Collateral which may be moved to another location for not more than 30 days) without 30 days prior written notice to Secured Party and all actions deemed necessary by Secured Party to maintain the Security Interest intended to be granted hereby at all times fully perfected and in full force and effect have been taken. All of the locations listed on page one or Exhibit A are owned by Debtor, or if not, by the party(ies) identified on Exhibit A.

3.6 Structure; Name. Debtor's organizational structure, state of registration and organizational identification number (if any) are stated accurately on page one of this Agreement, and its full legal name and any trade name used to identify it are stated accurately on page one of this Agreement, or if different or additional are listed on Exhibit A hereto. Debtor will not change its name, any trade names or its identity, its organizational structure, state of registration or organizational identification number without 30 days prior written notice to Secured Party. All actions deemed necessary by Secured Party to maintain the Security Interest intended to be granted hereby at all times fully perfected and in full force and effect have been taken.

4. Performance and Expenditures by Secured Party. If Debtor fails to perform or comply with any of the terms hereof, Secured Party, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such terms including the payment or discharge of all taxes, fees, security interest or other liens, encumbrances or claims, at any time levied or placed on the Collateral. An election to make expenditures or to take action or perform an obligation of Debtor under this Agreement, after Debtor's failure to perform, shall not affect Secured Party's right to declare an Event of Default and to exercise its remedies. Nor shall the provisions of this Section relieve Debtor of any of its obligations hereunder with respect to the Collateral or impose any obligation on Secured Party to proceed in any particular manner with respect to the Collateral.

5. Duty of Secured Party. Secured Party's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Secured Party deals with similar property for its own account. Neither Secured Party nor its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of the Collateral upon the request of Debtor or any other person or to take any other action whatsoever with regard to the Collateral. The powers conferred on Secured Party hereunder are solely to protect Secured Party's interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of its powers under this Agreement, and neither it nor its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

6. Certain Rights and Remedies.

6.1 Inspection; Verification. Secured Party, and such persons as it may designate, shall have the right from time to time to (i) audit and inspect (a) the Collateral, (b) all books and records related thereto (and make extracts and copies from such records), and (c) the premises upon which any of the Collateral or books and records may be located; (ii) discuss Debtor's business, operations, affairs or condition (financial or otherwise) with its officers, accountants; and (iii) verify the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to the Collateral in any manner and through any medium Secured Party may consider appropriate (including contacting account debtors or third party possessing the Collateral for purpose of making such verification). Debtor shall furnish all assistance and information and perform any acts Secured Party may require regarding thereto. Debtor shall bear the cost and expense of any such inspection and verification.

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6.2 Notification of Security Interest. Secured Party may notify any or all account debtors and other person obligated with respect to the Collateral of the Security Interest therein. Upon the request of Secured Party, Debtor agrees to enter into such warehousing, lockbox or other custodial arrangement with respect to any of the Collateral that Secured Party shall deem necessary or desirable.

6.3 Application of Proceeds. Secured Party may apply the proceeds from the sale, lease or other disposition or realization upon the Collateral to the Obligations in such order and manner and at such time as Secured Party shall, in its sole discretion, determine. Debtor shall remain liable for any deficiency if the proceeds of any sale, lease or other disposition or realization upon the Collateral are insufficient to pay the Obligations. Any proceeds received by Debtor from the Collateral after an Event of Default shall (i) be held by Debtor in trust for Secured Party in the same medium in which received; (ii) not be commingled with any assets of Debtor; and (iii) be delivered to Secured Party in the form received, properly indorsed to permit collection. After an Event of Default, Debtor shall promptly notify Secured Party of the return to or repossession by Debtor of goods constituting part of the Collateral, and Debtor shall hold the same in trust for Secured Party and shall dispose of the same as Secured Party directs.

6.4 Income and Proceeds of Instruments and Investment Property. Until the occurrence of an Event of Default, Debtor reserves the right to request to receive all cash income or cash distribution (whether in cash or evidenced by check) payable on account of any instrument or investment property constituting part of the Collateral (collectively, "Cash Distribution"). Until actually paid, all rights in the foregoing shall remain subject to the Security Interest. Any other income, dividend, distribution, increase in or profits (including any stock issued as a result of any stock split or dividend, any capital distributions and the like) on account of any instrument or investment property constituting part of the Collateral and, upon the occurrence of an Event of Default, all Cash Distributions, shall be delivered to Secured Party immediately upon receipt, in the exact form received and without commingling with other property which may be received by, paid or delivered to Debtor or for Debtor's account, whether as an addition to, in discharge of, in substitution of, or in exchange of the Collateral. Until delivery, such Collateral shall be held in trust for Secured Party.

6.5 Registered Holder of the Collateral. Secured Party shall have the right to transfer to or register (with or without reference to this Agreement) in the name of Secured Party or its nominee any investment property, general intangible, instrument or deposit account constituting part of the Collateral so that Secured Party or such nominee shall appear as the sole owner of record thereof; provided, however, that so long as no Event of Default has occurred, Secured Party shall deliver to Debtor all notices, statements or other communications received by it or its nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give to Debtor or its designee a proxy or proxies to vote and take all action with respect to such Collateral. After the occurrence of any Event of Default, Debtor waives all rights to be advised of or to receive any notices, statements or communications received by Secured Party or its nominee as such record owner, and agrees that no proxy or proxies given by Secured Party to Debtor or its designee as aforesaid shall thereafter be effective.

7. Default.

7.1 Events of Default. Any of the following events or conditions shall constitute an "Event of Default": (i) failure by Debtor to pay when due (whether at the stated maturity, by acceleration, upon demand or otherwise) the Obligations, or any part thereof, or there occurs any event or condition which after notice, lapse of time or after both notice and lapse of time will permit acceleration of any Obligation; (ii) default by Debtor in the performance of any obligation, term or condition of this Agreement or any other agreement with Secured Party or any of its affiliates or subsidiaries (collectively, "Affiliates"); (iii) failure by Debtor to pay when due (whether at the stated maturity, by acceleration, upon demand or otherwise) any indebtedness or obligation owing to any third party or any Affiliate, the occurrence of any event which could result in acceleration of payment of any such indebtedness or obligation or the failure to perform any agreement with any third party or any affiliate; (iv) Debtor is dissolved, becomes insolvent, generally fails to pay or admits in writing its inability generally to pay its debts as they become due; (v) Debtor makes a general assignment, arrangement or composition agreement with or

for the benefit of its creditors or makes, or sends notice of any intended, bulk sale; the sale, assignment, transfer or delivery of all or substantially all of the assets of Debtor to a third party; or the cessation by Debtor as a going business concern; (vi) Debtor files a petition in bankruptcy or institutes any action under federal or state law for the relief of debtors or seeks or consents to the appointment of an administrator, receiver, custodian or similar official for the wind up of its business (or has such a petition or action filed against it and such petition action or appointment is not dismissed or stayed within forty-five (45) days); (vii) the reorganization, merger, consolidation or dissolution of Debtor (or the making of any agreement therefor); (viii) the death or judicial declaration of incompetency of Debtor, if an individual; (ix) the entry of any judgment or order of any court, other governmental authority or arbitrator against Debtor; (x) falsity, omission or inaccuracy of facts submitted to Secured Party or any Affiliate (whether in a financial statement or otherwise); (xi) an adverse change in the Collateral, Debtor, its business, operations, affairs or condition (financial or otherwise) from the status shown on any financial statement or other document submitted to Secured Party, and which change Secured Party determines will have a material adverse affect on (a) Debtor, its business, operations or condition (financial or otherwise), or (b) the ability of Debtor to pay or perform the Obligations; (xii) any pension plan of Debtor fails to comply with applicable law or has vested unfunded liabilities that, in the opinion of Secured Party, might have a material adverse effect on Debtor's ability to repay its debts; (xiii) any indication or evidence received by Secured Party that Debtor may have directly or indirectly been engaged in any type of activity which, in Secured Party's discretion, might result in the forfeiture of any property of Debtor to any governmental authority; (xiv) the occurrence of any event described in Section 7.1(i) through and including 7.1(xiii) with respect to any endorser, guarantor or any other party liable for, or whose assets or any interest therein secures, payment of any of the Obligations; or (xv) Secured Party in good faith deems itself insecure with respect to payment or performance of the Obligations.

7.2 Rights and Remedies Upon Default. Upon the occurrence of any Event of Default, Secured Party without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon Debtor or any other person (all and each of which demands, presentments, protests, advertisements and notices are hereby waived), may exercise all rights and remedies of a secured party under the UCC, under other applicable law, in equity or otherwise or available under in this Agreement including:

7.2.1 Obligations Immediately Due; Termination of Lending. Secured Party may declare all or any part of any Obligations not payable on demand to be immediately due and payable without demand or notice of any kind. All or any part of any Obligations whether or not payable on demand, shall be immediately due and payable automatically upon the occurrence of an Event of Default in Section 7.1 (vi) above. The provisions hereof are not intended in any way to affect any rights of Secured Party with respect to any Obligations which may now or hereafter be payable on demand. Secured Party may terminate any obligation it may have to grant any additional loan, credit or other financial accommodation to Debtor.

7.2.2 Access to Collateral. Secured Party, or its agents, may peaceably retake possession of the Collateral with or without notice or process of law, and for that purpose may enter upon any premises where the Collateral is located and remove the same. At Secured Party's request, Debtor shall assemble the Collateral and deliver it to Secured Party or any place designated by Secured Party, at Debtor's expense.

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7.2.3 Sell Collateral. Secured Party shall have the right to sell, lease or otherwise dispose of the Collateral in one or more parcels at public or private sale or sales upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of Debtor. Debtor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which Debtor now has or may at any time in the future have under any applicable law now existing or hereafter enacted. Secured Party shall have the right to use Debtor's premises and any materials or rights of Debtor (including any intellectual property rights) without charge for such sales or disposition of the Collateral or the completion of any work in progress for such times as Secured Party may see fit. Without in any way requiring notice to be given in the following time and manner, Debtor agrees that with respect to any notice by Secured Party of any sale, lease or other disposition or realization or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, such notice shall be deemed reasonable and proper if given at least five (5) days before such action in the manner described below in the Section entitled "Notices".

7.2.4 Collect Revenues. Secured Party may either directly or through a receiver (i) demand, collect and sue on any Collateral consisting of accounts or any other Collateral including notifying account debtors or any other persons obligated on the Collateral to make payment on the Collateral directly to Secured Party; (ii) file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Secured Party with respect to the Collateral or to enforce any other right in respect of the Collateral; (iii) take control, in any manner, of any payment or proceeds from the Collateral; (iv) prosecute or defend any suit, action or proceeding brought against Debtor with respect to the Collateral; (v) settle, compromise or adjust any and all claims arising under the Collateral or, to give such discharges or releases as Secured Party may deem appropriate; (vi) receive and collect all mail addressed to Debtor, direct the place of delivery thereof to any location designated by Secured Party; to open such mail; to remove all contents therefrom; to retain all contents thereof constituting or relating to the Collateral; (vii) execute, sign or endorse any and all claims, endorsements, assignments, checks or other instruments with respect to the Collateral; or (viii) generally, use, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral; and Debtor hereby irrevocably appoints Secured Party, its officers, employees and agents, or any of them, as attorneys-in-fact for Debtor with full power and authority in the place and stead of Debtor and in the name of Debtor or in its own name from time to time in Secured Party's discretion, to take any and all appropriate action Secured Party deems necessary or desirable to accomplish any of the foregoing or otherwise to protect, preserve, collect or realize upon the Collateral or to accomplish the purposes of this Agreement. Debtor revokes each power of attorney (including any proxy) heretofore granted by Debtor with regard to the Collateral. This power of attorney, being coupled with an interest, is irrevocable and shall not be affected by the subsequent disability or incompetence of Debtor.

7.2.5 Setoff. Secured Party may place an administrative hold on and set off against the Obligations any property held in a deposit or other account with Secured Party or any of its Affiliates or otherwise owing by Secured Party or any of its Affiliates in any capacity to Debtor. Such set-off shall be deemed to have been exercised immediately at the time Secured Party or such Affiliate elects to do so.

8. Expenses. Debtor shall pay to Secured Party on demand all costs and expenses (including all reasonable fees and disbursements of all counsel retained for advice, suit, appeal or other proceedings or purpose and of any experts or agents it may retain), which Secured Party may incur in connection with (i) the administration of this Agreement, including any administrative fees Secured Party may impose for the preparation of discharges, releases or assignments to third-parties; (ii) the custody or preservation of, or the sale, lease or other disposition or realization on the Collateral; (iii) the enforcement and collection of any Obligations or any guaranty thereof; (iv) the exercise, performance, enforcement or protection of any of the rights of Secured Party hereunder; or (v) the failure of Debtor to perform or observe any provisions hereof. After such demand for payment of any cost, expense or fee under this Section or elsewhere under this Agreement, Debtor shall pay interest at the highest default rate specified in any instrument evidencing any of the Obligations from the date payment is demanded by Secured Party to the date reimbursed by Debtor. All such costs, expenses or fees under this Agreement shall be

added to the Obligations.

9. Indemnification. Debtor shall indemnify Secured Party and its Affiliates and each officer, employee, accountant, attorney and other agent thereof (each such person being an "Indemnified Party") on demand, without any limitation as to amount, against each liability, cost and expense (including all reasonable fees and disbursements of all counsel retained for advice, suit, appeal or other proceedings or purpose, and of any expert or agents an Indemnified Party may retain) heretofore or hereafter imposed on, incurred by or asserted against any Indemnified Party (including any claim involving any allegation of any violation of applicable law of any governmental authority (including any environmental law or criminal law)), however asserted and whether now existing or hereafter arising, arising out of any ownership, disposition or use of any of the Collateral; provided, however, the foregoing indemnity shall not apply to liability, cost or expense solely attributable to an Indemnified Party's gross negligence or willful misconduct. This indemnity agreement shall survive the termination of this Agreement. Any amounts payable under this or any other section of this Agreement shall be additional Obligations secured hereby.

10. Miscellaneous.

10.1 Notices. Any demand or notice hereunder or under any applicable law pertaining hereto shall be in writing and duly given if delivered to Debtor (at its address on Secured Party's records) or to Secured Party (at the address on page one and separately to Secured Party's officer responsible for Debtor's relationship with Secured Party). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal delivery and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Debtor and Secured Party.

10.2 Governing Law; Jurisdiction. This Agreement has been delivered to and accepted by Secured Party and will be deemed to be made in the State of New York. Except as otherwise provided under federal law, this Agreement will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. **DEBTOR HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK IN A COUNTY OR JUDICIAL DISTRICT WHERE SECURED PARTY MAINTAINS A BRANCH AND CONSENTS THAT SECURED PARTY MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT DEBTOR'S ADDRESS SET FORTH ABOVE FOR PROVIDING NOTICE OR DEMAND; PROVIDED THAT NOTHING CONTAINED IN THIS AGREEMENT WILL PREVENT SECURED PARTY FROM BRINGING ANY ACTION, ENFORCING ANY AWARD OR JUDGMENT OR EXERCISING ANY RIGHTS AGAINST DEBTOR INDIVIDUALLY, AGAINST ANY SECURITY OR AGAINST ANY PROPERTY OF DEBTOR WITHIN ANY OTHER COUNTY, STATE OR OTHER FOREIGN OR DOMESTIC JURISDICTION.** Debtor acknowledges and agrees that the venue provided above is the most convenient forum for both Secured Party and Debtor. Debtor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

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10.3 Security Interest Absolute. All rights of Secured Party hereunder, the Security Interest and all obligations of Debtor hereunder shall be absolute and unconditional irrespective of (i) any filing by or against Debtor of any petition in bankruptcy or any action under federal or state law for the relief of debtors or the seeking or consenting to of the appointment of an administrator, receiver, custodian or similar officer for the wind up of its business; (ii) any lack of validity or enforceability of any agreement with respect to any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any agreement or instrument with respect to the Obligations, (iv) any exchange, release or non-perfection of any lien or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (v) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Debtor in respect of the Obligations or this Agreement. If, after receipt of any payment of all or any part of the Obligations, Secured Party is for any reason compelled to surrender such payment to any person or entity, because such payment is determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, such payment shall be reinstated as part of the Obligations and this Agreement shall continue in full force notwithstanding any contrary action which may have been taken by Secured Party in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Secured Party's rights under this Agreement and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

10.4 Remedies Cumulative; Preservation of Rights. The rights and remedies herein are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies which Secured Party may have under other agreements now or hereafter in effect between Debtor and Secured Party, at law (including under the UCC) or in equity. No failure or delay of Secured Party in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. Debtor expressly disclaims any reliance on any course of dealing or usage of trade or oral representation of Secured Party including representations to make loans to Debtor. No notice to or demand on Debtor in any case shall entitle Debtor to any other or further notice or demand in similar or other circumstances.

10.5 Joint and Several; Successors and Assigns. If there is more than one Debtor, each of them shall be jointly and severally liable for all amounts, which become due, and the performance of all obligations under this Agreement and the term "Debtor" shall include each as well as all of them. This Agreement shall be binding upon Debtor and upon its heirs and legal representatives, its successors and assignees, and shall inure to the benefit of, and be enforceable by, Secured Party, its successors and assignees and each direct or indirect assignee or other transferee of any of the Obligations; provided, however, that this Agreement may not be assigned by Debtor without the prior written consent of Secured Party.

10.6 Waivers; Changes in Writing. No course of dealing or other conduct, no oral agreement or representation made by Secured Party or usage of trade shall operate as a waiver of any right or remedy of Secured Party. No waiver of any provision of this Agreement or consent to any departure by Debtor therefrom shall in any event be effective unless made specifically in writing by Secured Party and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No modification to any provision of this Agreement shall be effective unless made in writing in an agreement signed by Debtor and Secured Party.

10.7 Interpretation. Unless the context otherwise clearly requires, references to plural includes the singular and references to the singular include the plural; the word "or" has the inclusive meaning represented by the phrase "and/or"; the word "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and captions or section headings are solely for convenience and not part of the substance of this Agreement. Any representation, warranty, covenant or agreement herein shall survive execution and delivery of this Agreement and shall be deemed continuous. Each provision of this Agreement shall be interpreted as consistent with existing law and shall be deemed amended to the extent necessary to comply with any conflicting law. If any provision nevertheless is held invalid, the other provisions shall remain in effect. Debtor agrees that in any legal proceeding, a photocopy of this Agreement kept in Secured Party's course of

business may be admitted into evidence as an original. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the UCC.

10.8 Waiver of Jury Trial. DEBTOR AND SECURED PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY DEBTOR AND SECURED PARTY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTIONS RELATED HERETO. DEBTOR REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF SECURED PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SECURED PARTY WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. DEBTOR ACKNOWLEDGES THAT SECURED PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

Dated: May 7, 2008

CORNING NATURAL GAS CORPORATION

By: /s/ Michael I. German

Name: Michael I German

Title: President

ACKNOWLEDGMENT

STATE OF NEW YORK)
 : SS.
COUNTY OF BROOME)

On the _____ day of May, in the year 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared **MICHAEL I. GERMAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

FOR SECURED PARTY USE ONLY:

Authorization Confirmed: _____

If Debtor's Obligations arise under a guaranty in favor of Secured Party, list the name of each party whose indebtedness is being guaranteed under such guaranty: _____

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Exhibit A

1. Grant (§1.1): Debtor grants the Security Interest in its property described below (mark applicable box):

☐ **All Equipment.** If marked here, all equipment, including equipment which is or becomes fixtures, and any general intangibles associated with such equipment and fixtures.

☒ **Specific Equipment.** If marked here, in the following described equipment, including equipment which is or becomes fixtures, and any general intangibles associated with such equipment:

All Fixtures and Equipment now owned or hereafter affixed to, or used in connection with, the premises described on attached Schedule A and any and all replacements thereof and additions thereto and in the proceeds, rents, issues, profits and all now in existence or hereafter arising, Accounts and General Intangibles arising from such premises. All present and future debts between the parties are hereby secured.

☐ **All Inventory.** If marked here, in all inventory.

☐ **Specific Inventory.** If marked here, in the following described inventory and in all inventory of the same class:

☐ **All Accounts, General Intangibles and Chattel Paper.** If marked here, in all accounts, general intangibles or chattel paper.

☐ **Specific Accounts, General Intangibles or Chattel Paper.** If marked here, in the following described accounts, general intangibles or chattel paper: _____

☐ **Other Types of Property.** If marked here, in the following described property: _____

2. Permitted Liens (§3.1)

3. Residence, principal place of business or chief executive office (§3.5(i))

4. Location of Books and Records (§3.5(ii))

5. Location of Inventory, Equipment, Fixtures, Crops or Timber (§3.5(iii) and §3.5(iv))

6. Locations Not Owned by Debtor and Name of Record Owner (§3.5)

7. Trade Name, "Doing Business As" Name or Assumed Name (§3.6)

EX-10.4 6 v115948_ex10-4.htm

Exhibit 10.4



GENERAL SECURITY AGREEMENT New York

Debtor (Name): Corning Natural Gas Corporation

(Organizational Structure): Corporation

(State Law organized under): New York

(Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number):

(Address of residence/chief executive office): 330 West William Street, Corning, New York 14830

Bank/Secured Party: Manufacturers and Traders Trust Company, a New York banking corporation with its banking offices at One M&T Plaza, Buffalo, New York 14203 Attention: Office of General Counsel.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, Debtor agrees with Secured Party as follows:

1. Security Interests.

1.1 Grant. As security for the prompt and complete payment and performance when due of all of the Obligations, Debtor does hereby grant to Secured Party a continuing security interest ("Security Interest") in all personal property and fixtures of Debtor, wherever located, whether now existing or owned or hereafter arising or acquired, whether or not subject to the Uniform Commercial Code, as the same may be in effect in the State of New York, as amended from time to time ("UCC"), and whether or not affixed to any realty, including, without limitation, (i) all accounts, chattel paper, investment property, deposit accounts, documents, goods, equipment, farm products, general intangibles (including trademarks, service marks, trade names, patents, copyrights, licenses and franchises), instruments, **contract rights**, money, letter of credit rights, causes of action (including tort claims) and other personal property (including agreements and instruments not constituting chattel paper or a document, general intangible or instrument); (ii) all additions to, accessions to, substitutions for, replacements of and supporting obligations of the foregoing; (iii) all proceeds and products of the foregoing, including, without limitation, insurance proceeds; and (iv) all business records and information relating to any of the foregoing and any software or other programs for accessing and manipulating such information (collectively, the "Collateral"). Debtor acknowledges and agrees that the foregoing collateral description is intended to cover all assets of Debtor.

1.2 Obligations. The term "Obligations" means any and all indebtedness or other obligations of Debtor to Secured Party in any capacity, now existing or hereafter incurred, however created or evidenced, regardless of kind, class or form, whether direct, indirect, absolute or contingent (including obligations pursuant to any guaranty, endorsement, other assurance of payment or otherwise), whether joint or several, whether from time to time reduced and thereafter increased, or entirely extinguished and thereafter reincurred, together with all extensions, renewals and replacements thereof, and all interest, fees, charges, costs or expenses which accrue on or in connection with the foregoing, including, without limitation, any indebtedness or obligations (i) not yet outstanding but contracted for, or with regard to which any other commitment by Secured Party exists; (ii) arising prior to, during or after any pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding; (iii) owed by Debtor to others and which Secured Party obtained, or may obtain, by assignment or otherwise; or (iv) payable under this Agreement.

2. Covenants. Debtor covenants and agrees as follows:

2.1 Perfection of Security Interest. Debtor shall execute and deliver to Secured Party such financing statements,

control agreements or other documents, in form and content satisfactory to Secured Party, as Secured Party may from time to time request to perfect and continue the Security Interest. Upon the request of Secured Party, Debtor shall deliver to Secured Party any and all instruments, chattel paper, negotiable documents or other documents evidencing or constituting any part of the Collateral properly endorsed or assigned, in a manner satisfactory to Secured Party. Until such delivery, Debtor shall hold such portion of the Collateral in trust for Secured Party. Debtor shall pay all expenses for the preparation, filing, searches and related costs in connection with the grant and perfection of the Security Interest. Debtor authorizes (both prospectively and retroactively) Secured Party to file financing statements, and any continuations and amendments thereof, with respect to the Collateral without Debtor's signature. A photocopy or other reproduction of any financing statement or this Agreement shall be sufficient as a financing statement for filing in any jurisdiction.

2.2 Negative Pledge; Disposition of Collateral. Debtor shall not grant or allow the imposition of any lien, security interest or encumbrance on, or assignment of, the Collateral unless consented to in writing by Secured Party. Debtor shall not make or permit to be made any sale, transfer or other disposition of the Collateral; provided, however, prior to the occurrence of an Event of Default, Debtor may in the ordinary course of business consistent with its past practices and with prudent and standard practices used in the industry that is the same or similar to that in which Debtor is engaged: (i) dispose of any Collateral consisting of equipment that is obsolete or worn-out; (ii) sell or exchange any Collateral consisting of equipment in connection with the acquisition of other equipment that is at least as valuable as such equipment, that Debtor intends to use for substantially the same purposes as such equipment and that is not subject to any security interest or other lien or encumbrance; or (iii) collect Collateral consisting of accounts or assign such Collateral for purposes of collection.

2.3 Condition of Collateral; Impermissible Use. Debtor shall keep the Collateral consisting of goods in good condition and shall not commit or permit damage or destruction (other than ordinary wear and tear) to such Collateral. Debtor shall not permit any Collateral consisting of goods (i) to be used in such a manner that would violate any insurance policy or warranty covering the Collateral or that would violate any applicable law of any governmental authority (including any environmental law) now or hereafter in effect; (ii) to become fixtures on any real property on which Secured Party does not have a first priority mortgage lien (unless Secured Party has been provided with an acceptable landlord/mortgagee waiver) or become an accession to any goods not included in the Collateral; or (iii) to be placed in any warehouse that may issue a negotiable document with regard to such Collateral.

2.4 Modification to Collateral. Debtor shall not, without Secured Party's prior written consent, grant any extension on, compound, settle for less than the full amount of, release (in whole or in part), modify, cancel, or allow for any substitution, credit or adjustment on Collateral consisting of accounts, chattel paper, general intangibles, instruments, documents or investment property, except that in the absence of an Event of Default, Debtor may grant to account debtors, or other persons obligated with respect to the Collateral, extensions, credits, discounts, compromises or settlements in the ordinary course of business consistent with its past practices and consistent with prudent and standard practices used in the industries that are the same or similar to those in which Debtor is engaged.

2.5 Titled Goods. Debtor shall cause all goods included in the Collateral to be properly titled and registered to the extent required by applicable law. Upon the request of Secured Party, Debtor shall cause the interest of Secured Party to be properly indicated on any certificate of title relating to such goods and deliver to Secured Party each such certificate, and any additional evidence of ownership, certificates of origin or other documents evidencing any interest in such goods.

2.6 Insurance. Debtor shall, at its own expense and at all times, maintain effective insurance policies covering damage to persons and against fire, flood, theft and all other risks to which the Collateral may be subject, all in such amounts, with such deductibles and issued by such insurance company as shall be satisfactory to Secured Party. Such insurance policies shall have all endorsements that Secured Party may require and shall further (i) name Secured Party, exclusively, as the additional insured on the casualty insurance and the lender's loss payee and/or mortgagee on the hazard insurance; (ii) provide that Secured Party shall receive a minimum of thirty (30) days prior written notice of any amendment or cancellation; and (iii) insure Secured Party notwithstanding any act or neglect of Debtor or other owner of the property described in such insurance. If Debtor fails to obtain the required insurance as provided herein, Secured Party may, but is not obligated, to obtain such insurance as Secured Party may deem appropriate, including, without limitation, if Secured Party so chooses, "single interest insurance" which will cover only Secured Party's interest in the Collateral. Debtor shall pay or reimburse to Secured Party the cost of such insurance. Secured Party shall have the option, in its sole discretion, to hold insurance proceeds as part of the Collateral, apply any insurance proceeds toward the Obligations or allow the Debtor to apply the insurance proceeds towards repair or replacement of the item of Collateral in respect of which such proceeds were received. Upon the request of Secured Party, Debtor shall from time to time deliver to Secured Party such insurance policies, or other evidence of such policies satisfactory to Secured Party, and such other related information Secured Party may request.

2.7 Collateral Information. Debtor shall provide all information, in form and substance satisfactory to Secured Party, that Secured Party shall from time to time request to (i) identify the nature, extent, value, age and location of any of the Collateral, or (ii) identify any account debtor or other party obligated with respect to any chattel paper, general intangible, instrument, investment property, document or deposit account included in the Collateral.

2.8 Financial Information. Debtor shall furnish to Secured Party financial statements in such form (e.g., audited, reviewed, compiled) and at such intervals as Secured Party shall request from time to time plus any additional financial information that Secured Party may request. All such financial statements shall be in conformity with generally accepted accounting principles consistently applied.

2.9 Taxes; Licenses; Compliance with Laws. Before the end of any applicable grace period, Debtor shall pay each tax,

assessment, fee and charge imposed by any governmental authority upon the Collateral, the ownership, disposition or use of any of the Collateral, this Agreement or any instrument evidencing any of the Obligations. Debtor shall maintain in full force and effect each license, franchise or other authorization needed for any ownership, disposition or use of the Collateral and the conduct of its business, operations or affairs. Debtor shall comply with all applicable law of any governmental authority (including any environmental law), now or hereafter in effect, applicable to the ownership, disposition or use of the Collateral or the conduct of its business, operations or affairs.

2.10 Records; Legend. Debtor shall maintain accurate and complete books and records relating to the Collateral in conformity with generally accepted accounting principles consistently applied. At Secured Party's request, Debtor will legend, in form and manner satisfactory to Secured Party, its books and records to indicate the Security Interest.

2.11 Additional Collateral. If at any time the liquidation value of any of the Collateral is unsatisfactory to Secured Party, then, on demand of Secured Party, Debtor shall immediately (i) furnish such additional collateral satisfactory to Secured Party to be held by Secured Party as if originally pledged hereunder and execute such additional security agreements, financing statements or other agreements as requested by Secured Party, or (ii) repay the Obligations to bring the outstanding amount of the Obligations to within a satisfactory relationship to the liquidation value of the Collateral.

2.12 Notifications of Change. Immediately upon acquiring knowledge or reason to know of any of the following, Debtor shall notify Secured Party of the occurrence or existence of (i) any Event of Default; (ii) any event or condition that, after notice, lapse of time or after both notice and lapse of time, would constitute an Event of Default; (iii) any account or general intangible that arises out of a contract with any governmental authority (including the United States); (iv) any event or condition that has or (so far as can be foreseen) will or might have any material adverse effect on the Collateral (including a material loss, destruction or theft of, or of any damage to, the Collateral, material decline in value of the Collateral or a material default by an account debtor or other party's performance of obligations with respect to the Collateral), on Debtor or its business, operations, affairs or condition (financial or otherwise).

2.13 Lien Law. If any account or general intangible included in the Collateral represents money owing pursuant to any contract for the improvement of real property or for a public improvement for purposes of the Lien Law of the State of New York (the "Lien Law"), Debtor shall (i) give Secured Party notice of such fact; (ii) receive and hold any money advanced by Secured Party with respect to such account or general intangible as a trust fund to be first applied to the payment of trust claims as such term and/or concept is defined in the Lien Law (in Section 71 thereof, or otherwise); and (iii) until such trust claim is paid, not use or permit the use of any such money for any purpose other than the payment of such trust claims.

2.14 Protection of Collateral; Further Assurances. Debtor shall, at its own cost, faithfully preserve, defend and protect the Security Interest as a prior perfected security interest in the Collateral under the UCC and other applicable law, superior and prior to the rights of all third parties (other than those permitted pursuant to Section 3.1) and shall defend the Collateral against all setoffs, claims, counterclaims, demands and defenses. At the request of Secured Party, Debtor shall do, obtain, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as Secured Party may deem necessary or advisable from time to time in order to attach, continue, preserve, perfect or protect the Security Interest and Secured Party's rights hereunder including obtaining waivers (in form and content acceptable to Secured Party) from landlords, warehousemen and mortgagees. Debtor hereby irrevocably appoints Secured Party, its officers, employees and agents, or any of them, as attorneys-in-fact for Debtor with full power and authority in the place and stead of Debtor and in the name of Debtor or its own name from time to time in Secured Party's discretion, to perform all acts which Secured Party deems appropriate to attach, continue, preserve or perfect and continue the Security Interest, including signing for Debtor (to the extent such signature may be required by applicable law) UCC-1 financing statements, UCC-3 amendment or other instruments and documents to accomplish the purposes of this Agreement. This power of attorney, being coupled with an interest, is irrevocable and shall not be affected by the subsequent disability or incompetence of Debtor.

3. Representations and Warranties. Debtor represents, warrants and agrees as follows:

3.1 Title. Debtor holds good and marketable title to the Collateral free and clear from any security interest or other lien or encumbrance of any party, other than the Security Interest or such liens, security interests or other liens or encumbrances specifically permitted by Secured Party and set forth on Exhibit A hereto ("Permitted Liens"). Debtor has not made any prior sale, pledge, encumbrance, assignment or other disposition of any of the Collateral except for the Permitted Liens.

3.2 Authority. If Debtor is a business entity, it is duly organized, validly existing and in good standing under the laws of the above-named state of organization. Debtor has the full power and authority to grant the Security Interest and to execute, deliver and perform its obligations in accordance with this Agreement. The execution and delivery of this Agreement will not (i) violate any applicable law of any governmental authority or any judgment or order of any court, other governmental authority or arbitrator; (ii) violate any agreement governing Debtor or to which Debtor is a party; or (iii) result

in a security interest or other lien or encumbrance on any of Debtor's assets, except in favor of Secured Party. Debtor's certificate of incorporation, by-laws or other organizational documents do not prohibit any term or condition of this Agreement. Each authorization, approval or consent from, each registration and filing with, each declaration and notice to, and each other act by or relating to, any party required as a condition of Debtor's execution, delivery or performance of this Agreement (including any shareholder or board of directors or similar approvals) has been duly obtained and is in full force and effect. Debtor has the power and authority to transact the business in which it is engaged and is duly licensed or qualified and in good standing in each jurisdiction in which the conduct of its business or ownership of property requires such licensing or such qualifications.

3.3 Judgments and Litigation. There is no pending or threatened claim, audit, investigation, action or other legal proceeding or judgment or order of any court, agency or other governmental authority or arbitrator which involves Debtor or the Collateral and which might have a material adverse effect upon the Collateral, the Debtor, its business, operations, affairs or condition (financial or otherwise), or threaten the validity of this Agreement or any related document or action. Debtor will immediately notify Secured Party upon acquiring knowledge of the foregoing.

3.4 Enforceability of Collateral. Instruments, chattel paper, accounts or documents which constitute any part of the Collateral are genuine and enforceable in accordance with their terms, comply with the applicable law of any governmental authority concerning form, content, manner of preparation and execution, and all persons appearing to be obligated on such Collateral have authority and capacity to contract and are in fact obligated as they appear to be on such Collateral. There are no restrictions on any assignment or other transfer or grant of the Security Interest by Debtor. Each sum represented by Debtor from time to time as owing on accounts, instruments, deposit accounts, chattel paper and general intangibles constituting any part of the Collateral by account debtors and other parties with respect to such Collateral is the sum actually and unconditionally owing by account debtors and other parties with respect thereto at such time, except for applicable normal cash discounts. None of the Collateral is subject to any defense, set-off, claim or counterclaim of a material nature against Debtor except as to which Debtor has notified Secured Party in writing.

3.5 Location of Chief Executive Office, Records, Collateral. The locations of the following are listed on page one of this Agreement or, if different or additional, on Exhibit A hereto: (i) Debtor's residence, principal place of business and chief executive office; (ii) the office in which Debtor maintains its books or records relating to the Collateral; (iii) the facility (including any storage facility) at which now owned or subsequently acquired equipment and fixtures constituting any part of the Collateral shall be kept; and (iv) the real property on which any crop included in the Collateral is growing or is to be grown, or on which any timber constituting any part of the Collateral is or is to be standing. Debtor will not effect or permit any change in any of the foregoing locations (or remove or permit the removal of the records or Collateral therefrom, except for mobile equipment included in the Collateral which may be moved to another location for not more than thirty (30) days) without thirty (30) days prior written notice to Secured Party and all actions deemed necessary by Secured Party to maintain the Security Interest intended to be granted hereby at all times fully perfected and in full force and effect have been taken. All of the locations listed on page one or Exhibit A are owned by Debtor, or if not, by the party(ies) identified on Exhibit A.

3.6 Structure; Name. Debtor's organizational structure, state of registration and organizational identification number (if any) are stated accurately on page one of this Agreement, and its full legal name and any trade name used to identify it are stated accurately on page one of this Agreement, or if different or additional are listed on Exhibit A hereto. Debtor will not change its name, any trade names or its identity, its organizational structure, state of registration or organizational identification number without thirty (30) days prior written notice to Secured Party. All actions deemed necessary by Secured Party to maintain the Security Interest intended to be granted hereby at all times fully perfected and in full force and effect have been taken.

4. Performance and Expenditures by Secured Party. If Debtor fails to perform or comply with any of the terms hereof, Secured Party, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such terms including the payment or discharge of all taxes, fees, security interest or other liens, encumbrances or claims, at any time levied or placed on the Collateral. An election to make expenditures or to take action or perform an obligation of Debtor under this Agreement, after Debtor's failure to perform, shall not affect Secured Party's right to declare an Event of Default and to exercise its remedies. Nor shall the provisions of this Section relieve Debtor of any of its obligations hereunder with respect to the Collateral or impose any obligation on Secured Party to proceed in any particular manner with respect to the Collateral.

5. Duty of Secured Party. Secured Party's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Secured Party deals with similar property for its own account. Neither Secured Party nor its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose

of the Collateral upon the request of Debtor or any other person or to take any other action whatsoever with regard to the Collateral. The powers conferred on Secured Party hereunder are solely to protect Secured Party's interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of its powers under this Agreement, and neither it nor its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

6. Certain Rights and Remedies.

6.1 Inspection; Verification. Secured Party, and such persons as it may designate, shall have the right from time to time to (i) audit and inspect (a) the Collateral, (b) all books and records related thereto (and make extracts and copies from such records), and (c) the premises upon which any of the Collateral or books and records may be located; (ii) discuss Debtor's business, operations, affairs or condition (financial or otherwise) with its officers, accountants; and (iii) verify the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to the Collateral in any manner and through any medium Secured Party may consider appropriate (including contacting account debtors or third party possessing the Collateral for purpose of making such verification). Debtor shall furnish all assistance and information and perform any acts Secured Party may require regarding thereto. Debtor shall bear the cost and expense of any such inspection and verification.

6.2 Notification of Security Interest. Secured Party may notify any or all account debtors and other person obligated with respect to the Collateral of the Security Interest therein. Upon the request of Secured Party, Debtor agrees to enter into such warehousing, lockbox or other custodial arrangement with respect to any of the Collateral that Secured Party shall deem necessary or desirable.

6.3 Application of Proceeds. Secured Party may apply the proceeds from the sale, lease or other disposition or realization upon the Collateral to the Obligations in such order and manner and at such time as Secured Party shall, in its sole discretion, determine. Debtor shall remain liable for any deficiency if the proceeds of any sale, lease or other disposition or realization upon the Collateral are insufficient to pay the Obligations. Any proceeds received by Debtor from the Collateral after an Event of Default shall (i) be held by Debtor in trust for Secured Party in the same medium in which received; (ii) not be commingled with any assets of Debtor; and (iii) be delivered to Secured Party in the form received, properly indorsed to permit collection. After an Event of Default, Debtor shall promptly notify Secured Party of the return to or repossession by Debtor of goods constituting part of the Collateral, and Debtor shall hold the same in trust for Secured Party and shall dispose of the same as Secured Party directs.

6.4 Income and Proceeds of Instruments and Investment Property. Until the occurrence of an Event of Default, Debtor reserves the right to request to receive all cash income or cash distribution (whether in cash or evidenced by check) payable on account of any instrument or investment property constituting part of the Collateral (collectively, "Cash Distribution"). Until actually paid, all rights in the foregoing shall remain subject to the Security Interest. Any other income, dividend, distribution, increase in or profits (including any stock issued as a result of any stock split or dividend, any capital distributions and the like) on account of any instrument or investment property constituting part of the Collateral and, upon the occurrence of an Event of Default, all Cash Distributions, shall be delivered to Secured Party immediately upon receipt, in the exact form received and without commingling with other property which may be received by, paid or delivered to Debtor or for Debtor's account, whether as an addition to, in discharge of, in substitution of, or in exchange of the Collateral. Until delivery, such Collateral shall be held in trust for Secured Party.

6.5 Registered Holder of the Collateral. Secured Party shall have the right to transfer to or register (with or without reference to this Agreement) in the name of Secured Party or its nominee any investment property, general intangible, instrument or deposit account constituting part of the Collateral so that Secured Party or such nominee shall appear as the sole owner of record thereof; provided, however, that so long as no Event of Default has occurred, Secured Party shall deliver to Debtor all notices, statements or other communications received by it or its nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give to Debtor or its designee a proxy or proxies to vote and take all action with respect to such Collateral. After the occurrence of any Event of Default, Debtor waives all rights to be advised of or to receive any notices, statements or communications received by Secured Party or its nominee as such record owner, and agrees that no proxy or proxies given by Secured Party to Debtor or its designee as aforesaid shall thereafter be effective.

7. Default.

7.1 Events of Default. Any of the following events or conditions shall constitute an "Event of Default": (i) failure by Debtor to pay when due (whether at the stated maturity, by acceleration, upon demand or otherwise) the Obligations, or any part thereof, or there occurs any event or condition which after notice, lapse of time or after both notice and lapse of time will permit acceleration of any Obligation; (ii) default by Debtor in the performance of any obligation, term or condition of this Agreement or any other agreement with Secured Party or any of its affiliates or subsidiaries (collectively, "Affiliates"); (iii) failure by Debtor to pay when due (whether at the stated maturity, by acceleration, upon demand or otherwise) any indebtedness or obligation owing to any third party or any Affiliate, the occurrence of any event which could result in acceleration of payment of any such indebtedness or obligation or the failure to perform any agreement with any third party or any affiliate; (iv) Debtor is dissolved, becomes insolvent, generally fails to pay or admits in writing its inability generally to pay its debts as they become due; (v) Debtor makes a general assignment, arrangement or composition agreement with or for the benefit of its creditors or makes, or sends notice of any intended, bulk sale; the sale, assignment, transfer or delivery of all or substantially all of the assets of Debtor to a third party; or the cessation by Debtor as a going business concern; (vi) Debtor files a petition in bankruptcy or institutes any action under federal or state law for the relief of debtors or seeks or consents to the appointment of an administrator, receiver, custodian or similar official for the wind up of its business (or has such a petition or action filed against it and such petition action or appointment is not dismissed or stayed within forty-five (45) days); (vii) the reorganization, merger, consolidation or dissolution of Debtor (or the making of any agreement therefor); (viii) the death or judicial declaration of incompetency of Debtor, if an individual; (ix) the entry of any judgment or order of any court, other governmental authority or arbitrator against Debtor; (x) falsity, omission or inaccuracy of facts submitted to Secured Party or any Affiliate (whether in a financial statement or otherwise); (xi) an adverse change in the Collateral, Debtor, its business, operations, affairs or condition (financial or otherwise) from the status shown on any financial statement or other document submitted to Secured Party, and which change Secured Party determines will have a material adverse effect on (a) Debtor, its business, operations or condition (financial or otherwise), or (b) the ability of Debtor to pay or perform the Obligations; (xii) any pension plan of Debtor fails to comply with applicable law or has vested unfunded liabilities that, in the opinion of Secured Party, might have a material adverse effect on Debtor's ability to repay its debts; (xiii) any indication or evidence received by Secured Party that Debtor may have directly or indirectly been engaged in any type of activity which, in Secured Party's discretion, might result in the forfeiture of any property of Debtor to any governmental authority; (xiv) the occurrence of any event described in Section 7.1(i) through and including 7.1(xiii) with respect to any endorser, guarantor or any other party liable for, or whose assets or any interest therein secures, payment of any of the Obligations; or (xv) Secured Party in good faith deems itself insecure with respect to payment or performance of the Obligations.

7.2 Rights and Remedies Upon Default. Upon the occurrence of any Event of Default, Secured Party without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon Debtor or any other person (all and each of which demands, presentments, protests, advertisements and notices are hereby waived), may exercise all rights and remedies of a secured party under the UCC, under other applicable law, in equity or otherwise or available under in this Agreement including:

7.2.1 Obligations Immediately Due; Termination of Lending. Secured Party may declare all or any part of any Obligations not payable on demand to be immediately due and payable without demand or notice of any kind. All or any part of any Obligations whether or not payable on demand, shall be immediately due and payable automatically upon the occurrence of an Event of Default in Section 7.1 (vi) above. The provisions hereof are not intended in any way to affect any rights of Secured Party with respect to any Obligations which may now or hereafter be payable on demand. Secured Party may terminate any obligation it may have to grant any additional loan, credit or other financial accommodation to Debtor.

7.2.2 Access to Collateral. Secured Party, or its agents, may peaceably retake possession of the Collateral with or without notice or process of law, and for that purpose may enter upon any premises where the Collateral is located

and remove the same. At Secured Party's request, Debtor shall assemble the Collateral and deliver it to Secured Party or any place designated by Secured Party, at Debtor's expense.

7.2.3 Sell Collateral. Secured Party shall have the right to sell, lease or otherwise dispose of the Collateral in one or more parcels at public or private sale or sales upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of Debtor. Debtor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which Debtor now has or may at any time in the future have under any applicable law now existing or hereafter enacted. Secured Party shall have the right to use Debtor's premises and any materials or rights of Debtor (including any intellectual property rights) without charge for such sales or disposition of the Collateral or the completion of any work in progress for such times as Secured Party may see fit. Without in any way requiring notice to be given in the following time and manner, Debtor agrees that with respect to any notice by Secured Party of any sale, lease or other disposition or realization or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, such notice shall be deemed reasonable and proper if given at least five (5) days before such action in the manner described below in the Section entitled "Notices".

7.2.4 Collect Revenues. Secured Party may either directly or through a receiver (i) demand, collect and sue on any Collateral consisting of accounts or any other Collateral including notifying account debtors or any other persons obligated on the Collateral to make payment on the Collateral directly to Secured Party; (ii) file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Secured Party with respect to the Collateral or to enforce any other right in respect of the Collateral; (iii) take control, in any manner, of any payment or proceeds from the Collateral; (iv) prosecute or defend any suit, action or proceeding brought against Debtor with respect to the Collateral; (v) settle, compromise or adjust any and all claims arising under the Collateral or, to give such discharges or releases as Secured Party may deem appropriate; (vi) receive and collect all mail addressed to Debtor, direct the place of delivery thereof to any location designated by Secured Party; to open such mail; to remove all contents therefrom; to retain all contents thereof constituting or relating to the Collateral; (vii) execute, sign or endorse any and all claims, endorsements, assignments, checks or other instruments with respect to the Collateral; or (viii) generally, use, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral; and Debtor hereby irrevocably appoints Secured Party, its officers, employees and agents, or any of them, as attorneys-in-fact for Debtor with full power and authority in the place and stead of Debtor and in the name of Debtor or in its own name from time to time in Secured Party's discretion, to take any and all appropriate action Secured Party deems necessary or desirable to accomplish any of the foregoing or otherwise to protect, preserve, collect or realize upon the Collateral or to accomplish the purposes of this Agreement. Debtor revokes each power of attorney (including any proxy) heretofore granted by Debtor with regard to the Collateral. This power of attorney, being coupled with an interest, is irrevocable and shall not be affected by the subsequent disability or incompetence of Debtor.

7.2.5 Setoff. Secured Party may place an administrative hold on and set off against the Obligations any property held in a deposit or other account with Secured Party or any of its Affiliates or otherwise owing by Secured Party or any of its Affiliates in any capacity to Debtor. Such set-off shall be deemed to have been exercised immediately at the time Secured Party or such Affiliate elects to do so.

8. Expenses. Debtor shall pay to Secured Party on demand all costs and expenses (including all reasonable fees and disbursements of all counsel retained for advice, suit, appeal or other proceedings or purpose and of any experts or agents it may retain), which Secured Party may incur in connection with (i) the administration of this Agreement, including any administrative fees Secured Party may impose for the preparation of discharges, releases or assignments to third-parties; (ii) the custody or preservation of, or the sale, lease or other disposition or realization on the Collateral; (iii) the enforcement and collection of any Obligations or any guaranty thereof; (iv) the exercise, performance, enforcement or protection of any of the rights of Secured Party hereunder; or (v) the failure of Debtor to perform or observe any provisions hereof. After such demand for payment of any cost, expense or fee under this Section or elsewhere under this Agreement, Debtor shall pay interest at the highest default rate specified in any instrument evidencing any of the Obligations from the date payment is demanded by Secured Party to the date reimbursed by Debtor. All such costs, expenses or fees under this Agreement shall be added to the Obligations.

9. Indemnification. Debtor shall indemnify Secured Party and its Affiliates and each officer, employee, accountant, attorney and other agent thereof (each such person being an "Indemnified Party") on demand, without any limitation as to amount, against each liability, cost and expense (including all reasonable fees and disbursements of all counsel retained for advice, suit, appeal or other proceedings or purpose, and of any expert or agents an Indemnified Party may retain) heretofore or hereafter imposed on, incurred by or asserted against any Indemnified Party (including any claim involving any allegation of any violation of applicable law of any governmental authority (including any environmental law or criminal law)), however asserted and whether now existing or hereafter arising, arising out of any ownership, disposition or use of any of the Collateral; provided, however, the foregoing indemnity shall not apply to liability, cost or expense solely attributable to an Indemnified Party's gross negligence or willful misconduct. This indemnity agreement shall survive the termination of this Agreement. Any amounts payable under this or any other section of this Agreement shall be additional Obligations secured hereby.

10. Miscellaneous.

10.1 Notices. Any demand or notice hereunder or under any applicable law pertaining hereto shall be in writing and duly given if delivered to Debtor (at its address on Secured Party's records) or to Secured Party (at the address on page one and separately to Secured Party's officer responsible for Debtor's relationship with Secured Party). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal delivery and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Debtor and Secured Party.

10.2 Governing Law; Jurisdiction. This Agreement has been delivered to and accepted by Secured Party and will be deemed to be made in the State of New York. Except as otherwise provided under federal law, this Agreement will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. **DEBTOR HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK IN A COUNTY OR JUDICIAL DISTRICT WHERE SECURED PARTY MAINTAINS A BRANCH AND CONSENTS THAT SECURED PARTY MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT DEBTOR'S ADDRESS SET FORTH ABOVE FOR PROVIDING NOTICE OR DEMAND; PROVIDED THAT NOTHING CONTAINED IN THIS AGREEMENT WILL PREVENT SECURED PARTY FROM BRINGING ANY ACTION, ENFORCING ANY AWARD OR JUDGMENT OR EXERCISING ANY RIGHTS AGAINST DEBTOR INDIVIDUALLY, AGAINST ANY SECURITY OR AGAINST ANY PROPERTY OF DEBTOR WITHIN ANY OTHER COUNTY, STATE OR OTHER FOREIGN OR DOMESTIC JURISDICTION.** Debtor acknowledges and agrees that the venue provided above is the most convenient forum for both Secured Party and Debtor. Debtor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

10.3 Security Interest Absolute. All rights of Secured Party hereunder, the Security Interest and all obligations of Debtor hereunder shall be absolute and unconditional irrespective of (i) any filing by or against Debtor of any petition in bankruptcy or any action under federal or state law for the relief of debtors or the seeking or consenting to of the appointment of an administrator, receiver, custodian or similar officer for the wind up of its business; (ii) any lack of validity or enforceability of any agreement with respect to any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any agreement or instrument with respect to the Obligations, (iv) any exchange, release or non-perfection of any lien or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (v) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Debtor in respect of the Obligations or this Agreement. If, after receipt of any payment of all or any part of the Obligations, Secured Party is for any reason compelled to surrender such payment to any person or entity, because such payment is determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, such payment shall be reinstated as part of the Obligations and this Agreement shall continue in full force notwithstanding any contrary action which may have been taken by Secured Party in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Secured Party's rights under this Agreement and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

10.4 Remedies Cumulative; Preservation of Rights. The rights and remedies herein are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies which Secured Party may have under other agreements now or hereafter in effect between Debtor and Secured Party, at law (including under the UCC) or in equity. No failure or delay of Secured Party in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. Debtor expressly disclaims any reliance on any course of dealing or usage of trade or oral representation of Secured Party including representations to make loans to Debtor. No notice to or demand on Debtor in any case shall entitle Debtor to any other or further notice or demand in similar or other circumstances.

10.5 Joint and Several; Successors and Assigns. If there is more than one Debtor, each of them shall be jointly and severally liable for all amounts, which become due, and the performance of all obligations under this Agreement and the term "Debtor" shall include each as well as all of them. This Agreement shall be binding upon Debtor and upon its heirs and legal representatives, its successors and assignees, and shall inure to the benefit of, and be enforceable by, Secured Party, its successors and assignees and each direct or indirect assignee or other transferee of any of the Obligations; provided, however, that this Agreement may not be assigned by Debtor without the prior written consent of Secured Party.

10.6 Waivers; Changes in Writing. No course of dealing or other conduct, no oral agreement or representation made by Secured Party or usage of trade shall operate as a waiver of any right or remedy of Secured Party. No waiver of any provision of this Agreement or consent to any departure by Debtor therefrom shall in any event be effective unless made specifically in writing by Secured Party and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No modification to any provision of this Agreement shall be effective unless made in writing in an agreement signed by Debtor and Secured Party.

10.7 Interpretation. Unless the context otherwise clearly requires, references to plural includes the singular and references to the singular include the plural; the word "or" has the inclusive meaning represented by the phrase "and/or"; the word "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and captions or section headings are solely for convenience and not part of the substance of this Agreement. Any representation, warranty, covenant or agreement herein shall survive execution and delivery of this Agreement and shall be deemed continuous. Each provision of this Agreement shall be interpreted as consistent with existing law and shall be deemed amended to the extent necessary to comply with any conflicting law. If any provision nevertheless is held invalid, the other provisions shall remain in effect. Debtor agrees that in any legal proceeding, a photocopy of this Agreement kept in Secured Party's course of

business may be admitted into evidence as an original. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the UCC.

10.8 Waiver of Jury Trial. DEBTOR AND SECURED PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY DEBTOR AND SECURED PARTY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTIONS RELATED HERETO. DEBTOR REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF SECURED PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SECURED PARTY WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. DEBTOR ACKNOWLEDGES THAT SECURED PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

Dated: May 7, 2008

CORNING NATURAL GAS CORPORATION

By: /s/ Michael I. German

Name: Michael I German

Title: President

ACKNOWLEDGMENT

STATE OF NEW YORK)
 : SS.
COUNTY OF BROOME)

On the _____ day of May, in the year 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared **MICHAEL I. GERMAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

FOR SECURED PARTY USE ONLY:

Authorization confirmed:

If Debtor's Obligations arise under a guaranty in favor of Secured Party, list the name whose indebtedness is being guaranteed under such guaranty:

Exhibit A

1. Permitted Liens (§3.1)
 2. Residence, principal place of business or chief executive office (§3.5(i))
 3. Location of Books and Records (§3.5(ii))
 4. Location of Equipment, Fixtures, Crops or Timber (§3.5(iii) and §3.5(iv))
 5. Locations Not Owned by Debtor and Name of Record Owner (§3.5)
 6. Trade Name, "Doing Business As" Name or Assumed Name (§3.6)
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EX-10.5 7 v115948_ex10-5.htm

Exhibit 10.5



MORTGAGE

Date: May 7, 2008

Mortgagor (Name): Corning Natural Gas Corporation
(Organizational Structure): Corporation

(State Law organized under): New York

(Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number):

(Address of residence/chief executive office): 330 West William Street, Corning, New York 14830

Mortgagee: MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation having offices at One M&T Plaza, Buffalo, New York 14203, Attn: Office of General Counsel.

WITNESSETH, to secure (a) the payment of an indebtedness in the principal sum of **Three Million and 00/100 Dollars (\$3,000,000.00)**, lawful money of the United States, together with interest thereon and other charges with respect thereto, to be paid according to a certain bond, note or other obligation dated on or about May 7, 2008, made and delivered by Mortgagor to Mortgagee (the "Note") and (b) if the Note is guaranteed by Mortgagor, to the extent of such principal sum and such interest and other charges, such guaranty (the "Guaranty"), Mortgagor hereby mortgages to Mortgagee, as continuing and collateral security for the payment of any and all indebtedness, liabilities and obligations of Mortgagor (or Debtor) to Mortgagee, now existing or which may hereafter arise pursuant to or in connection with (as further described below) the Note, the Guaranty, this Mortgage or any amendments, renewals, extensions, modifications or substitutions of the Note, the Guaranty or this Mortgage (collectively, the "Indebtedness"), the premises described on the attached Schedule A.

TOGETHER with all buildings, structures and other improvements now or hereafter erected, constructed or situated upon said premises, and all fixtures and equipment and other personal property now or hereafter affixed to, or used in connection with, said premises and any and all replacements thereof and additions thereto, all of which shall be deemed to be and remain and form a part of said premises and are covered by the lien of this Mortgage (said premises, buildings, structures, other improvements, fixtures and equipment and other personal property being collectively referred to as the "Premises"),

TOGETHER with all strips and gores of land adjoining or abutting the Premises,

TOGETHER with all right, title and interest of Mortgagor in and to all streets, alleys, highways, waterways and public places open or proposed in front of, running through or adjoining the Premises, and all easements and rights of way, public and private, now or hereafter used in connection with the Premises **including all easements, rights of way, licenses for ingress and egress, pipelines, connections and transfer stations in which the Mortgagor now has, ever had, or subsequently acquires any interest in and which are used by the Mortgagor in connection with its operation, including, but not limited to, those easements and rights of way set forth in Schedule B,**

TOGETHER with all tenements, hereditaments and appurtenances and all the estate and rights of Mortgagor in and to the Premises,

TOGETHER with all awards heretofore or hereafter made by any federal, state, county, municipal or other governmental

authority, or by whomsoever made in any condemnation or eminent domain proceedings whatsoever, to the present or subsequent owners of the Premises or any portion thereof, for the acquisition for public purposes of the Premises or any portion thereof or any interest therein or any use thereof, or for consequential damages on account thereof, including any award for any change of grade of streets affecting the Premises or any portion thereof and any award for any damage to the Premises or any portion thereof or any interest therein or any use thereof.

MORTGAGOR COVENANTS WITH MORTGAGEE SO LONG AS THIS MORTGAGE IS IN EFFECT AS FOLLOWS:

1. INDEBTEDNESS. The Indebtedness shall be paid as provided in the Note or Guaranty, as the case may be, and as provided herein. Additionally, Mortgagor acknowledges and agrees that any amounts now or hereafter due and owing from Mortgagor (or Debtor) to Mortgagee arising from or in connection with any interest rate swap agreement, now existing or hereafter entered into between Mortgagor (or Debtor) and Mortgagee, and any costs incurred by Mortgagee in connection therewith, including, without limitation, any interest, expenses, fees, penalties or other charges associated with any obligations undertaken by Mortgagee to hedge or offset Mortgagee's obligations pursuant to such swap agreement, or the termination of any such obligations, shall be (i) deemed additional interest and/or a related expense (to be determined in the sole discretion of Mortgagee) due in connection with the principal amount of the Indebtedness secured by this Mortgage, (ii) included (in the manner described above) as part of the Indebtedness secured by this Mortgage, and secured by this Mortgage to the full extent thereof, and (iii) included in any judgment in any proceeding instituted by Mortgagee or its agents against Mortgagor for foreclosure of this Mortgage or otherwise.

2. INSURANCE. Mortgagor shall keep the Premises insured against each risk to which the Premises may from time to time be subject (including fire, vandalism and other risks covered by all risk insurance; if requested by Mortgagee, earthquake; if the Premises or any portion thereof are located in an area identified as an area having special flood hazards and in which flood insurance has been made available, flood; and loss of rents by reason of such risks) for the benefit of Mortgagee. Such insurance shall be provided in such amounts, for such periods, in such form, with such special endorsements, on such terms and by such companies and against such risks as shall be satisfactory to Mortgagee. Without limiting the generality of the preceding two sentences, each policy pursuant to which such insurance is provided shall contain a mortgagee clause, in form and substance satisfactory to Mortgagee, (a) naming Mortgagee as mortgagee and (b) providing that (i) all moneys payable pursuant to such insurance shall be payable to Mortgagee, (ii) such insurance shall not be affected by any act or neglect of Mortgagor or Mortgagee, any occupancy, operation or use of the Premises or any portion thereof for purposes more hazardous than permitted by the terms of such policy, any foreclosure or other proceeding or notice of sale relating to the Premises or any portion thereof or any change in the title to or ownership of the Premises or any portion thereof and (iii) such policy and such mortgagee clause may not be canceled or amended except upon thirty (30) days' prior written notice to Mortgagee. Mortgagor hereby assigns and shall deliver each policy pursuant to which any such insurance is provided to Mortgagee. The acceptance by Mortgagee of such policies from Mortgagor shall not be deemed or construed as an approval by Mortgagee of the form, sufficiency or amount of such insurance. Mortgagee does not in any way represent that such insurance, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the business or interest of Mortgagor. In the event of the foreclosure of this Mortgage, or a transfer of title to the Premises in extinguishment of the Indebtedness, all right, title and interest of Mortgagor in and to any such policies then in force shall pass to the purchaser or grantee of the Premises. All the provisions of this Section 2 and any other provisions of this Mortgage pertaining to insurance which may be required under this Mortgage shall be construed with Section 254, Subdivision 4 of the New York Real Property Law, but, said Section 254 to the contrary notwithstanding, Mortgagor consents that Mortgagee may, without qualification or limitation by virtue of said Section 254, retain and apply the proceeds of any such insurance in satisfaction or reduction of the Indebtedness, whether or not then due and payable, or it may pay the same, wholly or in part, to any Mortgagor for the repair or replacement of the Premises or for any other purpose satisfactory to Mortgagee, without affecting the lien of this Mortgage for the full amount of the Indebtedness before the making of such payment.

3. ALTERATIONS, DEMOLITION OR REMOVAL. No building, structure, other improvement, fixture or equipment or other personal property constituting any portion of the Premises shall be removed, demolished or substantially altered without the prior written consent of Mortgagee.

4. WASTE AND CHANGE IN USE. No Mortgagor shall commit any waste on the Premises or make any change in the use of the Premises which may in any way increase any ordinary fire, environmental or other risk arising out of construction or operation.

5. MAINTENANCE AND REPAIRS. Mortgagor shall keep and maintain all buildings, structures, other improvements, fixtures and equipment and other personal property constituting any portion of the Premises and the sidewalks and curbs abutting the Premises in good order and rentable and tenantable condition and state of repair. In the event that the Premises or any portion thereof shall be damaged or destroyed by fire or any other casualty, or in the event of the condemnation or taking of any portion of the Premises as a result of any exercise of the power of eminent domain, Mortgagor shall promptly restore, replace, rebuild or alter the same as nearly as possible to the condition immediately prior to such fire, other casualty, condemnation or taking without regard to the adequacy of any proceeds of any insurance or award received. Mortgagor shall give prompt written notice to Mortgagee of any such damage or destruction or of the commencement of any condemnation or eminent domain proceeding affecting the Premises or any portion thereof.

6. EXISTENCE AND AUTHORITY. Mortgagor represents and warrants, and continues to represent and warrant as long as this Mortgage is in effect, as follows: (a) If Mortgagor is not a natural person (e.g., corporation, partnership, limited liability company, etc.), it is duly organized, validly existing and in good standing under the laws of the above-named state of organization and will do all things necessary to preserve and keep in full force and effect the existence, franchises, rights and privileges of Mortgagor as the type of business entity it was as of the date of this Mortgage, under the laws of the state of its organization; (b) Mortgagor has the full power and authority to grant the mortgage lien hereunder and to execute, deliver and perform its obligations in accordance with this Mortgage; (c) the execution and delivery of this Mortgage will not (i) violate any applicable law of any governmental authority or any judgment or order of any court, other governmental authority or arbitrator; (ii) violate any agreement to which Mortgagor is a party; or (iii) result in a lien or encumbrance on any of its assets (other than the mortgage lien hereunder); (d) Mortgagor's certificate of incorporation, by-laws, partnership agreement, articles of organization or other organizational or governing documents ("Governing Documents") do not prohibit any term or condition of this Mortgage; (d) each authorization, approval or consent from, each registration and filing with, each declaration and notice to, and each other act by or relating to, any party required as a condition of Mortgagor's execution, delivery or performance of this Mortgage (including any shareholder or board of directors or similar approvals) has been duly obtained and is in full force and effect and no other action is required under its Governing Documents or otherwise; and (e) Mortgagor has the power and authority to transact the business in which it is engaged and is duly licensed or qualified and in good standing in each jurisdiction in which the conduct of its business or ownership of property requires such licensing or such qualifications.

7. TAXES AND ASSESSMENTS. Unless paid from an escrow established pursuant to Section 8 of this Mortgage, Mortgagor shall pay all taxes, general and special assessments and other governmental impositions with respect to the Premises before the end of any applicable grace period. Upon request by Mortgagee, Mortgagor shall promptly deliver to Mortgagee receipted bills showing payment of all such taxes, assessments and impositions within the applicable grace period.

8. ESCROW FOR TAXES, ASSESSMENTS AND INSURANCE. Upon request by Mortgagee, Mortgagor shall pay (a) monthly to Mortgagee on or before the first day of each and every calendar month, until the Indebtedness is fully paid, a sum equal to one-twelfth ($1/12^{\text{th}}$) of the yearly taxes, general and special assessments, other governmental impositions and other liens and charges with respect to the Premises to be imposed for the ensuing year, as estimated by Mortgagee in good faith, and annual premiums for insurance on the Premises and (b) an initial payment such that, when such monthly payments are added thereto, the total of such payments will be sufficient to pay such taxes, assessments, impositions and other liens and charges and such insurance premiums on or before the date when they become due. Absent manifest error, Mortgagee's calculation as to the amount to be paid into Escrow shall be deemed conclusive. So long as no Event of Default (as hereinafter defined) shall have occurred or exists, Mortgagee shall hold such payments in trust in an account maintained with Mortgagee without obligation to pay interest thereon, except such interest as may be mandatory by any applicable statute, regulation or other law, to pay, to the extent funds are available, such taxes, assessments, impositions and other liens and charges and such insurance premiums within a reasonable time after they become due; provided, however, that upon the occurrence or existence of any Event of Default, Mortgagee may apply the balance of any such payments held to the Indebtedness. If the total of such payments made by any Mortgagor shall exceed the amount of such payments made by Mortgagee, such excess shall be held or credited by Mortgagee for the benefit of Mortgagor. If the total of such payments made by any Mortgagor shall be less than the amount of such taxes, assessments, impositions and other liens and charges and

such insurance premiums, then Mortgagor shall pay to Mortgagee any amount necessary to make up the deficiency on or before the date when any such amount shall be due.

9. LEASES. Pursuant to Section 291-f of the New York Real Property Law, Mortgagor shall not (a) amend, cancel, abridge, terminate, or otherwise modify any lease of the Premises or of any portion thereof or (b) accept any prepayment of installments of rent to become due thereunder for more than one month in advance, without the prior written consent of Mortgagee. No Mortgagor shall make any new lease in place of or any lease renewal or extension of any lease of the Premises or any portion thereof (other than those that Mortgagor as landlord may be required to grant by the terms of an existing lease) without the prior written consent of Mortgagee. Upon request by Mortgagee, Mortgagor shall promptly furnish to Mortgagee a written statement containing the names and mailing addresses of all lessees of the Premises or of any portion thereof, the terms of their respective leases, the space occupied and the rentals payable thereunder and copies of their respective leases and shall cooperate in effecting delivery of notice of this covenant to each affected lessee.

10. ASSIGNMENT OF LEASES AND RENTS. Mortgagor hereby assigns to Mortgagee all existing and future leases of the Premises or any portion thereof (including any amendments, renewals, extensions or modifications thereof) and the rents, issues and profits of the Premises including accounts receivable for use of the Premises for hotel or lodging services ("Accounts"), as further security for the payment of the Indebtedness, and Mortgagor grants to Mortgagee the right to enter upon and to take possession of the Premises for the purpose of collecting the same and to let the Premises or any portion thereof, and after payment of each cost and expense (including each fee and disbursement of counsel to Mortgagee) incurred by Mortgagee in such entry and collection, to apply the remainder of the same to the Indebtedness, without affecting its right to maintain any action theretofore instituted, or to bring any action thereafter, to enforce the payment of the Indebtedness. In the event Mortgagee exercises such rights, it shall not thereby be deemed a mortgagee in possession, and it shall not in any way be made liable for any act or omission. No Mortgagor shall assign such leases, rents, issues or profits or any interest therein or grant any similar rights to any other person without Mortgagee's prior written consent. Mortgagee hereby waives the right to enter upon and to take possession of the Premises for the purpose of collecting said rents, issues and profits, and Mortgagor shall be entitled to collect the same, until the occurrence or existence of any Event of Default, but such right of Mortgagor may be revoked by Mortgagee upon the occurrence or existence of any Event of Default. Upon the occurrence or existence of any Event of Default, Mortgagor shall pay monthly in advance to Mortgagee, or to any receiver appointed to collect said rents, issues and profits, a fair and reasonable monthly rental value for the use and occupation of the Premises, and upon default in any such payment shall vacate and surrender the possession of the Premises to Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings pursuant to Article 7 of the New York Real Property Actions and Proceedings Law. The rights and remedies under this section and any separately recorded assignment of rents and/or leases in favor of Mortgagee shall be cumulative. In the event of any irreconcilable inconsistencies between such agreements and this section, the separately recorded assignment of rents and/or leases shall control.

11. SECURITY AGREEMENT. This Mortgage constitutes a security agreement under the New York Uniform Commercial Code in effect in the State of New York, as amended from time to time (the "UCC"), and Mortgagor hereby grants to Mortgagee, to secure the Indebtedness, a continuing security interest in all personal property of Mortgagor used in connection with any portion of, or otherwise constituting a portion of, the Premises, including, without limitation, fixtures, goods that are or are to become fixtures, as-extracted items and timber to be cut, as such terms and categories may be defined or described in the UCC, as applicable, whether now existing or owned or hereafter arising or acquired, and in all proceeds, products, rents, issues, profits and accounts arising therefrom. Mortgagee shall have the right to file in any public office, without the signature of Mortgagor, any financing statement relating to such items of collateral. Mortgagee shall have each applicable right and remedy of a secured party under the UCC and each applicable right and remedy pursuant to any other law or pursuant to this Mortgage.

12. NO TRANSFER. Mortgagor shall not, without Mortgagee's prior written consent, sell, convey or transfer the Premises or any portion thereof or any interest therein or contract to do so. If any Mortgagor, Debtor or any endorser or guarantor of the Indebtedness (a "Guarantor") is a corporation, or if any other person liable with respect to the Indebtedness or any portion thereof other than Mortgagor or any general partner of Mortgagor, Debtor or any Guarantor, is a corporation, any direct or indirect change in the beneficial ownership or number of issued and outstanding shares of any class of stock of such Mortgagor, Debtor, Guarantor or general partner, whether by operation of law or otherwise, after which the percentage of such shares beneficially owned by any person or group of persons having beneficial ownership of any such shares has changed by at least ten percent (10%) more or less than it was on the date of this Mortgage shall be deemed a sale, conveyance or transfer of the Premises within the meaning of this Section 12. If any Mortgagor, Debtor or Guarantor is a partnership, including a limited liability partnership, any change in the partnership interests of the general partners of such Mortgagor, Debtor or Guarantor or in the composition of the general partners of such Mortgagor, Debtor or Guarantor, whether by operation of law or otherwise, shall be deemed a sale, conveyance or transfer of the Premises within the meaning of this Section 12. If any Mortgagor, Debtor or Guarantor is a limited liability company, any change in the direct or indirect membership interest of any member or class of members of such Mortgagor, Debtor or Guarantor, whether by operation of law or otherwise, after which the percentage of such membership interest owned by any such member or class has changed by at least ten percent (10%) more or less than it was on the date of this Mortgage shall be deemed a sale, conveyance or transfer of the Premises within the meaning of this Section 12.

13. NO SECONDARY FINANCING OR OTHER LIENS. Mortgagor shall not, without Mortgagee's prior written consent, mortgage, pledge, assign, grant a security interest in or cause any other lien or encumbrance to be made or permit any other lien or encumbrance to exist upon the Premises or any portion thereof except for (a) taxes and assessments not yet delinquent and (b) any mortgage, pledge, security interest, assignment or other lien or encumbrance to Mortgagee or any affiliate of Mortgagee (an "Affiliate").

14. COMPLIANCE WITH LAWS. Mortgagor represents and warrants to Mortgagee, and continues to represent and warrant as long as this Mortgage is in effect, as follows: (a) the buildings, structures and other improvements now constituting any portion of the Premises are in full compliance with all applicable statutes, regulations and other laws (including all applicable zoning, building, fire and health codes and ordinances and the Americans With Disabilities Act of 1990) and all applicable deed restrictions, if any, and is not and shall not be used for any illegal purpose; (b) such compliance is based solely upon Mortgagor's ownership of the Premises and not upon title to or interest in any other property. Mortgagor shall comply with or cause compliance with all statutes, regulations and other laws (including all applicable zoning, building, fire and health codes and ordinances and the Americans With Disabilities Acts of 1990), all other requirements of all governmental authorities whatsoever having jurisdiction over or with respect to the Premises or any portion thereof or the use or occupation thereof and with all applicable deed restrictions, if any; provided, however, that Mortgagor may postpone such compliance if and so long as the validity or legality of any such requirement or restriction shall be contested by such Mortgagor, with diligence and in good faith, by appropriate legal proceedings and Mortgagee is satisfied that such non-compliance will not impair or adversely affect the value of its security.

15. WARRANTY OF TITLE; TITLE INSURANCE. Mortgagor represents and warrants to Mortgagee, and continues to represent and warrant as long as this Mortgage is in effect, that Mortgagor holds good and marketable title in fee simple absolute to the Premises. Upon request by Mortgagee, Mortgagor shall furnish to Mortgagee at Mortgagor's own cost and expense a title insurance policy in the then amount of the Indebtedness, (a) naming Mortgagee as mortgagee, (b) covering the lien on the Premises granted pursuant to this Mortgage, (c) containing no exception not approved by Mortgagee, (d) issued by a title insurance company qualified to do business in the State of New York and satisfactory to Mortgagee and (e) otherwise in form and substance satisfactory to Mortgagee.

16. CERTAIN RIGHTS AND OBLIGATIONS.

(a) Mortgagee may take such action as Mortgagee deems appropriate to protect the Premises or the status or priority

of the lien of this Mortgage, including: entry upon the Premises to protect the Premises from deterioration or damage, or to cause the Premises to be put in compliance with any governmental, insurance rating or contract requirements; payment of amounts due on liens having priority over this Mortgage; payment of any tax or charge for purposes of assuring the priority or enforceability of this Mortgage; obtaining insurance on the Premises (including flood insurance); or commencement or defense of any legal action or proceeding to assess or protect the validity or priority of the lien of this Mortgage. On demand, Mortgagor shall reimburse Mortgagee for all expenses in taking any such action, with interest, and the amount thereof shall be secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the Indebtedness evidenced by the Note.

(b) Mortgagor authorizes Mortgagee, without notice, demand or any reservation of rights and without affecting this Mortgage, from time to time: (i) to accept from any person or entity and hold additional collateral for the payment of the Indebtedness or any part thereof, and to exchange, enforce or refrain from enforcing, or release such collateral or any part thereof; (ii) to accept and hold any endorsement or guaranty of payment of the Indebtedness or any part thereof, and to release or substitute any such obligation of any such Guarantor or any person or entity who has given any collateral as security for the payment of the Indebtedness or any part thereof, or any other person or entity in any way obligated to pay the Indebtedness or any part thereof, and to enforce or refrain from enforcing, or compromise or modify, the terms of any obligation of any such Guarantor, person or entity; (iii) upon the occurrence of an Event of Default, to direct the order or manner of the disposition of any and all collateral and the enforcement of any and all endorsements and guaranties relating to the Indebtedness or any part thereof as Mortgagee, in its sole discretion, may determine; and (iv) upon the occurrence of an Event of Default to determine the manner, amount and time of application of payments and credits, if any, to be made on all or any part of any component or components of the Indebtedness (whether principal, interest, costs and expenses, or otherwise) including if the amount of the Indebtedness secured by this Mortgage is less than the total amount of the obligations under the Note or the Guaranty, to make any such application to such obligations, if any, in excess of the amount of the Indebtedness secured by this Mortgage.

(c) Notwithstanding the occurrence of an Event of Default, this Mortgage shall remain valid, binding and enforceable: (i) without deduction by reason of any setoff, defense or counterclaim of Mortgagor, Guarantor or Debtor, (ii) without requiring protest or notice of nonpayment or notice of default to Mortgagor, to Guarantor, to Debtor, or to any other person; (iii) without demand for payment or proof of such demand; (iv) without requiring Mortgagee to resort first to Mortgagor or to any other guaranty or any collateral which Mortgagee may hold; (v) without requiring notice of acceptance hereof or assent hereto by Mortgagee; and (vi) without requiring notice that any indebtedness has been incurred or of the reliance by Mortgagee upon this Mortgage; all of which Mortgagor hereby waives.

(d) The enforceability of this Mortgage shall not be affected by: (i) any failure to perfect or continue the perfection of any security interest in or other lien on any other collateral securing payment of the Indebtedness; (ii) the invalidity, unenforceability, or loss or change in priority of any such security interest or other lien; (iii) any failure to protect, preserve or insure any such collateral; (iv) any defense arising by reason of the cessation from any cause whatsoever of liability of Debtor or any Guarantor; (v) any compromise of any obligation of Mortgagor, Debtor or any Guarantor; (vi) the invalidity or unenforceability of any of the Indebtedness; or (vii) any renewal, extension, acceleration, or other change in the time for payment of, or the terms of the interest on the Indebtedness or any part thereof; all of which Mortgagor hereby waives.

(e) If Mortgagee shall receive from or on behalf of Mortgagor any sum less than the full amount then due and payable, Mortgagee may, but shall not be obligated to, accept the same and, if it elects to accept any such payment, it may without waiving any Event of Default: (i) apply such payment on account of the Indebtedness or any amount payable hereunder, or (ii) hold same or any part thereof, without liability for interest, in a special account and from time to time apply same or any part thereof as specified in subsection (i) of this subsection.

17. LIEN LAW COVENANT. Mortgagor shall receive the advances secured by this Mortgage and shall hold the right to receive such advances as a trust fund in accordance with the provisions of Section 13 of the New York Lien Law.

18. APPLICATION OF AND INTEREST ON CONDEMNATION AWARD. Mortgagor consents that Mortgagee may retain and apply the proceeds of any award by a condemning authority in satisfaction or reduction of the Indebtedness, whether or not then due and payable, or it may pay the same, wholly or in part, to Mortgagor for the restoration or alteration of the Premises or for any other purpose satisfactory to Mortgagee, without affecting the lien of this Mortgage for the full amount of the Indebtedness before the making of such payment. In the event of the condemnation or taking by eminent domain of the Premises or any portion thereof, Mortgagee shall not be limited to the interest paid on the award by the condemning authority, but shall be entitled to receive out of the award interest on the Indebtedness in accordance with its terms.

19. APPOINTMENT OF RECEIVER. In addition to any other remedy, upon the occurrence of any Event of Default, Mortgagee, in any action to foreclose this Mortgage, shall be entitled, without notice or demand and without regard to the adequacy of any security for the Indebtedness or the solvency or insolvency of any person liable for the payment thereof, to the appointment of a receiver of the rents, issues and profits of the Premises.

20. SALE IN ONE OR MORE PARCELS. In case of a foreclosure sale, the Premises may be sold in one or more parcels, any provision of any statute, regulation or other law to the contrary notwithstanding.

21. ESTOPPEL STATEMENT. Upon request by Mortgagee, Mortgagor shall furnish to Mortgagee within five (5) days if such request is made in person or within ten (10) days if such request is otherwise made a written statement duly acknowledged of the amount of the Indebtedness and whether any offsets or defenses exist against the Indebtedness.

22. RIGHT TO INSPECT AND EXAMINE. Upon request by Mortgagee, Mortgagor shall immediately permit Mortgagee and each officer, employee, accountant, attorney and other agent of Mortgagee to enter and inspect the Premises and to examine, audit, copy and extract each record of any Mortgagor relating to the Premises or any portion thereof.

23. FINANCIAL STATEMENTS. Mortgagor shall provide, shall cause each Guarantor and Debtor to provide, and shall use its best efforts to cause each lessee of the Premises or any material portion thereof (a "Material Lessee") to provide, to Mortgagee, in form satisfactory to Mortgagee, promptly upon request by Mortgagee, all information relating to such Mortgagor, Guarantor, Debtor or Material Lessee or to such Mortgagor's, Guarantor's, Debtor's or Material Lessee's business, operations, assets, affairs or condition (financial or otherwise) or to the Premises or any portion thereof that is so requested. Without limiting the generality of the preceding sentence, Mortgagor shall so provide (a) if such Mortgagor is a natural person, at least once during each period of twelve (12) consecutive months, a personal financial statement of such Mortgagor for a year ending not more than sixty (60) days earlier, in reasonable detail and certified by such Mortgagor to be complete and accurate and (b) if such Mortgagor is not an individual, (i) promptly copies of all annual reports, proxy statements and similar information distributed to shareholders, partners or other owners and of all filings with the Securities and Exchange Commission and the Pension Benefit Guaranty Corporation, (ii) within sixty (60) days after the end of each of its first three fiscal quarters, **accountant prepared** consolidating and consolidated statements of income and cash flows for the quarter, for the corresponding quarter in the previous fiscal year and for the period from the end of the previous fiscal year, with a consolidating and consolidated balance sheet as of the quarter end, (iii) within **one hundred twenty (120) days** after the end of each fiscal year, consolidating and consolidated statements of such Mortgagor's income and cash flows and its consolidating and consolidated balance sheet as of the end of such fiscal year, setting forth comparative figures for the preceding fiscal year and to be ☒ **audited** ☐ **reviewed** ☐ **compiled** (check appropriate box. If no box is selected, all financial statements shall be audited) by an independent certified public accountant acceptable to Mortgagee, all such statements to be certified by such Mortgagor's chief financial officer or partner to be correct and in accordance with such Mortgagor's records and to present fairly the results of such Mortgagor's operations and cash flows and its financial position at year end in conformity with generally accepted accounting principles, and (iv) with each statement of income, a certificate executed by such Mortgagor's chief executive and chief financial officers or managing partners or members (A) stating that the signers of the certificate have reviewed this Mortgage and the operations and condition (financial or other) of such Mortgagor and any subsidiaries during the relevant period and (B) stating that no Event of Default occurred during the period, or if an Event of Default did occur, describing its nature, the date(s) of its occurrence or period of existence and what action Mortgagor has taken with respect thereto.

24. AUTHORIZATION AND POWER OF ATTORNEY. Mortgagee is irrevocably and unconditionally authorized to take, and Mortgagor irrevocably and unconditionally appoints Mortgagee as the attorney-in-fact of such Mortgagor, with full power of substitution and of revocation, to take, in the name of such Mortgagor or otherwise at the sole option of Mortgagee, each action relating to the Premises or any portion thereof that, subject to this Mortgage, such Mortgagor could take in the same manner, to the same extent and with the same effect as if such Mortgagor were to take such action; provided, however, that Mortgagee shall not have the right, pursuant to such authorization or as such attorney-in-fact, to sell or otherwise dispose of the Premises or any portion thereof. Such power of attorney is coupled with an interest in favor of Mortgagee, and shall not be terminated or otherwise affected by the death, disability or incompetence of any Mortgagor.

25. FURTHER ASSURANCES. Promptly upon request by Mortgagee, Mortgagor shall execute and deliver each writing, and take each other action, that Mortgagee shall deem necessary or desirable at the sole option of Mortgagee (a) to

perfect or accomplish any lien or security interest granted, or assignment made, pursuant to this Mortgage; (b) otherwise to accomplish any purpose of this Mortgage; (c) in connection with any transaction contemplated by this Mortgage; or (d) in connection with the Premises or any portion thereof.

26. ENVIRONMENTAL REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION. Mortgagor represents and warrants, and continues to represent and warrant as long as this Mortgage is in effect, to Mortgagee that (a) Mortgagor and the Premises are in compliance with each statute, regulation or other law and each judgment, order or award of any court, agency or other governmental authority or of any arbitrator (individually an "Environmental Requirement") relating to the protection of any water, water vapor, land surface or subsurface, air, fish, wildlife, biota or other natural resources or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of any chemical, natural or synthetic substance, waste, pollutant or contaminant (collectively "Regulated Materials"), (b) Mortgagor has not been charged with, or has received any notice that such Mortgagor is under investigation for, the failure to comply with any Environmental Requirement, nor has Mortgagor received any notice that Mortgagor has or may have any liability or responsibility under any Environmental Requirement with respect to the Premises or otherwise, (c) the Premises have never been used for (i) the storage, treatment, generation, transportation, processing, handling, production or disposal of Regulated Materials, except as permitted by law, (ii) a landfill or other waste disposal site or (iii) military purposes, (d) no underground storage tanks are located on the Premises, (e) the environmental media at the Premises do not contain Regulated Materials beyond any legally permitted level, (f) there has never been any release, threatened release, migration or uncontrolled presence of any Regulated Materials on, at or from the Premises or, to the knowledge of Mortgagor, within the immediate vicinity of the Premises and (g) Mortgagor has not received any notice of any such release, threatened release, migration or uncontrolled presence. Mortgagor shall not cause or permit the Premises to be used in any way that would result in any of the representations and warranties contained in the preceding sentence to be false or misleading at any future time. To the extent any such representation or warranty at any time is or becomes false or misleading, Mortgagor shall promptly notify Mortgagee thereof. If at any time Mortgagor obtains any evidence or information which suggests that potential environmental problems may exist on, at or about the Premises, Mortgagee may request Mortgagor, at Mortgagor's own cost and expense, to conduct and complete investigations, studies, sampling and testing with respect to the Premises requested by Mortgagee. Mortgagor shall promptly furnish to Mortgagee copies of all such investigations, studies, samplings and tests. Mortgagor shall (a) conduct and complete all such investigations, studies, samplings and testing, and all remedial, removal and other actions necessary with respect to the Premises, in accordance with all applicable Environmental Requirements and promptly furnish to Mortgagee copies of all documents generated in connection therewith and (b) defend, reimburse, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, the violation of, or other liability or responsibility under, any Environmental Requirements, or the release, threatened release, migration or uncontrolled presence of any Regulated Materials on, at or from the Premises including attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. In the event this Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure which Mortgagee agrees to accept, Mortgagor shall be responsible to deliver the Premises to Mortgagee free of any and all Regulated Materials other than any that are (a) normally used in Mortgagor's business and (b) located and maintained thereon in compliance with all applicable Environmental Requirements and in a condition that conforms with all applicable Environmental Requirements. The provisions of this Section 26 shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee at common law or any other agreement with Mortgagee, and shall survive the transactions contemplated in this Mortgage and the termination of this Mortgage.

27. EVENTS OF DEFAULT.

(a) Any of the following events or conditions shall constitute an "Event of Default": (i) failure by Mortgagor to pay when due (whether at the stated maturity, by acceleration, upon demand or otherwise) the Indebtedness, or any part thereof, or there occurs any event or condition which after notice, lapse of time or after both notice and lapse of time will permit acceleration of the Indebtedness; (ii) default by Mortgagor in the performance of any obligation, term or condition of this Mortgage or any other agreement with Mortgagee or any of its Affiliates; (iii) failure by Mortgagor to pay when due (whether at the stated maturity, by acceleration, upon demand or otherwise) any indebtedness or obligation owing to any third party or any Affiliate, the occurrence of any event which could result in acceleration of payment of any such indebtedness or obligation or the failure to perform any agreement with any third party or any Affiliate; (iv) Mortgagor is dissolved, becomes insolvent, generally fails to pay or admits in writing its inability generally to pay its debts as they become due; (v) failure to

pay, withhold or collect any tax as required by law; (vi) Mortgagor makes a general assignment, arrangement or composition agreement with or for the benefit of its creditors or makes, or sends notice of any intended, bulk sale; the sale, assignment, transfer or delivery of all or substantially all of the assets of Mortgagor to a third party; or the cessation by Mortgagor as a going business concern; (vii) Mortgagor files a petition in bankruptcy or institutes any action under federal or state law for the relief of debtors or seeks or consents to the appointment of an administrator, receiver, custodian or similar official for the wind up of its business (or has such a petition or action filed against it and such petition action or appointment is not dismissed or stayed within forty-five (45) days); (viii) the reorganization, merger, consolidation or dissolution of Mortgagor (or the making of any agreement therefor); (ix) the death or judicial declaration of incompetency of Mortgagor, if a natural person; (x) the entry of any judgment or order of any court, other governmental authority or arbitrator against Mortgagor; (xi) falsity, omission or inaccuracy of facts submitted to Mortgagee or any Affiliate (whether in a financial statement or otherwise); (xii) an adverse change in the Premises, Mortgagor, its business, operations, affairs or condition (financial or otherwise) from the status shown on any financial statement or other document submitted to Mortgagee, and which change Mortgagee determines will have a material adverse affect on (a) Mortgagor, the Premises, its business, operations or condition (financial or otherwise), or (b) the ability of Mortgagor to pay the Indebtedness or perform its obligations hereunder or the Note; (xiii) there occurs any change in the management or ownership of Mortgagor which is, in the opinion of Mortgagee, materially adverse to its interest and which remains uncorrected for thirty (30) days after Mortgagee notifies Mortgagor of its opinion; (xiv) any pension plan of Mortgagor fails to comply with applicable law or has vested unfunded liabilities that, in the opinion of Mortgagee, might have a material adverse effect on Mortgagor's ability to repay its debts; (xv) any indication or evidence received by Mortgagee that Mortgagor may have directly or indirectly been engaged in any type of activity which, in Mortgagee's discretion, might result in the forfeiture of the Premises to any governmental authority; (xvi) the occurrence of any event described in Section 27.1(i) through and including 27.1(xv) with respect to any Guarantor or Debtor (if Mortgagor and Debtor are not the same); or (xvii) Mortgagee in good faith believes that the prospect of payment of all or any part of the Indebtedness or performance of Mortgagor's or Debtor's obligations under this Mortgage or any other agreement now or hereafter in effect between Mortgagor, Debtor or Guarantor and Mortgagee or its Affiliates is impaired.

(b) Mortgagee, at its sole election, may declare all or any part of any Indebtedness not payable on demand to be immediately due and payable without demand or notice of any kind upon the happening of any Event of Default. All or any part of any Indebtedness not payable on demand shall be automatically and immediately due and payable, without demand or notice of any kind, upon the commencement of Mortgagor's or Debtor's bankruptcy if voluntary and upon the lapse of forty-five (45) days without dismissal if involuntary, unless an order for relief is entered sooner. The provisions of this paragraph are not intended in any way to affect any rights of Mortgagee with respect to any Indebtedness which may now or hereafter be payable on demand.

(c) Upon the happening of an Event of Default, whether or not foreclosure proceedings have been instituted, Mortgagor shall, upon demand, surrender possession of the Premises to Mortgagee. If Mortgagor remains in possession of the Premises after the happening of an Event of Default and demand by Mortgagee, the possession shall be as tenant of Mortgagee and Mortgagor agrees to pay in advance upon demand to Mortgagee a reasonable monthly rental for the Premises or portion so occupied. Mortgagee may dispossess, by summary proceedings or otherwise, any tenant of Mortgagor defaulting in the payment of rent. If a receiver is appointed, this covenant shall inure to the benefit of such receiver. Notwithstanding any provision of law to the contrary, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of tenants of the Premises which are subordinate to the lien of this Mortgage.

(d) If the Indebtedness, as evidenced by a single note or other written instrument shall exceed the amount secured by this Mortgage, or as evidenced by a combination of same that singularly or in part collectively may be less than said secured amount but combined exceed said secured amount, Mortgagee, in any foreclosure hereof, shall have the right to sue and collect the excess in the same action as commenced for the foreclosure hereof, and recover a money judgment for said excess with all the rights attendant thereto, including the issuance of an execution to the Sheriff for collection thereof, and Mortgagor hereby waives any defense based upon a claim that in doing so, Mortgagee is splitting its cause of action if it seeks to foreclose this Mortgage for part of the indebtedness and recover at law for another part.

(e) Upon the happening of an Event of Default, Mortgagee may pursue, take or refrain from pursuing any remedy for collection of the Indebtedness, including foreclosure of this Mortgage.

(f) Mortgagee may, either with or without entry or taking possession of the Premises as provided in this Mortgage or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action of foreclosure of this Mortgage: (A) sell the Premises or any part thereof pursuant to any procedures provided by applicable law including the procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law (and any amendments or substitute statutes in regard thereto) allowing non-judicial foreclosure of Mortgage by sale, and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law or (B) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure under this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee may elect. Any reference in this Mortgage to an action or right of Mortgagee in regard to or in connection with a "foreclosure proceeding" shall be deemed to include a sale and/or proceeding under this subsection, including a non-judicial foreclosure of mortgage by sale.

28. EXPENSES. Mortgagor shall pay to Mortgagee on demand all costs and expenses (including attorneys' fees and disbursements whether for internal or outside counsel) incurred by Mortgagee in connection with the Indebtedness or the Mortgage including costs of collection, of preserving or exercising any right or remedy of Mortgagee under this Mortgage or any related security agreement or guaranty, of workout or bankruptcy proceedings by or against Mortgagor, of defending against any claim asserted as a direct or indirect result of the Indebtedness or of performing any obligation of any Mortgagor pursuant to this Mortgage or otherwise (including payment of any amount any Mortgagor is obligated to pay pursuant to this Mortgage and performance of any obligation of Mortgagor pursuant to this Mortgage). Mortgagor agrees to defend and indemnify Mortgagee from any and all third party claims arising from Mortgagor's duties as owner and/or occupant of the Premises, and further agrees to pay, upon demand, any expense that Mortgagee may incur (including attorneys' fees and disbursements whether for internal or outside counsel) due to Mortgagor's failure to provide appropriate defense and indemnification to Mortgagee in a timely manner. Mortgagee reserves the right to have Mortgagor pay, upon demand, administrative fee(s) in regard to any administrative action Mortgagee is required or requested to take including the preparation of discharges, releases or assignments to third parties. Costs and expenses shall accrue interest at the default rate set forth in the Note from the date of demand until payment is actually received by Mortgagee. Each such cost and expense and any interest thereon shall constitute part of the Indebtedness and be secured by this Mortgage and may be added to the judgment in any suit brought by Mortgagee or its agents against any Mortgagor on this Mortgage.

29. NOTICES. Any demand or notice hereunder or under any applicable law pertaining hereto (including Article 14 of New York Real Property Actions and Proceedings Law) shall be in writing and duly given if delivered to Mortgagor (at its address on Mortgagee's records) or to Mortgagee (at the address on page one and separately to Mortgagee officer responsible for Mortgagor's relationship with Mortgagee). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal service and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Mortgagor and Mortgagee.

30. LITIGATION. Mortgagor shall promptly notify Mortgagee in writing of any litigation, proceeding, or counterclaim against, or of any investigation of, Mortgagor (or the threat thereof) if: (i) the outcome of such litigation, proceeding, counterclaim, or investigation may materially and adversely affect the finances or operations of Mortgagor or title to, or the value of, any assets secured by the Mortgage or (ii) such litigation, proceeding, counterclaim, or investigation questions the validity of the Mortgage, the Note or any document executed in connection therewith including any guaranties or any action taken, or to be taken, pursuant to any such documents. Mortgagor shall furnish to Mortgagee such information regarding any

such litigation, proceeding, counterclaim, or investigation as Mortgagee shall request.

31. NOTICE OF NON-COMPLIANCE. Mortgagor shall notify Mortgagee in writing of any failure by Mortgagor to comply with any provision of the Note, the Mortgage or any document executed in connection therewith immediately upon learning of such non-compliance, or if any representation, warranty or covenant contained in any such document is no longer true. Mortgagor shall also immediately notify Mortgagee in writing if there is any material adverse change in any of the information or financial statements supplied to Mortgagee to induce Mortgagee to extend credit to Mortgagor or if such information or financial statement is required under this Mortgage or any other document executed in connection therewith.

32. COVENANTS SHALL RUN WITH THE LAND. The covenants contained in this Mortgage shall run with the land and bind Mortgagor, each heir, legal representative, successor and assign of Mortgagor and each subsequent owner, encumbrancer, tenant and subtenant of the Premises or any portion thereof, and shall inure to the benefit of, and be enforceable by, Mortgagee and each successor and assign of Mortgagee.

33. NONWAIVER BY MORTGAGEE. All rights and remedies of Mortgagee under this Mortgage and its other agreements with Mortgagor are cumulative, and no right or remedy shall be exclusive of any other right or remedy. No single, partial or delayed exercise by Mortgagee or its agents of any right or remedy shall preclude full and timely exercise by Mortgagee or its agents at any time of any right or remedy of Mortgagee without notice or demand, at Mortgagee's sole option. No course of dealing or other conduct, no oral agreement or representation made by Mortgagee or its agents or usage of trade shall operate as a waiver of any right or remedy of Mortgagee. No waiver of any right or remedy of Mortgagee hereunder shall be effective unless made specifically in writing by Mortgagee. No notice or demand on Mortgagor, Debtor or Guarantor in any case shall entitle Mortgagor, Debtor or Guarantor to any other or further notice in similar or other circumstances.

34. RIGHT OF SETOFF. If an Event of Default occurs, Mortgagee and Affiliates shall also have the right to setoff against the indebtedness any property held in a deposit or other account or otherwise owing by Mortgagee or Affiliates including, in any capacity to any Mortgagor, Debtor or Guarantor in any capacity whether or not the Indebtedness or the obligation to pay such moneys owed by Mortgagee is then due, and Mortgagee shall be deemed to have exercised such right of setoff immediately at the time of such election.

35. TERM; SURVIVAL. The term of this Mortgage and Mortgagor's obligations hereunder shall continue until the Indebtedness has been fully paid to Mortgagee's satisfaction. Mortgagor's obligation to pay the costs and expenses hereunder shall survive the term of this Mortgage and the entry of any judgment of foreclosure. Mortgagor's representations, warranties, covenants and agreements shall survive during the term of this Mortgage and shall be presumed to have been relied upon by Mortgagee. If after receipt of any payment of all or any part of the Indebtedness, Mortgagee is for any reason compelled to surrender such payment to any person or entity because such payment is determined to be void or voidable as a preference, impermissible set-off, or a diversion of trust funds, or for any other reason, this Mortgage shall continue in full force notwithstanding any contrary action which may have been taken by Mortgagee in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Mortgagee's rights under this Mortgage and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

36. MISCELLANEOUS. This Mortgage is absolute and unconditional. This Mortgage and all documents, including the Note, any Guaranty and any other document required to be executed by Mortgagor, Debtor or Guarantor in connection with the transaction contemplated hereby constitute the entire agreement and understanding between the parties hereto with respect to such transaction and supersedes all prior negotiations, courses of dealing, understandings, and agreements between such parties with respect to such transactions. This Mortgage is a binding obligation enforceable against Mortgagor and its heirs and legal representatives and its successors and assigns and shall inure to the benefit of Mortgagee and its successors and assigns. Any reference herein to "Mortgagee" shall be deemed to include and apply to every subsequent holder of this Mortgage and any reference herein to "Mortgagor", "Debtor" or "Guarantor" shall include; (i) any successor individual or individuals, association, partnership, limited liability company or corporation to which all or substantially all of the business or assets of Debtor, Mortgagor or Guarantor, as the case may be, shall have been transferred; (ii) in the case of a partnership

Debtor, Mortgagor or Guarantor (as the case may be) any new partnership which shall have been created by reason of the admission of any new partner or partners therein, or by reason of the dissolution of the existing partnership by voluntary agreement or the death, resignation or other withdrawal of any partner; and (iii) in the case of a corporate or limited liability company, Debtor, Mortgagor or Guarantor (as the case may be) any other entity into or with which Debtor, Mortgagor or Guarantor (as the case may be) shall have been merged, consolidated, reorganized, or absorbed. It is the intent of Mortgagor and Mortgagee that the provisions of this Mortgage, other than those included in the New York statutory form of mortgage, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions contained in such statutory form. Unless the context otherwise clearly requires, references to plural includes the singular and references to the singular include the plural; the word "or" has the inclusive meaning represented by the phrase "and/or"; the word "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and captions or section headings are solely for convenience and not part of the substance of this Mortgage. Any representation, warranty, covenant or agreement herein shall survive execution and delivery of this Mortgage and shall be deemed continuous. Each provision of this Mortgage shall be interpreted as consistent with existing law and shall be deemed amended to the extent necessary to comply with any conflicting law. If any provision nevertheless is held invalid, the other provisions shall remain in effect. Mortgagor agrees that in any legal proceeding, a photocopy of this Mortgage kept in Mortgagee's course of business may be admitted into evidence as an original.

37. JOINT AND SEVERAL. If there is more than one Mortgagor, each of them shall be jointly and severally liable for all amounts and obligations which become due or should be performed under this Mortgage and the term "Mortgagor" shall include each as well as all of them.

38. GOVERNING LAW; JURISDICTION. This Mortgage has been delivered to and accepted by Mortgagee and will be deemed to be made in the State of New York. This Mortgage will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. **MORTGAGOR HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN NEW YORK STATE IN A COUNTY OR JUDICIAL DISTRICT WHERE MORTGAGEE MAINTAINS A BRANCH AND CONSENTS THAT MORTGAGEE MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT MORTGAGOR'S ADDRESS SET FORTH ABOVE FOR PROVIDING NOTICE OR DEMAND; PROVIDED THAT NOTHING CONTAINED IN THIS MORTGAGE WILL PREVENT MORTGAGEE FROM BRINGING ANY ACTION, ENFORCING ANY AWARD OR JUDGMENT OR EXERCISING ANY RIGHTS AGAINST MORTGAGOR INDIVIDUALLY, AGAINST ANY SECURITY OR AGAINST ANY PROPERTY OF MORTGAGOR WITHIN ANY OTHER COUNTY, STATE OR OTHER FOREIGN OR DOMESTIC JURISDICTION.** Mortgagor acknowledges and agrees that the venue provided above is the most convenient forum for both Mortgagee and Mortgagor. Mortgagor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Mortgage.

39. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY EACH WAIVE ANY RIGHT TO TRIAL BY JURY THEY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS MORTGAGE OR THE TRANSACTIONS RELATED THERETO. MORTGAGOR REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS RIGHT TO JURY TRIAL WAIVER. MORTGAGOR ACKNOWLEDGES THAT MORTGAGEE HAS BEEN INDUCED TO ACCEPT THIS MORTGAGE BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor the day and year first above written.

CORNING NATURAL GAS CORPORATION

By: /s/ Michael I. German

Name: Michael I. German

Title: President

ACKNOWLEDGMENT

[illegible]

On the ____ day of May, in the year 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared **MICHAEL I. GERMAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

RECORD & RETURN TO:
Mark S. Gorgos, Esq.
Coughlin & Gerhart, LLP
P.O. Box 2039

Binghamton, NY 13902-2039

Exhibit 11

Cost of Issuance and Unamortized Debt Discount and Expense.

Corning Natural Gas Corporation
 Cost of Issuance and Unamortized Debt Discount and Expense

Exhibit 11

Manufactures and Traders Trust Company	\$ 29,064.00
Steuben County Clerk	37,741.00
Chemung County Clerk	76.00
New York State Secretary of State	120.00
Ticor Title Insurance Company	9,910.00
Attorney's Fees	28,588.80
	<u>\$ 105,499.80</u>
Amortization Period (Years)	20
Proposed Annual Amortization	\$5,275

<u>Unamortized Debt Discount and Expense of Retired Debt</u>	<u>Amount Retired</u>	<u>Unamortized Debt Discount and Expense Balance</u>
GNA Senior Note 9.83%	\$ 1,500,000	\$ 15,363.62
First Mortgage Bonds NYSERDA 8.25%	\$ 3,100,000	82,658.56
		<u>\$ 98,022.18</u>

Exhibit 12

Calculation of Reimbursement Margin.

Exhibit 12
Schedule 1[illegible]

Corning Natural Gas Corporation
Projected Capital Expenditures

Exhibit 12
Schedule 2

2008-2012					
2008					
Project	Description	Qty	Cost per	Sub-total	Total
1	Blanket Work Order				
380 1.1	New Residential Services	100	\$1,288	\$128,800	
380 1.2	Service reconstruction	400	\$1,350	\$540,000	
380 1.3	Extra Service reconst	0	\$0	\$0	
					\$668,800
2	Gas Meters & Regulators				
383 2.1	Replace residential regulators	225	\$65	\$14,625	
378 2.2	Replace large regulators	10	\$600	\$6,000	
381 2.3	Replace 250 TC meters	500	\$95	\$47,500	
381 2.4	Replace large meters w/ TC	9	\$700	\$6,300	
378 2.5	Replace large rotary / turbine	5	\$2,700	\$13,500	
378 2.6	Replace volume correctors	5	\$1,570	\$7,850	
378 2.7	Replace pressure recorders	5	\$980	\$4,900	
378 2.8	Install AMR units	500	\$75	\$37,500	
					\$138,175
3	Main Replacement - Distribution				
376 3.1	Main Replacement - 2", 4" 6"	36960	\$25	\$924,000	
376 3.2	Route 17 Crossing Replacement E.C.	1	\$80,000	\$80,000	
376 3.3	Main Replacement - 6"	0	\$36	\$0	
376 3.4	Morgan Creek Rd Bridge	0	\$0	\$0	
376 3.5	Watson Creek Bridge	0	\$0	\$0	
376 3.6	Bridge Replacements	2	\$30,000	\$60,000	
376 3.7	Mic. Replacement	0	\$25,000	\$0	
					\$1,064,000
4	Main Replacement - HP Distribution				
369 4.1	Line 6				
	Move Farm taps to Line 7	50	\$1,000	\$50,000	
369	Replace 3 mile line 6 w/ 6" stl	0	\$400,000	\$0	
369 4.2	Line 11	1	\$375,000	\$375,000	
369 4.3	Line 15	1	\$125,000	\$125,000	
					\$550,000
5	Main Extension - New distribution				
376 5.1	Install new 2" Main	1000	\$25	\$25,000	
					\$25,000
6	Corrosion Control				
376 6.1	8 Mile pre 71 Pipe Program	0	\$10,000	\$0	
369 6.2	CP on HP Distribution	1	\$30,000	\$30,000	
376 6.3	CP on distribution	1	\$30,000	\$30,000	
					\$60,000
7	SCADA				
391 7.1	Hardware / Software upgrade	1	\$30,000	\$30,000	
378 7.2	ABB Chromatograph	0	\$12,000	\$0	
					\$30,000
8	M&R Stations				
378 8.1	Murray Ave reg and SRV	1	\$20,000	\$20,000	
378 8.2	Bradley Station meter / VC replace	0	\$0	\$0	
378 8.3	Hemington Reg / Odorizer	0	\$0	\$0	
378 8.4	Whiskey Creek Station reg/SRV	1	\$25,000	\$25,000	
378 8.5	Orr Hill Odorizer	1	\$50,000	\$50,000	
378 8.6	Orr Hill Regulators	1	\$10,000	\$10,000	
378 8.7	Coopers addition, Bradley Sta Generators	3	\$4,500	\$13,500	
					\$118,500

Project	Description	Qty	Cost per	Sub-total	Total
9	Transportation Equipment				
392 9.1	Vehicle Replacement	1	\$40,000	\$40,000	
392 9.2	Replace meter changer truck	0	\$0	\$0	
392 9.3	Replace 2nd Reg man truck	0	\$0	\$0	
392 9.4	Upgrade Radio Equipment	0	\$0	\$0	
392 9.5	Purchase Mini Excav	0	\$0	\$0	
392 9.6	Replace small vehicle	0	\$0	\$0	
392 9.7	Replace line tech truck	0	\$0	\$0	
392 9.8	Replace dump truck	0	\$0	\$0	
392 9.9	Replace backhoe	0	\$0	\$0	
392 9.10	Replace 1987 line truck	0	\$0	\$0	
392 9.11	Heavy Equipment Trailer	0	\$0	\$0	
392 9.12	Replace line truck	0	\$0	\$0	
392 9.13	Replace 1996 line truck	0	\$0	\$0	
					\$40,000
10	Tools and Equipment				
394 10.1	ITRON data devices	3	\$4,700	\$14,100	
394 10.2	Mueller D5 (2" to 6") machine	0	\$0	\$0	
394 10.3	Electronic Leak Detector	2	\$2,600	\$5,200	
394 10.4	Metrotech locator	0	\$0	\$0	
394 10.5	Pavement Saw	0	\$0	\$0	
394 10.6	Misc. small tools	0	\$10,000	\$0	
394 10.7	Electrofusion Contoller	0	\$5,625	\$0	
394 10.8	Mueller (8" to 12") machine	0	\$15,000	\$0	
394 10.9	Health HFI	1	\$3,800	\$3,800	
394 10.10	Engineering survey equipment	0	\$3,750	\$0	
394 10.11	Line Locator	0	\$250	\$0	
394 10.12	GPS Survey Equipment	0	\$1,250	\$0	
394 10.13	Welding Machine	0	\$1,375	\$0	
394 10.14	Portable Shoring	0	\$3,000	\$0	
394 10.15	Dewatering pumps	0	\$875	\$0	
394 10.16	Lighting	0	\$0	\$0	
394 10.17	Stopper Replacement Equipment	0	\$0	\$0	
394 10.18	Misc. Equipment	1	\$5,000	\$5,000	
					\$28,100
11	Safety Equipment				
11.1	PPE	1	\$3,000	\$3,000	
11.2	Flash fire coveralls / hood / gloves	0	\$368	\$0	
11.3	Supplied Air Respirator	0	\$4,900	\$0	
11.4	Confined space gas monitor	0	\$600	\$0	
					\$3,000
12	General Office				
390 12.1	replace OH doors	0	\$10,000	\$0	
390 12.2	Misc.	0	\$10,000	\$0	
					\$0
13	IT equipment				
391 13.1	Replace CADD PC	1	\$2,500	\$2,500	
391 13.2	Field map PCs	0	\$1,000	\$0	
391 13.3	CADD software	0	\$4,125	\$0	
391 13.4	Finance Software	0	\$15,000	\$0	
391 13.5	misc.	0	\$5,000	\$0	
391 13.6	Field GPS Equipment	0	\$875	\$0	
391 13.7	Enterprise Software	0	\$12,500	\$0	
391 13.8	Accounting and Billing System(Including Hardware)	0	\$0	\$0	
					\$2,500
	Total Base Expenditures				\$2,728,075
14	Major Projects				
369 14.1	Line 11 Upgrade			\$0	
369 14.2	Line 15 Reconstruction			\$0	
369 14.3	Line 1 Rebuild to PPL			\$0	
369 14.4	Computer Hardware and Software			\$0	
369 14.5	Misc. Facilities			\$0	
					\$0

Total Plant Investment		\$2,728,075
Less. Depreciation and Defered Tax Reserves		<u>(900,784)</u>
		\$1,827,291

Depreciation at December '06 annualized	\$ 691,598	
Deperciation on Current Year		
Transmission	-	
Distribution & all Other	<u>58,773</u>	
	\$ 750,371	

Deferred Taxes		
<u>Prior Period Additions</u>		
ACRS Depreciation	\$ 175,263	
ADR Depreciation	(7,542)	
Current Year Additions		
ACRS Depreciation*	<u>24,156</u>	
	\$ 191,877	

* Assumes tax rate is 2X book deprecation rates. Deferred Tax setup on difference
Tax rate of 41.1% SIT and FIT 41.1%

SENIOR NOTE - CANADA LIFE		
Sinking Fund Payment	7.90%	\$ 355,000

M & T BANK - Equipment Loans
M & T BANK - TRUCK #234
M & T BANK - TRUCK #235
M & T BANK - MINI BACKHOE
M & T BANK - BACKHOE & SKID STEER LOADER

Corning Natural Gas Corporation
Projected Capital Expenditures

Exhibit 12
Schedule 2

2009						
Project	Description	Qty	Cost per	Sub-total	Total	Project
1	Blanket Work Order					1
1.1	New Residential Services	110	\$1,318	\$144,980		1.1
1.2	Service reconstruction	400	\$1,390	\$556,000		1.2
1.3	Extra Service reconst	0	\$0	\$0		1.3
					\$700,980	
2	Gas Meters & Regulators					2
2.1	Replace residential regulators	500	\$67	\$33,475		2.1
2.2	Replace large regulators	12	\$618	\$7,416		2.2
2.3	Replace 250 TC meters	700	\$98	\$68,495		2.3
2.4	Replace large meters w/ TC	10	\$721	\$7,210		2.4
2.5	Replace large rotary / turbine	14	\$2,781	\$38,934		2.5
2.6	Replace volume correctors	5	\$1,617	\$8,086		2.6
2.7	Replace pressure recorders	5	\$1,009	\$5,047		2.7
2.8	Install AMR units	2500	\$77	\$193,125		2.8
			\$0		\$361,788	
3	Main Replacement - Distribution					3
3.1	Main Replacement - Mandated	36960	\$26	\$951,720		3.1
3.2	Main Replacement - 4"	0	\$82,400	\$0		3.2
3.3	Main Replacement - 6"	0	\$37	\$0		3.3
3.4	Morgan Creek Rd Bridge	0	\$0	\$0		3.4
3.5	Watson Creek Bridge	0	\$0	\$0		3.5
3.6	Lawrenceville Bridge (PPL tap)	2	\$30,000	\$60,000		3.6
3.7	Mic. Replacement	1	\$25,000	\$25,000		3.7
					\$1,036,720	
4	Main Replacement - HP Distribution					4
4.1	Line 6					4.1
	Move Farm taps to Line 7	50	\$1,000	\$50,000		
	Replace 3 mile line 6 w/ 6" stl	0	\$800,000	\$0		
4.2	Line 11	1	\$375,000	\$375,000		4.2
4.3	Line 15	1	\$125,000	\$125,000		4.3
					\$550,000	
5	Main Extension - New distribution					5
5.1	Install new 2" Main	2000	\$26	\$51,500		5.1
					\$51,500	
6	Corrosion Control					6
6.1	8 Mile pre 71 Pipe Program	1	\$10,000	\$10,000		6.1
6.2	CP on HP Distribution	1	\$30,000	\$30,000		6.2
6.3	CP on distribution	1	\$30,000	\$30,000		6.3
					\$70,000	
7	SCADA					7
7.1	Hardware / Software upgrade	3	\$18,000	\$54,000		7.1
7.2	ABB Chromatograph	1	\$12,000	\$12,000		7.2
					\$66,000	
8	M&R Stations					8
8.1	Misc station upgrades	5	\$20,000	\$100,000		8.1
8.2	Whiskey Creek Station reg /SRV	0	\$25,000	\$0		8.2
8.3	Hemngton Reg / Odorizer	0	\$0	\$0		8.3
8.4	Whiskey Creek Station reg/SRV	0	\$18,750	\$0		8.4
8.5	Orr Hill Odorizer	1	\$37,000	\$37,000		8.5
8.6	Dist. Reg Station Rebuild	3	\$5,000	\$15,000		8.6
					\$152,000	

Project	Description	Qty	Cost per	Sub-total	Total	Project
9	Transportation Equipment					9
9.1	Replace small vehicle	2	\$15,000	\$30,000		9.1
9.2	Replace Line Tech truck	0	\$25,000	\$0		9.2
9.3	Replace Dump Truck	1	\$30,000	\$30,000		9.3
9.4	Replace Backhoe	0	\$60,000	\$0		9.4
9.5	Purchase Mini Excav	0	\$0	\$0		9.5
9.6	Replace small vehicle	0	\$0	\$0		9.6
9.7	Replace line tech truck	0	\$0	\$0		9.7
9.8	Replace dump truck	0	\$0	\$0		9.8
9.9	Replace backhoe	0	\$0	\$0		9.9
9.10	Replace 1987 line truck	0	\$0	\$0		9.10
9.11	Heavy Equipment Trailer	0	\$0	\$0		9.11
9.12	Replace line truck	0	\$0	\$0		9.12
9.13	Replace 1996 line truck	0	\$0	\$0		9.13
					\$60,000	
10	Tools and Equipment					10
10.1	Electrofusion controller	1	\$7,500	\$7,500		10.1
10.2	Mueller (8" to 12") machine	0	\$20,000	\$0		10.2
10.3	Electronic Leak Detector	2	\$3,000	\$6,000		10.3
10.4	Heath HFI	1	\$3,800	\$3,800		10.4
10.5	Engineering survey equip	1	\$5,000	\$5,000		10.5
10.6	Misc. small tools	0	\$10,000	\$0		10.6
10.7	Electrofusion Controller	0	\$5,625	\$0		10.7
10.8	Mueller (8" to 12") machine	0	\$15,000	\$0		10.8
10.9	Health HFI	0	\$2,850	\$0		10.9
10.10	Engineering survey equipment	0	\$3,750	\$0		10.10
10.11	Line Locator	0	\$250	\$0		10.11
10.12	GPS Survey Equipment	0	\$1,250	\$0		10.12
10.13	Welding Machine	0	\$1,375	\$0		10.13
10.14	Portable Shoring	1	\$3,000	\$3,000		10.14
10.15	Dewatering pumps	0	\$875	\$0		10.15
10.16	Lighting	0	\$0	\$0		10.16
10.17	Stopper Replacement Equipment	0	\$0	\$0		10.17
10.18	Misc. Equipment	1	\$3,000	\$3,000		10.18
					\$28,300	
11	Safety Equipment					11
11.1	PPE	1	\$2,500	\$2,500		11.1
11.2	Flash fire coveralls / hood / gloves	6	\$368	\$2,208		11.2
11.3	Supplied Air Respirator	2	\$4,900	\$9,800		11.3
11.4	Confined space gas monitor	5	\$600	\$3,000		11.4
					\$17,508	
12	General Office					12
12.1	replace OH doors	0	\$10,000	\$0		
12.2	Misc.	1	\$10,000	\$10,000		12.1
					\$10,000	
13	IT equipment					13
13.1	office PC / software	3	\$2,500	\$7,500		13.1
13.2	Field map PCs	1	\$1,200	\$1,200		13.2
13.3	CADD software	2	\$5,500	\$11,000		13.3
13.4	Finance Software	1	\$20,000	\$20,000		13.4
13.5	misc.	1	\$5,000	\$5,000		13.5
13.6	Field GPS Equipment	0	\$875	\$0		13.6
13.7	Enterprise Software	0	\$12,500	\$0		13.7
13.8	Accounting and Billing System(Including Hardware)	1	\$320,000	\$320,000		13.8
					\$364,700	
					\$3,469,496	
14	Major Projects					14
14.1	Line 11 Upgrade					14.1
14.2	Line 15 Reconstruction					14.2
14.3	Line 1 Rebuild to PPL					14.3
14.4	Computer Hardware and Software					14.4
14.5	Misc. Facilities			\$600,000		14.5
					\$600,000	

Depreciation at December '06 annualized	\$ 750,371		
Deperciation on Current Year			
Transmission	-		
Distribution & all Other	<u>87,672</u>	\$838,043	\$4,069,496
	\$ 838,043		<u>(996,558)</u>
			\$3,072,937

Composite Deprecetion Rates Annual	
Transmission	3.0%
Distribution & all Other	2.2%

Deferred Taxes
Prior Period Additions

ACRS Depreciation	\$ 191,877
ADR Depreciation	(7,542)

Current Year Additions

ACRS Depreciation*	<u>36,033</u>	\$220,368	\$1,058,411
	\$ 220,368		

Sinking Fund Payment	7.90%	\$ 355,000
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\$ 6,009
10,636
21,651
5,354
43,650

Corning Natural Gas Corporation
Projected Capital Expenditures

Exhibit 12
Schedule 2

2010

Description	Qty	Cost per	Sub-total	Total	Project
Blanket Work Order					1
New Residential Services	120	\$1,358	\$162,905		1.1
Service reconstruction	400	\$1,432	\$572,680		1.2
Extra Service reconstr	0	\$0	\$0		1.3
				\$735,585	
Gas Meters & Regulators					2
Replace residential regulators	500	\$69	\$34,479		2.1
Replace large regulators	10	\$637	\$6,365		2.2
Replace 250 TC meters	700	\$101	\$70,550		2.3
Replace large meters w/ TC	10	\$743	\$7,426		2.4
Replace large rotary / turbine	14	\$2,864	\$40,102		2.5
Replace volume correctors	5	\$1,666	\$8,328		2.6
Replace pressure recorders	5	\$1,040	\$5,198		2.7
Install AMR units	2500	\$80	\$198,919		2.8
				\$371,368	
Main Replacement - Distribution					3
Main Replacement - Mandated	36960	\$27	\$980,272		3.1
Main Replacement - 4"	0	\$84,872	\$0		3.2
Main Replacement - 6"	0	\$38	\$0		3.3
Morgan Creek Rd Bridge	0	\$0	\$0		3.4
Watson Creek Bridge	0	\$0	\$0		3.5
Lawrenceville Bridge (PPL tap)	0	\$26,250			3.6
Mic. Replacement	1	\$25,000	\$25,000		3.7
				\$1,005,272	
Main Replacement - HP Distribution					4
Line 6					4.1
Move Farm taps to Line 7	0	\$1,000	\$0		
Replace 3 mile line 6 w/ 6" stl	0	\$400,000	\$0		
Line 11	1	\$375,000	\$375,000		4.2
Line 15	1	\$125,000	\$125,000		4.3
				\$500,000	
Main Extension - New distribution					5
Install new 2" Main	2000	\$32	\$64,000		5.1
				\$64,000	
Corrosion Control					6
8 Mile pre 71 Pipe Program	0	\$10,000	\$0		6.1
CP on HP Distribution	1	\$20,000	\$20,000		6.2
CP on distribution	1	\$20,000	\$20,000		6.3
				\$40,000	
SCADA					7
Hardware / Software upgrade	3	\$18,000	\$54,000		7.1
			\$0		7.2
				\$54,000	
M&R Stations					8
Dist Reg Sta Rebuild	5	\$25,000	\$125,000		8.1
Whiskey Creek Station reg /SRV	0	\$25,000	\$0		8.2
Hemngton Reg / Odorizer	0	\$0	\$0		8.3
Whiskey Creek Station reg/SRV	0	\$18,750	\$0		8.4
Orr Hill Odorizer	0	\$22,500	\$0		8.5
Dist. Reg Station Rebuild	3	\$5,000	\$15,000		8.6
				\$140,000	

Description	Qty	Cost per	Sub-total	Total	Project
Transportation Equipment					9
Replace small vehicle	1	\$15,000	\$15,000		9.1
Replace 1987 Line Truck	1	\$75,000	\$75,000		9.2
Heavy Equip Trailer	0	\$5,000	\$0		9.3
Replace Backhoe	0	\$60,000	\$0		9.4
Purchase Mini Excav	0	\$0	\$0		9.5
Replace small vehicle	0	\$0	\$0		9.6
Replace line tech truck	0	\$0	\$0		9.7
Replace dump truck	0	\$0	\$0		9.8
Replace backhoe	0	\$0	\$0		9.9
Replace 1987 line truck	0	\$75,000	\$0		9.10
Heavy Equipment Trailer	0	\$0	\$0		9.11
Replace line truck	0	\$0	\$0		9.12
Replace 1996 line truck	0	\$75,000	\$0		9.13
				\$90,000	
Tools and Equipment					10
Line locator	1	\$3,000	\$3,000		10.1
GPS Survey Equip	0	\$5,000	\$0		10.2
Welding Machine	0	\$5,500	\$0		10.3
Portable Shoring	0	\$12,000	\$0		10.4
Dewatering Pumps	0	\$3,500	\$0		10.5
Electronic Leak Detector	1	\$3,000	\$3,000		10.6
Electrofusio n Controller	0	\$5,625	\$0		10.7
Mueller (8" to 12") machine	0	\$15,000	\$0		10.8
Health HFI	0	\$2,850	\$0		10.9
Engineering survey equipment	0	\$3,750	\$0		10.10
Line Locator	0	\$250	\$0		10.11
GPS Survey Equipment	0	\$1,250	\$0		10.12
Welding Machine	0	\$1,375	\$0		10.13
Portable Shoring	0	\$3,000	\$0		10.14
Dewatering pumps	0	\$875	\$0		10.15
Lighting	0	\$0	\$0		10.16
Stopper Replacement Equipment	0	\$0	\$0		10.17
Misc. Equipment	0	\$0	\$0		10.18
				\$6,000	
Safety Equipment					11
PPE	1	\$2,500	\$2,500		11.1
Flash fire coveralls / hood / gloves	6	\$368	\$2,208		11.2
Supplied Air Respirator	2	\$4,900	\$9,800		11.3
Confined space gas monitor	2	\$600	\$1,200		11.4
				\$15,708	
General Office					12
Misc	1	\$10,000	\$10,000		12.1
				\$10,000	
IT equipment					13
office PC / software	3	\$2,500	\$7,500		13.1
Field map PCs	1	\$1,200	\$1,200		13.2
Field GPS equip	0	\$3,500	\$0		13.3
Enterprise Software	1	\$50,000	\$50,000		13.4
misc.	1	\$5,000	\$5,000		13.5
Field GPS Equipment	0	\$875	\$0		13.6
Enterprise Software	0	\$12,500	\$0		13.7
Accounting and Billing System(Including Hardware)	1	\$320,000	\$320,000		13.8
				\$383,700	
				\$3,415,632	
Major Projects					14
Line 11 Upgrade					14.1
Line 15 Reconstruction					14.2
Line 1 Rebuild to PPL					14.3
Computer Hardware and Software					14.4
Misc. Facilities			\$600,000		14.5
				\$600,000	

Depreciation at December annualized	\$ 838,043		
Depreciation on Current Year			
Transmission	-		
Distribution & all Other	<u>86,512</u>	\$924,555	\$4,015,632
	\$ 924,555		<u>(1,111,903)</u>
			\$2,903,729

Deferred Taxes			
<u>Prior Period Additions</u>			
ACRS Depreciation	\$ 220,368		
ADR Depreciation	(7,542)		
Current Year Additions			
ACRS Depreciation*	<u>35,556</u>	\$248,382	
	\$ 248,382		

Sinking Fund Payment 7.90% \$ 355,000

\$ 6,444
9,700
23,345
4,260
43,749

Corning Natural Gas Corporation
Projected Capital Expenditures

Exhibit 12
Schedule 2

2011

Description	Qty	Cost per	Sub-total	Total	Project
Blanket Work Order					1
New Residential Services	130	\$1,398	\$181,775		1.1
Service reconstruction	400	\$1,475	\$589,860		1.2
Extra Service reconst	0	\$0	\$0		1.3
				\$771,635	
Gas Meters & Regulators					2
Replace residential regulators	500	\$71	\$35,514		2.1
Replace large regulators	10	\$656	\$6,556		2.2
Replace 250 TC meters	700	\$104	\$72,666		2.3
Replace large meters w/ TC	10	\$765	\$7,649		2.4
Replace large rotary / turbine	14	\$2,950	\$41,305		2.5
Replace volume correctors	3	\$1,716	\$5,147		2.6
Replace pressure recorders	3	\$1,071	\$3,213		2.7
Install AMR units	2500	\$82	\$204,886		2.8
				\$376,936	
Main Replacement - Distribution					3
Main Replacement - 2"	21120	\$27	\$576,960		3.1
Main Replacement - 4"	10000	\$28	\$280,000		3.2
Main Replacement - 6"	5840	\$29	\$169,360		3.3
Morgan Creek Rd Bridge	0	\$0	\$0		3.4
Watson Creek Bridge	0	\$0	\$0		3.5
Lawrenceville Bridge (PPL tap)	0	\$26,250			3.6
Mic. Replacement	1	\$25,000	\$25,000		3.7
				\$1,051,320	
Main Replacement - HP Distribution					4
Line 6					4.1
Move Farm taps to Line 7	0	\$1,000	\$0		
Replace 3 mile line 6 w/ 6" stl	0	\$400,000	\$0		
Line 11	1	\$250,000	\$250,000		4.2
Line 15	1	\$500,000	\$500,000		4.3
				\$750,000	
Main Extension - New distribution					5
Install new 2" Main	2000	\$33	\$66,000		5.1
				\$66,000	
Corrosion Control					6
8 Mile pre 71 Pipe Program	0	\$10,000	\$0		6.1
CP on HP Distribution	1	\$20,000	\$20,000		6.2
CP on distribution	1	\$20,000	\$20,000		6.3
				\$40,000	
SCADA					7
Hardware / Software upgrade	3	\$18,000	\$54,000		7.1
			\$0		7.2
				\$54,000	
M&R Stations					8
Dist Reg Sta Rebuild	5	\$30,000	\$150,000		8.1
Whiskey Creek Station reg /SRV	0	\$25,000	\$0		8.2
Herrington Reg / Odorizer	0	\$0	\$0		8.3
Whiskey Creek Station reg/SRV	0	\$18,750	\$0		8.4
Orr Hill Odorizer	0	\$22,500	\$0		8.5
Dist. Reg Station Rebuild	3	\$5,000	\$15,000		8.6
				\$165,000	

Description	Qty	Cost per	Sub-total	Total	Project
Transportation Equipment					9
Replace small vehicle	2	\$15,000	\$30,000		9.1
Replace 1996 Line Truck	0	\$75,000	\$0		9.2
			\$0		9.3
Replace Backhoe	0	\$60,000	\$0		9.4
Purchase Mini Excav	0	\$0	\$0		9.5
Replace small vehicle	0	\$0	\$0		9.6
Replace line tech truck	0	\$0	\$0		9.7
Replace dump truck	0	\$0	\$0		9.8
Replace backhoe	0	\$0	\$0		9.9
Replace 1987 line truck	0	\$0	\$0		9.10
Heavy Equipment Trailer	0	\$0	\$0		9.11
Replace line truck	0	\$0	\$0		9.12
Replace 1996 line truck	1	\$75,000	\$75,000		9.13
				\$105,000	
Tools and Equipment					10
Metrotech Locator	0	\$4,000	\$0		10.1
Lighting	0	\$2,500	\$0		10.2
Electronic Leak Detector	1	\$3,000	\$3,000		10.3
Heath HF1	1	\$4,000	\$4,000		10.4
Stopper Replacement Equip	1	\$10,000	\$10,000		10.5
Misc. small tools	1	\$10,000	\$10,000		10.6
Electrofusion Contoller	0	\$5,625	\$0		10.7
Mueller (8" to 12") machine	0	\$15,000	\$0		10.8
Heath HF1	0	\$2,850	\$0		10.9
Engineering survey equipment	0	\$3,750	\$0		10.10
Line Locator	0	\$250	\$0		10.11
GPS Survey Equipment	0	\$1,250	\$0		10.12
Welding Machine	0	\$1,375	\$0		10.13
Portable Shoring	0	\$3,000	\$0		10.14
Dewatering pumps	0	\$875	\$0		10.15
Lighting	0	\$0	\$0		10.16
Stopper Replacement Equipment	0	\$0	\$0		10.17
Misc Equipment	0	\$0	\$0		10.18
				\$27,000	
Safety Equipment					11
PPE	1	\$2,500	\$2,500		11.1
Flash fire coveralls / hood / gloves	6	\$368	\$2,208		11.2
Supplied Air Respirator	2	\$4,900	\$9,800		11.3
Confined space gas monitor	2	\$600	\$1,200		11.4
				\$15,708	
General Office					12
Misc.	1	\$10,000	\$10,000		12.1
				\$10,000	
IT equipment					13
office PC / software	3	\$2,500	\$7,500		13.1
Field map PCs	1	\$1,200	\$1,200		13.2
System Maint	1	\$10,000	\$10,000		13.3
			\$0		13.4
misc	1	\$5,000	\$5,000		13.5
Field GPS Equipment	0	\$875	\$0		13.6
Enterprise Software	0	\$12,500	\$0		13.7
Accounting and Billing System(Including Hardware)	0	\$0	\$0		13.8
				\$23,700	
				\$3,456,299	
Major Projects					14
Line 11 Upgrade					14.1
Line 15 Reconstruction					14.2
Line 1 Rebuild to PPL					14.3
Computer Hardware and Software					14.4
Misc. Facilities			\$350,000		14.5
				\$350,000	

Depreciation at December annualized	\$ 924,555		
Depreciation on Current Year			
Transmission	-		
Distribution & all Other	<u>82,002</u>	\$1,006,557	\$3,806,299
	\$ 1,006,557		<u>(1,223,247)</u>
			\$2,563,052

Deferred Taxes			
<u>Prior Period Additions</u>			
ACRS Depreciation	\$ 248,382		
ADR Depreciation	(7,542)		
Current Year Additions			
ACRS Depreciation*	<u>33,703</u>	\$274,543	
	\$ 274,543		

Sinking Fund Payment 7.90% \$ 355,000

\$ 6,909
11,372
25,172
-
43,453

Corning Natural Gas Corporation
Projected Capital Expenditures

Exhibit 12
Schedule 2

2012

Description	Qty	Cost per	Sub-total	Total
Blanket Work Order				
New Residential Services	140	\$1,440	\$201,630	
Service reconstruction	400	\$1,519	\$607,556	
Extra Service reconst	0	\$0	\$0	
				\$809,186
Gas Meters & Regulators				
Replace residential regulators	500	\$73	\$36,579	
Replace large regulators	10	\$675	\$6,753	
Replace 250 TC meters	700	\$107	\$74,846	
Replace large meters w/ TC	10	\$788	\$7,879	
Replace large rotary / turbine	14	\$3,039	\$42,544	
Replace volume correctors	1	\$1,767	\$1,767	
Replace pressure recorders	1	\$1,103	\$1,103	
Install AMR units	2500	\$84	\$211,033	
				\$382,504
Main Replacement - Distribution				
Main Replacement - 2"	21120	\$28	\$594,269	
Main Replacement - 4"	10000	\$29	\$288,400	
Main Replacement - 6"	5840	\$30	\$174,441	
Morgan Creek Rd Bridge	0	\$0	\$0	
Watson Creek Bridge	0	\$0	\$0	
Lawrenceville Bridge (PPL tap)	0.75	\$26,250		
Mic. Replacement	1	\$25,000	\$25,000	
				\$1,082,109
Main Replacement - HP Distribution				
Line 6				
Move Farm taps to Line 7	50	\$1,000	\$50,000	
Replace 3 mile line 6 w/ 6" sll	0	\$400,000	\$0	
Line 11	1	\$250,000	\$250,000	
Line 15	1	\$500,000	\$500,000	
				\$800,000
Main Extension - New distribution				
Install new 2" Main	2000	\$34	\$68,000	
				\$68,000
Corrosion Control				
8 Mile pre 71 Pipe Program	0	\$10,000	\$0	
CP on HP Distribution	1	\$20,000	\$20,000	
CP on distribution	1	\$20,000	\$20,000	
				\$40,000
SCADA				
Hardware / Software upgrade	3	\$18,000	\$54,000	
			\$0	
				\$54,000
M&R Stations				
Dist Reg Sta Rebuild	5	\$35,000	\$175,000	
Whiskey Creek Station reg /SRV	0	\$25,000	\$0	
Herrington Reg / Odorizer	0	\$0	\$0	
Whiskey Creek Station reg/SRV	0	\$18,750	\$0	
Orr Hill Odorizer	0	\$22,500	\$0	
Dist. Reg Station Rebuild	3	\$5,000	\$15,000	
				\$190,000

Description	Qty	Cost per	Sub-total	Total
Transportation Equipment				
Replace small vehicle	2	\$15,000	\$30,000	
Replace Line Truck	0	\$75,000	\$0	
			\$0	
Replace Backhoe	0	\$60,000	\$0	
Purchase Mini Excav	0	\$0	\$0	
Replace small vehicle	0	\$0	\$0	
Replace line tech truck	1	\$30,000	\$30,000	
Replace dump truck	0	\$0	\$0	
Replace backhoe	0	\$0	\$0	
Replace 1987 line truck	0	\$0	\$0	
Heavy Equipment Trailer	0	\$0	\$0	
Replace line truck	0	\$0	\$0	
Replace 1996 line truck	0	\$0	\$0	
				\$30,000
Tools and Equipment				
Line Locator	1	\$1,500	\$1,500	
Lighting	1	\$2,500	\$2,500	
Electronic Leak Detector	1	\$3,000	\$3,000	
			\$0	
Misc Equip	1	\$20,000	\$20,000	
	0	\$0	\$0	
Electrofusion Contoller	0	\$5,625	\$0	
Mueller (8" to 12") machine	0	\$15,000	\$0	
Health HFI	1	\$2,850	\$2,850	
Engineering survey equipment	0	\$3,750	\$0	
Line Locator	0	\$250	\$0	
GPS Survey Equipment	0	\$1,250	\$0	
Welding Machine	0	\$1,375	\$0	
Portable Shoring	0	\$3,000	\$0	
Dewatering pumps	0	\$875	\$0	
Lighting	0	\$0	\$0	
Stopper Replacement Equipment	0	\$0	\$0	
Misc. Equipment	0	\$0	\$0	
				\$29,850
Safety Equipment				
PPE	1	\$2,500	\$2,500	
Flash fire coveralls / hood / gloves	6	\$368	\$2,208	
Supplied Air Respirator	2	\$4,900	\$9,800	
Confined space gas monitor	2	\$600	\$1,200	
				\$15,708
General Office				
Misc	1	\$10,000	\$10,000	
				\$10,000
IT equipment				
office PC / software	3	\$2,500	\$7,500	
Field map PCs	1	\$1,000	\$1,200	
Syst. Maint	1	\$10,000	\$10,000	
			\$0	
misc.	1	\$5,000	\$5,000	
Field GPS Equipment	0	\$875	\$0	
Enterprise Software	0	\$12,500	\$0	
Accounting and Billing System(including Hardware)	0	\$0	\$0	
				\$23,700
				\$3,535,058
Major Projects				
Line 11 Upgrade				
Line 15 Reconstruction				
Line 1 Rebuild to PPL				
Computer Hardware and Software				
Misc. Facilities			\$350,000	
				\$350,000

Depreciation at December annualized	\$ 1,006,557		
Deperciation on Current Year			
Transmission	-		
Distribution & all Other	<u>83,699</u>	\$1,090,255	\$3,885,058
	\$ 1,090,255		<u>(1,332,607)</u>
			\$2,552,451

Deferred Taxes			
<u>Prior Period Additions</u>			
ACRS Depreciation	\$ 274,543		
ADR Depreciation	<u>(7,542)</u>		
Current Year Additions			
ACRS Depreciation*	<u>34,400</u>	\$301,401	
	\$ 301,401		

Sinking Fund Payment 7.90% \$ 355,000

\$ 1,202
3,967
14,759
-
19,928

Corning Natural Gas Corporation
Proforma Source and Application of Funds

Exhibit 12
Schedule 3

	2008	2009	2010	2011	2012	Total
Sources of Funds:						
Net Income (Assumes earning allowed rate of Return)	659,000	721,606	826,889	926,375	1,014,875	4,148,745
Long term Debt Issuance	6,000,000					6,000,000
Depreciation	708,907	776,191	863,521	948,704	1,031,206	4,328,529
Deferred Taxes	191,877	220,368	248,382	274,543	301,401	1,236,570
Deferred Debit Amortizations	764,000	764,000	764,000	764,000	764,000	3,820,000
Internally Generated Funds Other (A)	-	683,000	683,000	683,000	683,000	2,732,000
Drawdown from Available Line of Credit and Other	(220,939)	1,682,985	1,250,238	608,129	465,504	3,785,919
Total Sources	8,323,784	4,848,150	4,636,030	4,204,752	4,259,986	26,051,763
Use of Funds:						
Capital Expenditures	2,728,075	4,069,496	4,015,632	3,806,299	3,885,058	18,504,560
Retirement of Long Term Debt	4,500,000	-	-	-	-	4,500,000
Sinking Fund Payments	874,770	778,654	620,398	398,453	374,928	3,047,203
Total Uses	8,102,845	4,848,150	4,636,030	4,204,752	4,259,986	26,051,763
	2008	2009	2010	2011	2012	
Available Line	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000	
Additional Line (B)	380,004	760,008	981,657	981,657	981,657	
	<u>7,380,004</u>	<u>7,760,008</u>	<u>7,981,657</u>	<u>7,981,657</u>	<u>7,981,657</u>	
Gas In Storage Costs	<u>(4,500,000)</u>	<u>(4,500,000)</u>	<u>(4,500,000)</u>	<u>(4,500,000)</u>	<u>(4,500,000)</u>	
Available for Operations	\$ 2,880,004	\$ 3,260,008	\$ 3,481,657	\$ 3,481,657	\$ 3,481,657	

(A) Assumes average historical change in accounts payable, customer deposit, accrued interest, material and supply and prepaid expenses

(B) As demand note is retired the principle amount paid down increases the credit line available to the company

Exhibit 13

Affidavit of Principal Financial Officer.

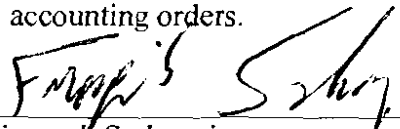
**AFFIDAVIT OF PRINCIPAL FINANCIAL OFFICER
OF CORNING NATURAL GAS CORPORATION
(PURSUANT TO 16 NYCRR PART 37)**

STATE OF NEW YORK)
 ss
COUNTY OF STEUBEN)

I, Firouzeh Sarhangi, being duly sworn, state that I am the Treasurer and Chief Financial Officer of Corning Natural Gas Corporation (the "Company").

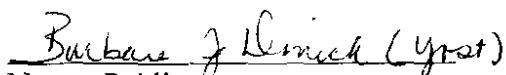
1. Proper credits have been made to each sub-account of the Company's operating property account for all property which was removed, sold, abandoned or destroyed or which for any cause ceased to be used and useful in the service of the public for the period ending December 31, 2007, as required by the applicable system of accounts prescribed by the Public Service Commission of the State of New York; during the foregoing period, the debits to each of said sub-accounts represent the original cost of the property used and useful in the service of the public; that funds expended for purposes for which reimbursement is sought were not directly or indirectly derived from the sale of stock, bonds, or notes or other evidences of indebtedness or from open accounts of the Company.

2. The accounts of the Company have been strictly in accordance with accounting order or orders of the Public Service Commission of the State of New York applicable thereto; that since the effective date of such orders there have been no charges to asset accounts not in accordance therewith; all required credits to such asset accounts have been made for the amount and in the manner prescribed therefore in such accounting orders.



Firouzeh Sarhangi
Treasurer and Chief Financial Officer of
Corning Natural Gas Corporation

Sworn to before me this
16th day of June, 2008



Notary Public

BARBARA J. DIMICK
Notary Public, State of New York
No. 01DI6147984
Qualified in Steuben County
Commission Expires June 19, 2010
11048026 2