

## DEPARTMENT OF AGRICULTURE

## Rural Utilities Service

## 7 CFR Part 1718

RIN 0572-AB06

## Loan Security Documents for Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) hereby establishes new policies and requirements for the form of mortgage required of electric distribution borrowers. This rule updates and clarifies the provisions of the mortgage, ensures that security for loans made to distribution borrowers will continue to be adequate, generally confines the scope of the mortgage primarily to basic issues of collateral and loan security, and supports borrower access to other credit sources.

**EFFECTIVE DATE:** This rule is effective August 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex M. Cockey, Jr., Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, room 4037-S, Ag Box 1560, 14th Street & Independence Avenue, SW., Washington, DC 20250-1500. Telephone: 202-720-9547.

**SUPPLEMENTARY INFORMATION:** This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable

conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

#### Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572-0032 and 0572-0103.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

#### Background

On September 29, 1994, at 59 FR 49594, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR 1718 Loan Security Documents for Electric Borrowers, Subpart B Mortgage for Distribution Borrowers, which proposed the agency's policies and requirements for mortgages used to secure direct and guaranteed loans made to electric distribution borrowers. The objectives of the proposed rule were to update and clarify the provisions of the mortgage used with distribution borrowers, to generally confine the scope of the mortgage primarily to basic issues of collateral and loan security, to support borrower access to other credit sources, and to continue to provide adequate loan security. This proposal was preceded by the revision of the agency's policies and requirements for accommodating or subordinating the lien of the RUS mortgage, which was published in final form in the **Federal Register** on October 19, 1993 at 58 FR 53835.

Comments on the proposed rule were received from 30 different sources, including the Ad Hoc Mortgage Committee of the National Rural Electric Cooperative Association (NRECA), the National Rural Utilities Cooperative Finance Corporation (CFC), CoBank,

several state-wide or regional electric cooperative associations, and a number of individual distribution and power supply borrowers.

In addition to the written comments received, RUS met, in either separate or combined meetings, with representatives of the ad hoc NRECA Mortgage Committee, CFC, and CoBank to discuss and answer questions regarding specific provisions of the proposed rule, to clarify the meaning, scope and effect of some proposed provisions, and to listen to alternatives to certain provisions. The NRECA Mortgage Committee also submitted additional written comments to clarify certain points in their earlier written comments. Also, some commenters provided additional oral comments by telephone to clarify or expand their written comments.

All of the written and oral comments received, some of which were conflicting, were taken into consideration in drafting the final rule. The more important comments and issues are discussed below.

Published elsewhere in this issue of the **Federal Register** is a proposed rule that sets forth proposed amendments to RUS regulations to update the agency's policies and requirements regarding loan contracts with distribution borrowers. These new policies and requirements are designed to complement the new distribution mortgage and to reflect changes in the lending program and the electric industry that have occurred over the past several years. Readers are encouraged to review that proposed rule in connection with the final mortgage published today.

#### Phase-in of New Mortgage

Distribution borrowers receiving a loan from RUS during the transition period between now and the date the new model loan contract is published in final form in the **Federal Register** may opt to execute the new model mortgage and the proposed model loan contract. Such borrowers will have the further option of executing the final form of the model loan contract after it is published in the **Federal Register**. Distribution borrowers receiving a loan from RUS during the period after publication of the final form of the new model loan contract but before its effective date may opt for the final forms of both the model loan contract and the model mortgage. If there are other co-mortgagees on the borrower's existing mortgage, which there are in most cases, the borrower would have to obtain the approval of these co-mortgagees before executing a new mortgage.

Other borrowers not obtaining a new loan from RUS could request that a new mortgage and loan contract be executed, for example, in connection with a lien accommodation request or if the borrower is trying to expand its access to future private financing. RUS will attempt to honor these requests, but may be constrained by time and staff limitations.

After the effective date of the new model loan contract, all distribution borrowers receiving a loan or loan guarantee from RUS will be required to execute the new model forms of the mortgage and loan contract. The proposed mortgage rule had proposed that borrowers receiving a lien accommodation after the effective date of the new mortgage would have the option of staying with their existing mortgage. That proposed provision was not intended to give borrowers the absolute right to stay with their existing mortgage for all time, even after both the new mortgage and new RUS loan contract have been finalized. In the proposed rule for the RUS loan contract, published elsewhere in this issue of the **Federal Register**, borrowers receiving a lien accommodation or other financial assistance from RUS after the effective date of the new loan contract may on a case-by-case basis be required by RUS to execute the new forms of the loan documents. Again, before executing a new mortgage, borrowers may have to obtain the approval of any other lenders secured under their existing mortgage.

#### *Mortgage Lien; Excepted Property; Permitted Encumbrances*

Both CFC and CoBank recommended that the lien of the new mortgage, like that of the existing mortgage, should be more inclusive and cover such assets as cash, stocks, other securities, computer records, and other property essential to the operation of the utility system. This recommendation has been accepted and the changes included in the final mortgage.

One commenter recommended that emission allowances not be covered by the mortgage lien because that would inhibit free market trading. This recommendation was not accepted. Emission allowances represent a very important element of collateral since they are required for generation and because of their potential market value. RUS does not believe that having a lien on Emission allowances will materially inhibit a borrower's ability to obtain fair market value for these assets. Borrowers should be able to take the necessary steps prior to the sale of the allowances to obtain mortgagee approval to release the lien. Moreover, Mortgagee approval

of such sales would not be required if the conditions of the mortgage are met with regard to limitations on transfers of property.

#### *Section 1.01 Definitions*

A borrower association stated that accounting requirements should be decided by the mortgagee with the majority of the outstanding debt. This recommendation has not been adopted since it is in the interests of all mortgagees to have continuity in accounting requirements and not have the standards changed depending on which mortgagee holds a majority of the outstanding debt. The final mortgage retains the provision that accounting requirements will be those promulgated by RUS so long as RUS is a mortgagee, and if RUS ceases to be a mortgagee, the requirements will be based on generally accepted accounting principles.

One commenter recommended that the term "regulatory created assets", as used in the definitions of equity and total assets, should be defined. This has been done.

#### *The Rate Covenant*

The proposed rate covenant and proposed section 2.01 on issuing additional notes without mortgagee approval received the greatest number of comments. The proposed rate covenant required a borrower to design and implement rates sufficient to maintain on an annual basis a Modified TIER and Modified DSC each equal to at least 1.35. If the borrower failed to achieve either ratio based on the average of the two best years out of the past three years, the borrower would be required to submit a plan of remedial action to the mortgagees for approval, and then implement the approved plan.

There was substantial disagreement among the commenters regarding the rate covenant, including disagreement among RUS, CFC, CoBank, and NRECA. CFC recommended that the rate covenant be deleted from the mortgage and put in the agency's loan contract (and presumably in the loan contracts of other secured lenders). Since it appeared impossible to reach full agreement among the three principal lenders, RUS decided to shift the rate covenant from the mortgage to its proposed new loan contract, which is published for comment elsewhere in this issue of the **Federal Register**.

Most comments on the rate covenant focused on the formulation or definition of Modified TIER and Modified DSC, and whether or not both ratios are needed. Modified TIER and Modified DSC were defined the same as the standard TIER and DSC contained in

existing distribution mortgages, with the important exception that allocations of generation and transmission capital credits and other capital credits were excluded from margins in calculating the ratios. The intent was to more closely reflect the current revenues and cash flows of the borrower's utility operations than do the standard TIER and DSC, and thus better reflect a borrower's ability to meet expenses currently and over time.

CoBank generally supported the formulation of the proposed coverage ratios, but recommended that cash received from retirement of capital credits, including patronage refunds, be included in margins when measuring past performance. CoBank also argued that certain of the proposed procedures in the event the borrower failed to achieve the ratios weakened the covenant and should be deleted. CFC supported the idea of deleting capital credit allocations, but recommended a substantially different formulation of Modified DSC and that Modified DSC was sufficient by itself.

NRECA indicated that they recognized that many private lenders were moving toward more cash-flow based financial tests. However, NRECA opposed the use of Modified TIER and Modified DSC set at 1.35 (the level specified in CFC's indenture for its collateral trust bonds, as well as in recent mortgages executed by CFC and CoBank) because of concerns that it would be difficult for some borrowers to meet the test. NRECA further recommended that if Modified TIER and Modified DSC were adopted, they should at minimum be phased in over a number of years and cash retirements of capital credits should be included in calculating the ratios.

A number of power supply borrowers and the distribution members of power supply borrowers opposed the exclusion of allocations of generation and transmission capital credits in calculating the coverage ratios because they believed it would put pressure on the G&T to lower the rates charged for power and thus reduce the G&T's cash flow and weaken its financial condition. They argued that if the distribution members of a G&T were not able to include the capital credits allocated to them by the G&T in calculating their TIER and DSC ratios, the members would put additional pressure on the G&T to operate on an even thinner margin that could jeopardize the financial viability of the G&T. Some G&Ts and some distribution members of G&Ts also argued that using Modified TIER and Modified DSC set at 1.35 would force some distribution systems

to raise rates, which would weaken the financial viability of both the members and the G&Ts. One regional borrower association supported the use of both Modified TIER and Modified DSC.

Given the concerns and issues raised, RUS has decided to shift the rate covenant from the mortgage to RUS' proposed new loan contract for distribution borrowers, to retain the existing standard TIER and DSC set at the existing minimum levels of 1.5 and 1.25 respectively, and to add an Operating TIER and Operating DSC, both set at a minimum of 1.1 for the borrower's electric utility operations. Adding Operating TIER (OTIER) and Operating DSC (ODSC) set at 1.1 would achieve the original objective of excluding major non-cash margins from the coverage tests, while also requiring that borrowers at least break even, with a small margin for error, on their primary business. Operating TIER and Operating DSC would be tested retrospectively using the same averaging of the best two out of three years as is used for standard TIER and DSC.

Since a borrower's electric utility business accounts for most of the financing provided by RUS, is the main source of revenue for repaying the loans, and provides the primary security for the loans, RUS believes it is reasonable to expect this business to be financially viable and not dependent on other sources of income to cover business expenses. Retaining the existing standard TIER and DSC requirements will help ensure that the borrower's overall operations are financially sound. These existing requirements appear to be widely accepted by borrowers, and no formal or informal complaints were received that they are too demanding. Based on performance data as of the end of 1993, adding OTIER and ODSC at 1.1 would affect only 18 distribution borrowers who had met the standard TIER and DSC requirements based on the average of the best two out of three years.

RUS also believes it is important to retain both TIER and DSC as the coverage tests, and not rely solely on DSC. Given the fact that the amortization of principal for virtually all debt owed by borrowers is heavily back-end loaded and that depreciation charges substantially exceed principal payments now and for the foreseeable future, relying solely on Modified DSC set at 1.35, regardless of whether RUS' or CFC's version of Modified DSC is used, would allow many distribution borrowers to operate at a loss and still meet the coverage ratio. TIER, on the other hand, provided that it is set at least 1.0, requires a borrower to at least

break even, either for its overall operations in the case of standard TIER, or its electric utility operations in the case of Operating TIER. RUS does not believe it would be in the interests of the rural electrification program, either from the standpoint of loan security and financial soundness or public support, to rely on a standard that would allow a large number of borrowers to operate at a loss.

Comments were also received on the provision which would have prohibited borrowers from offering any services free of charge. Several commenters suggested that this restriction be limited to electric power and energy so as not to prevent borrowers from participating in legitimate community service activities. RUS has adopted this change and has included it in its proposed loan contract.

#### *Section 2.01 Additional Notes Without Mortgage Approval*

Unlike the existing mortgage where the issuance of any debt secured by the mortgage must be approved in advance by RUS, section 2.01 of the proposed mortgage would authorize a borrower to issue additional secured notes without the approval of RUS or the other mortgagees if the following criteria are met:

- The borrower achieved a Modified TIER and Modified DSC of at least 1.35 in each of the two most recent years after including the incremental interest expense of the new debt.
- The borrower's equity is equal to at least 27 percent of total assets, after including the effect of the addition to plant.
- The borrower has a ratio of net utility plant to long term debt of at least 1.1, after including the effect of the new debt and the addition to plant.
- The maturity of the loan is less than the weighted average remaining life of the assets financed.
- Loan maturity is not less than 5 years.
- The loan is amortized at a rate not less than the rate obtained under level payment of principal and interest.
- Outstanding secured debt for water and sewer systems, telecommunications systems, natural gas distribution systems, and solid waste disposal systems would be not more than 20 percent of total outstanding secured debt after issuing the debt.

Comments on the use of Modified TIER and Modified DSC and the definition of these ratios were similar to those regarding the rate covenant. In addition, several commenters opposed the inclusion of the incremental interest expense of the new debt when

calculating the ratio, mainly because of possible problems of accurately reflecting the interest cost of new debt for variable rate loans. While RUS believes inclusion of incremental interest expense is sound conceptually, it recognizes the potential problems in implementing the concept and thus has decided not to include it in the final rule.

For the reasons explained with respect to the rate covenant, RUS believes it would be unwise to rely on Modified DSC by itself set at a 1.35 level. We also believe it wouldn't be desirable to have three different formulations of the coverage ratios: standard TIER and DSC and Operating TIER and DSC in the rate covenant, and Modified TIER and DSC in section 2.01 of the mortgage. There appears to be no particular advantage of adding a third formulation in section 2.01, and having three different formulations could cause administrative and communication problems.

Standard TIER and DSC have proven to be workable over the past 25 years and acceptable to nearly all borrowers. Therefore, RUS has decided to use in section 2.01 a standard TIER or 1.5 and standard DSC of 1.25, the levels currently required in the existing rate covenants of distribution borrowers. Borrowers meeting these levels in each of the two years immediately preceding the issuance of the debt would meet the test. The incremental interest expense of the new debt would not be included in calculating the ratios.

For the sake of consistency with the proposed RUS rate covenant, it could be argued that a borrower should also be required to meet an Operating TIER and Operating DSC of at least 1.1 in each of the two most recent years to issue debt under section 2.01 of the mortgage. While that argument can be made, RUS believes that so long as the borrower is required in its rate covenant to operate so as to meet the standard TIER and DSC ratios and the Operating TIER and DSC ratios on an ongoing basis, it is not necessary to also include Operating TIER and DSC in section 2.01 of the mortgage. Having only the two ratios rather than all four would also be responsive to the concerns raised by CFC, NRECA, and some others about the tests being too numerous and too complicated. Other lenders, it should be noted, may include additional tests in their respective loan contracts if they do not believe that the standard TIER and DSC tests are adequate.

Comments were mixed regarding the equity and net utility plant tests. Several commenters argued that the tests were duplicative and only one was needed.

CFC favored deleting the net utility plant test and relying on equity, set at 20 percent of total assets, after issuance of the debt. CoBank and NRECA favored using a net utility plant test over one based on equity. One regional borrower association also supported the use of a net utility plant test. Another regional borrower association indicated general support for the two tests.

RUS recognized when it proposed these two tests that they overlap to a considerable degree. However, in the interest of establishing a collateralization test that is no higher than necessary to preserve reasonably adequate loan security, RUS believes it is better to use two admittedly overlapping tests, each set at minimal levels, than to use either test by itself set at a higher level. The net utility plant to long term debt ratio focuses on the primary collateral for the loans, and approximates a bondable additions test commonly used in utility indentures. The equity test reflects the broader operations of the borrower and focuses on the overall equity cushion available as security for the loans. Each test has its advantages and limitations, and when used together the advantages of one test tends to offset the limitations of the other.

For these reasons RUS has decided to retain both the equity and the net utility/long-term debt plant tests. The net utility plant/long-term debt test has been reduced to a level of 1.0 from 1.1 in the proposed rule.

Based on performance data as of the end of 1993, up to 64 percent of distribution borrowers would have qualified under the proposed criteria of Modified TIER and Modified DSC at 1.35 (including incremental interest expense), equity at 27 percent, and net utility plant to long-term debt at 1.1. Under the criteria included in the final rule (standard TIER of 1.5, standard DSC of 1.25, equity of 27 percent, and net utility plant to long-term debt of 1.0) the number of borrowers qualifying increases to 71 percent.

RUS believes that these criteria represent a reasonable compromise between RUS' legitimate need (and statutorily imposed requirement) to maintain reasonably adequate loan security, and the borrowers' needs for financial flexibility. This issue, however, is not a *we versus them* proposition. RUS believes that the tests for issuing secured debt without mortgagee approval must be reasonably rigorous to attract other lenders and expand the financing alternatives available to borrowers. Any lender not familiar with rural electric systems will be looking for reasonably rigorous

financial covenants to compensate for the uncertain financial risks of lending to unfamiliar borrowers.

Comments were also received on the other four proposed conditions for issuing debt under section 2.01. Most of those who commented argued that three of the four conditions (the two dealing with loan maturity and the other with a minimum loan amortization rate) were unnecessary and unduly cluttered the section. Some also suggested that such conditions be put in the RUS loan contract if they were deemed necessary to retain.

RUS does believe it is important to retain these conditions and has shifted them to our proposed loan contract. Restricting loan maturity to the useful life of the asset financed and requiring a minimum rate of loan amortization (albeit a very minimal rate) is important to ensure that the collateral for loans remains adequate. Limiting secured lending to loans of at least 5 years will preserve the security of the mortgage for lenders committed to providing permanent long-term financing for rural electrification. Without these conditions in its loan contract, RUS believes it would be necessary to have more restrictive tests in section 2.01 of the mortgage.

As to the fourth condition, which limited the issuance of debt under section 2.01 for the four community infrastructure purposes cited above, NRECA recommended that the limitation be dropped, and CFC recommended that the limitation be based on 50 percent of the borrower's equity rather than 20 percent of the outstanding long-term debt. Since these activities would be new to nearly all borrowers, RUS believes some limitation ought to be placed on a borrower's ability to issue secured debt for these activities without the approval of the mortgagees. CFC's recommendation that the limitation be based on equity has been adopted, but RUS believes it is more prudent to set the limitation at 30 percent of equity rather than 50 percent. For the typical distribution borrower, 30 percent of equity, which is numerically equal to 26 percent of outstanding long-term debt, would provide greater latitude to the borrower than the original proposal.

CFC also recommended that there should be no other limitations on the purposes that can be financed under section 2.01 of the mortgage. RUS disagrees and believes that secured debt issued under 2.01 without mortgagee approval should be limited to property additions, which essentially means property chargeable to the mortgagor's utility plant accounts and used or useful

in the mortgagor's utility business. The mortgage is intended to provide security for loans made to rural utility systems primarily for utility purposes, and any security granted for loans to finance property or purposes that are outside of the utility business should be subject to the approval of the mortgagees under section 2.03 of the mortgage. This position seems consistent with the position taken by CFC in its own 100 percent mortgage, wherein secured debt issued without the approval of the mortgagee is limited such that at least 95 percent of the proceeds of the loan must be for the purpose of acquiring or constructing new or replacement electric utility or general plant.

Other changes were made to section 2.01. In the proposed rule, financing under the section was limited to "mortgageable property." But mortgageable property was defined essentially as "property additions." The distinction between the two terms was based mainly on expositional use of the terms. For simplicity and clarity, the term "mortgageable property" has been dropped from the mortgage in favor of using "property additions". This change has no effect on the property eligible for financing under section 2.01.

One commenter asked whether debt to reimburse general funds or to replace interim financing was eligible for issuance under section 2.01, or whether the section could be used only to finance plant added after and as a direct result of the debt issuance. The intent was, and remains, to allow such debt under the section so long as the general funds and interim financing were used to finance property additions. This question lead to the practical question of how the mortgagor and the mortgagees will be able to determine that the debt was in fact being issued to finance property additions, since plant added 10 or 20 years ago or plant which may not be added until 10 or 20 years in the future might be claimed as the basis for issuing the debt.

In response to these questions, changes were made to limit financing under section 2.01 to property additions acquired or whose construction was completed not more than 5 years prior to the issuance of the additional notes and property additions acquired or whose construction is started and/or completed not more than 4 years after issuance of the additional notes, so long as such property additions were not financed by other debt secured under the mortgage at the time the additional notes are issued.

Also in section 2.01, the pro forma test for net utility plant/long-term debt has been revised to clarify and simplify

calculation. In the proposed rule it was implicitly assumed that each issuance of debt would entail additions to plant. However, in the case of reimbursement of general funds or replacement of interim financing, there may be little or no plant actually added as a result of issuing the secured debt. In other cases, there would be uncertainty about whether the proposed plant additions would actually materialize in every instance. For these reasons, the pro forma net utility plant/long-term debt test has been changed and clarified. Namely, the principal amount of the additional debt would be added to the then outstanding long-term debt, but no adjustment would be made for any additional plant that may actually result from the debt issuance. For this reason, the required ratio was reduced from 1.1 to 1.0 to compensate for those instances where plant may be added as a result of the debt issuance.

Two other clarifications were made to section 2.01. The date of issuance of additional notes has been defined as the date the notes are executed. Also, for purposes of calculating the pro forma ratios, it has been specified that the most recently available end-of-month data preceding debt issuance shall be used for total long-term debt and total assets before debt issuance and for equity and net utility plant. The data used, however, may not be for a month ending more than 180 days prior to debt issuance.

#### *Section 2.02 Refinancing Without Mortgage Approval*

Unlike the existing mortgage where any refinancing loans to be secured under the mortgage must be approved in advance by RUS, section 2.02 of the proposed mortgage would authorize a borrower to issue secured refinancing notes without the approval of RUS or the other mortgagees if the following tests are met:

- The principal amount of the refinancing loan does not exceed 103.5 percent of the loan principal being refinanced.
- The weighted average life of the refinancing loan does not exceed the remaining weighted average life of the loan being refinanced.
- The present value of the cost of the refinancing, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the loan being refinanced.

CFC commented that none of the three tests are needed. NRECA argued that the net present value of cost test is sufficient by itself and thus the other two are not necessary. CoBank supported the net present value of costs

test, but did not comment on the other two tests. CoBank argued that documentation and certification of the tests to the mortgagees is needed, as well as explicit guidance on calculating net present value of costs. One borrower association indicated that it supported the changes proposed in section 2.02 in comparison with the present mortgage.

In view of these comments, RUS has decided to retain in section 2.02 the limitation on the principal amount of the refinancing loan, to shift the limitation on the weighted average life of the refinancing loan to the agency's proposed new loan contract, and to drop the net present value of costs test. Moreover, the limitation on the principal of the refinancing loan has been increased from 103.5 percent to 105 percent of the loan refinanced, which is the same limitation contained in recent 100 percent mortgages executed by CFC and CoBank.

RUS believes the limitations on the weighted average life and principal amount of the refinancing loan via-a-vis the loan refinanced are reasonable and provide important safeguards. The limitation on weighted average life will help ensure that refinancing, or repeated refinancings, will not extend the borrower's debt beyond the useful life and security value of the collateral used to secure the original loan. Limiting the principal of the refinancing loan to 105 percent of the loan principal refinanced is designed to prevent the accumulation of additional debt without the addition of additional collateral. The purpose of section 2.02 is to allow for existing secured debt to be refinanced, not to provide for the issuance of additional debt or extension of existing debt.

The net present value of costs test was intended to address the comparative costs of the refinancing loan and the loan to be refinanced, which is a different matter than that addressed by the other two tests. However, after reviewing the comments and discussing the question with co-mortgagees and other commenters, RUS has concluded that it would not be possible to define a methodology for calculating the net present value of costs that would be entirely routine and objective and not dependent on judgment calls on how to deal with unusual cases. For example, determining interest costs alone is difficult when the rate is variable, and certain assumptions must be made that may not be appropriate for all cases. While such judgments can be made for case-by-case approvals, the tests in section 2.02 need to be entirely generic and routine.

#### *Section 2.05 Form of Supplemental Mortgage*

The proposed mortgage indicated that a simple form of mortgage supplement needed to be added in order to extend the lien of the mortgage to new lenders. The form included in the final mortgage was drafted based, in part, on a form suggested by a co-mortgagee.

#### *Section 3.04 Environmental Obligations; Indemnification of Mortgagees*

CFC suggested that this provision be moved to the RUS loan contract, and that the 3 days to notify mortgagees of environmental liabilities was too short. CoBank recommended that the provision remain in the mortgage, that the mortgagees should be authorized to examine and test borrowers' premises at the borrowers' expense, and that indemnification of mortgagees against environmental liabilities should continue after satisfaction and release of the mortgage. NRECA stated that the provision was (1) unnecessary since the borrower is required in section 3.09 to comply with all laws, including environmental laws, (2) unworkable since it required compliance with all environmental laws rather than all "material" environmental laws, and (3) if not eliminated altogether, the provision should be moved to the RUS loan contract.

RUS believes the provision should remain in the mortgage itself given the importance of this issue to all lenders and the virtual explosion of environmental suits and potential liabilities in the past few years. RUS agrees that is reasonable to give borrowers more time to notify mortgagees of potential or actual environmental liabilities, and has increased the time allowed to 10 days. RUS agrees that the indemnification of mortgagees against environmental and other liabilities stemming from the mortgaged property should survive the lien of the mortgage, and has made this clear in the final language.

RUS does not agree that since section 3.09 requires borrowers to comply with all laws that section 3.04 is not needed. Section 3.09 does not address indemnification of mortgagees against environmental liabilities. RUS also does not agree that the requirement should be that borrowers need comply only with "material" environmental laws, since this might imply that RUS was advising borrowers that certain environmental laws are not themselves material.

RUS agrees that individual lenders in specific cases may want the right to test a borrower's property for environmental

hazards at the expense of the borrower. RUS believes, however, that it would be more appropriate to include such a provision in individual loan contracts.

#### *Section 3.08 Restrictions on Additional Permitted Debt*

Comments were received regarding two of the proposed restrictions on additional permitted debt: restricting unsecured debt to 15 percent of the borrower's net utility plant, and restricting any debt assumed as part of an acquisition to 90 percent of the net utility plant of the acquired company. Those who opposed restricting unsecured debt believed it was unnecessary and could limit interim construction financing. One commenter said the restriction was unnecessary if borrowers were required to maintain a minimum equity requirement. On the other hand, one regional borrower association said that: "The cooperatives applaud the amendments [proposals] regarding restrictions on additional permitted debt. The amendments make the requirements less restrictive and more conducive to today's utility environment."

In light of these comments, RUS has decided to move the restriction on issuing unsecured debt without mortgagee approval to the RUS loan contract and apply it only to borrowers with equity of less than 30 percent of total assets. Currently, only 9 percent of distribution borrowers have less than 30 percent equity and would thus be subject to this restriction.

The restriction limiting debt assumed through acquisitions to 90 percent of net utility plant of the acquired company (which was intended to mirror the test in sec. 2.01) was dropped. Such debt would have to comply with Article II of the mortgage in order to be secured, and thus the proposed restriction is not needed.

#### *Section 3.10 Limitations on Consolidations and Mergers*

One commenter recommended that consolidations that don't meet the required financial ratios should have the opportunity to be approved by mortgagees on a case-by-case basis. This in fact is the intention of section 3.10 and language has been added to make that clear. Moreover, the required financial ratios have been revised consistent with the changes to the financial ratios in section 2.01 of the mortgage.

#### *Section 3.12 Maintenance of Mortgaged Property*

Most of the comments on this section focused on the professional engineer's

certification as to the condition of the borrower's property, which the mortgagees could require not more than once every 3 years. Some commenters said the certificate need not come from an independent professional engineer, but simply a professional engineer acceptable to the mortgagees. RUS has adopted this change.

One mortgagee argued that the proposed second certification and related remedial plan and process should be dropped since they detracted from the clear intent of the section and could weaken the provision. RUS agrees and has dropped these provisions. The section has also been modified to make it clear that the mortgagees may direct the mortgagor to make needed improvements in the maintenance and repair of the borrower's system based on any information available to the mortgagees, including the engineer's certification. The suggestion that "good utility practice" be changed to "prudent utility practice" has also been adopted.

#### *Section 3.16 Limitations on Dividends, Patronage Refunds and Other Cash Distributions*

CFC recommended that this provision be moved to the RUS loan contract. CoBank recommended that no restrictions be placed on distributions at or above 30 percent equity if the borrower is not in default, and that no distributions be allowed below 30 percent equity (after distribution), except for membership fees upon termination of membership. NRECA stated that the proposed provision (which was essentially the same as that in the existing mortgage) was too complicated, and that it should be simplified by having no restrictions on distributions above 27 percent equity (after distribution), and presumably allowing distributions below 27 percent equity only in the case of membership terminations. One borrower association proposed a fairly complicated scheme whereby different proportions of prior year's margins could be distributed depending on the level of borrower equity.

Based on these comments, RUS has decided to move this provision to its loan contract. In the proposed loan contract, the language of the provision would be simplified and greater latitude would be granted. Borrowers could make distributions without RUS approval provided that the borrower was not in default and equity after the distribution was equal to at least 30 percent of total assets (versus 40 percent in the existing mortgage). Below 30 percent equity, borrowers not in default could make distributions to the estates

of deceased persons without RUS approval. Also, between 20 percent and 30 percent equity (after distribution) borrowers could distribute up to 25 percent of last year's margins, including any distributions for estates. These changes would provide substantially greater latitude to most borrowers since 91 percent of distribution borrowers have equity of 30 percent or more.

#### *Section 4.02 Acceleration of Maturity; Rescission and Annulment*

Several comments were received suggesting clarifications or modifications of certain aspects of this section. Based on these comments, the following clarifications or modifications have been made:

A mortgagee who accelerates a note for a non-payment default (not just a payment default) must notify the other mortgagees.

A mortgagee who becomes aware that another mortgagee has accelerated its notes for either a payment or a non-payment default may in turn accelerate its own notes.

Two additional conditions have been added to those that must be met before mortgagees representing at least 80 percent of the outstanding secured debt may annul an acceleration by another mortgagee: all reasonable expenses of the mortgagee in connection with the acceleration must have been paid, and the annulment must be made before proceedings to foreclose the lien of the mortgage have commenced.

#### *Opinions of Borrower's Counsel*

Several comments were received concerning the number and nature of legal opinions called for in the proposed mortgage. The final mortgage published today requires fewer opinions, and the scope of some of the opinions has been narrowed in response to those comments. The topic of legal opinions from borrowers' counsels has been the subject of robust debate within the legal profession for several years, with no clear consensus emerging. It is doubtful that all of these concerns can be addressed to the satisfaction of the entire legal community.

#### **List of Subjects in 7 CFR Part 1718**

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, REA amends chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1718 to read as follows:

**PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS**

**Subpart A—General**

Sec.  
1718.1–1718.49 [Reserved]

**Subpart B—Mortgage for Distribution Borrowers**

1718.50 Definitions.  
1718.51 Policy.  
1718.52 Existing mortgages.  
1718.53 Rights of other mortgagees.  
1718.54 Availability of model mortgage.

**Appendix A to Subpart B of Part 1718—Model Form of Mortgage for Electric Distribution Borrowers**

**Authority:** 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

**Subpart A—General**

§§ 1718.1–1718.49 [Reserved]

**Subpart B—Mortgage for Distribution Borrowers**

**§ 1718.50 Definitions.**

Unless otherwise indicated, terms used in this subpart are defined as set forth in 7 CFR 1710.2.

**§ 1718.51 Policy.**

(a) Adequate loan security must be provided for loans made or guaranteed by RUS. The loans are required to be secured by a first mortgage lien on most of the borrower's assets substantially in the form set forth in Appendix A of this subpart. At the discretion of RUS, this model form of mortgage may be adapted to satisfy different legal requirements among the states and individual differences in lending circumstances, provided that such adaptations are consistent with the policies set forth in this subpart.

(b) Some borrowers, such as certain public power districts, may not be able to provide security in the form of a first mortgage lien on their assets. In these cases RUS will consider accepting other forms of security, such as resolutions and pledges of revenues.

(c) RUS may require supplemental and amending mortgages to protect its security, or in connection with additional loans.

(d) RUS may also require such other security instruments (such as loan contracts, security agreements, financing statements, guarantees, and pledges) as it deems appropriate.

(e) All distribution borrowers that receive a loan or loan guarantee from RUS on or after August 17, 1995 will be required to enter into a mortgage with RUS that meets the requirements of this subpart. The concurrence of any other lenders secured under the borrower's

existing mortgage may be required before the borrower can enter into a new mortgage.

**§ 1718.52 Existing mortgages.**

Nothing contained in this subpart amends, invalidates, terminates or rescinds any existing mortgage entered into between the borrower and RUS and any other mortgagees.

**§ 1718.53 Rights of other mortgagees.**

Nothing contained in this subpart is intended to alter or affect any other mortgagee's rights under an existing mortgage.

**§ 1718.54 Availability of model mortgage.**

Single copies of the model mortgage (RUS Informational Publication 1718 B) are available from the Administrative Services Division, Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500. This document may be reproduced.

**Appendix A to Subpart B of Part 1718—Model Form of Mortgage for Electric Distribution Borrowers**

RESTATED MORTGAGE AND SECURITY AGREEMENT Made By And Between

\_\_\_\_\_  
Mortgagor  
and UNITED STATES OF AMERICA and

\_\_\_\_\_  
MORTGAGEE

Dated as of \_\_\_\_\_

THIS INSTRUMENT GRANTS A SECURITY INTEREST BY A TRANSMITTING UTILITY

THIS INSTRUMENT CONTAINS FUTURE ADVANCE PROVISIONS

THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS

TABLE OF CONTENTS

GRANTING CLAUSES

FIRST

SECOND

THIRD

FOURTH

EXCEPTED PROPERTY

HABENDUM

ARTICLE I—DEFINITIONS & OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.01 Definitions

SECTION 1.02 General Rules of Construction

SECTION 1.03 Special Rules of Construction if RUS is a Mortgagee

SECTION 1.04 Governing Law

SECTION 1.05 Notices

ARTICLE II

ADDITIONAL NOTES

SECTION 2.01 Additional Notes

SECTION 2.02 Refunding or Refinancing Notes

SECTION 2.03 Other Additional Notes

SECTION 2.04 Additional Lenders Entitled to the Benefits of This Mortgage

SECTION 2.05 Form of Supplemental Mortgage

ARTICLE III—PARTICULAR COVENANTS OF THE MORTGAGOR

SECTION 3.01 Payment of Debt Service on Notes

SECTION 3.02 Warranty of Title

SECTION 3.03 After-Acquired Property; Further Assurances: Recording

SECTION 3.04 Environmental Requirements and Indemnity

SECTION 3.05 Payment of Taxes

SECTION 3.06 Authority to Execute and Deliver Notes, Loan Agreements and Mortgages; All Action Taken; Enforceable Obligations

SECTION 3.07 Restrictions on Further Encumbrances on Property

SECTION 3.08 Restrictions on Additional Permitted Debt

SECTION 3.09 Preservation of Corporate Existence and Franchises

SECTION 3.10 Limitations on Consolidations and Mergers

SECTION 3.11 Limitations on Transfers of Property

SECTION 3.12 Maintenance of Mortgaged Property

SECTION 3.13 Insurance; Restoration of Damaged Mortgaged Property

SECTION 3.14 Mortgagee Right to Expend Money to Protect Mortgaged Property

SECTION 3.15 Time Extensions for Payment of Notes

SECTION 3.16 Application of Proceeds from Condemnation

SECTION 3.17 Compliance with Loan Agreements; Notice of Amendments to and Defaults under Loan Agreements

SECTION 3.18 Rights of Way, etc., Necessary in Business

SECTION 3.19 Limitations on Providing Free Electric Services

SECTION 3.20 Keeping Books; Inspection by Mortgagee

ARTICLE IV—EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01 Events of Default

SECTION 4.02 Acceleration of Maturity; Rescission and Annulment

SECTION 4.03 Remedies of Mortgagees

SECTION 4.04 Application of Proceeds from Remedial Actions

SECTION 4.05 Remedies Cumulative; No Election

SECTION 4.06 Waiver of Appraisal Rights, Marshaling of Assets Not Required

SECTION 4.07 Notice of Default

ARTICLE V—POSSESSION UNTIL DEFAULT—DEFEASANCE CLAUSE

SECTION 5.01 Possession Until Default

SECTION 5.02 Defeasance

SECTION 5.03 Special Defeasance

ARTICLE VI—MISCELLANEOUS

SECTION 6.01 Property Deemed Real Property

SECTION 6.02 Mortgage to Bind and Benefit Successors and Assigns

SECTION 6.03 Headings

SECTION 6.04 Severability Clause

## SECTION 6.05 Mortgage Deemed Security Agreement

## SECTION 6.06 Indemnification by Mortgagor of Mortgagees

## Schedule A

## Schedule B

## Schedule C

## Exhibit A—Manager's Certificate

## Exhibit B—Form of Supplemental Mortgage

## Supplemental Mortgage Schedule A—

## Maximum Debt Limit and Other Information

## Supplemental Mortgage Schedule B—

## Property Schedule

## Supplemental Mortgage Schedule C—

## Excepted Property

## RESTATED MORTGAGE AND SECURITY AGREEMENT, dated as of \_\_\_\_\_, 19\_\_\_\_,

(hereinafter sometimes called this "Mortgage") is made by and between

\_\_\_\_\_ (hereinafter called the "Mortgagor"), a corporation existing under the laws of the State of \_\_\_\_\_, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the "Government"), \_\_\_\_\_ {Supplemental Lender}, (hereinafter called "\_\_\_\_\_") a \_\_\_\_\_ existing under the laws of \_\_\_\_\_, and is intended to confer rights and benefits on both the Government and \_\_\_\_\_ as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with Section [2.04] of Article II hereof (the Government and any such other lenders being herein sometimes collectively referred to as the "Mortgagees").

## RECITALS

WHEREAS, the Mortgagor, the Government and \_\_\_\_\_ are parties to that certain \_\_\_\_\_ Mortgage and Security Agreement dated as of \_\_\_\_\_, 19\_\_\_\_, as supplemented, amended or restated (the "Original Mortgage" identified in Schedule "A" of this Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Electrification Administration, the predecessor of RUS, and \_\_\_\_\_;

WHEREAS, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor from time to time in one or more series, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same;

WHEREAS, the Mortgagor desires to enter into this Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity;

WHEREAS, this Mortgage restates and consolidates the Original Mortgage while preserving the priority of the Lien under the Original Mortgage securing the payment of Mortgagor's outstanding obligations secured under the Original Mortgage, which indebtedness is described more particularly by listing the Original Notes in Schedule "A" hereto; and

WHEREAS, all acts necessary to make this Mortgage a valid and binding legal instrument for the security of such notes and

obligations, subject to the terms of this Mortgage, have been in all respects duly authorized;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: That to secure the payment of the principal of (and premium, if any) and interest on the Original Notes and all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge, and grant a continuing security interest and lien in for the purposes hereinafter expressed [other language may be required under various state laws], unto the Mortgagees all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein OR ANY OTHER KIND OR NATURE, except any Excepted Property, now owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

## GRANTING CLAUSE FIRST

A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule;

B. all of the Mortgagor's interest in fixtures, easements, permits, licenses and rights-of-way comprising real property, and all other interests in real property, comprising any portion of the Utility System (as herein defined) located in the Counties listed in Schedule "B" hereto;

C. all right, title and interest of the Mortgagor in and to those contracts of the Mortgagor (i) relating to the ownership, operation or maintenance of any generation, transmission or distribution facility owned, whether solely or jointly, by the Mortgagor, (ii) for the purchase of electric power and energy by the Mortgagor and having an original term in excess of 3 years, (iii) for the sale of electric power and energy by the Mortgagor and having an original term in excess of 3 years, and (iv) for the transmission of electric power and energy by or on behalf of the Mortgagor and having an original term in excess of 3 years, including in respect of any of the foregoing, any amendments, supplements and replacements thereto;

D. all the property, rights, privileges, allowances and franchises particularly described in the annexed Schedule "B" are hereby made a part of, and deemed to be described in, this Granting Clause as fully as if set forth in this Granting Clause at length; and

ALSO ALL OTHER PROPERTY, real estate, lands, easements, servitudes, licenses, permits, allowances, consents, franchises, privileges, rights of way and other rights in or relating to real estate or the occupancy of

the same; all power sites, storage rights, water rights, water locations, water appropriations, ditches, flumes, reservoirs, reservoir sites, canals, raceways, waterways, dams, dam sites, aqueducts, and all other rights or means for appropriating, conveying, storing and supplying water; all rights of way and roads; all plants for the generation of electric and other forms of energy (whether now known or hereafter developed) by steam, water, sunlight, chemical processes and/or (without limitation) all other sources of power (whether now known or hereafter developed); all power houses, gas plants, street lighting systems, standards and other equipment incidental thereto; all telephone, radio, television and other communications, image and data transmission systems, air conditioning systems and equipment incidental thereto, water wheels, waterworks, water systems, steam and hot water plants, substations, lines, service and supply systems, bridges, culverts, tracks, ice or refrigeration plants and equipment, offices, buildings and other structures and the equipment thereto all machinery, engines, boilers, dynamos, turbines, electric, gas and other machines, prime movers, regulators, meters, transformers, generators (including, but not limited to, engine-driven generators and turbogenerator units), motors, electrical, gas and mechanical appliances, conduits, cables, water, steam, gas or other pipes, gas mains and pipes, service pipes, fittings, valves and connections, pole and transmission lines, towers, overhead conductors and devices, underground conduits, underground conductors and devices, wires, cables, tools, implements, apparatus, storage battery equipment, and all other fixtures and personalty; all municipal and other franchises, consents, certificates or permits; all emissions allowances; all lines for the transmission and distribution of electric current and other forms of energy, gas, steam, water or communications, images and data for any purpose including towers, poles, wires, cables, pipes, conduits, ducts and all apparatus for use in connection therewith, and (except as hereinbefore or hereinafter expressly excepted) all the right, title and interest of the Mortgagor in and to all other property of any kind or nature appertaining to and/or used and/or occupied and/or employed in connection with any property hereinbefore described, but in all circumstances excluding Excepted Property;

## GRANTING CLAUSE SECOND

All other property, real, personal or mixed, of whatever kind and description and wheresoever situated, including without limitation goods, accounts, money held in a trust account pursuant hereto or to a Loan Agreement, and general intangibles now owned or which may be hereafter acquired by the Mortgagor, but excluding Excepted Property, now owned or which may be hereafter acquired by the Mortgagor, it being the intention hereof that all property, rights, privileges, allowances and franchises now owned by the Mortgagor or acquired by the Mortgagor after the date hereof (other than Excepted Property) shall be as fully embraced within and subjected to the lien hereof as if such property were specifically described herein.

## GRANTING CLAUSE THIRD

Also any Excepted Property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof by the Mortgagor or by anyone in its behalf; and any Mortgagee is hereby authorized to receive the same at any time as additional security hereunder for the benefit of all the Mortgagees. Such subjection to the lien hereof of any Excepted Property as additional security may be made subject to any reservations, limitations or conditions which shall be set forth in a written instrument executed by the Mortgagor or the person so acting in its behalf or by such Mortgagee respecting the use and disposition of such property or the proceeds thereof.

## GRANTING CLAUSE FOURTH

Together with (subject to the rights of the Mortgagor set forth on Section [5.01]) all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders and all the tolls, earnings, rents, issues, profits, revenues and other income, products and proceeds of the property subjected or required to be subjected to the lien of this Mortgage, and all other property of any nature appertaining to any of the plants, systems, business or operations of the Mortgagor, whether or not affixed to the realty, used in the operation of any of the premises or plants or the System, or otherwise, which are now owned or acquired by the Mortgagor, and all the estate, right, title and interest of every nature whatsoever, at law as well as in equity, of the Mortgagor in and to the same and every part thereof (other than Excepted Property with respect to any of the foregoing).

## EXCEPTED PROPERTY

There is, however, expressly excepted and excluded from the lien and operation of this Mortgage the following described property of the Mortgagor, now owned or hereafter acquired (herein sometimes referred to as "Excepted Property"):

A. all shares of stock, securities or other interests of the Mortgagor in the National Rural Utilities Cooperative Finance Corporation, the National Bank for Cooperatives and the St. Paul Bank for Cooperatives other than any stock, securities or other interests that are specifically described in Subclause D of Granting Clause First as being subjected to the lien hereof;

B. all rolling stock (except mobile substations), automobiles, buses, trucks, truck cranes, tractors, trailers and similar vehicles and movable equipment, and all tools, accessories and supplies used in connection with any of the foregoing;

C. all vessels, boats, ships, barges and other marine equipment, all airplanes, airplane engines and other flight equipment, and all tools, accessories and supplies used in connection with any of the foregoing;

D. all office furniture, equipment and supplies that is not data processing, accounting or other computer equipment or software;

E. all leasehold interests for office purposes;

F. all leasehold interests of the Mortgagor under leases for an original term (including any period for which the Mortgagor shall have a right of renewal) of less than five (5) years;

G. all timber and crops (both growing and harvested) and all coal, ore, gas, oil and other minerals (both in place or severed);

H. the last day of the term of each leasehold estate (oral or written) and any agreement therefor, now or hereafter enjoyed by the Mortgagor and whether falling within a general or specific description of property herein: PROVIDED, HOWEVER, that the Mortgagor covenants and agrees that it will hold each such last day in trust for the use and benefit of all of the Mortgagees and Noteholders and that it will dispose of each such last day from time to time in accordance with such written order as the Mortgagee in its discretion may give;

I. all permits, licenses, franchises, contracts, agreements, contract rights and other rights not specifically subjected or required to be subjected to the lien hereof by the express provisions of this Mortgage, whether now owned or hereafter acquired by the Mortgagor, which by their terms or by reason of applicable law would become void or voidable if mortgaged or pledged hereunder by the Mortgagor, or which cannot be granted, conveyed, mortgaged, transferred or assigned by this Mortgage without the consent of other parties whose consent has been withheld, or without subjecting any Mortgagee to a liability not otherwise contemplated by the provisions of this Mortgage, or which otherwise may not be, hereby lawfully and effectively granted, conveyed, mortgaged, transferred and assigned by the Mortgagor; and

J. the property identified in Schedule "C" hereto.

PROVIDED, HOWEVER, that (i) if, upon the occurrence of an Event of Default, any Mortgagee, or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Mortgaged Property, all the Excepted Property described or referred to in the foregoing Subdivisions A through H, inclusive, then owned or thereafter acquired by the Mortgagor shall immediately, and, in the case of any Excepted Property described or referred to in Subdivisions I through J, inclusive, upon demand of any Mortgagee or such receiver, become subject to the lien hereof to the extent permitted by law, and any Mortgagee or such receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and (ii) whenever all Events of Default shall have been cured and the possession of all or substantially all of the Mortgaged Property shall have been restored to the Mortgagor, such Excepted Property shall again be excepted and excluded from the lien hereof to the extent and otherwise as hereinabove set forth.

However, pursuant to Granting Clause Third, the Mortgagor may subject to the lien of this Mortgage any Excepted Property, whereupon the same shall cease to be Excepted Property.

## HABENDUM

TO HAVE AND TO HOLD all said property, rights, privileges and franchises of every kind and description, real, personal or mixed, hereby and hereafter (by supplemental mortgage or otherwise) granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, mortgaged, encumbered, hypothecated, pledged, setover, confirmed, or subjected to a continuing security interest and lien as aforesaid, together with all the appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited with any Mortgagee (other than any such cash, if any, which is specifically stated herein not to be deemed part of the Mortgaged Property)), being herein collectively called the "Mortgaged Property" unto the Mortgagees and the respective assigns of the Mortgagees forever, to secure equally and ratably the payment of the principal of (and premium, if any) and interest on the Notes, according to their terms, without preference, priority or distinction as to interest or principal (except as otherwise specifically provided herein) or as to lien or otherwise of any Note over any other Note by reason of the priority in time of the execution, delivery or maturity thereof or of the assignment or negotiation thereof, or otherwise, and to secure the due performance of all of the covenants, agreements and provisions herein and in the Loan Agreements contained, and for the uses and purposes and upon the terms, conditions, provisos and agreements hereinafter expressed and declared.

SUBJECT, HOWEVER, to Permitted Encumbrances (as defined in Section 1.01).

## ARTICLE I

## DEFINITIONS &amp; OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. *Definitions.* In addition to the terms defined elsewhere in this Mortgage, the terms defined in this Article I shall have the meanings specified herein and under the UCC, unless the context clearly requires otherwise. The terms defined herein include the plural as well as the singular and the singular as well as the plural.

*Accounting Requirements* shall mean the requirements of any system of accounts prescribed by RUS so long as the Government is the holder, insurer or guarantor of any Notes, or, in the absence thereof, the requirements of generally accepted accounting principles applicable to businesses similar to that of the Mortgagor.

*Additional Notes* shall mean any Notes issued by the Mortgagor to the Government or any other lender pursuant to Article II of this Mortgage including any refunding, renewal, or substitute Notes which may from time to time be executed and delivered by the Mortgagor pursuant to the terms of Article II.

*Board* shall mean either the Board of Directors or the Board of Trustees, as the case may be, of the Mortgagor.

*Business Day* shall mean any day that the Government is open for business.

*Debt Service Coverage Ratio ("DSCR")* shall mean the ratio determined as follows: for each calendar year add (i) Patronage Capital or Margins of the Mortgagor, (ii) Interest

Expense on Total Long Term Debt of the Mortgagor (as computed in accordance with the principles set forth in the definition of TIER) and (iii) Depreciation and Amortization Expense of the Mortgagor, and divide the total so obtained by an amount equal to the sum of all payments of principal and interest required to be made on account of Total Long-Term Debt during such calendar year increasing said sum by any addition to interest expense on account of Restricted Rentals as computed with respect to the Times Interest Earned Ratio herein; *provided, however*, that in the event that any Long-Term Debt (being any amount included in Total Long-Term Debt computed as provided above) has been refinanced during such year the payments of principal and interest required to be made during such year on account of such Long-Term Debt shall be based (in lieu of actual payments required to be made on such refinanced Debt) upon the larger of (i) an annualization of the payments required to be made with respect to the refinancing debt during the portion of such year such refinancing debt is outstanding or (ii) the payment of principal and interest required to be made during the following year on account of such refinancing debt.

*Depreciation and Amortization Expense* shall mean an amount constituting the depreciation and amortization of the Mortgagor as computed pursuant to Accounting Requirements.

*Electric System* shall mean, and shall be broadly construed to encompass and include, all of the Mortgagor's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear or other fuel of any kind or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Mortgagor's generating plants, now existing or hereafter acquired by lease, contract, purchase or otherwise or constructed by the Mortgagor, including any interest or participation of the Mortgagor in any such facilities or any rights to the output or capacity thereof, together with all additions, betterments, extensions and improvements to such Electric System or any part thereof hereafter made and together with all lands, easements and rights-of-way of the Mortgagor and all other works, property or structures of the Mortgagor and contract rights and other tangible and intangible assets of the Mortgagor used or useful in connection with or related to such Electric System, including without limitation a contract right or other contractual arrangement referred to in Granting Clause First, Subclause [(C)] but excluding any excepted property.

*Environmental Law and Environmental Laws* shall mean all federal, state, and local laws, regulations, and requirements related to protection of human health or the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), the Resource

Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Clean Air Act (42 U.S.C. 7401 *et seq.*), and any amendments and implementing regulations of such acts.

*Equity* shall mean the total margins and equities and margins computed pursuant to Accounting Requirements, but excluding any Regulatory Created Assets.

*Event of Default* shall have the meaning specified in Section [4.01] hereof.

*Excepted Property* shall have the meaning stated in the Granting Clauses.

*Government* shall mean the United States of America acting by and through the Administrator of RUS and shall include its successors and assigns.

*Government Notes* shall mean the Original Notes, and any Additional Notes, issued by the Mortgagor to the Government, or guaranteed or insured as to payment by the Government.

*Independent* shall mean when used with respect to any specified person or entity means such a person or entity who (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Mortgagor or in any affiliate of the Mortgagor and (3) is not connected with the Mortgagor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

*Interest Expense* shall mean an amount constituting the interest expense of the Mortgagor as computed pursuant to Accounting Requirements.

*Lien* shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the UCC.

*Loan Agreement* shall mean any agreement executed by and between the Mortgagor and the Government or any other lender in connection with the execution and delivery of any Notes secured hereby.

*Long-Term Debt* shall mean any amount included in Total Long-Term Debt pursuant to Accounting Requirements.

*Long-Term Lease* shall mean a lease having an unexpired term (taking into account terms of renewal at the option of the lessor, whether or not such lease has previously been renewed) of more than 12 months.

*Margins* shall mean the sum of amounts recorded as operating margins and non-operating margins as computed in accordance with Accounting Requirements.

*Maximum Debt Limit*, if any, shall mean the amount more particularly described in Schedule "A" hereof.

*Mortgage* shall mean this Restated Mortgage and Security Agreement, including any amendments or supplements thereto from time to time.

*Mortgaged Property* shall have the meaning specified as stated in the Habendum to the Granting Clauses.

*MORTGAGEE or MORTGAGEES* shall mean the Government, \_\_\_\_\_ {the supplemental lender}, \_\_\_\_\_ their

successors and assigns as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with Section [2.04] of Article II hereof, their successors and assigns.

*Net Utility Plant* shall mean the amount constituting the total utility plant of the Mortgagor less depreciation computed in accordance with Accounting Requirements.

*Note or Notes* shall mean one or more of the Government Notes, and any other Notes which may, from time to time, be secured under this Mortgage.

*Noteholder or Noteholders* shall mean one or more of the holders of Notes secured by this Mortgage; PROVIDED, however, that in the case of any Notes that have been guaranteed or insured as to payment by RUS, as to such Notes Noteholder or Noteholders shall mean RUS, exclusively, regardless of whether such notes are in the possession of RUS.

*Original Mortgage* means the instrument(s) identified as such in Schedule "A" hereof.

*Original Notes* shall mean the Notes listed on Schedule "A" hereto as such, such Notes being instruments evidencing outstanding indebtedness of the Mortgagor (i) to the Government (including indebtedness which has been issued by the Mortgagor to a third party and guaranteed or insured as to payment by the Government) and (ii) to each other Mortgagee on the date of this Mortgage.

*Outstanding Notes* shall mean as of the date of determination, (i) all Notes theretofore issued, executed and delivered to any Mortgagee and (ii) any Notes guaranteed or insured as to payment by the Government, *except* (a) Notes referred to in clause (i) or (ii) for which the principal and interest have been fully paid and which have been canceled by the Noteholder, and (b) Notes the payment for which has been provided for pursuant to Section [5.03].

*Permitted Debt* shall have the meaning specified in Section [3.08].

*Permitted Encumbrances* shall mean:

(1) as to the property specifically described in Granting Clause First, the restrictions, exceptions, reservations, conditions, limitations, interests and other matters which are set forth or referred to in such descriptions and each of which fits one or more of the clauses of this definition, PROVIDED, such matters do not in the aggregate materially detract from the value of the Mortgaged Property taken as a whole and do not materially impair the use of such property for the purposes for which it is held by the Mortgagor;

(2) liens for taxes, assessments and other governmental charges which are not delinquent;

(3) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(4) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business for charges which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the

Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(5) liens in respect of judgments or awards with respect to which the Mortgagor shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Mortgagor shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(6) easements and similar rights granted by the Mortgagor over or in respect of any Mortgaged Property, PROVIDED that in the opinion of the Board or a duly authorized officer of the Mortgagor such grant will not impair the usefulness of such property in the conduct of the Mortgagor's business and will not be prejudicial to the interests of the Mortgagees, and similar rights granted by any predecessor in title of the Mortgagor;

(7) easements, leases, reservations or other rights of others in any property of the Mortgagor for streets, roads, bridges, pipes, pipe lines, railroads, electric transmission and distribution lines, telegraph and telephone lines, the removal of oil, gas, coal or other minerals and other similar purposes, flood rights, river control and development rights, sewage and drainage rights, restrictions against pollution and zoning laws and minor defects and irregularities in the record evidence of title, PROVIDED that such easements, leases, reservations, rights, restrictions, laws, defects and irregularities do not materially affect the marketability of title to such property and do not in the aggregate materially impair the use of the Mortgaged Property taken as a whole for the purposes for which it is held by the Mortgagor;

(8) liens upon lands over which easements or rights of way are acquired by the Mortgagor for any of the purposes specified in Clause [(7)] of this definition, securing indebtedness neither created, assumed nor guaranteed by the Mortgagor nor on account of which it customarily pays interest, which liens do not materially impair the use of such easements or rights of way for the purposes for which they are held by the Mortgagor;

(9) leases existing at the date of this instrument affecting property owned by the Mortgagor at said date which have been previously disclosed to the Mortgagees in writing and leases for a term of not more than two years (including any extensions or renewals) affecting property acquired by the Mortgagor after said date;

(10) terminable or short term leases or permits for occupancy, which leases or permits expressly grant to the Mortgagor the right to terminate them at any time on not more than six months' notice and which occupancy does not interfere with the operation of the business of the Mortgagor;

(11) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(12) liens or privileges of any employees of the Mortgagor for salary or wages earned but not yet payable;

(13) the burdens of any law or governmental regulation or permit requiring the Mortgagor to maintain certain facilities or perform certain acts as a condition of its occupancy of or interference with any public lands or any river or stream or navigable waters;

(14) any irregularities in or deficiencies of title to any rights-of-way for pipe lines, telephone lines, telegraph lines, power lines or appurtenances thereto, or other improvements thereon, and to any real estate used or to be used primarily for right-of-way purposes, PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor shall have obtained from the apparent owner of the lands or estates therein covered by any such right-of-way a sufficient right, by the terms of the instrument granting such right-of-way, to the use thereof for the construction, operation or maintenance of the lines, appurtenances or improvements for which the same are used or are to be used, or PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor has power under eminent domain, or similar statutes, to remove such irregularities or deficiencies;

(15) rights reserved to, or vested in, any municipality or governmental or other public authority to control or regulate any property of the Mortgagor, or to use such property in any manner, which rights do not materially impair the use of such property, for the purposes for which it is held by the Mortgagor;

(16) any obligations or duties, affecting the property of the Mortgagor, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;

(17) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Mortgagor upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Mortgagor; PROVIDED, HOWEVER, that nothing in this clause 17 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

(18) as to properties of other operating electric companies acquired after the date of this Mortgage by the Mortgagor as permitted by Section [3.10] hereof, reservations and other matters as to which such properties may be subject as more fully set forth in such Section;

(19) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Mortgagor to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this

clause 19 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

(20) liens arising out of any defeased mortgage or indenture of the Mortgagor;

(21) the undivided interest of other owners, and liens on such undivided interests, in property owned jointly with the Mortgagor as well as the rights of such owners to such property pursuant to the ownership contracts;

(22) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or the performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(23) purchase money mortgages permitted by Section [3.08]; and

(24) the Original Mortgage.

*Property Additions* shall mean Utility System property as to which the Mortgagor shall provide Title Evidence and which shall be (or, if retired, shall have been) subject to the lien of this Mortgage, which shall be properly chargeable to the Mortgagor's utility plant accounts under Accounting Requirements (including property constructed or acquired to replace retired property credited to such accounts) and which shall be:

(1) acquired (including acquisition by merger, consolidation, conveyance or transfer) or constructed by the Mortgagor after the date hereof, including property in the process of construction, insofar as not reflected on the books of the Mortgagor with respect to periods on or prior to the date hereof, and

(2) used or useful in the utility business of the Mortgagor conducted with the properties described in the Granting Clauses of this Mortgage, even though separate from and not physically connected with such properties.

"Property Additions" shall also include:

(3) easements and rights-of-way that are useful for the conduct of the utility business of the Mortgagor, and

(4) property located or constructed on, over or under public highways, rivers or other public property if the Mortgagor has the lawful right under permits, licenses or franchises granted by a governmental body having jurisdiction in the premises or by the law of the State in which such property is located to maintain and operate such property for an unlimited, indeterminate or indefinite period or for the period, if any, specified in such permit, license or franchise or law and to remove such property at the expiration of the period covered by such permit, license or franchise or law, or if the terms of such permit, license, franchise or law require any public authority having the right to take over such property to pay fair consideration therefor.

"Property Additions" shall NOT include:

(a) good will, going concern value, contracts, agreements, franchises, licenses or permits, whether acquired as such, separate and distinct from the property operated in connection therewith, or acquired as an incident thereto, or

(b) any shares of stock or indebtedness or certificates or evidences of interest therein or other securities, or

(c) any plant or system or other property in which the Mortgagor shall acquire only a leasehold interest, or any betterments, extensions, improvements or additions (other than movable physical personal property which the Mortgagor has the right to remove), of, upon or to any plant or system or other property in which the Mortgagor shall own only a leasehold interest unless (i) the term of the leasehold interest in the property to which such betterment, extension, improvement or addition relates shall extend for at least 75% of the useful life of such betterment, extension, improvement or addition and (ii) the lessor shall have agreed to give the Mortgagee reasonable notice and opportunity to cure any default by the Mortgagor under such lease and not to disturb any Mortgagee's possession of such leasehold estate in the event any Mortgagee succeeds to the Mortgagor's interest in such lease upon any Mortgagee's exercise of any remedies under this Mortgage so long as there is no default in the performance of the tenant's covenants contained therein, or

(d) any property of the Mortgagor subject to the Permitted Encumbrance described in clause [(23)] of the definition thereof.

*Prudent Utility Practice* shall mean any of the practices, methods and acts which, in the exercise of reasonable judgment, in light of the facts, including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result consistent with cost-effectiveness, reliability, safety and expedition. It is recognized that Prudent Utility Practice is not intended to be limited to optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost-effectiveness, reliability, safety and expedition.

*REA* shall mean the Rural Electrification Administration of the United States Department of Agriculture, the predecessor of RUS.

*Regulatory Created Assets* shall mean the sum of any amounts properly recordable as unrecovered plant and regulatory study costs or as other regulatory assets, pursuant to Accounting Requirements.

*Restricted Rentals* shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term "finance lease" shall mean any lease having a rental term (including the term for which such lease may be renewed or extended at the option of the lessee) in excess of 3 years and covering property having an initial cost in excess of \$250,000 other than aircraft, ships, barges, automobiles, trucks,

trailers, rolling stock and vehicles; office, garage and warehouse space; office equipment and computers.

*RUS* shall mean the Rural Utilities Service, an agency of the United States Department of Agriculture, or if at any time after the execution of this Mortgage RUS is not existing and performing the duties of administering a program of rural electrification as currently assigned to it, then the entity performing such duties at such time.

*Security Interest* shall mean any assignment, transfer, mortgage, hypothecation or pledge.

*Subordinated Indebtedness* shall mean secured indebtedness of the Mortgagor, payment of which shall be subordinated to the prior payment of the Notes in accordance with the provisions of Section [3.08] hereof by subordination agreement in form and substance satisfactory to each Mortgagee which approval will not be unreasonably withheld.

*Supplemental Mortgage* shall mean an instrument of the type described in Section [2.04].

*Times Interest Earned Ratio ("TIER")* shall mean the ratio determined as follows: for each calendar year: add (i) patronage capital or margins of the Mortgagor, (ii) Interest Expense on Total Long-Term Debt of the Mortgagor and (iii) taxes paid, if any, based upon income during the year and divide the total so obtained by Interest Expense on Total Long-Term Debt of the Mortgagor, *provided, however,* that in computing Interest Expense on Total Long-Term Debt, there shall be added, to the extent not otherwise included, an amount equal to 33 $\frac{1}{3}$ % of the excess of Restricted Rentals paid by the Mortgagor over 2% of the Mortgagor's Equity.

*Title Evidence* shall mean with respect to any real property:

(1) an opinion of counsel to the effect that the Mortgagor has title, whether fairly deducible of record or based upon prescriptive rights (or, as to personal property, based on such evidence as counsel shall determine to be sufficient), as in the opinion of counsel is satisfactory for the use thereof in connection with the operations of the Mortgagor, and counsel in giving such opinion may disregard any irregularity or deficiency in the record evidence of title which, in the opinion of such counsel, can be cured by proceedings within the power of the Mortgagor or does not substantially impair the usefulness of such property for the purpose of the Mortgagor and may base such opinion upon counsel's own investigation or upon affidavits, certificates, abstracts of title, statements or investigations made by persons in whom such counsel has confidence or upon examination of a certificate or guaranty of title or policy of title insurance in which counsel has confidence; or

(2) a mortgagee's policy of title insurance in the amount of the cost to the Mortgagor of the land included in Property Additions, as such cost is determined by the Mortgagor in accordance with the Accounting Requirements, issued in favor of the Mortgagees by an entity authorized to insure title in the states where the subject property is located, showing the Mortgagor as the

owner of the subject property and insuring the lien of this Mortgage; and with respect to any *personal property* a certificate of the general manager or other duly authorized officer that the Mortgagor lawfully owns and is possessed of such property.

*Total Assets* shall mean an amount constituting total assets of the Mortgagor as computed pursuant to Accounting Requirements, but excluding any Regulatory Created Assets.

*Total Long-Term Debt* shall mean the total outstanding long-term debt of the Mortgagor as computed pursuant to Accounting Requirements.

*Total Utility Plant* shall mean the total of all property properly recorded in the utility plant accounts of the Mortgagor, pursuant to Accounting Requirements.

*Uniform Commercial Code or UCC* shall mean the UCC of the state referred to in Section [1.04], and if Mortgaged Property is located in a state other than that state, then as to such Mortgaged Property UCC refers to the UCC in effect in the state where such property is located.

*Utility System* shall mean the Electric System and all of the Mortgagor's interest in community infrastructure located substantially within its electric service territory, namely water and waste systems, solid waste disposal facilities, telecommunications and other electronic communications systems, and natural gas distribution systems.

#### SECTION 1.02. *General Rules of Construction:*

a. Accounting terms not referred to above are used in this Mortgage in their ordinary sense and any computations relating to such terms shall be computed in accordance with the Accounting Requirements.

b. Any reference to "directors" or "board of directors" shall be deemed to mean "trustees" or "board of trustees," as the case may be.

SECTION 1.03. *Special Rules of Construction if RUS is a Mortgagee:* During any period that RUS is a Mortgagee, the following additional provisions shall apply:

a. In the case of any Notes that have been guaranteed or insured as to payment by RUS, as to such Notes RUS shall be considered to be the Noteholder, exclusively, regardless of whether such Notes are in the possession of RUS.

b. In the case of any prior approval rights conferred upon RUS by Federal statutes, including (without limitation) Section 7 of the Rural Electrification Act of 1936, as amended, with respect to the sale or disposition of property, rights, or franchises of the Mortgagor, all such statutory rights are reserved except to the extent that they are expressly modified or waived in this Mortgage.

SECTION 1.04. *Governing Law:* This Mortgage shall be construed in and governed by Federal law to the extent applicable, and otherwise by the laws of the State of \_\_\_\_\_.

SECTION 1.05 *Notices:* All demands, notices, reports, approvals, designations, or directions required or permitted to be given hereunder shall be in writing and shall be deemed to be properly given if sent by

registered or certified mail, postage prepaid, or delivered by hand, or sent by facsimile transmission, receipt confirmed, addressed to the proper party or parties at the following address:

As to the Mortgagor:

As to the Mortgagee:

Rural Utilities Service,  
United States Department of Agriculture,  
Washington, DC 20250-1500

and as to any other person, firm, corporation or governmental body or agency having an interest herein by reason of being a Mortgagee, at the last address designated by such person, firm, corporation, governmental body or agency to the Mortgagor and the other Mortgagees. Any such party may from time to time designate to each other a new address to which demands, notices, reports, approvals, designations or directions may be addressed, and from and after any such designation the address designated shall be deemed to be the address of such party in lieu of the address given above.

## ARTICLE II

### ADDITIONAL NOTES

**SECTION 2.01. *Additional Notes:*** (a) Without the prior consent of any Mortgagee or any Noteholder, the Mortgagor may issue Additional Notes to the Government or to another lender or lenders for the purpose of acquiring, procuring or constructing new or replacement Eligible Property Additions which Notes will thereupon be secured equally and ratably with the Notes if each of the following requirements are satisfied:

(1) As evidenced by a certificate of an Independent certified public accountant sent to each Mortgagee on or before the first advance of proceeds from such Additional Notes:

(i) The Mortgagor shall have achieved for each of the two calendar years immediately preceding the issuance of such Additional Notes, a TIER of not less than 1.5 and a DSC of not less than 1.25;

(ii) After taking into account the effect of such Additional Notes on the Total Long Term Debt of the Mortgagor, the ratio of the Mortgagor's Net Utility Plant to its Total Long Term Debt shall be greater than or equal to 1.0 on a pro forma basis;

(iii) After taking into account the effect of such Additional Notes on the Total Assets of such Mortgagor, the Mortgagor shall have Equity greater than or equal to 27 percent of Total Assets on a pro forma basis; and

(iv) The sum of the aggregate principal amount of such Additional Notes (if any) that are not related to the Electric System if added to the aggregate outstanding principal amount of all the existing Notes (if any) that are not related to the Electric System will not exceed 30% of the Mortgagor's Equity on a pro forma basis.

(2) No Event of Default has occurred and is continuing hereunder, or any event which with the giving of notice or lapse of time or

both would become an Event of Default has occurred and is continuing.

(3) The Eligible Property Additions being constructed, acquired, procured or replaced are part of the Mortgagor's Utility System.

(4) The Borrower's general manager or other duly authorized officer shall send to each of the Mortgagees a certificate in substantially the form attached hereto as [Exhibit A] on or before the date of the first advance of proceeds from such Additional Notes.

(b) For purposes of this section:

(1) "Eligible Property Additions" shall mean Property Additions acquired or whose construction was completed not more than 5 years prior to the issuance of the Additional Notes and Property Additions acquired or whose construction is started and/or completed not more than 4 years after issuance of the Additional Notes, but shall exclude any Property Additions financed by any other debt secured under the Mortgage at the time additional Notes are issued;

(2) Notes are considered to be "issued" on, and the date of "issuance" shall be, the date on which they are executed by the Mortgagor; and

(3) For purposes of calculating the pro forma ratios in subparagraphs (a)(1)(ii) and (iii), the values for Total Long Term Debt and Total Assets before debt issuance and the values for Equity and Net Utility Plant shall be the most recently available end-of-month figures preceding the issuance of the Additional Notes, but in no case for a month ending more than 180 days preceding such issuance.

**SECTION 2.02. *Refunding or Refinancing Notes:*** The Mortgagor shall also have the right without the consent of any Mortgagee or any Noteholder to issue Additional Notes for the purpose of refunding or refinancing any Notes so long as the total amount of outstanding indebtedness evidenced by such Additional Note or Notes is not greater than 105% of the then outstanding principal balance of the Note or Notes being refunded or refinanced. PROVIDED, HOWEVER, that the Mortgagor may not exercise its rights under this Section if an Event of Default has occurred and is continuing, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing. On or before the first advance of proceeds from Notes issued under this section, the Mortgagor shall notify each Mortgagee of the refunding or refinancing. Additional Notes issued pursuant to this Section [2.02] will thereupon be secured equally and ratably with the Notes.

**SECTION 2.03. *Other Additional Notes.*** With the prior written consent of each Mortgagee, the Mortgagor may issue Additional Notes to the Government or any lender or lenders, which Notes will thereupon be secured equally and ratably with Notes without regard to whether any of the requirements of Sections [2.01] or [2.02] are satisfied.

**SECTION 2.04. *Additional Lenders Entitled to the Benefit of This Mortgage:*** Without the prior consent of any Mortgagee or any Noteholder, each new lender designated as a payee in any Additional Notes issued by the

Mortgagor pursuant to Section [2.01] or [2.02] of this Mortgage shall become a Mortgagee hereunder upon the execution and delivery by the Mortgagor and such lender of a supplemental mortgage hereto designating such lender as a Mortgagee hereunder. Such new lender shall be entitled to the benefits of this Mortgage without further act or deed. Each Mortgagee and each person or entity that becomes a lender pursuant to Section [2.01] or [2.02] of this Mortgage shall, upon the request of the Mortgagor to do so, execute and deliver a supplement to this Mortgage in substantially the form set forth in Section [2.05] to evidence the addition of such new lender as an additional Mortgagee entitled to the benefits of this Mortgage. The failure of any existing Mortgagee to enter into such supplemental mortgage shall not deprive the new lender of its rights under this Mortgage; provided that such additional indebtedness otherwise conforms in all respects with the requirements for issuing Additional Notes under this Mortgage.

**SECTION 2.05. *Form of Supplemental Mortgage:*** (a) The form of supplemental mortgage referred to in Section [2.04] is attached to this Mortgage as Exhibit B and hereby incorporated by reference as if set forth in full at this point.

(b) In the event that the Mortgagor subsequently issues Additional Notes pursuant to Sections [2.01] or [2.02] to any existing Mortgagee and that Mortgagee desires further assurance that such Additional Notes will be secured by the lien of the Mortgage, an instrument substantially in the form of the supplemental mortgage attached as Exhibit B may be used.

(c) In the event that the Mortgagor issues Additional Notes pursuant to Section [2.03] to either an existing Mortgagee or a new lender, in either case with the prior written consent of each Mortgagee, then an instrument substantially in the form of the supplemental mortgage attached as Exhibit B may also be used.

## ARTICLE III—PARTICULAR COVENANTS OF THE MORTGAGOR

**SECTION 3.01. *Payment of Debt Service on Notes:*** The Mortgagor will duly and punctually pay the principal, premium, if any, and interest on the Notes in accordance with the terms of the Notes, the Loan Contracts, this Mortgage and any Supplemental Mortgage authorizing such Notes.

**SECTION 3.02. *Warranty of Title:*** (a) At the time of the execution and delivery of this instrument, the Mortgagor has good and marketable title in fee simple to the real property specifically described in Granting Clause First as owned in fee and good and marketable title to the interests in real property specifically described in Granting Clause [First], subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to grant, bargain, sell, alien, remise, release, convey, assign, transfer, encumber, mortgage, pledge, set over and confirm said real property and interests in real property in the manner and form aforesaid.

(b) At the time of the execution and delivery of this instrument, the Mortgagor lawfully owns and is possessed of the

personal property specifically described in Granting Clauses [First and Second], subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to mortgage, assign, transfer, deliver, pledge and grant a continuing security interest in said property and, including any proceeds thereof, in the manner and form aforesaid.

(c) The Mortgagor hereby does and will forever warrant and defend the title to the property specifically described in Granting Clause First against the claims and demands of all persons whomsoever, except Permitted Encumbrances.

**SECTION 3.03. After-Acquired Property; Further Assurances; Recording:** (a) All property of every kind, other than Excepted Property, acquired by the Mortgagor after the date hereof, shall, immediately upon the acquisition thereof by the Mortgagor, and without any further mortgage, conveyance or assignment, become subject to the lien of this Mortgage; SUBJECT, HOWEVER, to Permitted Encumbrances and the exceptions, if any, to which all of the Mortgagees consent. Nevertheless, the Mortgagor will do, execute, acknowledge and deliver all and every such further acts, conveyances, mortgages, financing statements and assurances as any Mortgagee shall require for accomplishing the purposes of this Mortgage.

(b) The Mortgagor will cause this Mortgage and all Supplemental Mortgages and other instruments of further assurance, including all financing statements covering security interests in personal property, to be promptly recorded, registered and filed, and will execute and file such financing statements and cause to be issued and filed such continuation statements, all in such manner and in such places as may be required by law fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder to all property comprising the Mortgaged Property. The Mortgagor will furnish to each Mortgagee:

(1) promptly after the execution and delivery of this instrument and of each Supplemental Mortgage or other instrument of further assurance, an Opinion of Counsel stating that, in the opinion of such Counsel, this instrument and all such Supplemental Mortgages and other instruments of further assurance have been properly recorded, registered and filed to the extent necessary to make effective the lien intended to be created by this Mortgage, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to make the lien effective; and

(2) within 30 days after \_\_\_\_\_ in each year beginning with the year \_\_\_\_, an Opinion of Counsel, dated as of such date, either stating that, in the opinion of such Counsel, such action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of this instrument and of all Supplemental Mortgages, financing statements,

continuation statements or other instruments of further assurances as is necessary to maintain the lien of this Mortgage (including the lien on any property acquired by the Mortgagor after the execution and delivery of this instrument and owned by the Mortgagor at the end of preceding calendar year) and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary to fully preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to maintain such lien.

**SECTION 3.04. Environmental Requirements and Indemnity:** (a) The Mortgagor shall, with respect to all facilities which may be part of the Mortgaged Property, comply with all Environmental Laws.

(b) The Mortgagor shall defend, indemnify, and hold harmless each Mortgagee, its successors and assigns, from and against any and all liabilities, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), causes of actions, administrative proceedings, suits, claims, demands, or judgments of any nature arising out of or in connection with any matter related to the Mortgage Property and any Environmental Law, including but not limited to:

(1) the past, present, or future presence of any hazardous substance, contaminant, pollutant, or hazardous waste on or related to the Mortgaged Property;

(2) any failure at any time by the undersigned to comply with the terms of any order related to the Mortgaged Property and issued by any federal, state, or municipal department or agency (other than RUS) exercising its authority to enforce any Environmental Law; and

(3) any lien or claim imposed under any Environmental Law related to clause (1).

(c) Within 10 (ten) business days after receiving knowledge of any liability, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), cause of action, administrative proceeding, suit, claim, demand, judgment, lien, reportable event including but not limited to the release of a hazardous substance, or potential or actual violation or non-compliance arising out of or in connection with the Mortgaged Property and any Environmental Law, the Mortgagor shall provide each Mortgagee with written notice of such matter. With respect to any matter upon which it has provided such notice, the Mortgagor shall immediately take any and all appropriate actions to remedy, cure, defend, or otherwise affirmatively respond to the matter.

**SECTION 3.05. Payment of Taxes:** The Mortgagor will pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Mortgaged Property or any part thereof or upon any income therefrom, and also (to the extent that such payment will not be contrary to any applicable laws) all taxes, assessments

and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Noteholders or of the Mortgagees in the Mortgaged Property, so that (to the extent aforesaid) the lien of this Mortgage shall at all times be wholly preserved at the cost of the Mortgagor and without expense to the Mortgagees or the Noteholders; PROVIDED, HOWEVER, that the Mortgagor shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and the Mortgagor shall have established and shall maintain adequate reserves on its books for the payment of the same.

**SECTION 3.06. Authority to Execute and Deliver Notes, Loan Agreements and Mortgage; All Action Taken; Enforceable Obligations:** The Mortgagor is authorized under its articles of incorporation and bylaws [or code of regulations] and all applicable laws and by corporate action to execute and deliver the Notes, any Additional Notes, the Loan Agreements and this Mortgage. The Notes, the Loan Agreements and this Mortgage are, and any Additional Notes and Loan Agreements when executed and delivered will be, the valid and enforceable obligations of the Mortgagor in accordance with their respective terms.

**SECTION 3.07. Restrictions on Further Encumbrances on Property:** Except to secure Additional Notes, the Mortgagor will not, without the prior written consent of each Mortgagee, create or incur or suffer or permit to be created or incurred or to exist any Lien, charge, assignment, pledge, mortgage on any of the Mortgaged Property inferior to, prior to, or on a parity with the Lien of this Mortgage except for the Permitted Encumbrances. Subject to the provisions of Section [3.08], or unless approved by each of the Mortgagees, the Mortgagor will purchase all materials, equipment and replacements to be incorporated in or used in connection with the Mortgaged Property outright and not subject to any conditional sales agreement, chattel mortgage, bailment, lease or other agreement reserving to the seller any right, title or Lien.

**SECTION 3.08. Restrictions On Additional Permitted Debt:** The Mortgagor shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Debt) other than the following: ("Permitted Debt")

(1) Additional Notes issued in compliance with Article II hereof;

(2) Purchase money indebtedness in non-Utility System property, in an amount not exceeding 10% of Net Utility Plant;

(3) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;

(4) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

(5) Debt represented by dividends declared but not paid; and

(6) Subordinated Indebtedness approved by each Mortgagee.

PROVIDED, However, that the Mortgagor may incur Permitted Debt without the consent of the Mortgagee only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder.

PROVIDED, FURTHER, by executing this Mortgage any consent of RUS that the Mortgagor would otherwise be required to obtain under this Section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate existing federal laws or government regulations.

**SECTION 3.09. Preservation of Corporate Existence and Franchises:** The Mortgagor will, so long as any Outstanding Notes exist, take or cause to be taken all such action as from time to time may be necessary to preserve its corporate existence and to preserve and renew all franchises, rights of way, easements, permits, and licenses now or hereafter to be granted or upon it conferred the loss of which would have a material adverse affect on the Mortgagor's financial condition or business. The Mortgagor will comply with all laws, ordinances, regulations, orders, decrees and other legal requirements applicable to it or its property the violation of which could have a material adverse affect on the Mortgagor's financial condition or business.

**SECTION 3.10. Limitations on Consolidations and Mergers:** The Mortgagor shall not, without the prior written approval of each Mortgagee, consolidate or merge with any other corporation or convey or transfer the Mortgaged Property substantially as an entirety unless: (1) such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security hereof and the rights and powers of the Mortgagees hereunder; (2) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall execute and deliver to the Mortgagees a mortgage supplemental hereto in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the Outstanding Notes and the performance and observance of every covenant and condition of this Mortgage; (3) immediately after giving effect to such transaction, no default hereunder shall have occurred and be continuing; (4) the Mortgagor shall have delivered to the Mortgagees a certificate of its general manager or other officer, in form and substance satisfactory to each of the Mortgagees, which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this subsection and that all conditions precedent herein provided for relating to such transaction have been complied with; (5) the Mortgagor shall have delivered to the Mortgagees an opinion of counsel in form and substance satisfactory to each of the Mortgagees; and (6) the entity formed by such consolidation or with which the Mortgagor is

merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall be an entity—(A) having Equity equal to at least 27% of its Total Assets on a pro forma basis after giving effect to such transaction, (B) having a pro forma TIER of not less than 1.50 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years, and (C) having Net Utility Plant equal to or greater than 1.0 times its Total Long-Term Debt on a pro forma basis. Upon any consolidation or merger or any conveyance or transfer of the Mortgaged Property substantially as an entirety in accordance with this subsection, the successor entity formed by such consolidation or with which the Mortgagor is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Mortgagor under this Mortgage with the same effect as if such successor entity had been named as the Mortgagor herein.

**SECTION 3.11. Limitations on Transfers of Property:** The Mortgagor may not, except as provided in [Section 3.10] above, without the prior written approval of each Mortgagee, sell, lease or transfer any Mortgaged Property to any other person or entity (including any subsidiary or affiliate of the Mortgagor), unless (1) there exists no Event of Default or occurrence which with the passing of time and the giving of notice would be an Event of Default, (2) fair market value is obtained for such property, (3) the aggregate value of assets so sold, leased or transferred in any 12-month period is less than 10% of Net Utility Plant, and (4) the proceeds of such sale, lease or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately (i) applied as a prepayment of all Notes equally and ratably, (ii) in the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the Mortgagor's utility business, not necessarily of the same kind as the property disposed of, which shall forthwith become subject to the Lien of the Mortgage, or (iii) applied to the acquisition or construction of utility plant.

**SECTION 3.12. Maintenance of Mortgaged Property:** (a) So long as the Mortgagor holds title to the Mortgaged Property, the Mortgagor will at all times maintain and preserve the Mortgaged Property which is used or useful in the Mortgagor's business and each and every part and parcel thereof in good repair, working order and condition, ordinary wear and tear and acts of God excepted, and in compliance with Prudent Utility Practice and in compliance with all applicable laws, regulations and orders, and will from time to time make all needed and proper repairs, renewals and replacements, and useful and proper alterations, additions, betterments and improvements, and will, subject to contingencies beyond its reasonable control, at all times use all reasonable diligence to furnish the consumers served by it through the Mortgaged Property, or any part thereof, with an adequate supply of electric power and energy. If any substantial part of the Mortgaged Property is leased by the Mortgagor to any other party, the lease agreement between the Mortgagor and the

lessee shall obligate the lessee to comply with the provisions of subsections (a) and (b) of this Section in respect of the leased facilities and to permit the Mortgagor to operate the leased facilities in the event of any failure by the lessee to so comply.

(b) If in the sole judgement of any Mortgagee, the Mortgaged Property is not being maintained and repaired in accordance with paragraph (a) of this section, such Mortgagee may send to the Mortgagor a written report of needed improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such improvements.

(c) The Mortgagor further agrees that upon reasonable written request of any Mortgagee, which request together with the requests of any other Mortgagees shall be made no more frequently than once every three years, the Mortgagor will supply promptly to each Mortgagee a certification (hereinafter called the "Engineer's Certification"), in form satisfactory to the requestor, prepared by a professional engineer, who shall be satisfactory to the Mortgagees, as to the condition of the Mortgaged Property. If in the sole judgment of any Mortgagee the Engineer's Certification discloses the need for improvements to the condition of the Mortgaged Property or any other operations of the Mortgagor, such Mortgagee may send to the Mortgagor a written report of such improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such of these improvements as are required by such Mortgagee.

**SECTION 3.13. Insurance; Restoration of Damaged Mortgaged Property:** (a) The Mortgagor will take out, as the respective risks are incurred, and maintain the classes and amounts of insurance in conformance with generally accepted utility industry standards for such classes and amounts of coverages of utilities of the size and character of the Mortgagor and consistent with Prudent Utility Practice.

(b) The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory authorities having jurisdiction, and, with respect to insurance upon any part of the Mortgaged Property, shall provide that the insurance shall be payable to the Mortgagees as their interests may appear by means of the standard mortgagee clause without contribution. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice to each Mortgagee of cancellation.

(c) In the event of damage to or the destruction or loss of any portion of the Mortgaged Property which is used or useful in the Mortgagor's business and which shall be covered by insurance, unless each Mortgagee shall otherwise agree, the Mortgagor shall replace or restore such damaged, destroyed or lost portion so that such Mortgaged Property shall be in substantially the same condition as it was in prior to such damage, destruction or loss, and

shall apply the proceeds of the insurance for that purpose. The Mortgagee shall replace the lost portion of such Mortgaged Property or shall commence such restoration promptly after such damage, destruction or loss shall have occurred and shall complete such replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance all costs and expenses in connection therewith.

(d) Sums recovered under any policy or fidelity bond by the Mortgagor for a loss of funds advanced under the Notes or recovered by any Mortgagee or any Noteholder for any loss under such policy or bond shall, unless applied as provided in the preceding paragraph, be used to finance construction of utility plant secured or to be secured by this Mortgage, or unless otherwise directed by the Mortgagees, be applied to the prepayment of the Notes *pro rata* according to the unpaid principal amounts thereof (such prepayments to be applied to such Notes and installments thereof as may be designated by the respective Mortgagee at the time of any such prepayment), or be used to construct or acquire utility plant which will become part of the Mortgaged Property. At the request of any Mortgagee, the Mortgagor shall exercise such rights and remedies which they may have under such policy or fidelity bond and which may be designated by such Mortgagee, and the Mortgagor hereby irrevocably appoints each Mortgagee as its agent to exercise such rights and remedies under such policy or bond as such Mortgagee may choose, and the Mortgagor shall pay all costs and reasonable expenses incurred by the Mortgagee in connection with such exercise.

**SECTION 3.14. Mortgagee Right to Expend Money to Protect Mortgaged Property:** The Mortgagor agrees that any Mortgagee from time to time hereunder may, in its sole discretion, after having given 5 Business days prior written notice to Mortgagor, but shall not be obligated to, advance funds on behalf of Mortgagor, in order to insure the Mortgagor's compliance with any covenant, warranty, representation or agreement of the Mortgage made in or pursuant to this Mortgage or any of the Loan Agreements, to preserve or protect any right or interest of the Mortgagees in the Mortgaged Property or under or pursuant to this Mortgage or any of the Loan Agreements, including without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Mortgaged Property or other property or assets of Mortgagor; *provided, however*, that the making of any such advance by or through any Mortgagee shall not constitute a waiver by any Mortgagee of any Event of Default with respect to which such advance is made nor relieve the Mortgagor of any such Event of Default. The Mortgagor shall pay to a Mortgagee upon demand all such advances made by such Mortgagee with interest thereon at a rate equal to that on the Note having the highest interest rate but in no event shall such rate be in excess of the maximum rate permitted by applicable law. All such advances shall be included in the obligations and secured by the security interest granted hereunder.

**SECTION 3.15. Time Extensions for Payment of Notes:** Any Mortgagee may, at any time or times in succession without notice to or the consent of the Mortgagor, or any other Mortgagee, and upon such terms as such Mortgagee may prescribe, grant to any person, firm or corporation who shall have become obligated to pay all or any part of the principal of (and premium, if any) or interest on any Note held by or indebtedness owed to such Mortgagee or who may be affected by the lien hereby created, an extension of the time for the payment of such principal, (and premium, if any) or interest, and after any such extension the Mortgagor will remain liable for the payment of such Note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

**SECTION 3.16. Application of Proceeds from Condemnation:** (a) In the event that the Mortgaged Property or any part thereof, shall be taken under the power of eminent domain, all proceeds and avails therefrom may be used to finance construction of utility plant secured or to be secured by this Mortgage. Any proceeds not so used shall forthwith be applied by the Mortgagor: first, to the ratable payment of any indebtedness secured by this Mortgage other than principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, to such installments thereof as may be designated by the respective Mortgagee at the time of any such payment; and fourth, the balance shall be paid to whomsoever shall be entitled thereto.

(b) If any part of the Mortgaged Property shall be taken by eminent domain, each Mortgagee shall release the property so taken from the Mortgaged Property and shall be fully protected in so doing upon being furnished with:

(1) A certificate of a duly authorized officer of the Mortgagor requesting such release, describing the property to be released and stating that such property has been taken by eminent domain and that all conditions precedent herein provided or relating to such release have been complied with; and

(2) an opinion of counsel to the effect that such property has been lawfully taken by exercise of the right of eminent domain, that the award for such property so taken has become final and that all conditions precedent herein provided for relating to such release have been complied with.

**SECTION 3.17. Compliance with Loan Agreements; Notice of Amendments to and Defaults under Loan Agreements:** The Mortgagor will observe and perform all of the material covenants, agreements, terms and conditions contained in any Loan Agreement entered into in connection with the issuance of any of the Notes, as from time to time amended. The Mortgagor will send promptly to each Mortgagee notice of any default by the Mortgagor under any Loan Agreement and notice of any amendment to any Loan Agreement. Upon request of any Mortgagee, the Mortgagor will furnish to such Mortgagee single copies of such Loan Agreements and amendments thereto as such Mortgagee may request.

**SECTION 3.18. Rights of Way, etc., Necessary in Business:** The Mortgagor will use its best efforts to obtain all such rights of way, easements from landowners and releases from lienors as shall be necessary or advisable in the conduct of its business, and, if requested by any Mortgagee, deliver to such Mortgagee evidence satisfactory to such Mortgagee of the obtaining of such rights of way, easements or releases.

**SECTION 3.19. Limitations on Providing Free Electric Services.** The Mortgagor will not furnish or supply or cause to be furnished or supplied any electric power, energy or capacity free of charge to any person, firm or corporation, public or private, and the Mortgagor will enforce the payment of any and all amounts owing to the Mortgagor by reason of the ownership and operation of the Utility System by discontinuing such use, output, capacity, or service, or by filing suit therefor within 90 days after any such accounts are due, or by both such discontinuance and by filing suit.

**SECTION 3.20. Keeping Books; Inspection by Mortgagee:** The Mortgagor will keep proper books, records and accounts, in which full and correct entries shall be made of all dealings or transactions of or in relation to the Notes and the Utility Systems, properties, business and affairs of the Mortgagor in accordance with the Accounting Requirements. The Mortgagor will at any and all times, upon the written request of any Mortgagee and at the expense of the Mortgagor, permit such Mortgagee by its representatives to inspect the Utility Systems and properties and properties, books of account, records, reports and other papers of the Mortgagor and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection, and the Mortgagor will furnish to each Mortgagee any and all such information as such Mortgagee may request, with respect to the performance by the Mortgagor of its covenants under this Mortgage, the Notes and the Loan Agreements.

#### ARTICLE IV

#### EVENTS OF DEFAULT AND REMEDIES

**SECTION 4.01. Events of Default:** Each of the following shall be an "Event of Default" under this Mortgage:

(a) default shall be made in the payment of any installment of or on account of interest on or principal of (or premium, if any associated with) any Note or Notes for more than five (5) Business Days after the same shall be required to be made;

(b) default shall be made in the due observance or performance of any other of the covenants, conditions or agreements on the part of the Mortgagor, in any of the Notes, Loan Agreements or in this Mortgage, and such default shall continue for a period of thirty (30) days after written notice specifying such default and requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder shall have been given to the Mortgagor by any Mortgagee; PROVIDED, HOWEVER that in the case of a default on the terms of a Note or Loan Agreement of a particular Mortgagee, the "Notice of Default" required under this paragraph may only be given by that Mortgagee;

(c) the Mortgagor shall file a petition in bankruptcy or be adjudicated a bankrupt or insolvent, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a receiver of itself or of its property, or shall institute proceedings for its reorganization or proceedings instituted by others for its reorganization shall not be dismissed within sixty (60) days after the institution thereof;

(d) a receiver or liquidator of the Mortgagor or of any substantial portion of its property shall be appointed and the order appointing such receiver or liquidator shall not be vacated within sixty (60) days after the entry thereof;

(e) the Mortgagor shall forfeit or otherwise be deprived of its corporate charter or franchises, permits, easements, or licenses required to carry on any material portion of its business;

(f) a final judgment for an amount of more than \$\_\_\_\_\_ shall be entered against the Mortgagor and shall remain unsatisfied or without a stay in respect thereof for a period of sixty (60) days; or,

(g) any material representation or warranty made by the Mortgagor herein, in the Loan Agreements or in any certificate or financial statement delivered hereunder or thereunder shall prove to be false or misleading in any material respect at the time made.

**SECTION 4.02. Acceleration of Maturity; Rescission and Annulment:**

(a) If an Event of Default described in Section [4.01(a)] has occurred and is continuing, any Mortgagee upon which such default has occurred may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not affect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding.

(b) If any other Event of Default shall have occurred and be continuing, any Mortgagee may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not affect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding.

(c) Upon receipt of actual knowledge of or any notice of acceleration by any Mortgagee, any other Mortgagee may declare the principal of all of its Notes to be due and payable immediately by a notice in writing to the Mortgagor and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or

Notes or Loan Agreements to the contrary notwithstanding.

(d) If after the unpaid principal of (and premium, if any) and accrued interest on any of the Notes shall have been so declared to be due and payable, all payments in respect of principal and interest which shall have become due and payable by the terms of such Note or Notes (other than amounts due as a result of the acceleration of the Notes) shall be paid to the respective Mortgagees, and (i) all other defaults under the Loan Agreements, the Notes and this Mortgage shall have been made good or cured to the satisfaction of the Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then Outstanding, (ii) proceedings to foreclose the lien of this Mortgage have not been commenced, and (iii) all reasonable expenses paid or incurred by the Mortgagees in connection with the acceleration shall have been paid to the respective Mortgagees, then in every such case such Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then Outstanding may by written notice to the Mortgagor, for purposes of this Mortgage, annul such declaration and waive such default and the consequences thereof, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

**SECTION 4.03. Remedies of Mortgagees:** If one or more of the Events of Default shall occur and be continuing, any Mortgagee personally or by attorney, in its or their discretion, may, in so far as not prohibited by law:

(a) take immediate possession of the Mortgaged Property, collect and receive all credits, outstanding accounts and bills receivable of the Mortgagor and all rents, income, revenues, proceeds and profits pertaining to or arising from the Mortgaged Property, or any part thereof, whether then past due or accruing thereafter, and issue binding receipts therefor; and manage, control and operate the Mortgaged Property as fully as the Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs or replacements deemed necessary or advisable by such Mortgagee in possession;

(b) proceed to protect and enforce the rights of all of the Mortgagees by suits or actions in equity or at law in any court or courts of competent jurisdiction, whether for specific performance of any covenant or any agreement contained herein or in aid of the execution of any power herein granted or for the foreclosure hereof or hereunder or for the sale of the Mortgaged Property, or any part thereof, or to collect the debts hereby secured or for the enforcement of such other or additional appropriate legal or equitable remedies as may be deemed necessary or advisable to protect and enforce the rights and remedies herein granted or conferred, and in the event of the institution of any such action or suit the Mortgagee instituting such action or suit shall have the right to have appointed a receiver of the Mortgaged Property and of all proceeds, rents, income, revenues and profits pertaining thereto or arising therefrom, whether then past due or

accruing after the appointment of such receiver, derived, received or had from the time of the commencement of such suit or action, and such receiver shall have all the usual powers and duties of receivers in like and similar cases, to the fullest extent permitted by law, and if application shall be made for the appointment of a receiver the Mortgagor hereby expressly consents that the court to which such application shall be made may make said appointment; and

(c) sell or cause to be sold all and singular the Mortgaged Property or any part thereof, and all right, title, interest, claim and demand of the Mortgagor therein or thereto, at public auction at such place in any county (or its equivalent locality) in which the property to be sold, or any part thereof, is located, at such time and upon such terms as may be specified in a notice of sale, which shall state the time when and the place where the sale is to be held, shall contain a brief general description of the property to be sold, and shall be given by mailing a copy thereof to the Mortgagor at least fifteen (15) days prior to the date fixed for such sale and by publishing the same once in each week for two successive calendar weeks prior to the date of such sale in a newspaper of general circulation published in said locality or, if no such newspaper is published in such locality, in a newspaper of general circulation in such locality, the first such publication to be not less than fifteen (15) days nor more than thirty (30) days prior to the date fixed for such sale. Any sale to be made under this subparagraph (c) of this Section [4.03] may be adjourned from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication the sale may be had at the time and place to which the same shall be adjourned; *provided, however,* that in the event another or different notice of sale or another or different manner of conducting the same shall be required by law the notice of sale shall be given or the sale be conducted, as the case may be, in accordance with the applicable provisions of law. The expense incurred by any Mortgagee (including, but not limited to, receiver's fees, counsel fees, cost of advertisement and agents' compensation) in the exercise of any of the remedies provided in this Mortgage shall be secured by this Mortgage.

(d) In the event that a Mortgagee proceeds to enforce remedies under this Section, any other Mortgagee may join in such proceedings. In the event that the Mortgagees are not in agreement with the method or manner of enforcement chosen by any other Mortgagee, the Mortgagees representing a majority of the aggregate unpaid principal balance of the then Outstanding Notes may direct the method and manner in which remedial action will proceed.

**SECTION 4.04. Application of Proceeds from Remedial Actions:** Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied first, to the ratable

payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes; and the balance, if any, shall be paid to whomsoever shall be entitled thereto.

**SECTION 4.05. Remedies Cumulative; No Election:** Every right or remedy herein conferred upon or reserved to the Mortgagees or to the Noteholders shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law, or in equity, or by statute. The pursuit of any right or remedy shall not be construed as an election.

**SECTION 4.06. Waiver of Appraisal Rights; Marshaling of Assets Not Required:** The Mortgagor, for itself and all who may claim through or under it, covenants that it will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated, in order to prevent, delay or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, and the Mortgagor, for itself and all who may claim through or under it, hereby waives the benefit of all such laws unless such waiver shall be forbidden by law. Under no circumstances shall there be any marshaling of assets upon any foreclosure or to other enforcement of this Mortgage.

**SECTION 4.07. Notice of Default:** The Mortgagor covenants that it will give immediate written notice to each Mortgagee of the occurrence of any Event of Default or in the event that any right or remedy described in Sections [4.02] and [4.03] hereof is exercised or enforced or any action is taken to exercise or enforce any such right or remedy.

#### ARTICLE V—POSSESSION UNTIL DEFAULT-DEFEASANCE CLAUSE

**SECTION 5.01. Possession Until Default:** Until some one or more of the Events of Default shall have happened, the Mortgagor shall be suffered and permitted to retain actual possession of the Mortgaged Property, and to manage, operate and use the same and any part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the rents, revenues, issues, earnings, income, proceeds, products and profits thereof or therefrom, subject to the provisions of this Mortgage.

**SECTION 5.02. Defeasance:** If the Mortgagor shall pay or cause to be paid the whole amount of the principal of (and premium, if any) and interest on the Notes at the times and in the manner therein provided, and shall also pay or cause to be paid all other sums payable by the Mortgagor hereunder or under any Loan Agreement and shall keep and perform, all covenants herein required to be kept and performed by it, then and in that case, all property, rights and

interest hereby conveyed or assigned or pledged shall revert to the Mortgagor and the estate, right, title and interest of the Mortgagee so paid shall thereupon cease, determine and become void and such Mortgagee, in such case, on written demand of the Mortgagor but at the Mortgagor's cost and expense, shall enter satisfaction of the Mortgage upon the record. In any event, each Mortgagee, upon payment in full to such Mortgagee by the Mortgagor of all principal of (and premium, if any) and interest on any Note held by such Mortgagee and the payment and discharge by the Mortgagor of all charges due to such Mortgagee hereunder or under any Loan Agreement, shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

**SECTION 5.03. Special Defeasance:** Other than any Notes excluded by the foregoing Sections 5.01 and 5.02 and Notes which have become due and payable, the Mortgagor may cause the Lien of this Mortgage to be defeased with respect to any Note for which it has deposited or caused to be deposited in trust solely for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Note for principal (and premium, if any) and interest to the date of maturity thereof; PROVIDED, HOWEVER, that depository serving as trustee for such trust must first be accepted as such by the Mortgagee whose Notes are being defeased under this section. In such event, such a Note will no longer be considered to be an Outstanding Note for purposes of this Mortgage and the Mortgagee shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

#### ARTICLE VI

#### MISCELLANEOUS

**SECTION 6.01. Property Deemed Real Property:** It is hereby declared to be the intention of the Mortgagor that any electric generating plant or plants and facilities and all electric transmission and distribution lines, or other Electric System or Utility System facilities, embraced in the Mortgaged Property, including (without limitation) all rights of way and easements granted or given to the Mortgagor or obtained by it to use real property in connection with the construction, operation or maintenance of such plant, lines, facilities or systems, and all other property physically attached to any of the foregoing, shall be deemed to be real property.

**SECTION 6.02. Mortgage to Bind and Benefit Successors and Assigns:** All of the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the Mortgagor shall bind its successors and assigns, whether so specified or not, and all titles, rights and remedies hereby granted to or conferred upon the Mortgagees shall pass to and inure to the benefit of the successors and assigns of the Mortgagees and shall be deemed to be granted or conferred for the ratable benefit and security of all who shall from time to time be a Mortgagee. The Mortgagor hereby agrees to execute such consents, acknowledgements and other instruments as

may be reasonably requested by any Mortgagee in connection with the assignment, transfer, mortgage, hypothecation or pledge of the rights or interests of such Mortgagee hereunder or under the Notes or in and to any of the Mortgaged Property.

**SECTION 6.03. Headings:** The descriptive headings of the various articles and sections of this Mortgage and also the table of contents were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

**SECTION 6.04. Severability Cause:** In case any provision of this Mortgage or in the Notes or in the Loan Agreements shall be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions thereof shall not in any way be affected or impaired, nor shall any invalidity or unenforceability as to any Mortgagee hereunder affect or impair the rights hereunder of any other Mortgagee.

**SECTION 6.05. Mortgage Deemed Security Agreement:** To the extent that any of the property described or referred to in this Mortgage is governed by the provisions of the UCC this Mortgage is hereby deemed a "security agreement" under the UCC, and, if so elected by any Mortgagee, a "financing statement" under the UCC for said security agreement. The mailing addresses of the Mortgagor as debtor, and the Mortgagees as secured parties are as set forth in Section [1.05] hereof. If any Mortgagee so directs the Mortgagor to do so, the Mortgagor shall file as a financing statement under the UCC for said security agreement and for the benefit of all of the Mortgagees, an instrument other than this Mortgage. In such case, the instrument to be filed shall be in a form customarily accepted by the filing office as a financing statement. PROCEEDS OF COLLATERAL ARE COVERED HEREBY.

**SECTION 6.06. Indemnification by Mortgagor of Mortgagees:** The Mortgagor agrees to indemnify and save harmless each Mortgagee against any liability or damages which any of them may incur or sustain in the exercise and performance of their rightful powers and duties hereunder. For such reimbursement and indemnity, each Mortgagee shall be secured under this Mortgage in the same manner as the Notes and all such reimbursements for expense or damage shall be paid to the Mortgagee incurring or suffering the same with interest at the rate specified in Section [3.14] hereof. The Mortgagor's obligation to indemnify the Mortgagees under this section and under Section [3.04] shall survive the satisfaction of the Notes, the reconveyance or foreclosure of this Mortgage, the acceptance of a deed in lieu of foreclosure, or any transfer or abandonment of the Mortgaged Property.

IN WITNESS WHEREOF, \_\_\_\_\_ as Mortgagor, has caused this Restated Mortgage and Security Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its officers hereunto duly authorized, and UNITED STATES OF AMERICA, as Mortgagee, and as Mortgagee, has caused this Restated Mortgage and Security Agreement to be signed in its name by duly authorized persons, all as of the day and year first above written.

(SEAL)
By:
President
Attest:
Title:
Executed by the Mortgagor in the presence of:

Witnesses
UNITED STATES OF AMERICA
By: Director, of the Rural Utilities Service
Executed by the United States of America, Mortgagor, in the presence of:

Witnesses
By:
(SEAL)
Attest:
Title:
Executed by the above-named Mortgagor in the presence of:

Witnesses
Schedule A
1. The Maximum Debt Limit is
2. The Original Mortgage as described in the [first] WHEREAS clause above is
3. The outstanding secured indebtedness described in the [fourth] WHEREAS clause above as evidenced by the Original Notes is as follows:

[Note this requires computation of principal balances, not merely a totaling up of the original face amounts of the notes. Alternative approaches may be used by the parties where legally effective and mutually agreeable.]

Schedule B—Property Schedule
The fee and leasehold interests in real property referred to in Section Subclause (a) of Granting Clause One are

The counties referred to in Subclause (B) of Granting Clause One are

Schedule C—Excepted Property
STATE OF
COUNTY OF

On this day of 19 before me appeared and personally known, by me and having been duly sworn by me, did say that they are the President and Secretary, respectively, of a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board, and said and acknowledged that the execution of said instrument was a free act and deed of said corporation.

IN WITNESS whereof, I have hereunto set my hand and official seal the day and year last above written.

Notary Public
(Notarial Seal)
My commission expires:
DISTRICT OF COLUMBIA ) SS
The foregoing instrument was acknowledged before me this day of 19, by Director, Regional Division of the Rural Utilities Service, acknowledging an agency of the United States of America, on behalf of the Rural Utilities Service, United States of America.

Notary Public
(Notarial Seal)
My Commission expires:
COMMONWEALTH OF VIRGINIA ) SS
BEFORE ME, a Notary Public, in and for the Commonwealth of Virginia, appeared in person, signing for the Governor of the National Rural Utilities cooperative Finance Corporation, to me personally known, and known to be the identical person who subscribed the name of said corporation to the foregoing instrument, being by me duly sworn, and who stated that she/he is duly authorized to execute the foregoing instrument on behalf of said corporation, and further stated and acknowledged that she/he executed the foregoing instrument as a free and voluntary act and deed of said corporation for the consideration therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of 19.

Notary Public
(Notarial Seal)
My commission expires:
Exhibit A—Manager's Certificate

Manager's Certificate Required Under Mortgage Section 2.01 for Additional Notes

On behalf of [Name of Borrower] (the "Borrower"), I hereby certify as follows:

1. I am the Manager of the Borrower and have been duly authorized to deliver this certificate in connection with the Additional Note or Notes to be issued on or about [Date Note or Notes are to be Signed] pursuant to Section [2.01] of the Mortgage dated.

2. No Event of Default has occurred and is continuing under the Mortgage, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing.

3. The Additional Notes described in paragraph 1 are for the purpose of funding Property Additions being constructed, acquired, procured or replaced that are or will become part of the Borrower's Utility System.

4. The Property Additions referred to in paragraph 3 are Eligible Property Additions, i.e. Property Additions acquired or whose construction was completed not more than 5 years prior to the issuance of additional Notes and Property Additions acquired or whose construction is started and/or

completed not more than 4 years after issuance of the additional Notes, but shall exclude any Property Additions financed by any other debt secured under the Mortgage at the time additional Notes are issued.

5. I have reviewed the certificate of the Independent certified public accountant also being delivered to each of the Mortgagees pursuant to Section [2.01] in connection with the aforesaid Additional Note or Notes and concur with the conclusions expressed therein.

6. Capitalized terms that are used in this certificate but are not defined herein have the meanings defined in the Mortgage.

[Signed]
[Dated]
[Name]
[Title]
[Name and Address of Borrower]

Exhibit B—Form of Supplemental Mortgage

Supplemental Mortgage and Security Agreement, dated as of, (hereinafter sometimes called this "Supplemental Mortgage") is made by and between (hereinafter called the "Mortgagor"), a corporation existing under the laws of the State of, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the "Government"), (Supplemental Lender) (hereinafter called), a existing under the laws of, and intended to confer rights and benefits on both the Government and in accordance with this Supplemental Mortgage and the Original Mortgage (hereinafter defined) (the Government and the Supplemental Lenders being herein sometimes collectively referred to as the "Mortgagees").

Recitals

Whereas, the Mortgagor, the Government and are parties to that certain Restated Mortgage and Security Agreement, as supplemented, amended or restated (the "Original Mortgage" identified in Schedule "A" of this Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Utilities Service (hereinafter called "RUS"), and; and

Whereas, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same, and to enter into this Supplemental Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity, and to add as a secured party hereunder and under the Original Mortgage (the Supplemental Mortgage and the Original Mortgage, as it may have been previously amended or supplemented, hereinafter may be called collectively the "RUS Mortgage"); and

Whereas, the RUS Mortgage, as supplemented hereby, preserves the priority of the Original Mortgage for the pro rata

benefit of all the Mortgagees and secures the payment of all of the Mortgagor's outstanding indebtedness as listed in the Instruments Recital of Schedule "A"; and

Whereas, all acts necessary to make this Supplemental Mortgage a valid and binding legal instrument for the security of such notes and obligations, subject to the terms of the RUS Mortgage, have been in all respects duly authorized:

Now, Therefore, This Supplemental Mortgage Witnesseth: That to secure the payment of the principal of (and premium, if any) and interest on all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge and grant a continuing security interest in for the purposes hereinafter expressed [other language may be required under various state laws], unto the Mortgagees all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein or any other

kind or nature, except any Excepted Property set forth on Schedule "C" hereof owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

A. All of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule; and

B. All of those fee and leasehold interests in real property set forth in Schedule "B" of the Original Mortgage or in any restatement, amendment or supplement thereto, subject in each case to those matters set forth in such Schedule; and

C. All of the kinds, types or items of property, now owned or hereafter acquired, described as Mortgaged Property in the Original Mortgage or in any restatement, amendment to supplement thereto as Mortgaged Property.

It is Further Agreed and Covenanted That the Original Mortgage, as previously restated, amended or supplemented, and this Supplement shall constitute one agreement and the parties hereto shall be bound by all of the terms thereof and, without limiting the foregoing.

1. All capitalized terms not defined herein shall have the meaning given in Article I of the Original Mortgage.

2. This Supplemental Mortgage is one of the Supplemental Mortgages contemplated by Article II of the Original Mortgage.

In Witness Whereof, \_\_\_\_\_ as Mortgagor.

[ACKNOWLEDGEMENTS]

Supplemental Mortgage Schedule A—  
Maximum Debt Limit and Other Information

1. The Maximum Debt Limit is \_\_\_\_\_.

2. The Original Mortgage as described in the first WHEREAS clause above is \_\_\_\_\_.

3. The outstanding secured indebtedness described in the third WHEREAS clause above is \_\_\_\_\_.

Supplemental Mortgage Schedule B—  
Property Schedule

The fee and leasehold interests in real property referred to in clause A of the granting clause are \_\_\_\_\_.

Supplemental Mortgage Schedule C—  
Excepted Property

Dated: June 29, 1995.

**Michael V. Dunn,**

*Acting Under Secretary, Rural Economic and Community Development.*

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