

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of :  
Suburban Natural Gas Company for :  
Authority to Abandon Service Pursuant :  
to Ohio Revised Code Sections 4905.20 :  
and 4905.21. :

Case No. 08- 947 -GA-ABN

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**APPLICATION OF SUBURBAN NATURAL GAS COMPANY FOR  
AUTHORITY TO ABANDON SERVICE TO CERTAIN VILLAGES  
WITHIN ITS SERVICE TERRITORY**

Now comes Applicant, Suburban Natural Gas Company (herein "Suburban"), by and through counsel, and files this application, pursuant to Sections 4905.20 and 4905.21 of the Ohio Revised Code, for authority to abandon natural gas service to the following Villages in Ohio: 1) Deshler; 2) Hamler; 3) Holgate; 4) Hoytville; and 5) Malinta (hereinafter referred to as the "Subject Villages"). In support of its application, Suburban states that:

1. Suburban is a natural gas company and public utility within the meaning of Sections 4905.02 and 4905.03(A)(6) of the Revised Code and is subject to the jurisdiction of the Public Utilities Commission of Ohio (herein "Commission" or "PUCO").
2. Suburban's service area includes portions of Delaware and Marion Counties in central Ohio and portions of Hancock, Wood, Henry, and Lucas Counties in northwest Ohio. Suburban serves approximately 15,000 total customers, 1,589 of which are located in the Subject Villages.
3. For a period of nearly fifty years, Suburban has been supplying natural gas service to the residents, businesses and other premises located in the Subject Villages through lease agreements between all of the Subject Villages and Suburban. A copy of the lease agreements between Suburban and the Subject Villages are attached hereto as Application Appendices A, B, C, D and E.
4. When the transmission system serving the Subject Villages was designed and constructed, it was designed and constructed as an integrated transmission system. Each of the Subject Villages made an initial contribution to construct the entire transmission system and is entitled to a designated portion of the total system capacity.

Each of the Subject Villages nominally owns an undivided interest in the system, as a

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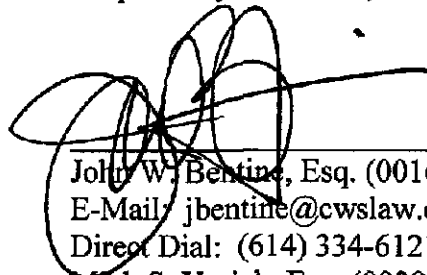
whole, and although each is responsible for the maintenance and expansion of only a part of the system, the transmission system serving the Subject Villages is most effectively and efficiently operated as a whole, complete and integrated unit. The transmission system is served through a single interconnection point, owned and operated by Suburban.

5. Pursuant to their express terms, most of the leases with the Subject Villages will expire in October of 2009. Malinta's lease will expire in September, 2012. In order to operate the system efficiently and cost effectively, Suburban needed to have leases in place with all of the Subject Villages prior to expiration of the existing leases. Beginning in 2001, Suburban attempted in good faith to extend and/or renew its leases with the Subject Villages in anticipation of the expiration of these leases. Suburban has not been successful in negotiating extensions or renewal lease agreements with two of the Subject Villages.
6. The Villages of Deshler and Holgate are the two largest of the Subject Villages, representing more than two-thirds (2/3) of the total number of customers served by the transmission system as a whole. These two Villages have rejected Suburban's attempts to extend or renew their leases with Suburban for the operation of their Village systems, including their portion of the transmission system serving all of the Subject Villages. Upon information and belief, Deshler and Holgate have contracted or intend to contract with KNG Energy, Inc., a natural gas company subject to the jurisdiction of the PUCO, to operate and manage their respective Village systems, including those portions of the integrated transmission system owned by Deshler and Holgate.
7. Since Deshler and Holgate will not agree to renew or extend their leases with Suburban upon reasonable terms, upon expiration of the leases between the Subject Villages and Suburban, Suburban will no longer have the ability to operate the Deshler and Holgate systems at all including their portions of the integrated transmission system. This precludes Suburban from effectively operating the transmission system which is an integral part of serving all of the other Villages as well.
8. Since it is not practical to operate the system that serves the Subject Villages efficiently or cost effectively without having lease agreements in place with all of the Subject Villages, Suburban seeks authority from the PUCO to abandon its service to all of the Subject Villages.

9. Upon approval of this application, Suburban will assist the Subject Villages in transferring management and control of the integrated transmission and distribution systems to the Subject Villages, to KNG Energy, Inc., or some other operator and to help assure no interruption or loss of service or potential inconvenience to customers of the systems of the Subject Villages.
10. Suburban submits that it would best serve the interests of customers in the Subject Villages to allow Suburban to abandon service to the Subject Villages upon the expiration of the term of the leases with the Subject Villages, or at some earlier or later time as determined by the PUCO.

WHEREFORE, Suburban respectfully requests that the Commission find its application to abandon service to the Villages of Deshler, Hamler, Holgate, Hoytville, and Malinta is reasonable and should be granted.

Respectfully submitted,



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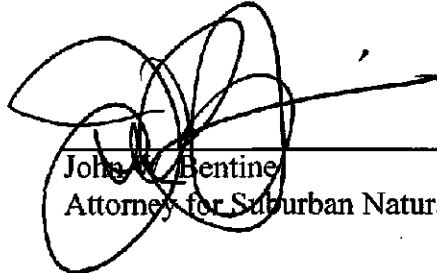
(614) 221-4012 (facsimile)

**Attorneys for Applicant Suburban Natural Gas  
Company**

Attachments: Appendix A – Village of Deshler Lease Agreement  
Appendix B – Village of Hamler Lease Agreement  
Appendix C – Village of Holgate Lease Agreement  
Appendix D – Village of Hoytville Lease Agreement  
Appendix E – Village of Malinta Lease Agreement

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the preceding *Application of Suburban Natural Gas Company for Authority to Abandon Service to Certain Villages within its Service Territory* was served this 1<sup>st</sup> day of August, 2008 upon the below listed Subject Villages at the addresses listed below by Regular U.S. Mail.

  
\_\_\_\_\_  
John W. Bentine  
Attorney for Suburban Natural Gas

Village Clerk  
Village of Deshler  
101 E. Main St.  
Deshler, OH 43516

Village Clerk  
Village of Hoytville  
P.O. Box 135  
Hoytville, OH 43529

Village Clerk  
Village of Hamler  
240 Church St.  
Hamler, OH 43524

Village Clerk  
Village of Malinta  
P.O. Box 69  
Malinta, OH 43535

Village Clerk  
Village of Holgate  
P.O. Box 323  
416 Smith St.  
Holgate, OH 43527

# **APPENDIX A**

## **VILLAGE OF DESHLER**

LEASE AGREEMENT

This agreement of lease made this 20th day of October, 1959, between the Village of Deshler, a municipal corporation duly organized and existing under the laws of the State of Ohio, and situated in Henry County in said state, herein referred to as Lessor, and Suburban Fuel Gas, Inc., a corporation duly organized and existing under the laws of Ohio with its principal office in Cygneth, Ohio, herein referred to as Lessee,

W I T N E S S E T H:

WHEREAS, Lessor proposes to construct and own a gas transmission and distribution system in accordance with plans and specifications approved by Council of Lessor on June 15, 1959, on file with said Council, herein referred to as the Utility, which is to be constructed for the purpose of supplying gas to Lessor, its inhabitants and to others within and without the corporate limits of Lessor; and

WHEREAS, the Lessor, together with Suburban Fuel Gas, Inc., and the Ohio Villages of Hamler, Holgate, Hoytville and McComb, have executed a certain instrument designated "Deed and Indenture", dated as of October 1, 1959 (hereinafter referred to as "Indenture"), in which Suburban Fuel Gas, Inc. grants unto Lessor and said Villages certain Rights-of-Way and Leases and reserved rights and providing, among other things, for the construction by said Villages of their respective parts of the gas System described therein, including the agreement of Lessor to construct the Utility which is part of said System, providing further for reciprocal rights of Lessor and said Villages to receive gas through the lines of the

others and the maintenance of such lines, which Indenture is incorporated herein by reference and made a part hereof; and

WHEREAS, Lessee is in a position to furnish an adequate supply of gas for such purpose; and

WHEREAS, the Council and the Board of Trustees of Public Affairs of Lessor have determined that the interests of the Lessor, its inhabitants and others, within and without the corporate limits of Lessor, who are to be served with gas through the Utility (hereinafter sometimes collectively referred to as the "Consumers") can best be served by the leasing of said Utility to a private corporation upon the terms and conditions herein set forth;

NOW, THEREFORE, Lessor lets and leases unto Lessee the Utility for a term of fifty years from the date hereof for the sole purpose of operating the same so as to supply gas to the Consumers, including Lessor, subject to the following terms, conditions and covenants:

1. Lessee shall pay to Lessor as rent the sum of 15 ¢ for each 1,000 cubic feet of gas delivered to domestic and commercial consumers from the Utility and 3 ¢ for each 1,000 cubic feet of gas delivered therefrom to industrial consumers as defined in Paragraph 8 hereof (herein sometimes referred to as "basic rent"), all according to meter readings to each Consumer, provided that, effective January 1, 1961, (but not earlier than the date of completion of the Utility), and continuing so long as any of Lessor's First Mortgage Gas System Revenue Bonds, dated September 1, 1959, or any bonds issued to refund or extend the maturity of said bonds or any additional bonds issued to complete the construction of the Utility or for the purpose of making replacements, extensions and improvements to the Utility (hereinafter

referred to as the "Bonds"), remain outstanding, the minimum rent payable by the Lessee to the Lessor shall be not less than the amount shown on the following schedule for each of the years indicated:

<u>Year(s)</u>	<u>Minimum Quarterly Rental</u>	<u>Minimum Annual Rental</u>
1961-65	\$ 9,500	\$ 38,000
1966	10,000	40,000
1967	11,250	45,000
1968-79	12,500	50,000
1980 and thereafter	13,750	55,000

Provided, however, that since such minimum rental provision shall become effective on January 1, 1961, the minimum quarterly rental payable, as hereinafter provided, on March 10, 1961, shall be two-thirds of the amount above shown and the minimum annual rental payable within the calendar year of 1961 shall be eleven-twelfths of the amount above shown.

2. Lessee shall pay the rental hereunder to Lessor quarterly on the 10th days of March, June, September and December based on meter readings, and covenants to read the meters of Consumers at least once during the three calendar months preceding each rental payment date; provided, however,

(a) That if the basic rent herein provided for shall for any quarter exceed the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the excess shall be applied pro tanto to all or any of the subsequent minimum quarterly payments to be made in that calendar year only in computing such minimum quarterly payments, provided that the total payments for any one calendar year must be at least equal to the minimum rental called for by the above schedule in Paragraph 1.



(b) That if the basic rent herein provided for shall for any quarter be less than the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the difference between the minimum quarterly rental (as adjusted pursuant to subparagraph (a) of this Paragraph 2) and the basic rent for that quarter shall be credited pro tanto to all or any of the subsequent basic rental payments to be made in that calendar year only and where such basic rental payment would otherwise exceed such minimum quarterly rental but never so as to reduce the basic rental payment below such minimum quarterly payment.

(c) That if in any of the years from 1961 to 1965, inclusive, the basic rent does not equal the minimum rental for such year, the payment of the amount of the deficit may be postponed by the Lessee until December 10, 1966, without creating any default hereunder, but only to the extent that in prior years the rentals actually paid exceeded the stated minimum rentals for such prior years and were not previously used by Lessee as a basis under this subparagraph for the postponement of payment of a deficit; provided, however, that by December 10, 1966, any or all deficits so postponed hereunder shall be paid in full.

3. In addition to the rent hereinbefore provided, Lessee shall pay to the Lessor upon demand any and all moneys payable or actually paid by the Lessor in the discharge of its obligations under the Trust Indenture

between Lessor and The Toledo Trust Company, dated as of September 1, 1959, securing the Bonds (hereinafter referred to as the "Mortgage").

4. The Lessee will operate the Utility under the provisions of the applicable laws of the State of Ohio and in accordance with all lawful requirements imposed by the State of Ohio or any other lawfully constituted authority and will indemnify Lessor against liability or penalty for any asserted violation thereof; and will furnish gas to all persons owning or occupying premises abutting the streets, alleys, public grounds or rights-of-way in which are laid the pipelines of the Utility or any extensions of such lines which may hereafter be made, whether within or without the corporate limits of Lessor; and will efficiently maintain and operate the Utility.

5. Lessee agrees to install any additional meters that may be necessary to measure the volume of gas supplied to each customer, at the sole cost and expense of Lessee and such meters upon being installed shall immediately become absolutely the property of Lessor and a part of the Utility, but subject to the terms and provisions of this lease.

6. Lessee shall keep the Utility, and every part thereof, in good condition, repair and working order, replacing any part or parts thereof which may become worn out or injured by other suitable property of at least equal value and efficiency, provided, however, that with the consent of the Lessor, the Lessee may discontinue the use and operation of any property or equipment forming a non-essential part of the Utility if it is no longer profitable to use and operate such property or equipment.

7. Lessee agrees to pay all ad valorem or other taxes, special assessments and similar charges payable during the term of this lease, be-

coming due and payable during the term of this lease, which have or may at any time be levied, taxed or assessed upon the Utility, including all interests in real property incidental thereto, the possession or operation thereof, the sale of gas or otherwise related to the Utility, and shall pay and hold Lessor harmless against any such taxes, including interest and penalties thereon, for which Lessor may become liable. Lessee also agrees to pay all claims or charges for or on account of water, light, heat, power and any other service or utility furnished in connection with the Utility or any part thereof.

8. Lessee agrees that the rates charged for gas furnished to Consumers from the Utility for the first ten years of said term shall not be in excess of the following schedule of rates:

A. For each residential or commercial consumer the rate shall be as follows:

\$1.25 for first 500 cubic feet or less used through each meter each month, the minimum charge being \$1.25 for each meter each month.

\$0.90 per 1,000 cubic feet for all over 500 cubic feet used through each meter each month.

B. For each industrial consumer the rate shall be as follows:

\$0.63 per 1,000 cubic feet used through each meter each month. The term "industrial consumer" means a Consumer who will consume (a) 4 million cubic feet of gas each month during a period of twelve successive months or (b) 25 million cubic feet of gas during the period from May 1 to October 30, provided that in order to obtain the rate for industrial consumers a Consumer must make application therefor to the Lessee prior to May 1 of each year with respect to the twelve months next following said date, and provided further that in the event that a Consumer shall have been charged the rate for industrial consumers during a period for which said Consumer's consumption shall not have met either of the aforesaid minimum requirements he shall be deemed a com-

mercial consumer for said period and shall be required to promptly pay, at the conclusion of said period the difference between the commercial rate and the industrial rate for gas consumed during said period.

C. Ten per cent of the charges as above calculated shall be added to each bill if the same is not paid within fifteen days following the mailing of such bill;

Provided, however, that during said ten year period:

(1) Should the then applicable rate charged by Lessee's supplier for gas delivered to Lessee be changed (including changes during the pendency of an application to the Federal Power Commission), the above schedule of rates shall be adjusted accordingly at the option of the Lessee in the case of increase and at the option of the Lessor in case of decrease, subject to the following conditions:

(i) The schedule of rates above set forth is based on (a) a commodity charge to Lessee of \$0.45 per 1,000 cubic feet with no demand charge or minimum charge or (b) a demand charge of \$1.56 per 1,000 cubic feet of billing demand per month and a commodity charge of 32.43 cents per 1,000 cubic feet; and adjustments to said rate schedule shall reflect variances therefrom.

(ii) The exercise of the option to require an increase or decrease may be exercised in full or in part, may be deferred and may be aggregated with subsequent increases or decreases or used to offset increases or decreases, as the case may be; but the exercise of the option to require an increase or decrease may not be applied retroactively to affect the rate for service which has already been billed at the time of such exercise.

(iii) The option to increase or decrease shall be exercised by written notice as hereinafter provided.

(iv) Any refund to Lessee by its supplier shall be passed on by Lessee as a refund to Consumers, provided that Lessee shall not be required to pass on to any one Consumer any refund which would be less than \$1.00.

(2) In the event that Lessee shall become subject to paying any new or increased taxes hereunder, the schedule of rates in effect at the time of the imposition or increase of such taxes shall be increased in an amount sufficient to pay such taxes, and such schedule of rates shall likewise be decreased upon the repeal or decrease in such taxes;

(3) If at any time after December 31, 1963, Lessee determines that there has been a change of conditions which affects the cost of service which is not otherwise provided for in subparagraphs (1) and (2) immediately preceding, Lessee shall give written notice, as hereinafter provided, to Lessor of the nature of the change of conditions and of the extent to which it believes such change requires a change of the schedule of rates to Consumers. If the parties do not agree upon a schedule of rates within ninety days after such notice, then nothing herein shall affect the right of Lessee to initiate any action or proceeding for the purpose of establishing the rates to be charged for service hereunder. Lessee agrees and stipulates that during the first ten years hereof, it will not advocate or advance in any proceeding for the determination of rates any increase in rates which will provide more revenue than that required to meet reasonable and proper costs and expenses hereunder, including a reasonable amortization of the costs of extension and replacement of lines, meters, regulators and other such facilities and the minimum lease payments provided above, and to maintain an adequate amount of working capital for the operation of the Utility.

9. After the expiration of the period of ten years specified in the foregoing paragraph of this lease, the rates which may be charged to Consumers of gas from the Utility shall be those fixed by Lessor from time to time subject, however, to any right of the Lessee to appeal therefrom to the Public Utilities Commission of Ohio.

10. With respect to Consumers outside the municipal limits of Lessor who are served from the Utility, Lessee shall, by agreement with such consumers, charge rates to them which are the same as the rates from time to time in effect for Consumers within Lessor's municipal limits.

11. Lessee agrees to sell and deliver to the Consumers the daily aggregate volume of 2,756,000 cubic feet of gas or such lesser amount as they may require at the rates and upon the terms and conditions as herein provided. In the event that this lease shall for any reason be terminated, Lessee hereby agrees that, at Lessor's option and so long as any of the Bonds are outstanding, it will sell and deliver said volume of gas to Lessor or any other person, firm or corporation which shall operate the Utility at a rate not to exceed by more than 5 cents per 1,000 cubic feet the cost of such gas to the Lessee, and at such point or points of delivery as Lessor may specify provided that Lessee shall not be required to construct any pipeline to such point of delivery. The supply of gas as hereinabove provided shall at all times be subject to the valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.

12. Lessee at all times will procure and maintain at its expense insurance on the Utility of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. All insurance policies shall provide for the payment of any loss to the

Lessor or as Lessor may designate and the sole right to receive the proceeds of such insurance and the right to collect and receipt for all claims thereunder shall be vested in the Lessor or as otherwise designated by Lessor. Originals or duplicate originals of such policies shall be delivered to Lessor. In case the Lessor shall at any time notify the Lessee in writing that it disapproves of any insurance company or the terms of any policy, the Lessee shall forthwith effect other insurance satisfactory to the Lessor. In the event of damage to or partial or total destruction of any part of the premises covered by such insurance, the Lessor, with the proceeds of the insurance and any other funds which may be lawfully made available, and with reasonable dispatch will repair, replace or rebuild the property damaged or destroyed provided that such repair, replacement or rebuilding is essential to proper operation of the Utility; the obligation of Lessor so to repair, replace or rebuild shall be limited to the proceeds of such insurance. Notwithstanding any other provision hereof, Lessee shall not be obligated to repair or replace any damaged or destroyed property if such damage or destruction is covered by insurance as provided above.

13. Lessee agrees to indemnify and hold Lessor harmless against any liability whatsoever because of accidents or injury to persons or property occurring in or related to the operation of the Utility by Lessee. Lessee also agrees that during the term of this lease it will procure and maintain public liability insurance and property damage insurance of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. Policies evidencing such insurance shall name Lessor as an assured and originals or duplicate originals thereof shall be delivered to Lessor.

14. Lessee shall report quarterly to Lessor (a) the aggregate volume of gas sold to consumers of the Utility based on the meter readings provided for in Paragraph 2 hereof with such detail as Lessor may need in order to verify the amounts of rental due, and (b) the nature, kind, character and location of substantial extensions to the lines of the Lessor together with the cost thereof. The Lessor, and such representatives of the mortgagee of the Utility as may be designated by Lessor, shall at all times have access to and opportunity for inspecting all records and accounts in any way pertaining to the ownership or operation of the Utility.

15. The Lessor shall have the right to construct both within and without its corporate limits any extensions or improvements to the Utility and when constructed the same shall be subject to the terms and provisions of this lease.

16. Upon request Lessee shall promptly extend the lines of the Utility within the corporate limits of Lessor in order to reach any Consumer which desires gas, but in no event shall the Lessee be required to extend such lines for a distance in excess of 100 feet for one consumer. Lessee shall have the right to construct any extensions or improvements to the Utility if it so desires, provided, however, that such extension shall not be made if the result will be that Consumers will be purchasing for use outside the corporate limits of Lessor more than fifty per cent of the volume of gas purchased by Consumers for use within said corporate limits. All extensions or improvements made by Lessee shall immediately become the property of Lessor and subject to the terms of this lease.



17. For the purpose of constructing, erecting, maintaining, operating and extending gas mains, meters, outlets, connections, manholes and all other apparatus necessary or appropriate to the operations of the Utility, the Lessee shall have the right to use streets, lanes, alleys, avenues and other public thoroughfares, easements, licenses and rights of the Lessor, together with all necessary privileges thereto; provided, however, that in the maintenance, repair or extension of said Utility, the Lessee shall not unnecessarily interrupt or obstruct the use of any street, lane, alley, avenue or public thoroughfare, and in connection with any such work shall obtain such permits and approvals as may be required by the ordinances of the Lessor. When any streets, lanes, alleys, avenues or public thoroughfares are entered upon, or facilities removed therefrom, the Lessee shall restore the same to their original condition and shall clear all such places of dirt, obstructions and anything that might constitute a nuisance, or prevent such street, lane, alley, avenue or public thoroughfare from being open and in repair. Such restoration to original condition shall be made by the Lessee under the supervision and control of the appropriate officer of the Lessor.

18. Lessee in the operation of the Utility shall be entitled to exercise those rights of the Lessor and does hereby assume and agree to be bound by those obligations of the Lessor provided for in Sections 1, 2, 7, 8, 9 and 10 of the Indenture referred to in the preamble hereto and incorporated herein by reference. Lessee's rights hereunder shall be subject and subordinate to the grants and agreements made by Lessor in the said Indenture.

19. Lessee will not without the prior written consent of Lessor

sell, assign or pledge this lease or any of its rights or obligations hereunder or sublease or permit the use by others of any of the property covered by this lease.

20. Lessor shall at all times have the right to sell, assign, mortgage, pledge or otherwise encumber all or any of its rights under this lease, and reserves unto itself the right to mortgage, pledge and otherwise encumber the Utility in preference to the rights of the Lessee in order to secure the payment of obligations incurred in order to construct, complete, replace or extend the Utility, or any part thereof. The Lessee's rights hereunder shall be subject and subordinate to the lien of the Mortgage or any other encumbrance given or to be given to secure the Bonds. This lease agreement shall inure to the benefit of and be binding upon the successors and assigns of Lessor, and of Lessee in the event that Lessor shall consent to assignment by the Lessee as provided above.

21. Lessor, its successors or assigns, by notice in writing to Lessee, may cancel this lease, or any extension thereof, in the event (a) Lessee is adjudged insolvent or bankrupt, and a receiver or trustee is appointed for Lessee or its property, Lessee makes an arrangement for the benefit of creditors, Lessee becomes insolvent, or a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating Lessee a bankrupt or for reorganization of Lessee, or for the purpose of effecting a composition or rearrangement with Lessee's creditors, and such petition is not dismissed within thirty days, (b) Lessee shall fail to pay the rental hereunder within five days after it shall become due, or (c) of any other

violation of any of the terms, conditions or covenants of this lease by Lessee and the failure of Lessee to cure such violation within sixty days from the giving of written notice thereof by Lessor, its successors or assigns to Lessee. Upon the expiration, termination or cancellation of this lease, Lessor, its successors or assigns, shall have the right to invoke any remedy permitted by law or in equity for the protection of its interests hereunder, and Lessee hereby expressly waives all rights which it may have to redeem or to be served with any further notice of the intention to cancel or terminate this lease other than as herein provided. In the event of sale of the Utility upon foreclosure under the Mortgage or any other encumbrance placed on the Utility to which Lessee's rights hereunder are subject and subordinate, the purchaser shall have the option to terminate this lease agreement in its entirety upon written notice to Lessee given within one year after confirmation of the sale by the court having jurisdiction, provided that such notice may fix as the termination date, the date of such notice or any other date within two years following the date of such notice.

23. Notices hereunder shall be in writing and shall be considered duly delivered when mailed by registered mail to the post office address of Lessor or Lessee, as the case may be or at such other address as either may designate by formal written notice. Until so changed, notices to the Lessor shall be addressed to the Clerk of the Village of Deshler, Henry County, Ohio, and notices to the Lessee shall be addressed to its President at Cygnat, Ohio.

IN WITNESS WHEREOF, we have hereunto set our hands as of the day  
and year first above written.

Signed and acknowledged in  
the presence of:

Henry A. Richmond

Justing G. Gribbell  
as to the Village of Deshler

VILLAGE OF DESHLER, OHIO

Lessor

By Robert E. Fox  
Mayor

By John L. ...  
Clerk

William J. Ahns

Le Roy ...

H. F. ...

Board of Trustees of Public Affairs

Signed and acknowledged in  
the presence of:

James E. ...

H. R. ...

as to

Suburban Fuel Gas., Inc.

Lessee

By ...  
President

By Robert Schumacher  
Secretary

# **APPENDIX B**

## **VILLAGE OF HAMLER**

LEASE AGREEMENT

This agreement of lease made this 20th day of October, 1959, between the Village of Hamler, a municipal corporation duly organized and existing under the laws of the State of Ohio, and situated in Henry County in said state, herein referred to as Lessor, and Suburban Fuel Gas Inc., a corporation duly organized and existing under the laws of Ohio with its principal office in Cyrus, Ohio, herein referred to as Lessee,

W I T N E S S E T H:

WHEREAS, Lessor proposes to construct and own a gas transmission and distribution system in accordance with plans and specifications approved by Council of Lessor on June 19, 1959, on file with said Council, herein referred to as the Utility, which is to be constructed for the purpose of supplying gas to Lessor, its inhabitants and to others within and without the corporate limits of Lessor; and

WHEREAS, the Lessor, together with Suburban Fuel Gas, Inc., and the Ohio Villages of Beahler, Holgate, Hoytville and McComb, have executed a certain instrument designated "Deed and Indenture", dated as of Oct, 1959 (hereinafter referred to as "Indenture"), in which Suburban Fuel Gas, Inc. grants unto Lessor and said Villages certain Rights-of-Way and Leases and reserved rights and providing, among other things, for the construction by said Villages of their respective parts of the gas System described therein, including the agreement of Lessor to construct the Utility which is part of said System, providing further for reciprocal rights of Lessor and said Villages to receive gas through the lines of the

others and the maintenance of such lines, which Indenture is incorporated herein by reference and made a part hereof; and

WHEREAS, Lessee is in a position to furnish an adequate supply of gas for such purpose; and

WHEREAS, the Council and the Board of Trustees of Public Affairs of Lessor have determined that the interests of the Lessor, its inhabitants and others, within and without the corporate limits of Lessor, who are to be served with gas through the Utility (hereinafter sometimes collectively referred to as the "Consumers") can best be served by the leasing of said Utility to a private corporation upon the terms and conditions herein set forth;

NOW, THEREFORE, Lessor lets and leases unto Lessee the Utility for a term of fifty years from the date hereof for the sole purpose of operating the same so as to supply gas to the Consumers, including Lessor, subject to the following terms, conditions and covenants:

1. Lessee shall pay to Lessor as rent the sum of 15 ¢ for each 1,000 cubic feet of gas delivered to domestic and commercial consumers from the Utility and 3 ¢ for each 1,000 cubic feet of gas delivered therefrom to industrial consumers as defined in Paragraph 8 hereof (herein sometimes referred to as "basic rent"), all according to meter readings to each Consumer, provided that, effective January 1, 1961, (but not earlier than the date of completion of the Utility), and continuing so long as any of Lessor's First Mortgage Gas System Revenue Bonds, dated September 1, 1959, or any bonds issued to refund or extend the maturity of said bonds or any additional bonds issued to complete the construction of the Utility or for the purpose of making replacements, extensions and improvements to the Utility (hereinafter

referred to as the "Bonds"), remain outstanding, the minimum rent payable by the Lessee to the Lessor shall be not less than the amount shown on the following schedule for each of the years indicated:

<u>Year(s)</u>	<u>Minimum Quarterly Rental</u>	<u>Minimum Annual Rental</u>
1961-65	\$ 3,250	\$ 13,000
1966	3,500	14,000
1967	3,750	15,000
1968-79	4,250	17,000
1980-82	4,500	18,000
1983 and thereafter	4,750	19,000

Provided, however, that since such minimum rental provision shall become effective on January 1, 1961, the minimum quarterly rental payable as herein after provided, on March 10, 1961, shall be two-thirds of the amount above shown and the minimum annual rental payable within the calendar year of 1961 shall be eleven-twelfths of the amount above shown.

2. Lessee shall pay the rental hereunder to Lessor quarterly on the 10th days of March, June, September and December based on meter readings, and covenants to read the meters of Consumers at least once during the three calendar months preceding each rental payment date; provided, however,

(a) That if the basic rent herein provided for shall for any quarter exceed the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the excess shall be applied pro tanto to all or any of the subsequent minimum quarterly payments to be made in that calendar year only in computing such minimum quarterly payments, provided that the total payments for any one calendar year must be at least equal to the minimum rental called for by the above schedule in Paragraph 1.



(b) That if the basic rent herein provided for shall for any quarter be less than the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the difference between the minimum quarterly rental (as adjusted pursuant to subparagraph (a) of this Paragraph 2) and the basic rent for that quarter shall be credited pro tanto to all or any of the subsequent basic rental payments to be made in that calendar year only and where such basic rental payment would otherwise exceed such minimum quarterly rental but never so as to reduce the basic rental payment below such minimum quarterly payment.

(c) That if in any of the years from 1961 to 1965, inclusive, the basic rent does not equal the minimum rental for such year, the payment of the amount of the deficit may be postponed by the Lessee until December 10, 1966, without creating any default hereunder, but only to the extent that in prior years the rentals actually paid exceeded the stated minimum rentals for such prior years and were not previously used by Lessee as a basis under this subparagraph for the postponement of payment of a deficit; provided, however, that by December 10, 1966, any or all deficits so postponed hereunder shall be paid in full.

3. In addition to the rent hereinbefore provided, Lessee shall pay to the Lessor upon demand any and all moneys payable or actually paid by the Lessor in the discharge of its obligations under the Trust Indenture

between Lessor and The Toledo Trust Company, dated as of September 1, 1959, securing the Bonds (hereinafter referred to as the "Mortgage").

4. The Lessee will operate the Utility under the provisions of the applicable laws of the State of Ohio and in accordance with all lawful requirements imposed by the State of Ohio or any other lawfully constituted authority and will indemnify Lessor against liability or penalty for any asserted violation thereof; and will furnish gas to all persons owning or occupying premises abutting the streets, alleys, public grounds or rights-of-way in which are laid the pipelines of the Utility or any extensions of such lines which may hereafter be made, whether within or without the corporate limits of Lessor; and will efficiently maintain and operate the Utility.

5. Lessee agrees to install any additional meters that may be necessary to measure the volume of gas supplied to each customer, at the sole cost and expense of Lessee and such meters upon being installed shall immediately become absolutely the property of Lessor and a part of the Utility, but subject to the terms and provisions of this lease.

6. Lessee shall keep the Utility, and every part thereof, in good condition, repair and working order, replacing any part or parts thereof which may become worn out or injured by other suitable property of at least equal value and efficiency, provided, however, that with the consent of the Lessor, the Lessee may discontinue the use and operation of any property or equipment forming a non-essential part of the Utility if it is no longer profitable to use and operate such property or equipment.

7. Lessee agrees to pay all ad valorem or other taxes, special assessments and similar charges payable during the term of this lease, be-

coming due and payable during the term of this lease, which have or may at any time be levied, taxed or assessed upon the Utility, including all interests in real property incidental thereto, the possession or operation thereof, the sale of gas or otherwise related to the Utility, and shall pay and hold Lessor harmless against any such taxes, including interest and penalties thereon, for which Lessor may become liable. Lessee also agrees to pay all claims or charges for or on account of water, light, heat, power and any other service or utility furnished in connection with the Utility or any part thereof.

8. Lessee agrees that the rates charged for gas furnished to Consumers from the Utility for the first ten years of said term shall not be in excess of the following schedule of rates:

A. For each residential or commercial consumer the rate shall be as follows:

\$1.25 for first 500 cubic feet or less used through each meter each month, the minimum charge being \$1.25 for each meter each month.

\$0.90 per 1,000 cubic feet for all over 500 cubic feet used through each meter each month.

B. For each industrial consumer the rate shall be as follows:

\$0.63 per 1,000 cubic feet used through each meter each month. The term "industrial consumer" means a Consumer who will consume (a) 4 million cubic feet of gas each month during a period of twelve successive months or (b) 25 million cubic feet of gas during the period from May 1 to October 30, provided that in order to obtain the rate for industrial consumers a Consumer must make application therefor to the Lessee prior to May 1 of each year with respect to the twelve months next following said date, and provided further that in the event that a Consumer shall have been charged the rate for industrial consumers during a period for which said Consumer's consumption shall not have met either of the aforesaid minimum requirements he shall be deemed a com-

mercial consumer for said period and shall be required to promptly pay, at the conclusion of said period the difference between the commercial rate and the industrial rate for gas consumed during said period.

C. Ten per cent of the charges as above calculated shall be added to each bill if the same is not paid within fifteen days following the mailing of such bill;

Provided, however, that during said ten year period:

(1) Should the then applicable rate charged by Lessee's supplier for gas delivered to Lessee be changed (including changes during the pendency of an application to the Federal Power Commission), the above schedule of rates shall be adjusted accordingly at the option of the Lessee in the case of increase and at the option of the Lessor in case of decrease, subject to the following conditions:

(i) The schedule of rates above set forth is based on (a) a commodity charge to Lessee of \$0.45 per 1,000 cubic feet with no demand charge or minimum charge or (b) a demand charge of \$1.56 per 1,000 cubic feet of billing demand per month and a commodity charge of 32.43 cents per 1,000 cubic feet; and adjustments to said rate schedule shall reflect variances therefrom.

(ii) The exercise of the option to require an increase or decrease may be exercised in full or in part, may be deferred and may be aggregated with subsequent increases or decreases or used to offset increases or decreases, as the case may be; but the exercise of the option to require an increase or decrease may not be applied retroactively to affect the rate for service which has already been billed at the time of such exercise.

(iii) The option to increase or decrease shall be exercised by written notice as hereinafter provided.

(iv) Any refund to Lessee by its supplier shall be passed on by Lessee as a refund to Consumers, provided that Lessee shall not be required to pass on to any one Consumer any refund which would be less than \$1.00.

(2) In the event that Lessee shall become subject to paying any new or increased taxes hereunder, the schedule of rates in effect at the time of the imposition or increase of such taxes shall be increased in an amount sufficient to pay such taxes, and such schedule of rates shall likewise be decreased upon the repeal or decrease in such taxes;

(3) If at any time after December 31, 1963, Lessee determines that there has been a change of conditions which affects the cost of service which is not otherwise provided for in subparagraphs (1) and (2) immediately preceding, Lessee shall give written notice, as hereinafter provided, to Lessor of the nature of the change of conditions and of the extent to which it believes such change requires a change of the schedule of rates to Consumers. If the parties do not agree upon a schedule of rates within ninety days after such notice, then nothing herein shall affect the right of Lessee to initiate any action or proceeding for the purpose of establishing the rates to be charged for service hereunder. Lessee agrees and stipulates that during the first ten years hereof, it will not advocate or advance in any proceeding for the determination of rates any increase in rates which will provide more revenue than that required to meet reasonable and proper costs and expenses hereunder, including a reasonable amortization of the costs of extension and replacement of lines, meters, regulators and other such facilities and the minimum lease payments provided above, and to maintain an adequate amount of working capital for the operation of the Utility.

9. After the expiration of the period of ten years specified in the foregoing paragraph of this lease, the rates which may be charged to Consumers of gas from the Utility shall be those fixed by Lessor from time to time subject, however, to any right of the Lessee to appeal therefrom to the Public Utilities Commission of Ohio.

10. With respect to Consumers outside the municipal limits of Lessor who are served from the Utility, Lessee shall, by agreement with such consumers, charge rates to them which are the same as the rates from time to time in effect for Consumers within Lessor's municipal limits.

11. Lessee agrees to sell and deliver to the Consumers the daily aggregate volume of 597,000 cubic feet of gas or such lesser amount as they may require at the rates and upon the terms and conditions as herein provided. In the event that this lease shall for any reason be terminated, Lessee hereby agrees that, at Lessor's option and so long as any of the Bonds are outstanding, it will sell and deliver said volume of gas to Lessor or any other person, firm or corporation which shall operate the Utility at a rate not to exceed by more than 5 cents per 1,000 cubic feet the cost of such gas to the Lessee, and at such point or points of delivery as Lessor may specify provided that Lessee shall not be required to construct any pipeline to such point of delivery. The supply of gas as hereinabove provided shall at all times be subject to the valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.

12. Lessee at all times will procure and maintain at its expense insurance on the Utility of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. All insurance policies shall provide for the payment of any loss to the

Lessor or as Lessor may designate and the sole right to receive the proceeds of such insurance and the right to collect and receipt for all claims thereunder shall be vested in the Lessor or as otherwise designated by Lessor. Originals or duplicate originals of such policies shall be delivered to Lessor. In case the Lessor shall at any time notify the Lessee in writing that it disapproves of any insurance company or the terms of any policy, the Lessee shall forthwith effect other insurance satisfactory to the Lessor. In the event of damage to or partial or total destruction of any part of the premises covered by such insurance, the Lessor, with the proceeds of the insurance and any other funds which may be lawfully made available, and with reasonable dispatch will repair, replace or rebuild the property damaged or destroyed provided that such repair, replacement or rebuilding is essential to proper operation of the Utility; the obligation of Lessor so to repair, replace or rebuild shall be limited to the proceeds of such insurance. Notwithstanding any other provision hereof, Lessee shall not be obligated to repair or replace any damaged or destroyed property if such damage or destruction is covered by insurance as provided above.

13. Lessee agrees to indemnify and hold Lessor harmless against any liability whatsoever because of accidents or injury to persons or property occurring in or related to the operation of the Utility by Lessee. Lessee also agrees that during the term of this lease it will procure and maintain public liability insurance and property damage insurance of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. Policies evidencing such insurance shall name Lessor as an assured and originals or duplicate originals thereof shall be delivered to Lessor.

14. Lessee shall report quarterly to Lessor (a) the aggregate volume of gas sold to consumers of the Utility based on the meter readings provided for in Paragraph 2 hereof with such detail as Lessor may need in order to verify the amounts of rental due, and (b) the nature, kind, character and location of substantial extensions to the lines of the Lessor together with the cost thereof. The Lessor, and such representatives of the mortgagee of the Utility as may be designated by Lessor, shall at all times have access to and opportunity for inspecting all records and accounts in any way pertaining to the ownership or operation of the Utility.

15. The Lessor shall have the right to construct both within and without its corporate limits any extensions or improvements to the Utility and when constructed the same shall be subject to the terms and provisions of this lease.

16. Upon request Lessee shall promptly extend the lines of the Utility within the corporate limits of Lessor in order to reach any Consumer which desires gas, but in no event shall the Lessee be required to extend such lines for a distance in excess of 100 feet for one consumer. Lessee shall have the right to construct any extensions or improvements to the Utility if it so desires, provided, however, that such extension shall not be made if the result will be that Consumers will be purchasing for use outside the corporate limits of Lessor more than fifty per cent of the volume of gas purchased by Consumers for use within said corporate limits. All extensions or improvements made by Lessee shall immediately become the property of Lessor and subject to the terms of this lease.



17. For the purpose of constructing, erecting, maintaining, operating and extending gas mains, meters, outlets, connections, manholes and all other apparatus necessary or appropriate to the operations of the Utility, the Lessee shall have the right to use streets, lanes, alleys, avenues and other public thoroughfares, easements, licenses and rights of the Lessor, together with all necessary privileges thereto; provided, however, that in the maintenance, repair or extension of said Utility, the Lessee shall not unnecessarily interrupt or obstruct the use of any street, lane, alley, avenue or public thoroughfare, and in connection with any such work shall obtain such permits and approvals as may be required by the ordinances of the Lessor. When any streets, lanes, alleys, avenues or public thoroughfares are entered upon, or facilities removed therefrom, the Lessee shall restore the same to their original condition and shall clear all such places of dirt, obstructions and anything that might constitute a nuisance, or prevent such street, lane, alley, avenue or public thoroughfare from being open and in repair. Such restoration to original condition shall be made by the Lessee under the supervision and control of the appropriate officer of the Lessor.

18. Lessee in the operation of the Utility shall be entitled to exercise those rights of the Lessor and does hereby assume and agree to be bound by those obligations of the Lessor provided for in Sections 1, 2, 7, 8, 9 and 10 of the Indenture referred to in the preamble hereto and incorporated herein by reference. Lessee's rights hereunder shall be subject and subordinate to the grants and agreements made by Lessor in the said Indenture.

19. Lessee will not without the prior written consent of Lessor

sell, assign or pledge this lease or any of its rights or obligations hereunder or sublease or permit the use by others of any of the property covered by this lease.

20. Lessor shall at all times have the right to sell, assign, mortgage, pledge or otherwise encumber all or any of its rights under this lease, and reserves unto itself the right to mortgage, pledge and otherwise encumber the Utility in preference to the rights of the Lessee in order to secure the payment of obligations incurred in order to construct, complete, replace or extend the Utility, or any part thereof. The Lessee's rights hereunder shall be subject and subordinate to the lien of the Mortgage or any other encumbrance given or to be given to secure the Bonds. This lease agreement shall inure to the benefit of and be binding upon the successors and assigns of Lessor, and of Lessee in the event that Lessor shall consent to assignment by the Lessee as provided above.

21. Lessor, its successors or assigns, by notice in writing to Lessee, may cancel this lease, or any extension thereof, in the event (a) Lessee is adjudged insolvent or bankrupt, and a receiver or trustee is appointed for Lessee or its property, Lessee makes an arrangement for the benefit of creditors, Lessee becomes insolvent, or a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating Lessee a bankrupt or for reorganization of Lessee, or for the purpose of effecting a composition or rearrangement with Lessee's creditors, and such petition is not dismissed within thirty days, (b) Lessee shall fail to pay the rental hereunder within five days after it shall become due, or (c) of any other

violation of any of the terms, conditions or covenants of this lease by Lessee and the failure of Lessee to cure such violation within sixty days from the giving of written notice thereof by Lessor, its successors or assigns to Lessee. Upon the expiration, termination or cancellation of this lease, Lessor, its successors or assigns, shall have the right to invoke any remedy permitted by law or in equity for the protection of its interests hereunder, and Lessee hereby expressly waives all rights which it may have to redeem or to be served with any further notice of the intention to cancel or terminate this lease other than as herein provided. In the event of sale of the Utility upon foreclosure under the Mortgage or any other encumbrance placed on the Utility to which Lessee's rights hereunder are subject and subordinate, the purchaser shall have the option to terminate this lease agreement in its entirety upon written notice to Lessee given within one year after confirmation of the sale by the court having jurisdiction, provided that such notice may fix as the termination date, the date of such notice or any other date within two years following the date of such notice.

23. Notices hereunder shall be in writing and shall be considered duly delivered when mailed by registered mail to the post office address of Lessor or Lessee, as the case may be or at such other address as either may designate by formal written notice. Until so changed, notices to the Lessor shall be addressed to the Clerk of the Village of Hamler, Henry County, Ohio, and notices to the Lessee shall be addressed to its President at Cygnat, Ohio.

IN WITNESS WHEREOF, we have hereunto set our hands as of the day  
and year first above written.

Signed and acknowledged in  
the presence of:

*[Signature]*  
as to the Village of Hamler

VILLAGE OF HAMLER

Lessor

By

*[Signature]*  
Mayor

By

*[Signature]*  
Clerk

*[Signature]*

*[Signature]*

*[Signature]*

Board of Trustees of Public Affairs

Signed and acknowledged in  
the presence of:

*[Signature]*  
Eleanor J. Martin  
As to Suburban Fuel Gas, Inc.

SUBURBAN FUEL GAS, INC.

Lessor

By

*[Signature]* PARTIDANT

By

*[Signature]* SECRETARY


STATE OF OHIO

COUNTY OF WOOD

)  
)SS:  
)

On this 20th day of October, 1959, before me, a Notary Public in and for said County and State, personally appeared the above named Village of Hawley, by George Heinrichs, its Mayor, Irvin Flory, its Clerk, and George Hoops, Arnold Hagen and George Faeth, the members of its Board of Trustees of Public Affairs, who acknowledged that they did sign the foregoing instrument, and that the same is the free act and deed of said Village, and the free act and deed of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year aforesaid.

 (Seal)  
Notary Public

My Commission Expires May 10, 1960

STATE OF OHIO

COUNTY OF WOOD

)  
)SS:  
)

HARRY G. ROESKE  
Notary Public, State of Ohio  
My Commission Expires May 10, 1960

On this 20th day of October, 1959, before me, a Notary Public in and for said County and State, personally appeared the above named SUBURBAN FUEL GAS, INC., by Carl H. Schwyn, its President, and Roselyn Schwyn Rood, its Secretary, who acknowledged that they did sign the foregoing instrument, and that the same is the free act and deed of said Corporation, and the free act and deed of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year aforesaid.

 (Seal)  
Notary Public

My Commission Expires May 10, 1960

(This instrument was prepared by Ralph H. Gibbon)

# **APPENDIX C**

## **VILLAGE OF HOLGATE**

*Chas. J. ...*

LEASE AGREEMENT

This agreement of lease made this 20th day of October, 1959, between the Village of Holgate, a municipal corporation duly organized and existing under the laws of the State of Ohio, and situated in Henry County in said state, herein referred to as Lessor, and Suburban Fuel Gas Inc, a corporation duly organized and existing under the laws of Ohio with its principal office in Cygnnet, Ohio, herein referred to as Lessee,

W I T N E S S E T H:

WHEREAS, Lessor proposes to construct and own a gas transmission and distribution system in accordance with plans and specifications approved by Council of Lessor on June 20, 1959, on file with said Council, herein referred to as the Utility, which is to be constructed for the purpose of supplying gas to Lessor, its inhabitants and to others within and without the corporate limits of Lessor; and

WHEREAS, the Lessor, together with Suburban Fuel Gas, Inc., and the Ohio Villages of Deshler, Hamler, Hoytville and McComb have executed a certain instrument designated "Deed and Indenture", dated as of Oct 1, 1959 (hereinafter referred to as "Indenture"), in which Suburban Fuel Gas, Inc. grants unto Lessor and said Villages certain Rights-of-Way and Leases and reserved rights and providing, among other things, for the construction by said Villages of their respective parts of the gas System described therein, including the agreement of Lessor to construct the Utility which is part of said System, providing further for reciprocal rights of Lessor and said Villages to receive gas through the lines of the

others and the maintenance of such lines, which Indenture is incorporated herein by reference and made a part hereof; and

WHEREAS, Lessee is in a position to furnish an adequate supply of gas for such purpose; and

WHEREAS, the Council and the Board of Trustees of Public Affairs of Lessor have determined that the interests of the Lessor, its inhabitants and others, within and without the corporate limits of Lessor, who are to be served with gas through the Utility (hereinafter sometimes collectively referred to as the "Consumers") can best be served by the leasing of said Utility to a private corporation upon the terms and conditions herein set forth;

NOW, THEREFORE, Lessor lets and leases unto Lessee the Utility for a term of fifty years from the date hereof for the sole purpose of operating the same so as to supply gas to the Consumers, including Lessor, subject to the following terms, conditions and covenants:

1. Lessee shall pay to Lessor as rent the sum of 15 ¢ for each 1,000 cubic feet of gas delivered to domestic and commercial consumers from the Utility and 3 ¢ for each 1,000 cubic feet of gas delivered therefrom to industrial consumers as defined in Paragraph 8 hereof (herein sometimes referred to as "basic rent"), all according to meter readings to each Consumer, provided that, effective January 1, 1961, (but not earlier than the date of completion of the Utility), and continuing so long as any of Lessor's First Mortgage Gas System Revenue Bonds, dated September 1, 1959, or any bonds issued to refund or extend the maturity of said bonds or any additional bonds issued to complete the construction of the Utility or for the purpose of making replacements, extensions and improvements to the Utility (hereinafter



referred to as the "Bonds"), remain outstanding, the minimum rent payable by the Lessee to the Lessor shall be not less than the amount shown on the following schedule for each of the years indicated:

<u>Year(s)</u>	<u>Minimum Quarterly Rental</u>	<u>Minimum Annual Rental</u>
1961-65	\$ 4,250	\$ 17,000
1966	4,500	18,000
1967	5,000	20,000
1968-79	5,750	23,000
1980-89 and thereafter	6,000	24,000

Provided, however, that since such minimum rental provision shall become effective on January 1, 1961, the minimum quarterly rental payable as hereinafter provided, on March 10, 1961, shall be two-thirds of the amount above shown and the minimum annual rental payable within the calendar year of 1961 shall be eleven-twelfths of the amount above shown.

2. Lessee shall pay the rental hereunder to Lessor quarterly on the 10th days of March, June, September and December based on meter readings, and covenants to read the meters of Consumers at least once during the three calendar months preceding each rental payment date; provided, however,

(a) That if the basic rent herein provided for shall for any quarter exceed the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the excess shall be applied pro tanto to all or any of the subsequent minimum quarterly payments to be made in that calendar year only in computing such minimum quarterly payments, provided that the total payments for any one calendar year must be at least equal to the minimum rental called for by the above schedule in Paragraph 1.

(b) That if the basic rent herein provided for shall for any quarter be less than the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the difference between the minimum quarterly rental (as adjusted pursuant to subparagraph (a) of this Paragraph 2) and the basic rent for that quarter shall be credited pro tanto to all or any of the subsequent basic rental payments to be made in that calendar year only and where such basic rental payment would otherwise exceed such minimum quarterly rental but never so as to reduce the basic rental payment below such minimum quarterly payment.

(c) That if in any of the years from 1961 to 1965, inclusive, the basic rent does not equal the minimum rental for such year, the payment of the amount of the deficit may be postponed by the Lessee until December 10, 1966, without creating any default hereunder, but only to the extent that in prior years the rentals actually paid exceeded the stated minimum rentals for such prior years and were not previously used by Lessee as a basis under this subparagraph for the postponement of payment of a deficit; provided, however, that by December 10, 1966, any or all deficits so postponed hereunder shall be paid in full.

3. In addition to the rent hereinbefore provided, Lessee shall pay to the Lessor upon demand any and all moneys payable or actually paid by the Lessor in the discharge of its obligations under the Trust Indenture

between Lessor and The Toledo Trust Company, dated as of September 1, 1959, securing the Bonds (hereinafter referred to as the "Mortgage").

4. The Lessee will operate the Utility under the provisions of the applicable laws of the State of Ohio and in accordance with all lawful requirements imposed by the State of Ohio or any other lawfully constituted authority and will indemnify Lessor against liability or penalty for any asserted violation thereof; and will furnish gas to all persons owning or occupying premises abutting the streets, alleys, public grounds or rights-of-way in which are laid the pipelines of the Utility or any extensions of such lines which may hereafter be made, whether within or without the corporate limits of Lessor; and will efficiently maintain and operate the Utility.

5. Lessee agrees to install any additional meters that may be necessary to measure the volume of gas supplied to each customer, at the sole cost and expense of Lessee and such meters upon being installed shall immediately become absolutely the property of Lessor and a part of the Utility, but subject to the terms and provisions of this lease.

6. Lessee shall keep the Utility, and every part thereof, in good condition, repair and working order, replacing any part or parts thereof which may become worn out or injured by other suitable property of at least equal value and efficiency, provided, however, that with the consent of the Lessor, the Lessee may discontinue the use and operation of any property or equipment forming a non-essential part of the Utility if it is no longer profitable to use and operate such property or equipment.

7. Lessee agrees to pay all ad valorem or other taxes, special assessments and similar charges payable during the term of this lease, be-

coming due and payable during the term of this lease, which have or may at any time be levied, taxed or assessed upon the Utility, including all interests in real property incidental thereto, the possession or operation thereof, the sale of gas or otherwise related to the Utility, and shall pay and hold Lessor harmless against any such taxes, including interest and penalties thereon, for which Lessor may become liable. Lessee also agrees to pay all claims or charges for or on account of water, light, heat, power and any other service or utility furnished in connection with the Utility or any part thereof.

8. Lessee agrees that the rates charged for gas furnished to Consumers from the Utility for the first ten years of said term shall not be in excess of the following schedule of rates:

A. For each residential or commercial consumer the rate shall be as follows:

\$1.25 for first 500 cubic feet or less used through each meter each month, the minimum charge being \$1.25 for each meter each month.

\$0.90 per 1,000 cubic feet for all over 500 cubic feet used through each meter each month.

B. For each industrial consumer the rate shall be as follows:

\$0.63 per 1,000 cubic feet used through each meter each month. The term "industrial consumer" means a Consumer who will consume (a) 4 million cubic feet of gas each month during a period of twelve successive months or (b) 25 million cubic feet of gas during the period from May 1 to October 30, provided that in order to obtain the rate for industrial consumers a Consumer must make application therefor to the Lessee prior to May 1 of each year with respect to the twelve months next following said date, and provided further that in the event that a Consumer shall have been charged the rate for industrial consumers during a period for which said Consumer's consumption shall not have met either of the aforesaid minimum requirements he shall be deemed a com-

mercial consumer for said period and shall be required to promptly pay, at the conclusion of said period the difference between the commercial rate and the industrial rate for gas consumed during said period.

C. Ten per cent of the charges as above calculated shall be added to each bill if the same is not paid within fifteen days following the mailing of such bill;

Provided, however, that during said ten year period:

(1) Should the then applicable rate charged by Lessee's supplier for gas delivered to Lessee be changed (including changes during the pendency of an application to the Federal Power Commission), the above schedule of rates shall be adjusted accordingly at the option of the Lessee in the case of increase and at the option of the Lessor in case of decrease, subject to the following conditions:

(i) The schedule of rates above set forth is based on (a) a commodity charge to Lessee of \$0.45 per 1,000 cubic feet with no demand charge or minimum charge or (b) a demand charge of \$1.56 per 1,000 cubic feet of billing demand per month and a commodity charge of 32.43 cents per 1,000 cubic feet; and adjustments to said rate schedule shall reflect variances therefrom.

(ii) The exercise of the option to require an increase or decrease may be exercised in full or in part, may be deferred and may be aggregated with subsequent increases or decreases or used to offset increases or decreases, as the case may be; but the exercise of the option to require an increase or decrease may not be applied retroactively to affect the rate for service which has already been billed at the time of such exercise.

(iii) The option to increase or decrease shall be exercised by written notice as hereinafter provided.

(iv) Any refund to Lessee by its supplier shall be passed on by Lessee as a refund to Consumers, provided that Lessee shall not be required to pass on to any one Consumer any refund which would be less than \$1.00.

(2) In the event that Lessee shall become subject to paying any new or increased taxes hereunder, the schedule of rates in effect at the time of the imposition or increase of such taxes shall be increased in an amount sufficient to pay such taxes, and such schedule of rates shall likewise be decreased upon the repeal or decrease in such taxes;

(3) If at any time after December 31, 1963, Lessee determines that there has been a change of conditions which affects the cost of service which is not otherwise provided for in subparagraphs (1) and (2) immediately preceding, Lessee shall give written notice, as hereinafter provided, to Lessor of the nature of the change of conditions and of the extent to which it believes such change requires a change of the schedule of rates to Consumers. If the parties do not agree upon a schedule of rates within ninety days after such notice, then nothing herein shall affect the right of Lessee to initiate any action or proceeding for the purpose of establishing the rates to be charged for service hereunder. Lessee agrees and stipulates that during the first ten years hereof, it will not advocate or advance in any proceeding for the determination of rates any increase in rates which will provide more revenue than that required to meet reasonable and proper costs and expenses hereunder, including a reasonable amortization of the costs of extension and replacement of lines, meters, regulators and other such facilities and the minimum lease payments provided above, and to maintain an adequate amount of working capital for the operation of the Utility.

9. After the expiration of the period of ten years specified in the foregoing paragraph of this lease, the rates which may be charged to Consumers of gas from the Utility shall be those fixed by Lessor from time to time subject, however, to any right of the Lessee to appeal therefrom to the Public Utilities Commission of Ohio.

10. With respect to Consumers outside the municipal limits of Lessor who are served from the Utility, Lessee shall, by agreement with such consumers, charge rates to them which are the same as the rates from time to time in effect for Consumers within Lessor's municipal limits.

11. Lessee agrees to sell and deliver to the Consumers the daily aggregate volume of 747,000 cubic feet of gas or such lesser amount as they may require at the rates and upon the terms and conditions as herein provided. In the event that this lease shall for any reason be terminated, Lessee hereby agrees that, at Lessor's option and so long as any of the Bonds are outstanding, it will sell and deliver said volume of gas to Lessor or any other person, firm or corporation which shall operate the Utility at a rate not to exceed by more than 5 cents per 1,000 cubic feet the cost of such gas to the Lessee, and at such point or points of delivery as Lessor may specify provided that Lessee shall not be required to construct any pipeline to such point of delivery. The supply of gas as hereinabove provided shall at all times be subject to the valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.

12. Lessee at all times will procure and maintain at its expense insurance on the Utility of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. All insurance policies shall provide for the payment of any loss to the

Lessor or as Lessor may designate and the sole right to receive the proceeds of such insurance and the right to collect and receipt for all claims thereunder shall be vested in the Lessor or as otherwise designated by Lessor. Originals or duplicate originals of such policies shall be delivered to Lessor. In case the Lessor shall at any time notify the Lessee in writing that it disapproves of any insurance company or the terms of any policy, the Lessee shall forthwith effect other insurance satisfactory to the Lessor. In the event of damage to or partial or total destruction of any part of the premises covered by such insurance, the Lessor, with the proceeds of the insurance and any other funds which may be lawfully made available, and with reasonable dispatch will repair, replace or rebuild the property damaged or destroyed provided that such repair, replacement or rebuilding is essential to proper operation of the Utility; the obligation of Lessor so to repair, replace or rebuild shall be limited to the proceeds of such insurance. Notwithstanding any other provision hereof, Lessee shall not be obligated to repair or replace any damaged or destroyed property if such damage or destruction is covered by insurance as provided above.

13. Lessee agrees to indemnify and hold Lessor harmless against any liability whatsoever because of accidents or injury to persons or property occurring in or related to the operation of the Utility by Lessee. Lessee also agrees that during the term of this lease it will procure and maintain public liability insurance and property damage insurance of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. Policies evidencing such insurance shall name Lessor as an assured and originals or duplicate originals thereof shall be delivered to Lessor.



14. Lessee shall report quarterly to Lessor (a) the aggregate volume of gas sold to consumers of the Utility based on the meter readings provided for in Paragraph 2 hereof with such detail as Lessor may need in order to verify the amounts of rental due, and (b) the nature, kind, character and location of substantial extensions to the lines of the Lessor together with the cost thereof. The Lessor, and such representatives of the mortgagee of the Utility as may be designated by Lessor, shall at all times have access to and opportunity for inspecting all records and accounts in any way pertaining to the ownership or operation of the Utility.

15. The Lessor shall have the right to construct both within and without its corporate limits any extensions or improvements to the Utility and when constructed the same shall be subject to the terms and provisions of this lease.

16. Upon request Lessee shall promptly extend the lines of the Utility within the corporate limits of Lessor in order to reach any Consumer which desires gas, but in no event shall the Lessee be required to extend such lines for a distance in excess of 100 feet for one consumer. Lessee shall have the right to construct any extensions or improvements to the Utility if it so desires, provided, however, that such extension shall not be made if the result will be that Consumers will be purchasing for use outside the corporate limits of Lessor more than fifty per cent of the volume of gas purchased by Consumers for use within said corporate limits. All extensions or improvements made by Lessee shall immediately become the property of Lessor and subject to the terms of this lease.

17. For the purpose of constructing, erecting, maintaining, operating and extending gas mains, meters, outlets, connections, manholes and all other apparatus necessary or appropriate to the operations of the Utility, the Lessee shall have the right to use streets, lanes, alleys, avenues and other public thoroughfares, easements, licenses and rights of the Lessor, together with all necessary privileges thereto; provided, however, that in the maintenance, repair or extension of said Utility, the Lessee shall not unnecessarily interrupt or obstruct the use of any street, lane, alley, avenue or public thoroughfare, and in connection with any such work shall obtain such permits and approvals as may be required by the ordinances of the Lessor. When any streets, lanes, alleys, avenues or public thoroughfares are entered upon, or facilities removed therefrom, the Lessee shall restore the same to their original condition and shall clear all such places of dirt, obstructions and anything that might constitute a nuisance, or prevent such street, lane, alley, avenue or public thoroughfare from being open and in repair. Such restoration to original condition shall be made by the Lessee under the supervision and control of the appropriate officer of the Lessor.

18. Lessee in the operation of the Utility shall be entitled to exercise those rights of the Lessor and does hereby assume and agree to be bound by those obligations of the Lessor provided for in Sections 1, 2, 7, 8, 9 and 10 of the Indenture referred to in the preamble hereto and incorporated herein by reference. Lessee's rights hereunder shall be subject and subordinate to the grants and agreements made by Lessor in the said Indenture.

19. Lessee will not without the prior written consent of Lessor

sell, assign or pledge this lease or any of its rights or obligations hereunder or sublease or permit the use by others of any of the property covered by this lease.

20. Lessor shall at all times have the right to sell, assign, mortgage, pledge or otherwise encumber all or any of its rights under this lease, and reserves unto itself the right to mortgage, pledge and otherwise encumber the Utility in preference to the rights of the Lessee in order to secure the payment of obligations incurred in order to construct, complete, replace or extend the Utility, or any part thereof. The Lessee's rights hereunder shall be subject and subordinate to the lien of the Mortgage or any other encumbrance given or to be given to secure the Bonds. This lease agreement shall inure to the benefit of and be binding upon the successors and assigns of Lessor, and of Lessee in the event that Lessor shall consent to assignment by the Lessee as provided above.

21. Lessor, its successors or assigns, by notice in writing to Lessee, may cancel this lease, or any extension thereof, in the event (a) Lessee is adjudged insolvent or bankrupt, and a receiver or trustee is appointed for Lessee or its property, Lessee makes an arrangement for the benefit of creditors, Lessee becomes insolvent, or a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating Lessee a bankrupt or for reorganization of Lessee, or for the purpose of effecting a composition or rearrangement with Lessee's creditors, and such petition is not dismissed within thirty days, (b) Lessee shall fail to pay the rental hereunder within five days after it shall become due, or (c) of any other

violation of any of the terms, conditions or covenants of this lease by Lessee and the failure of Lessee to cure such violation within sixty days from the giving of written notice thereof by Lessor, its successors or assigns to Lessee. Upon the expiration, termination or cancellation of this lease, Lessor, its successors or assigns, shall have the right to invoke any remedy permitted by law or in equity for the protection of its interests hereunder, and Lessee hereby expressly waives all rights which it may have to redeem or to be served with any further notice of the intention to cancel or terminate this lease other than as herein provided. In the event of sale of the Utility upon foreclosure under the Mortgage or any other encumbrance placed on the Utility to which Lessee's rights hereunder are subject and subordinate, the purchaser shall have the option to terminate this lease agreement in its entirety upon written notice to Lessee given within one year after confirmation of the sale by the court having jurisdiction, provided that such notice may fix as the termination date, the date of such notice or any other date within two years following the date of such notice.

23. Notices hereunder shall be in writing and shall be considered duly delivered when mailed by registered mail to the post office address of Lessor or Lessee, as the case may be or at such other address as either may designate by formal written notice. Until so changed, notices to the Lessor shall be addressed to the Clerk of the Village of Holgate, Henry County, Ohio, and notices to the Lessee shall be addressed to its President at Cygnnet, Ohio.

IN WITNESS WHEREOF, we have hereunto set our hands as of the day  
and year first above written.

Signed and acknowledged in  
the presence of

[Signature]  
[Signature]  
as to the Village of Holgate

VILLAGE OF HOLGATE

Lessor

By [Signature] Mayor

By [Signature] Clerk

[Signature]

[Signature]

[Signature]  
Board of Trustees of Public Affairs

Signed and acknowledged in  
the presence of:

[Signature]  
[Signature]  
as to

THE SUBURBAN FUEL GAS, INC.

Lessee

By [Signature] President

By [Signature] Secretary



# **APPENDIX D**

## **VILLAGE OF HOYTVILLE**

LEASE AGREEMENT

This agreement of lease made this 20th day of October, 1959, between the Village of Hoytville, a municipal corporation duly organized and existing under the laws of the State of Ohio, and situated in Wood County in said state, herein referred to as Lessor, and Suburban Fuel Gas, Inc., a corporation duly organized and existing under the laws of Ohio with its principal office in Cyrnet, Ohio, herein referred to as Lessee,

W I T N E S S E T H:

WHEREAS, Lessor proposes to construct and own a gas transmission and distribution system in accordance with plans and specifications approved by Council of Lessor on June 15, 1959, on file with said Council, herein referred to as the Utility, which is to be constructed for the purpose of supplying gas to Lessor, its inhabitants and to others within and without the corporate limits of Lessor; and

WHEREAS, the Lessor, together with Suburban Fuel Gas, Inc., and the Ohio Villages of Deshler, Hamler, Holgate and McComb, have executed a certain instrument designated "Deed and Indenture", dated as of \_\_\_\_\_, 1959 (hereinafter referred to as "Indenture"), in which Suburban Fuel Gas, Inc. grants unto Lessor and said Villages certain Rights-of-Way and Leases and reserved rights and providing, among other things, for the construction by said Villages of their respective parts of the gas System described therein, including the agreement of Lessor to construct the Utility which is part of said System, providing further for reciprocal rights of Lessor and said Villages to receive gas through the lines of the



others and the maintenance of such lines, which Indenture is incorporated herein by reference and made a part hereof; and

WHEREAS, Lessee is in a position to furnish an adequate supply of gas for such purpose; and

WHEREAS, the Council and the Board of Trustees of Public Affairs of Lessor have determined that the interests of the Lessor, its inhabitants and others, within and without the corporate limits of Lessor, who are to be served with gas through the Utility (hereinafter sometimes collectively referred to as the "Consumers") can best be served by the leasing of said Utility to a private corporation upon the terms and conditions herein set forth;

NOW, THEREFORE, Lessor lets and leases unto Lessee the Utility for a term of fifty years from the date hereof for the sole purpose of operating the same so as to supply gas to the Consumers, including Lessor, subject to the following terms, conditions and covenants:

1. Lessee shall pay to Lessor as rent the sum of <sup>15</sup> ¢ for each 1,000 cubic feet of gas delivered to domestic and commercial consumers from the Utility and <sup>3</sup> ¢ for each 1,000 cubic feet of gas delivered therefrom to industrial consumers as defined in Paragraph 8 hereof (herein sometimes referred to as "basic rent"), all according to meter readings to each Consumer, provided that, effective January 1, 1961, (but not earlier than the date of completion of the Utility), and continuing so long as any of Lessor's First Mortgage Gas System Revenue Bonds, dated September 1, 1959, or any bonds issued to refund or extend the maturity of said bonds or any additional bonds issued to complete the construction of the Utility or for the purpose of making replacements, extensions and improvements to the Utility (hereinafter

referred to as the "Bonds"), remain outstanding, the minimum rent payable by the Lessee to the Lessor shall be not less than the amount shown on the following schedule for each of the years indicated:

<u>Year(s)</u>	<u>Minimum Quarterly Rental</u>	<u>Minimum Annual Rental</u>
1961-67	\$ 1,250	\$ 5,000
1968-85	1,500	6,000
1986 and thereafter	1,750	7,000

Provided, however, that since such minimum rental provision shall become effective on January 1, 1961, the minimum quarterly rental payable, as hereinafter provided, on March 10, 1961, shall be two-thirds of the amount above shown and the minimum annual rental payable within the calendar year of 1961 shall be eleven-twelfths of the amount above shown.

2. Lessee shall pay the rental hereunder to Lessor quarterly on the 10th days of March, June, September and December based on meter readings, and covenants to read the meters of Consumers at least once during the three calendar months preceding each rental payment date; provided, however,

(a) That if the basic rent herein provided for shall for any quarter exceed the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the excess shall be applied pro tanto to all or any of the subsequent minimum quarterly payments to be made in that calendar year only in computing such minimum quarterly payments, provided that the total payments for any one calendar year must be at least equal to the minimum rental called for by the above schedule in Paragraph 1.

(b) That if the basic rent herein provided for shall for any quarter be less than the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the difference between the minimum quarterly rental (as adjusted pursuant to subparagraph (a) of this Paragraph 2) and the basic rent for that quarter shall be credited pro tanto to all or any of the subsequent basic rental payments to be made in that calendar year only and where such basic rental payment would otherwise exceed such minimum quarterly rental but never so as to reduce the basic rental payment below such minimum quarterly payment.

(c) That if in any of the years from 1961 to 1965, inclusive, the basic rent does not equal the minimum rental for such year, the payment of the amount of the deficit may be postponed by the Lessee until December 10, 1966, without creating any default hereunder, but only to the extent that in prior years the rentals actually paid exceeded the stated minimum rentals for such prior years and were not previously used by Lessee as a basis under this subparagraph for the postponement of payment of a deficit; provided, however, that by December 10, 1966, any or all deficits so postponed hereunder shall be paid in full.

3. In addition to the rent hereinbefore provided, Lessee shall pay to the Lessor upon demand any and all moneys payable or actually paid by the Lessor in the discharge of its obligations under the Trust Indenture

between Lessor and The Toledo Trust Company, dated as of September 1, 1959, securing the Bonds (hereinafter referred to as the "Mortgage").

4. The Lessee will operate the Utility under the provisions of the applicable laws of the State of Ohio and in accordance with all lawful requirements imposed by the State of Ohio or any other lawfully constituted authority and will indemnify Lessor against liability or penalty for any asserted violation thereof; and will furnish gas to all persons owning or occupying premises abutting the streets, alleys, public grounds or rights-of-way in which are laid the pipelines of the Utility or any extensions of such lines which may hereafter be made, whether within or without the corporate limits of Lessor; and will efficiently maintain and operate the Utility.

5. Lessee agrees to install any additional meters that may be necessary to measure the volume of gas supplied to each customer, at the sole cost and expense of Lessee and such meters upon being installed shall immediately become absolutely the property of Lessor and a part of the Utility, but subject to the terms and provisions of this lease.

6. Lessee shall keep the Utility, and every part thereof, in good condition, repair and working order, replacing any part or parts thereof which may become worn out or injured by other suitable property of at least equal value and efficiency, provided, however, that with the consent of the Lessor, the Lessee may discontinue the use and operation of any property or equipment forming a non-essential part of the Utility if it is no longer profitable to use and operate such property or equipment.

7. Lessee agrees to pay all ad valorem or other taxes, special assessments and similar charges payable during the term of this lease, be-

coming due and payable during the term of this lease, which have or may at any time be levied, taxed or assessed upon the Utility, including all interests in real property incidental thereto, the possession or operation thereof, the sale of gas or otherwise related to the Utility, and shall pay and hold Lessor harmless against any such taxes, including interest and penalties thereon, for which Lessor may become liable. Lessee also agrees to pay all claims or charges for or on account of water, light, heat, power and any other service or utility furnished in connection with the Utility or any part thereof.

8. Lessee agrees that the rates charged for gas furnished to Consumers from the Utility for the first ten years of said term shall not be in excess of the following schedule of rates:

A. For each residential or commercial consumer the rate shall be as follows:

\$1.25 for first 500 cubic feet or less used through each meter each month, the minimum charge being \$1.25 for each meter each month.

\$0.90 per 1,000 cubic feet for all over 500 cubic feet used through each meter each month.

B. For each industrial consumer the rate shall be as follows:

\$0.63 per 1,000 cubic feet used through each meter each month. The term "industrial consumer" means a Consumer who will consume (a) 4 million cubic feet of gas each month during a period of twelve successive months or (b) 25 million cubic feet of gas during the period from May 1 to October 30, provided that in order to obtain the rate for industrial consumers a Consumer must make application therefor to the Lessee prior to May 1 of each year with respect to the twelve months next following said date, and provided further that in the event that a Consumer shall have been charged the rate for industrial consumers during a period for which said Consumer's consumption shall not have met either of the aforesaid minimum requirements he shall be deemed a com-

mercial consumer for said period and shall be required to promptly pay, at the conclusion of said period the difference between the commercial rate and the industrial rate for gas consumed during said period.

C. Ten per cent of the charges as above calculated shall be added to each bill if the same is not paid within fifteen days following the mailing of such bill;

Provided, however, that during said ten year period:

(1) Should the then applicable rate charged by Lessee's supplier for gas delivered to Lessee be changed (including changes during the pendency of an application to the Federal Power Commission), the above schedule of rates shall be adjusted accordingly at the option of the Lessee in the case of increase and at the option of the Lessor in case of decrease, subject to the following conditions:

(i) The schedule of rates above set forth is based on (a) a commodity charge to Lessee of \$0.45 per 1,000 cubic feet with no demand charge or minimum charge or (b) a demand charge of \$1.56 per 1,000 cubic feet of billing demand per month and a commodity charge of 32.43 cents per 1,000 cubic feet; and adjustments to said rate schedule shall reflect variances therefrom.

(ii) The exercise of the option to require an increase or decrease may be exercised in full or in part, may be deferred and may be aggregated with subsequent increases or decreases or used to offset increases or decreases, as the case may be; but the exercise of the option to require an increase or decrease may not be applied retroactively to affect the rate for service which has already been billed at the time of such exercise.

(iii) The option to increase or decrease shall be exercised by written notice as hereinafter provided.

(iv) Any refund to Lessee by its supplier shall be passed on by Lessee as a refund to Consumers, provided that Lessee shall not be required to pass on to any one Consumer any refund which would be less than \$1.00.

(2) In the event that Lessee shall become subject to paying any new or increased taxes hereunder, the schedule of rates in effect at the time of the imposition or increase of such taxes shall be increased in an amount sufficient to pay such taxes, and such schedule of rates shall likewise be decreased upon the repeal or decrease in such taxes;

(3) If at any time after December 31, 1963, Lessee determines that there has been a change of conditions which affects the cost of service which is not otherwise provided for in subparagraphs (1) and (2) immediately preceding, Lessee shall give written notice, as hereinafter provided, to Lessor of the nature of the change of conditions and of the extent to which it believes such change requires a change of the schedule of rates to Consumers. If the parties do not agree upon a schedule of rates within ninety days after such notice, then nothing herein shall affect the right of Lessee to initiate any action or proceeding for the purpose of establishing the rates to be charged for service hereunder. Lessee agrees and stipulates that during the first ten years hereof, it will not advocate or advance in any proceeding for the determination of rates any increase in rates which will provide more revenue than that required to meet reasonable and proper costs and expenses hereunder, including a reasonable amortization of the costs of extension and replacement of lines, meters, regulators and other such facilities and the minimum lease payments provided above, and to maintain an adequate amount of working capital for the operation of the Utility.

9. After the expiration of the period of ten years specified in the foregoing paragraph of this lease, the rates which may be charged to Consumers of gas from the Utility shall be those fixed by Lessor from time to time subject, however, to any right of the Lessee to appeal therefrom to the Public Utilities Commission of Ohio.

10. With respect to Consumers outside the municipal limits of Lessor who are served from the Utility, Lessee shall, by agreement with such consumers, charge rates to them which are the same as the rates from time to time in effect for Consumers within Lessor's municipal limits.

11. Lessee agrees to sell and deliver to the Consumers the daily aggregate volume of 215,000 cubic feet of gas or such lesser amount as they may require at the rates and upon the terms and conditions as herein provided. In the event that this lease shall for any reason be terminated, Lessee hereby agrees that, at Lessor's option and so long as any of the Bonds are outstanding, it will sell and deliver said volume of gas to Lessor or any other person, firm or corporation which shall operate the Utility at a rate not to exceed by more than 5 cents per 1,000 cubic feet the cost of such gas to the Lessee, and at such point or points of delivery as Lessor may specify provided that Lessee shall not be required to construct any pipeline to such point of delivery. The supply of gas as hereinabove provided shall at all times be subject to the valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.

12. Lessee at all times will procure and maintain at its expense insurance on the Utility of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. All insurance policies shall provide for the payment of any loss to the



Lessor or as Lessor may designate and the sole right to receive the proceeds of such insurance and the right to collect and receipt for all claims thereunder shall be vested in the Lessor or as otherwise designated by Lessor. Originals or duplicate originals of such policies shall be delivered to Lessor. In case the Lessor shall at any time notify the Lessee in writing that it disapproves of any insurance company or the terms of any policy, the Lessee shall forthwith effect other insurance satisfactory to the Lessor. In the event of damage to or partial or total destruction of any part of the premises covered by such insurance, the Lessor, with the proceeds of the insurance and any other funds which may be lawfully made available, and with reasonable dispatch will repair, replace or rebuild the property damaged or destroyed provided that such repair, replacement or rebuilding is essential to proper operation of the Utility; the obligation of Lessor so to repair, replace or rebuild shall be limited to the proceeds of such insurance. Notwithstanding any other provision hereof, Lessee shall not be obligated to repair or replace any damaged or destroyed property if such damage or destruction is covered by insurance as provided above.

13. Lessee agrees to indemnify and hold Lessor harmless against any liability whatsoever because of accidents or injury to persons or property occurring in or related to the operation of the Utility by Lessee. Lessee also agrees that during the term of this lease it will procure and maintain public liability insurance and property damage insurance of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. Policies evidencing such insurance shall name Lessor as an assured and originals or duplicate originals thereof shall be delivered to Lessor.

14. Lessee shall report quarterly to Lessor (a) the aggregate volume of gas sold to consumers of the Utility based on the meter readings provided for in Paragraph 2 hereof with such detail as Lessor may need in order to verify the amounts of rental due, and (b) the nature, kind, character and location of substantial extensions to the lines of the Lessor together with the cost thereof. The Lessor, and such representatives of the mortgagee of the Utility as may be designated by Lessor, shall at all times have access to and opportunity for inspecting all records and accounts in any way pertaining to the ownership or operation of the Utility.

15. The Lessor shall have the right to construct both within and without its corporate limits any extensions or improvements to the Utility and when constructed the same shall be subject to the terms and provisions of this lease.

16. Upon request Lessee shall promptly extend the lines of the Utility within the corporate limits of Lessor in order to reach any Consumer which desires gas, but in no event shall the Lessee be required to extend such lines for a distance in excess of 100 feet for one consumer. Lessee shall have the right to construct any extensions or improvements to the Utility if it so desires, provided, however, that such extension shall not be made if the result will be that Consumers will be purchasing for use outside the corporate limits of Lessor more than fifty per cent of the volume of gas purchased by Consumers for use within said corporate limits. All extensions or improvements made by Lessee shall immediately become the property of Lessor and subject to the terms of this lease.

17. For the purpose of constructing, erecting, maintaining, operating and extending gas mains, meters, outlets, connections, manholes and all other apparatus necessary or appropriate to the operations of the Utility, the Lessee shall have the right to use streets, lanes, alleys, avenues and other public thoroughfares, easements, licenses and rights of the Lessor, together with all necessary privileges thereto; provided, however, that in the maintenance, repair or extension of said Utility, the Lessee shall not unnecessarily interrupt or obstruct the use of any street, lane, alley, avenue or public thoroughfare, and in connection with any such work shall obtain such permits and approvals as may be required by the ordinances of the Lessor. When any streets, lanes, alleys, avenues or public thoroughfares are entered upon, or facilities removed therefrom, the Lessee shall restore the same to their original condition and shall clear all such places of dirt, obstructions and anything that might constitute a nuisance, or prevent such street, lane, alley, avenue or public thoroughfare from being open and in repair. Such restoration to original condition shall be made by the Lessee under the supervision and control of the appropriate officer of the Lessor.

18. Lessee in the operation of the Utility shall be entitled to exercise those rights of the Lessor and does hereby assume and agree to be bound by those obligations of the Lessor provided for in Sections 1, 2, 7, 8, 9 and 10 of the Indenture referred to in the preamble hereto and incorporated herein by reference. Lessee's rights hereunder shall be subject and subordinate to the grants and agreements made by Lessor in the said Indenture.

19. Lessee will not without the prior written consent of Lessor

sell, assign or pledge this lease or any of its rights or obligations hereunder or sublease or permit the use by others of any of the property covered by this lease.

20. Lessor shall at all times have the right to sell, assign, mortgage, pledge or otherwise encumber all or any of its rights under this lease, and reserves unto itself the right to mortgage, pledge and otherwise encumber the Utility in preference to the rights of the Lessee in order to secure the payment of obligations incurred in order to construct, complete, replace or extend the Utility, or any part thereof. The Lessee's rights hereunder shall be subject and subordinate to the lien of the Mortgage or any other encumbrance given or to be given to secure the Bonds. This lease agreement shall inure to the benefit of and be binding upon the successors and assigns of Lessor, and of Lessee in the event that Lessor shall consent to assignment by the Lessee as provided above.

21. Lessor, its successors or assigns, by notice in writing to Lessee, may cancel this lease, or any extension thereof, in the event (a) Lessee is adjudged insolvent or bankrupt, and a receiver or trustee is appointed for Lessee or its property, Lessee makes an arrangement for the benefit of creditors, Lessee becomes insolvent, or a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating Lessee a bankrupt or for reorganization of Lessee, or for the purpose of effecting a composition or rearrangement with Lessee's creditors, and such petition is not dismissed within thirty days, (b) Lessee shall fail to pay the rental hereunder within five days after it shall become due, or (c) of any other

violation of any of the terms, conditions or covenants of this lease by Lessee and the failure of Lessee to cure such violation within sixty days from the giving of written notice thereof by Lessor, its successors or assigns to Lessee. Upon the expiration, termination or cancellation of this lease, Lessor, its successors or assigns, shall have the right to invoke any remedy permitted by law or in equity for the protection of its interests hereunder, and Lessee hereby expressly waives all rights which it may have to redeem or to be served with any further notice of the intention to cancel or terminate this lease other than as herein provided. In the event of sale of the Utility upon foreclosure under the Mortgage or any other encumbrance placed on the Utility to which Lessee's rights hereunder are subject and subordinate, the purchaser shall have the option to terminate this lease agreement in its entirety upon written notice to Lessee given within one year after confirmation of the sale by the court having jurisdiction, provided that such notice may fix as the termination date, the date of such notice or any other date within two years following the date of such notice.

23. Notices hereunder shall be in writing and shall be considered duly delivered when mailed by registered mail to the post office address of Lessor or Lessee, as the case may be or at such other address as either may designate by formal written notice. Until so changed, notices to the Lessor shall be addressed to the Clerk of the Village of Hoytville, Wood County, Ohio, and notices to the Lessee shall be addressed to its President at Cygnet, Ohio.

IN WITNESS WHEREOF, we have hereunto set our hands as of the day  
and year first above written.

Signed and acknowledged in  
the presence of:

\_\_\_\_\_

as to the Village of Hoytville

VILLAGE OF HOYTVILLE

Lessor

By Purl Vansant  
Mayor

By Robert Van Horn  
Clerk

Ernest Myers

Edo J. Lamm

Wesley Long, Jr.  
Board of Trustees of Public Affairs

Signed and acknowledged in  
the presence of:

Eleanor J. Martin  
as to Suburban Fuel Gas, Inc.

SUBURBAN FUEL GAS, INC.

Lessee

By William J. Martin President

By Rosie Seligman Secretary

# **APPENDIX E**

## **VILLAGE OF MALINTA**

LEASE AGREEMENT

This agreement of lease made this 31st day of September, 1962 between the Village of Malinta, a municipal corporation duly organized and existing under the laws of the State of Ohio, and situated in Henry County in said State, herein referred to as Lessor, and Suburban Fuel Gas Inc, a corporation duly organized and existing under the laws of Ohio with its principal office in Cuyahoga, Ohio, herein referred to as Lessee,

## W I T N E S S E T H:

WHEREAS, Lessor proposes to construct and own a gas transmission and distribution system in accordance with plans and specifications approved by Council of Lessor on May 16, 1962, on file with said Council, herein referred to as the Utility, which is to be constructed for the purpose of supplying gas to Lessor, its inhabitants and to others within and without the corporate limits of Lessor; and

WHEREAS, the Lessor, together with Suburban Fuel Gas, Inc., and the Ohio Villages of Deshler, Hamler, Kolgate, Hoytville and McComb, have executed a certain instrument designated "Deed and Indenture", dated as of October 1, 1959, as supplemented by Supplemental Deed and Indenture dated as of August 1, 1962 (hereinafter referred to as "Indenture"), in which Suburban Fuel Gas, Inc. grants unto Lessor and said Villages certain Rights-of-Way and Leases and reserved rights and providing, among other things, for the construction by said Villages of their respective parts of the gas system described therein, including the agreement of Lessor to construct the Utility which is part of said system, providing further for reciprocal rights of Lessor and said Villages to receive gas through the lines of the others and the maintenance of such lines, which Indenture is incorporated herein by reference and made a part hereof; and



*Village of Malibu*

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WHEREAS, Lessee is in a position to furnish an adequate supply of gas for such purpose; and

WHEREAS, the Council and the Board of Trustees of Public Affairs of Lessor have determined that the interests of the Lessor, its inhabitants and others, within and without the corporate limits of Lessor, who are to be served with gas through the Utility (hereinafter sometimes collectively referred to as the "Consumers") can best be served by the leasing of said Utility to a private corporation upon the terms and conditions herein set forth:

NOW, THEREFORE, Lessor lets and leases unto Lessee the Utility for a term of fifty years from the date hereof for the sole purpose of operating the same so as to supply gas to the consumers, including Lessor, subject to the following terms, conditions and covenants:

1. Lessee shall pay to Lessor as rent the sum of 15 ¢ for each 1,000 cubic feet of gas delivered to domestic and commercial consumers from the Utility and 3 ¢ for each 1,000 cubic feet of gas delivered therefrom to industrial consumers as defined in Paragraph 8 hereof (herein sometimes referred to as "basic rent"), all according to meter readings to each consumer, provided that, effective July 1, 1965, (but not earlier than the date of completion of the Utility), and continuing so long as any of Lessor's First Mortgage Gas System Revenue Bonds, dated August 1, 1962, or any bonds issued to refund or extend the maturity of said bonds or any additional bonds issued to complete the construction of the Utility or for the purpose of making replacements, extensions and improvements to the Utility (hereinafter referred to as the "Bonds"), remain outstanding, the minimum rent payable by the Lessee to the Lessor shall be not less than the amount shown on the following schedule for each of the years indicated:

<u>Year(s)</u>	<u>Minimum Quarterly Rental</u>	<u>Minimum Annual Rental</u>
1965	\$1,750	\$7,000
1966	2,000	8,000
1967-1997	2,250	9,000

Provided, however, that since such minimum rental provision shall become effective on July 1, 1965, the minimum quarterly rental payable, as hereinafter provided, on September 10, 1965, shall be two-thirds of the amount above shown as minimum quarterly rental in 1965 and the minimum annual rental payable within the calendar year of 1965 shall be one-half of the amount above shown.

2. Lessee shall pay the rental hereunder to Lessor quarterly on the 10th days of March, June, September and December based on meter readings, and covenants to read the meters of Consumers at least once during the three calendar months preceding each rental payment date; provided, however,

(a) That if the basic rent herein provided for shall for any quarter exceed the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the excess shall be applied pro tanto to all or any of the subsequent minimum quarterly payments to be made in that calendar year only in computing such minimum quarterly payments, provided that the total payments for any one calendar year must be at least equal to the minimum rental called for by the above schedule in Paragraph 1.

(b) That if the basic rent herein provided for shall for any quarter be less than the minimum quarterly rental, as set forth in the schedule in Paragraph 1 hereof, the difference between the minimum quarterly rental (as adjusted pursuant to subparagraph (a) of this Paragraph 2) and the basic rent for that quarter shall be credited pro tanto to all or any of the subsequent basic rental payments to be made in that calendar year only and where such basic rental payment would otherwise exceed such minimum quarterly rental but never so as to reduce the basic rental payment below such minimum quarterly payment.

(c) That if in any of the years from 1965 to 1971, inclusive, the basic rent does not equal the minimum rental for such year, the payment of the amount of the deficit may be postponed by the Lessee until March 10, 1972, without creating any default hereunder, but only to the extent that in prior years the rentals actually paid exceeded the stated minimum rentals for such prior years and were not previously used by Lessee as a basis under this subparagraph for the postponement of payment of a deficit; provided, however, that by March 10, 1972, any or all deficits so postponed hereunder shall be paid in full.

3. In addition to the rent hereinbefore provided, Lessee shall pay to the Lessor upon demand any and all moneys payable or actually paid by the Lessor in the discharge of its obligations under the Trust Indenture between Lessor and The Toledo Trust Company, dated as of August 1, 1962, securing the Bonds (hereinafter referred to as the "Mortgage"). All payments to be made by the Lessee to the Lessor under this Lease Agreement shall be made directly to the Trustee under the Mortgage so long as any of the Bonds are outstanding, and payments actually so made shall pro tanto discharge the Lessor's obligation hereunder. Record of such payments shall at the time thereof be submitted to the Lessee by the Lessor.

4. The Lessee will operate the Utility under the provisions of the applicable laws of the State of Ohio and in accordance with all lawful requirements imposed by the State of Ohio or any other lawfully constituted authority and will indemnify Lessor against liability or penalty for any asserted violation thereof; and will furnish gas to all persons owning or occupying premises abutting the streets, alleys, public grounds or rights-of-way in which are laid the pipelines of the Utility or any extensions of such lines which may hereafter be made, whether within or without the corporate limits of Lessor; and will efficiently maintain and operate the Utility.

5. Lessee agrees to install any additional meters that may be necessary to measure the volume of gas supplied to each customer, at the sole cost and expense of Lessee and such meters upon being installed shall immediately become absolutely the property of Lessor and a part of the Utility, but subject to the terms and provisions of this lease.

6. Lessee shall keep the Utility, and every part thereof, in good condition, repair and working order, replacing any part or parts thereof which may become worn out or injured by other suitable property of at least equal value and efficiency, provided, however, that with the consent of the Lessor, the Lessee may discontinue the use and operation of any property or equipment forming a non-essential part of the Utility if it is no longer profitable to use and operate such property or equipment.

7. Lessee agrees to pay all ad valorem or other taxes, special assessments and similar charges payable during the term of this lease, becoming due and payable during the term of this lease, which have or may at any time be levied, taxes or assessed upon the Utility, including all interests in real property incidental thereto, the possession or operation thereof, the sale of gas or otherwise related to the Utility, and shall pay and hold Lessor harmless against any such taxes, including interest and penalties thereon, for which Lessor may become liable. Lessee also agrees to pay all claims or charges for or on account of water, light, heat, power and any other service or utility furnished in connection with the Utility or any part thereof.

8. Lessee agrees that the rates charged for gas furnished to Consumers from the Utility for the first ten years of said term shall not be in excess of the following schedule of rates:

A. For residential or commercial consumers:

\$1.25 for first 500 cubic feet or less used through each meter each month, the minimum charge being \$1.25 for each meter each month.

\$0.9788 per 1,000 cubic feet for all over 500 cubic feet used through each meter each month.

B. For industrial consumers:

\$0.7088 per 1,000 Cubic feet used through each meter each month. The term "industrial consumer" means a consumer who will consume (a) 4 million cubic feet of gas each month during a period of twelve successive months or (b) 25 million cubic feet of gas during the period from May 1 to October 30, provided that in order to obtain the rate for industrial consumers a consumer must make application therefor to the Lessee prior to May 1 of each year with respect to the twelve months next following said date, and provided further that in the event that a consumer shall have been charged the rate for industrial consumers during a period for which said consumer's consumption shall not have met either of the aforesaid minimum requirements he shall be deemed a commercial consumer for said period and shall be required to promptly pay, at the conclusion of said period the difference between the commercial rate and the industrial rate for gas consumed during said period.

C. Ten per cent of the charges as above calculated shall be added to each bill if the same is not paid within fifteen days following the mailing of such bill;

Provided, however, that during said ten year period:

(1) Should the then applicable rate charged by Lessee's supplier for gas delivered to Lessee be changed (including changes during the pendency of an application to the Federal Power Commission), the above schedule of rates shall be adjusted accordingly at the option of the Lessee in the case of increase and at the option of the Lessor in case of decrease, subject to the following conditions:

(i) The schedule of rates above set forth is based on (a) a commodity charge to Lessee of \$0.5288 per 1,000 cubic feet with no demand charge or minimum charge or (b) a demand charge of \$1.94 per 1,000 cubic feet of billing demand per month and a commodity charge of 33.55 cents per 1,000 cubic feet; and adjustments to said rate schedule shall reflect variances therefrom.

(ii) The exercise of the option to require an increase or decrease may be exercised in full or in part, may be deferred and may be aggregated with subsequent increases or decreases or used to offset increases or decreases, as the case may be; but the exercise of the option to require an

increase or decrease may not be applied retroactively to affect the rate for service which has already been billed at the time of such exercise.

(iii) The option to increase or decrease shall be exercised by written notice as hereinafter provided.

(iv) Any refund to Lessee by its supplier shall be passed on by Lessee as a fund to consumers, provided that Lessee shall not be required to pass on to any one consumer any refund which would be less than \$10.00.

(2) In the event that Lessee shall become subject to paying any new or increased taxes hereunder, the schedule of rates in effect at the time of the imposition or increase of such taxes shall be increased in an amount sufficient to pay such taxes, and such schedule of rates shall likewise be decreased upon the repeal or decrease in such taxes;

(3) If at any time after December 31, 1966, Lessee determines that there has been a change of conditions which affects the cost of service which is not otherwise provided for in subparagraphs (1) and (2) immediately preceding, Lessee shall give written notice, as hereinafter provided, to Lessor of the nature of the change of conditions and of the extent to which it believes such change requires a change of the schedule of rates to consumers. If the parties do not agree upon a schedule of rates within ninety days after such notice, then nothing herein shall affect the right of Lessee to initiate any action or proceeding for the purpose of establishing the rates to be charged for service hereunder. Lessee agrees and stipulates that during the first ten years hereof, it will not advocate or advance in any proceeding for the determination of rates any increase in rates which will provide more revenue than that required to meet reasonable and proper costs and expenses hereunder, including a reasonable amortization of the costs of extension and replacement of lines, meters, regulators and other such facilities and the minimum lease payments provided above, and to maintain an adequate amount of working capital for the operation of the Utility.

9. After the expiration of the period of ten years specified in the foregoing paragraph of this lease, the rates which may be charged to consumers of gas from the Utility shall be those fixed by Lessor from time to time subject, however, to any right of the Lessee to appeal therefrom to the Public Utilities Commission of Ohio.

10. With respect to consumers outside the municipal limits of Lessor who are served from the Utility, Lessee shall, by agreement with such consumers, charge rates to them which are the same as the rates from time to time in effect for consumers within Lessor's municipal limits.

11. Lessee agrees to sell and deliver to the consumers the daily aggregate volume of 334,000 cubic feet of gas or such lesser amount as they may require at the rates and upon the terms and conditions as herein provided. In the event that this lease shall for any reason be terminated, Lessee hereby agrees that, at Lessor's option and so long as any of the Bonds are outstanding, it will sell and deliver said volume of gas to Lessor or any other person, firm or corporation which shall operate the Utility at a rate not to exceed by more than 10 cents per 1,000 cubic feet the cost of such gas to the Lessee, and at such point or points of delivery as Lessor may specify, provided that Lessee shall not be required to construct any pipeline to such point of delivery. The supply of gas as hereinabove provided shall at all times be subject to the valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.

12. Lessee at all times will procure and maintain at its expense insurance on the Utility of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. All insurance policies shall provide for the payment of any loss to the Lessor or

as Lessor may designate and the sole right to receive the proceeds of such insurance and the right to collect and receipt for all claims thereunder shall be vested in the Lessor or as otherwise designated by Lessor. Originals or duplicate originals of such policies shall be delivered to Lessor. In case the Lessor shall at any time notify the Lessee in writing that it disapproves of any insurance company or the terms of any policy, the Lessee shall forthwith effect other insurance satisfactory to the Lessor. In the event of damage to or partial or total destruction of any part of the premises covered by such insurance, the Lessor, with the proceeds of the insurance and any other funds which may be lawfully made available, and with reasonable dispatch will repair, replace or rebuild the property damaged or destroyed provided that such repair, replacement or rebuilding is essential to proper operation of the Utility; the obligation of Lessor so to repair, replace or rebuild shall be limited to the proceeds of such insurance. Notwithstanding any other provision hereof, Lessee shall not be obligated to repair or replace any damaged or destroyed property if such damage or destruction is covered by insurance as provided above.

13. Lessee agrees to indemnify and hold Lessor harmless against any liability whatsoever because of accidents or injury to persons or property occurring in or related to the operation of the Utility by Lessee. Lessee also agrees that during the term of this lease it will procure and maintain public liability insurance and property damage insurance of such kinds and in such amounts as shall accord with the practice of private companies engaged in the same type of business. Policies evidencing such insurance shall name Lessor as an assured and originals or duplicate originals thereof shall be delivered to Lessor.

14. Lessee shall report quarterly to Lessor (a) the aggregate volume of gas sold to consumers of the Utility based on the meter readings provided for in Paragraph 2 hereof with such detail as Lessor may need in order to verify



the amounts of rental due, and (b) the nature, kind, character and location of substantial extensions to the lines of the Lessor together with the cost thereof. The Lessor, and such representatives of the mortgagee of the Utility as may be designated by Lessor, shall at all times have access to and opportunity for inspecting all records and accounts in any way pertaining to the ownership or operation of the Utility.

15. The Lessor shall have the right to construct both within and without its corporate limits any extensions or improvements to the Utility and when constructed the same shall be subject to the terms and provisions of this lease.

16. Upon request Lessee shall promptly extend the lines of the Utility within the corporate limits of Lessor in order to reach any consumer which desires gas, but in no event shall the Lessee be required to extend such lines for a distance in excess of 100 feet for one consumer. Lessee shall have the right to construct any extensions or improvements to the Utility if it so desires, provided, however, that such extension shall not be made if the result will be that consumers will be purchasing for use outside the corporate limits of Lessor more than fifty per cent of the volume of gas purchased by consumers for use within said corporate limits. All extensions or improvements made by Lessee shall immediately become the property of Lessor and subject to the terms of this lease.

17. For the purpose of constructing, erecting, maintaining, operating and extending gas mains, meters, outlets, connections, manholes and all other apparatus necessary or appropriate to the operations of the Utility, the Lessee shall have the right to use streets, lanes, alleys, avenues and other public thoroughfares, easements, licenses and rights of the Lessor, together with all necessary privileges thereto; provided, however, that in the maintenance, repair or extension of said Utility, the Lessee shall not unnecessarily interrupt

or obstruct the use of any street, lane, alley, avenue or public thoroughfare, and in connection with any such work shall obtain such permits and approvals as may be required by the ordinances of the Lessor. When any streets, lanes, alleys, avenues or public thoroughfares are entered upon, or facilities removed therefrom, the Lessee shall restore the same to their original condition and shall clear all such places of dirt, obstructions and anything that might constitute a nuisance, or prevent such street, lane, alley, avenue or public thoroughfare from being open and in repair. Such restoration to original condition shall be made by the Lessee under the supervision and control of the appropriate officer of the Lessor.

18. Lessee in the operation of the Utility shall be entitled to exercise those rights of the Lessor and does hereby assume and agree to be bound by those obligations of the Lessor provided for in Sections 1, 2, 7, 8, 9 and 10 of the Indenture referred to in the preamble hereto and incorporated herein by reference. Lessee's rights hereunder shall be subject and subordinate to the grants and agreements made by Lessor in the said Indenture.

19. Lessee will not without the prior written consent of Lessor sell, assign or pledge this lease or any of its rights or obligations hereunder or sublease or permit the use by others of any of the property covered by this lease.

20. Lessor shall at all times have the right to sell, assign, mortgage, pledge or otherwise encumber all or any of its rights under this lease, and reserves unto itself the right to mortgage, pledge and otherwise encumber the Utility in preference to the rights of the Lessee in order to secure the payment of obligations incurred in order to construct, complete, replace or extend the Utility, or any part thereof. The Lessee's rights hereunder shall be subject and subordinate to the lien of the Mortgage or any other encumbrance given or to be given to secure the Bonds. This lease agreement shall inure to

the benefit of and be binding upon the successors and assigns of Lessor, and of Lessee in the event that Lessor shall consent to assignment by the Lessee as provided above.

21. Lessor, its successors or assigns, by notice in writing to Lessee, may cancel this lease, or any extension thereof, in the event (a) Lessee is adjudged insolvent or bankrupt, and a receiver or trustee is appointed for Lessee or its property, Lessee makes an arrangement for the benefit of creditors, Lessee becomes insolvent, or a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating Lessee a bankrupt or for reorganization of Lessee, or for the purpose of effecting a composition or rearrangement with Lessee's creditors, and such petition is not dismissed within sixty days, (b) Lessee shall fail to pay the rental hereunder within five days after it shall become due, or (c) of any other violation of any of the terms, conditions or covenants of this lease by Lessee and the failure of Lessee to cure such violation within sixty days from the giving of written notice thereof by Lessor, its successors or assigns to Lessee. Upon the expiration, termination or cancellation of this lease, Lessor, its successors or assigns, shall have the right to invoke any remedy permitted by law or in equity for the protection of its interests hereunder, and Lessee hereby expressly waives all rights which it may have to redeem or to be served with any further notice of the intention to cancel or terminate this lease other than as herein provided. In the event of sale of the Utility upon foreclosure under the Mortgage or any other encumbrance placed on the Utility to which Lessee's rights hereunder are subject and subordinate, the purchaser shall have the option to terminate this lease agreement in its entirety upon written notice to Lessee given within one year after confirmation of the sale by the court having jurisdiction, provided that such notice may fix as the termination date, the date of such notice or any other date within two

years following the date of such notice.

22. Notices hereunder shall be in writing and shall be considered duly delivered when mailed by registered mail to the post office address of Lessor or Lessee, as the case may be or at such other address as either may designate by formal written notice. Until so changed, notices to the Lessor shall be addressed to the Village Clerk of the Lessor, and notices to the Lessee shall be addressed to its President at CYGNET, OHIO.

IN WITNESS WHEREOF, we have hereunto set our hands as of the day and year first above written.

Signed and acknowledged in the presence of:

Patricia A. Power  
as to the Village of Malinta

VILLAGE OF MALINTA, OHIO,  
Lessor

By Harold Tonjes  
Mayor  
By William F. Huber  
Clerk

Paul Tonjes

Frank Huber

Nancy Huber  
Board of Trustees of Public Affairs

Signed and acknowledged in the presence of:

Edmund J. Huber  
as to

THE SUPERRAN FUEL GAS INC.  
Lessee

By William F. Huber  
PRESIDENT

By Paul Tonjes  
SECRETARY, TREAS.

STATE OF OHIO )  
 ) SS:  
 COUNTY OF HENRY )

On this 21st day of September, 1962, before me, a Notary Public in and for said County and State, personally appeared the above named Village of Malinta, by Donald Jones, its Mayor, Liberty H. H. H. H., its Clerk, and and and the members of its Board of Trustees of Public Affairs, who acknowledged that they did sign the foregoing instrument, and that the same is the free act and deed of said Village, and the free act and deed of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year aforesaid.

HARRY G. ROEBKE  
 NOTARY PUBLIC  
 STATE OF OHIO

[Signature]  
 Notary Public  
 My Commission expires 5/17/64

(SEAL)

STATE OF OHIO )  
 ) SS:  
 COUNTY OF Wood )

On this 21st day of September, 1962, before me, a Notary Public in and for said County and State, personally appeared the above named SUBURBAN FUEL GAS, INC., by Carl H. Schwyn, its President, and Roselyn Schwyn Rood, its Secretary, who acknowledged that they did sign the foregoing instrument, and that the same is the free act and deed of said Corporation, and the free act and deed of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year aforesaid.

HARRY G. ROEBKE  
 NOTARY PUBLIC  
 STATE OF OHIO

[Signature]  
 Notary Public  
 My Commission expires 5/17/64

(SEAL)