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September 24, 2007

RECEIVED

SEP 25 2007

PUBLIC SERVICE
COMMISSION

HAND DELIVERED

Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

Case No. 2007-00419

RE: The Application of DLR Enterprises, Inc. and Cow Creek Gas, Inc. for Approval of the Transfer of Certain Assets Formerly Owned and Controlled by Sigma Gas Corporation

Dear Ms. O'Donnell:

Enclosed for filing are an original and ten copies of the application in the above referenced case.

Please acknowledge receipt of this application by placing your file-stamp on the extra copy and returning to me via the enclosed self-addressed, postage paid envelope.

Sincerely yours,

Deborah T. Eversole

DTE: jms
Enclosures

K

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

SEP 25 2007

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF DLR ENTERPRISES,)
INC. AND COW CREEK GAS, INC. FOR APPROVAL)
OF THE TRANSFER OF CERTAIN ASSETS)
FORMERLY OWNED AND CONTROLLED)
BY SIGMA GAS CORPORATION)

CASE NO. 07-00419

VERIFIED APPLICATION

DLR Enterprises, Inc. ("DLR") and Cow Creek Gas, Inc. ("Cow Creek") (collectively, the "Joint Applicants"), by counsel, pursuant to KRS 278.020(5) and (6), and all other applicable statutes and regulations, for their Application for approval of the transfer of certain assets formerly owned and controlled by Sigma Gas Corporation (the "Sigma System") upon the terms approved by the United States Bankruptcy Court, Eastern District of Kentucky, in *In re: Sigma Gas Corporation*, Case No. 04-71003 (Order dated August 30, 2007) [the "Bankruptcy Order," Exhibit 1 hereto], state as follows:

INTRODUCTION

The gas system sought to be acquired in this case is in bankruptcy, is in violation of Commission laws and regulations, and is deeply in debt. The bankruptcy trustee has abandoned the system's assets, the City of Salyersville no longer wishes to manage the system, and the Governor's Office of Local Development ("GOLD") is unable to collect either principal or interest on its extensive loans to the system. Commission approval of the proposed transaction will solve these problems as follows:

- ✓ Customers served by the system will be assured of continuation of service.

- ✓ The City of Salyersville will be relieved of its current management burden.
- ✓ GOLD will be relieved of its burden to oversee the system and to make up revenue shortfalls, and will receive \$750,000 in settlement of its loans.
- ✓ Joint Applicants will provide experienced and capable management and immediately begin to bring the System into compliance with applicable laws and regulations.

THE ACQUIRERS

The proposed acquirers of the assets of the Sigma system are DLR Enterprises, Inc. ("DLR") and Cow Creek Gas, Inc. ("Cow Creek"), a Commission-regulated utility pursuant to KRS 278.010. A copy of Cow Creek's articles of incorporation is attached hereto as Exhibit 2. Cow Creek's address is:

347 Thompson Road
P.O. Box 3385
Pikeville, Kentucky 41502
Telephone: (606) 437-6147

A copy of DLR's articles of incorporation is attached hereto as Exhibit 3.

DLR's address is:

347 Thompson Road
P.O. Box 3385
Pikeville, Kentucky 41502-3385
Telephone: (606) 437-6147

The owners/operators of both of these companies, Jerome Kanney and Dennis Rohrer, have been found by the Commission to possess the technical, financial, and managerial capacity to operate a gas utility in the Commonwealth no fewer than three times, most recently with reference to the system that is the subject of this application.¹

¹ See *Application of Elizabeth Stephens Bierbauer Attorney-in-Fact for D.C. Stephens, d/b/a Leslie Oil and Gas Company and Cow Creek Gas, Inc. for Approval of Sale to Cow Creek Gas, Inc. Pursuant to KRS 278.020(4), (5)*, PSC No. 94-321 (Final Order dated January 6, 1995) (concluding that Mr. Kanney and Mr. Rohrer have "financial, technical, and managerial abilities to provide reasonable service" and noting Mr.

BACKGROUND

The Sigma system is in bankruptcy. It is operating in violation of Commission regulations. And it is under the management of a city government that no longer wishes to be involved with its operation. See Response to Order to Show Cause of the City of Salyersville, filed with the United States Bankruptcy Court in *In re: Sigma Gas Corporation*, Case No. 04-71003 (E.D.Ky.) on July 11, 2007 [Exhibit 4 hereto]; Bankruptcy Order at 3.

The Sigma System has been a troubled one for many years. In 1993, the Commission approved the acquisition of the then-existing assets of the system after it emerged from bankruptcy.² The system's problems continued after the acquisition, as the Commission conducted investigations, catalogued growing problems, and watched the system sink, once again, hopelessly into debt. In *The Application of Sigma Gas Corporation for Approval of Financing*,³ the Commission approved a loan from the Department of Local Government, now GOLD, to pay, among other things, settlement of a judgment, delinquent property taxes, and the costs of construction for which Sigma had failed to obtain prior Commission approval. The Commission noted that the company

Kanney's work for "various gas companies for many years"); *Application of Jerome A. Kanney and Dennis L. Rohrer and Mary Leslie and Susan A. Branham for the Approval of the Acquisition of the Stock of Dema Gas Company, Inc. of Prestonsburg, Floyd County, Kentucky*, PSC No. 99-232 (Final Order dated August 3, 1999) (Joint Applicants found to have "financial, technical, and managerial ability to provide reasonable service"); *The Application of Jerome A. Kanney and Dennis L. Rohrer for Authorization of the Acquisition of the Corporate Stock of Sigma Gas Corporation from Estill Branham, Barkley Sturgill, and Ruth Conley Clemmons*, PSC No. 2005-00073 (Final Order dated June 13, 2005) (holding that Mr. Kanney and Mr. Rohrer possess the technical, financial, and managerial capacity to operate the Sigma system but that delay and uncertainty might result from the proposed transfer of stock).

² *The Joint Application of Sigma Gas Corporation and Salyersville Gas Company, Inc., for Approval of the Assets of Salyersville Gas Company, Inc.*, PSC No. 93-349 (Final Order dated Dec. 15, 1993).

³ PSC No. 99-074 (Order dated October 1, 1999)

was falling behind in its obligations to its gas suppliers and that management and operations needed to improve lest the company cease to be “operational.”⁴

Despite the Commission’s best efforts, and despite government loans, the system once again collapsed into bankruptcy. The Bankruptcy Trustee abandoned the assets,⁵ leaving the future of the system even more uncertain. GOLD, its principal creditor, maintained for a time a management agreement with Auxier Road Gas Company. Subsequently, GOLD entered into a management agreement with the City of Salyersville, which was, at that time, interested in purchasing the system. The management agreements of both Auxier Road and Salyersville have required GOLD to maintain a fifty thousand dollar line of credit to fund deficiencies [Management Agreement of City of Salyersville and GOLD, Exhibit 5 hereto, at 9].

During the pendency of the bankruptcy proceeding, Mr. Kanney and Mr. Rohrer purchased the stock of Sigma’s owners and petitioned this Commission for approval of the acquisition, intending to work out the corporation’s debt issues within the context of the bankruptcy proceedings. However, the Commission denied the petition, despite a finding that Mr. Kanney and Mr. Rohrer had the necessary technical, financial, and managerial expertise, on the ground that the proposed transaction introduced too great a risk.⁶ Since that time, the Sigma Gas Corporation has been administratively dissolved [Certificate of Administrative Dissolution attached as Exhibit 6 hereto], and the City of Salyersville has determined that it is not interested in purchasing the system. Currently,

⁴ *Id.* at 5.

⁵ Bankruptcy Order at 7.

⁶ Final Order, PSC No. 2005-00073.

two unprosecuted cases brought by Sigma, one a complaint and the other yet another request for financing, remain on the Commission's docket.⁷

Beset by revenue shortages and notices of violations of law, the City of Salyersville abandoned its previous interest in purchasing the Sigma System, and has strongly indicated its desire to cease managing the system at the earliest opportunity [November 20, 2006 Letter from Stanley Howard, Mayor of Salyersville, attached hereto as Exhibit 7]. In contrast, Mr. Kanney and Mr. Rohrer have continued to pursue their interest in obtaining the assets of the system, discussing with Commission staff necessary remediation for the system and reaching a Court-approved agreement with GOLD whereby GOLD's interest in and claims upon the system assets will be purchased, contingent upon approval of this Commission without material modification of the terms agreed to. The United States Department of Commerce, Economic Development Administration ("EDA"), which had suspended lending activities for the revolving loan fund, also has agreed to the sale proposed herein [February 28, 2007 Letter from EDA to GOLD, Exhibit 8 hereto].

THE PROPOSED TRANSACTION

Joint Applicants propose to acquire the assets formerly controlled by Sigma Gas Corporation, now administratively dissolved, in accordance with the terms and conditions approved in the Bankruptcy Order and the Asset Purchase Agreement [Exhibit 9 hereto]. The Asset Purchase Agreement provides, *inter alia*, that GOLD will be paid \$750,000.00 for its secured interest in the Sigma System resulting from loans made to the

⁷ *Sigma Gas Corporation v. B.T.U. Gas Company, Inc.*, PSC Case No. 2004-00018; *The Petition of Sigma Gas Corporation to Incur Debt*, PSC Case No. 2004-00289.

system from time to time. DLR also has agreed to pay certain administrative expenses, including attorneys' fees to Sigma's counsel, to purchase the assets in bankruptcy. Pursuant to the Asset Purchase Agreement and the Bankruptcy Order, the Sigma System will be bifurcated into the "City Business," encompassing gas operations located principally within the city limits of Salyersville and the end-use customer taps wherever located, whether within or outside the city limits; and the "Rural Business," encompassing gas gathering operations located principally outside the city limits of Salyersville, excluding any end-use customer taps. The Asset Purchase Agreement further provides, at Art. X, §10.9, that Joint Applicants' obligation to close is conditioned upon Commission approval of the transfer on the terms proposed in this application without material modification.

Those assets that are part of the City Business as described in the Asset Purchase Agreement and approved by the Bankruptcy Court are proposed to be acquired by Cow Creek. Those assets that are part of the Rural Business as described in the Asset Purchase Agreement and approved by the Bankruptcy Court are proposed to be acquired by DLR, and will serve as a gathering system. The assets currently are used to gather gas,⁸ and constitute a gathering system pursuant to the primary function test set forth by the Federal Energy Regulatory Commission.⁹ All customers receiving service by means of the Sigma System will continue to be served by Cow Creek upon the terms and conditions pursuant to which their service is currently provided. Immediately upon

⁸ The City of Salyersville has placed Jefferson Gas Transmission Company, Inc. ("Jefferson"), in charge of operating these lines, and Jefferson has permitted wells to be connected to the rural lines in the system. Five wells of Interstate Natural Gas Company, owned by Mr. Kanney and Mr. Rohrer, in addition to wells belonging to other entities, are currently tapped onto these pipelines. On information and belief, the Sigma System no longer purchases gas from Columbia.

⁹ See, e.g., *Dominion Transmission, Inc.*, 117 F.E.R.C. ¶ 61,233, 62,215 (2006).

Commission approval of the transaction proposed herein, Cow Creek shall file an Adoption Notice so stating.¹⁰ Service in the rural areas will be provided by Cow Creek using, in part, facilities of DLR. DLR's assistance to Cow Creek in serving rural customers will be on terms consistent with the affiliate transactions requirements of KRS 278.2201 *et seq.* Cow Creek will have available to it an immediate source of funds in the amount of a \$250,000 line of credit from Community Trust Bank.

The funding of the acquisition shall initially be by personal loans made by Mr. Kanney and Mr. Rohrer to DLR and Cow Creek, respectively, each entity to bear fifty percent of the cost of such acquisition, in an amount of approximately \$ 425,000.00 each, depending upon the amount of the administrative expenses due and owing pursuant to the Asset Purchase Agreement at the time of the closing.

THE STATUTORY STANDARDS

The transfer of Sigma's assets is subject to KRS 278.020 (4) and (5). The former provides for Commission approval of the transfer of utility assets if the acquirer possesses the technical, financial, and managerial ability to provide service. The latter provides for Commission approval if the transaction is in the public interest. Both standards are met.

The acquiring companies are owned and operated by Mr. Kanney and Mr. Rohrer, hands-on managers whose business acumen and utility experience will provide much-needed innovative, energetic management that will resuscitate the long-troubled Sigma system. Joint Applicants hereby incorporate by reference their filings in PSC Case No. 2005-00073, demonstrating the success of their current businesses, their numerous

¹⁰ After its current utility operations have been operationally merged with the Rural Business as described in the Bankruptcy filings cited herein, Cow Creek plans to prepare an application for new rates that will reflect the cost of service of its merged system.

qualifications to operate a gas utility, their personal finances, and the professional honors they have received.

In addition to Mr. Kanney and Mr. Rhorer, the employees who will be responsible for the day-to-day operations of the newly acquired LDC system are experienced and well-qualified. A list of those employees and their duties is attached as Exhibit 10.

Next, pursuant to KRS 278.020(6), the Commission is to approve a proposed transfer if the public interest is thereby served. The Commission has defined the “public interest” standard to require a showing either that “the proposed transfer will not adversely affect the existing level of utility service or rates *or* that any potentially adverse effects can be avoided through the commission’s imposition of reasonable conditions on the acquiring party.”¹¹ Here, that standard is met: approval of the transfer will at long last assure current customers that their service is provided by experienced, competent management and that the uncertainty that has plagued the system throughout the bankruptcy proceedings, management changes, and repeated findings of deficiencies by the Commission’s inspectors has come to an end.

In addition, GOLD, a tax-supported agency of the Commonwealth, will be relieved of the burdens it has borne for years as it carried the defunct Sigma’s long-overdue loans, dealt with the expense and administrative burdens of overseeing the operation of a utility system in bankruptcy, and subsidized the system’s operation.

¹¹ *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GmbH*, PSC No. 2002-00018, at 9, quoting Final Order dated May 30, 2002 (Order on Rehearing dated July 10, 2002). The Commission went on in that Order, *id.* at 9-10, to note that while a public interest standard requiring a transfer to produce “readily quantifiable benefits” might be “achievable in limited instances, most transfers of control that are presented to this Commission would be unable to meet this standard.”

Although the Commission should have no concerns as to the proposed transaction at issue, it has found in prior transfer proceedings that even if such concerns exist, the transfer may still be approved upon reasonable conditions.¹² When ALLTEL Inc. acquired the Kentucky assets of Verizon South, Inc., for example, the Commission noted that another state commission had found that ALLTEL had provided “substandard customer service,” including “excessive hold time, significant billing errors, excessive static, and untimely service repair.”¹³ The Kentucky Commission also expressed concerns including ALLTEL’s inability to provide customer services that Verizon had provided¹⁴ and its inability to replicate the operational support systems Verizon had made available to competing carriers under federal law.¹⁵ Still, the transfer was approved upon the imposition of conditions including corrective action and service quality reports, advisories as to “any other services offered by Verizon that [ALLTEL] will not provide,” and regular meetings with Commission staff.¹⁶

Joint Applicants do not object to similar reporting and monitoring conditions even though this application, unlike ALLTEL’s, presents no questions with regard to the expertise and experience of the acquirers. The Sigma system and its customers have faced insolvency, bankruptcy, and a management that has lacked the funds or the expertise to address issues of compliance with PSC regulations. The proposed transfer will provide solutions to all of these problems.

The public interest standard is met.

¹² *Petition by ALLTEL Incorporated to Acquire the Kentucky Assets of Verizon South, Incorporated*, PSC No. 2001-00399 (Order dated Feb. 13, 2002).

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 9-12.

¹⁶ *Id.* at 19-20.

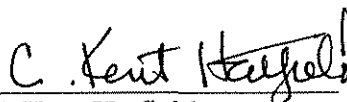
REQUEST FOR EXPEDITED TREATMENT

Joint Applicants request expedited treatment of this Application to implement the decision of the Bankruptcy Court and to allow Joint Applicants to begin the work of imposing needed management reorganization, improving the distribution system, and bringing the system into compliance with Commission regulations at the earliest possible date.

CONCLUSION

The proposed transaction clearly serves the public interest. Current customers served by the assets of the now-defunct Sigma Gas Company will continue to receive service at their present rates. The City of Salyersville will be relieved of its current management burden. GOLD will be relieved of its burden to oversee the system and to make up revenue shortfalls, even as it is finally able to close the books on Sigma's ill-fated loans. Joint Applicants will immediately begin remediating regulatory violations. Accordingly, Joint Applicants respectfully request expedited approval of the proposed transaction.

Respectfully submitted,



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Counsel for Joint Applicants

VERIFICATION

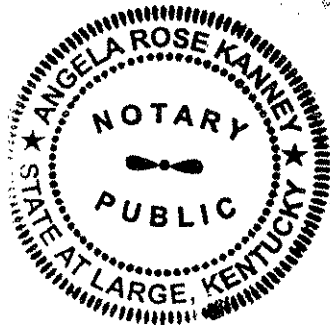
Commonwealth of Kentucky)
)
County of Pike)

Jerome A. Kanney, being first duly sworn, deposes and says that he has read the foregoing Application and knows the contents thereof; and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes them to be true.

Jerome A. Kanney

Jerome A. Kanney
President, Cow Creek Gas, Inc. and
DLR Enterprises, Inc.

Subscribed and sworn to before me, this 19th day of September, 2007.



Angela Rose Kanney
Notary Public

My Commission expires June 7, 2010.

EXHIBITS

1. United States Bankruptcy Court, Eastern District of Kentucky, in *In re: Sigma Gas Corporation*, Case No. 04-71003 (Order dated August 30, 2007)
2. Articles of Incorporation, Cow Creek Gas, Inc.
3. Articles of Incorporation of DLR Enterprises, Inc.
4. Response to Order to Show Cause of the City of Salyersville, filed on July 11, 2007 with the United States Bankruptcy Court, Eastern District of Kentucky, in *In re: Sigma Gas Corporation*, Case No. 04-71003
5. Management Agreement of City of Salyersville and the Governor's Office of Local Development
6. Certificate of Administrative Dissolution of Sigma Gas Corporation
7. November 20, 2006 Letter from Stanley Howard, Mayor of Salyersville
8. February 28, 2007 Letter from United States Department of Commerce, Economic Development Administration, to GOLD
9. Asset Purchase Agreement
10. List of Employees and Duties

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

IN RE:

SIGMA GAS CORPORATION

CASE NO. 04-71003

DEBTOR

CHAPTER 7

ORDER (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (B) APPROVING ASSET PURCHASE AGREEMENTS; (C) AUTHORIZING THE ASSIGNMENT OF CONTRACTS IN CONNECTION WITH SUCH SALE AND (D) APPROVING FORM AND NOTICE OF THE SALE

Sigma Gas Corporation, for itself and on behalf of its Chapter 7 bankruptcy estate (“Sigma” or “Debtor”), by counsel, having moved the Court for an order, pursuant to Sections 105(a) and 363 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6004(f) and (g) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (a) authorizing the sale of substantially all of the Debtor’s assets to DLR Enterprises, Inc. (“DLR”) and/or one or more of its designee(s), free and clear of liens, claims, encumbrances and interests, (b) approving the APAs, (c) authorizing the assignment of contracts in connection with such sale and (d) approving the form and notice of the Sale (the “Sale Motion”)¹, the Court having reviewed the Sale Motion and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) notice of the Sale Motion was sufficient under the circumstances, and (d) it is in the best interest of the Debtor, its estate, creditors, and all other parties in interest; and the Court having determined that the legal and factual bases set forth in the Sale Motion establish just cause for the relief granted herein; the Court hereby makes the following Findings of Fact and Conclusions of Law:

¹ Terms not defined herein shall have the meanings given them in the Sale Motion.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

IT IS HEREBY FOUND AND DETERMINED THAT:

Jurisdiction, Final Order and Statutory Predicates

A. This Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested therein, pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. To any extent necessary under Bankruptcy Rules 6004(g) and 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

C. The statutory predicates for the relief sought herein are Sections 105(a) and 363 of the Bankruptcy Code, as contemplated by Bankruptcy Rules 2002, 6004 and 9014.

Retention of Jurisdiction

D. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the APAs and this Order in all respects and further to hear and determine any and all disputes, including without limitation, those between the Debtor and DLR, as the case may be, including, without limitation, compliance by the Debtor and/or DLR (including their respective designees, officers, employees and agents) with the terms of this Order and the APAs, delivery of the Purchased Assets to DLR and/or one or more of its designee(s), protecting DLR and/or one or more of its designee(s) against any liens, claims, interests, obligations and encumbrances against the Debtor and/or the Purchased Assets, and any non-debtor party to,

among other things, any Assigned Contract concerning, *inter alia*, the Debtor's assignment thereof to DLR and/or one or more of its designee(s) under the APAs; provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the APAs or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

Bankruptcy Filing

E. At all relevant times hereto, Sigma was a public utility corporation in the business of supplying natural gas to residential customers in Magoffin County, Kentucky (the "Business").

F. On October 20, 2004 (the "Petition Date"), Sigma filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

G. Due to the potential liabilities related thereto, the Chapter 7 Trustee abandoned all of the bankruptcy estate's interest(s) in the Debtor's assets on or about October 27, 2004 [Docket No. 29]. Notwithstanding that fact, the Court retained jurisdiction over this matter to facilitate a sale of Sigma's assets to ensure continued service to Sigma's customers.

H. Since that time, the Business has been conducted, in whole or in part, pursuant to a management agreement most recently with the City of Salyersville. The Management Agreement with the City of Salyersville was renewed on or about April 6, 2006 [Docket No. 157] and continues month to month. However, the City of Salyersville has indicated that it wishes to cease management of the Debtor's operations as soon as possible or as soon as a replacement can be located.

I. During the pendency of this bankruptcy case, the shareholders of Sigma attempted to transfer their shares of stock; however, such transfer of ownership was not approved by the

Kentucky Public Service Commission (“PSC”) and therefore failed. Those shareholders believe they no longer have the authority or ability to act for Sigma and, shortly after the bankruptcy filing, the officers and directors of Sigma resigned. Since that time, the undersigned counsel has continued acting as counsel for Sigma, with the direction of the Governor’s Office for Local Development (“GOLD”), the Debtor’s alleged largest secured creditor, and pursuant to Court orders.

Lien Priority Dispute

J. GOLD and DLR are the only secured creditors of the Debtor and both claim valid and enforceable security interests in substantially all of the Debtor’s assets. The Debtor has no known basis to challenge the validity or amount of either secured creditor’s claim. During the pendency of the Debtor’s Chapter 7 bankruptcy case, however, a dispute arose between GOLD and DLR as to the validity, extent and priority of those competing security interests.

K. As a result, on May 1, 2006, DLR commenced Case No. 06-07114 by filing a Complaint against GOLD seeking, inter alia, a declaratory judgment as to the validity, amount, priority and extent of competing liens or other interests of DLR and GOLD in the property of the Debtor.

L. Also on May 1, 2006, GOLD commenced an adversary case by filing a Complaint against the Debtor, KISU Service Co., Inc. (“KISU”), Auxier Road Gas Company (“Auxier Road”) and DLR seeking the identical relief sought by DLR in its Complaint and adding 3 additional defendants.²

² In the Adversary Case, DLR asserted certain Counterclaims against GOLD and certain Cross-Claims (the “Cross-Claims”) against the Debtor and Auxier Road. On July 20, 2006, Auxier Road filed an Answer to the Cross-Claims disclaiming any interest in the property that was the subject of the Adversary Case. Auxier Road was ultimately dismissed as a party to the Adversary Case. In addition, the Debtor failed to timely answer or otherwise respond to the Cross-Claims and, on November 16, 2006, the Bankruptcy Court awarded DLR a Default Judgment against the Debtor on the Cross-Claims and further ordered that any and all claims or interests the Debtor may have had against DLR under applicable state and/or federal law were thereby extinguished [see Adversary Case Docket No. 34]. The Debtor and KISU never responded to the GOLD Complaint and are therefore in default.

M. On July 25, 2006, the Court entered an order consolidating the foregoing cases (as consolidated, the “Adversary Case”) pursuant to Rule 42 of the Civil Rules, made applicable in the Adversary Case pursuant to Rule 7042 of the Bankruptcy Rules.

N. After approximately 8 months of litigation with extensive discovery and as the Adversary Case neared trial, on February 22, 2007, the Debtor, GOLD, the Gas System Restoration and Development Project Account Review Board (“GSRP Board”) and DLR reached an agreement in principal (the “Settlement”), subject to certain conditions and approvals, including Bankruptcy Court and PSC approval, regarding a resolution of all the matters at issue in the Adversary Case. The terms of the Settlement were formalized in a Settlement Agreement executed by the parties and approved by this Court on June 15, 2007 pursuant to that certain Order Authorizing the Debtor to Compromise and Settle Claims among Commonwealth of Kentucky, Governor’s Office for Local Development, Gas System Restoration and Development Project Account Review Board and DLR Enterprises, Inc. [Docket No. 218].

Settlement Terms

O. As a part of the Settlement and as contemplated by the Settlement Agreement, in exchange for, among other things, a full release of any claims, DLR and/or one or more of its designee(s) agreed, subject to Bankruptcy Court and PSC approval, to (i) purchase the claims GOLD has against the Debtor and (ii) purchase substantially all of the Debtor’s assets pursuant to a private sale by credit bidding the secured claims of GOLD and DLR which aggregate over \$2.0 million dollars, all as more fully set forth in the Settlement Agreement and APAs.

Notice of Proposed Sale and Assignment

P. On August 6, 2007, the Debtor filed with this Court the Sale Motion seeking authority for a private sale of substantially all of the Debtor’s assets, free and clear of all liens,

claims, encumbrances and interests, to DLR and/or one or more of its designee(s) pursuant to the APAs.

Q. On or about August 6, 2007, the Debtor provided all secured creditors, unsecured creditors, the applicable taxing authorities, the United States Trustee, all applicable non-debtor counterparties to the Assigned Contracts and all parties who have requested notice in this Chapter 7 case with notice of the Sale Motion, either electronically or by first class mail, postage prepaid. A notice of the proposed sale and approval hearing date and time were also published in local newspapers as shown by the notices filed in the record. The Debtor also served the Notice only to the customers on August 7, 2007 by first class mail, postage prepaid.

R. Service of a full copy of the Sale Motion and proposed order on each of the over 600 customers of the Debtor would be extremely burdensome and costly to the estate due to the associated photocopying and postage expenses, as well as the amount of time required to assemble and coordinate such a large mailing.

S. The Court hereby (i) approves the notice of the filing of the Sale Motion and the hearing thereon substantially in the form attached to the Motion as Exhibit B (the "Sale Hearing Notice") and (ii) approves service of the Sale Hearing Notice on the Debtor's customers in place of service of the Sale Motion and proposed order. The Sale Hearing Notice and the service thereof as stated herein comply with the notice requirements of Rules 2002 and 6004 of the Bankruptcy Rules.

T. Notice of the Sale Motion has been given in accordance with Bankruptcy Rules 2002 and 6004. The foregoing notice constitutes good and sufficient notice of the Sale Motion and no other or further notice of the Sale Motion or the entry of this Order need be given.

The Sale

U. Emergent circumstances and sound business reasons exist for the Debtor's sale of the Purchased Assets pursuant to the APAs. Entry into the APAs and consummation of the transactions contemplated thereby constitute the exercise by the Debtor of sound business judgment and such acts are in the best interests of the Debtor, its estate and its creditors.

V. This case is an operating Chapter 7 proceeding wherein the Chapter 7 Trustee abandoned all of her interests in the assets due to liability concerns. The City of Salyersville is currently operating the utility pursuant to a management agreement approved by the Court; however, the City notified the Debtor that it wishes to cease operations as soon as possible.

W. The Debtor has two options in this case: (a) sell all of its assets, or (b) cease operations. Since the Debtor provides a gas utility service to hundreds of customers in Magoffin and Floyd Counties, it is certainly not in the best interest of the public for the Debtor to cease operations. Nor is it in the best interests of the Debtor's creditors. Therefore, a sale of the Debtor's assets is the best resolution of this case.

X. The Debtor has been working since almost the inception of this case to try and sell its assets; however, a number of complicating factors have thwarted those sale efforts until now. The uncertainty of the ownership of the Debtor's stock (which is still pending appeal before the Franklin Circuit Court), the inability of any proposed purchaser from assuming the GOLD debt (which provided very attractive interest rates) due to the Economic Development Administration's moratorium, and the lien priority dispute between GOLD and DLR which impacted either secured party's right to credit bid have all presented obstacles to a sale.

Y. When the Debtor, GOLD and DLR reached the Settlement, they were successful in resolving those obstacles. The Settlement is conditioned upon a private sale of the Purchased Assets to DLR and/or one or more of its designee(s) in return for a waiver of the claims held by

DLR (including those claims to be acquired from GOLD as described above) which total in excess of \$2.0 million.

Z. In the instant case, the Sale of the Purchased Assets by private sale pursuant to the APAs will result in the elimination of approximately \$2.0 million of secured debt. In the 30 months since the Petition Date, the Debtor has not received any offers for the Purchased Assets comparable to the DLR offer. Moreover, there does not appear to be any other viable purchasers for the Purchased Assets who would be ready and willing to pay the consideration and provide comparable benefits to the Debtor and its bankruptcy estate in an amount equal to that being offered by DLR. This is particularly true in light of the obstacles that would surface once again if this Sale is not approved due to DLR's right to credit bid its claims.

AA. If this Court does not approve the Settlement and the Sale, it is extremely unlikely that the Debtor will be able to locate a viable purchaser for substantially all of its assets. Therefore, the private Sale of the Purchased Assets to DLR and/or one or more of its designee(s) is in the best interests of its estate and creditors.

BB. The sale consideration to be realized by the Debtor pursuant to the APAs is fair and reasonable because, among other things, the Sale is the highest and best offer the Debtor has received for the Purchased Assets.

CC. It is reasonable in this circumstance to allow DLR to credit bid pursuant to Section 363(k) of the Bankruptcy Code. By virtue of DLR's credit bid, the Debtor is being afforded the opportunity to reduce and/or eliminate a significant amount of its claims (*i.e.*, those held by DLR, including those claims to be acquired from GOLD totaling approximately \$2.0 million).

DD. The transactions contemplated by the APAs are undertaken by the Debtor and DLR (and/or one or more of its designees) at arm's length, without collusion and in good faith

within the meaning of Sections 363(m) and 364(e) of the Bankruptcy Code, and such parties are entitled to the protections of Sections 363(m) and 364(e) of the Bankruptcy Code.

EE. The Sale of the Purchased Assets satisfies the statutory requirements of Section 363(f) of the Bankruptcy Code. A sale of the Purchased Assets other than one free and clear of all liens, claims, encumbrances and interests (collectively, the "Liens") would adversely affect the Debtor's bankruptcy estate, the conclusion of this bankruptcy case and would be of substantially less benefit to the Debtor's estate and creditors.

FF. Adequate business justifications merit judicial approval to assign the Assigned Contracts to DLR and/or one or more of its designee(s). It is in the best interest of the Debtor's estate to sell the Purchased Assets to DLR and/or one or more of its designee(s). The Assigned Contracts are important assets, which are necessary to operate the Business on a going-concern basis. They are critical to the transaction and their assignment to DLR and/or one or more of its designee(s) is a condition to the Sale of the Purchased Assets.

GG. The decision to assign the Assigned Contracts is based on the reasonable exercise of the Debtor's business judgment and is in the best interest of the Debtor's estate.

II. ORDERS OF THE COURT:

Based on the forgoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

1. The Sale Motion, the APAs, and the transactions contemplated thereby, are hereby APPROVED.

2. Pursuant to Section 363(b) of the Bankruptcy Code, the Debtor is authorized to sell the Purchased Assets to DLR and/or one or more of its designee(s) upon the terms and subject to the conditions set forth in the APAs, with such modifications or amendments as may be agreed to by the parties.

3. The Debtor and DLR and/or its designee(s) are hereby authorized to take all actions and execute all documents and instruments that the Debtor and DLR and/or its designee(s) deem necessary or appropriate to implement and effect the transactions contemplated by the APAs.

4. In furtherance thereof, as there are no officers or other representatives of the Debtor available to execute the APAs and other Sale documents or to take the actions necessary to complete the Sale, counsel for the Debtor is hereby authorized to sign the APAs and any and all other documents for and on behalf of the Debtor as a representative approved by Order of this Court and to take any and all actions as may be necessary to complete the Sale for and on behalf of the Debtor. Counsel for the Debtor is not otherwise acting in any other capacity as a Debtor representative beyond its role as Counsel in this case.

5. The Sale of the Purchased Assets shall be free and clear of Liens pursuant to Section 363(f) of the Bankruptcy Code, whether known or unknown, including, but not limited to, any of the Debtor's creditors, vendors, suppliers, employees, customers, contract counterparties or lessors or taxing authorities, with all such Liens transferring and attaching to the proceeds of the Sale, if any, with the same validity, priority, force and effect that the Liens had on the Purchased Assets immediately prior to Closing, and DLR and its designee(s) shall not be liable in any way (as successor entity or otherwise) for any claims that any of the foregoing or any other third party may have against the Debtor or the Purchased Assets, except as may be provided for in the APAs.

6. Upon the Closing of the Sale and the actual receipt by the Debtor of the proceeds from the Sale, if any, pursuant to the APAs and this Order, each of the Debtor's creditors is authorized and directed to execute such documents and take all other action as may be necessary

to release their Liens upon, or security interests in, the Purchased Assets, as may have been recorded or may otherwise exist.

7. This Order: (a) shall be effective as a determination that, upon the Closing, all Liens existing as to the Purchased Assets prior to the Closing have been unconditionally released, discharged and terminated on the Purchased Assets with such Liens transferring and attaching to the proceeds of the Sale, if any, with the same validity, priority, force and effect that the Liens had on the Purchased Assets immediately prior to Closing, and that the conveyances described herein and in the APAs have been effected; and (b) is and shall be binding upon and govern the acts of all entities and persons, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract to accept, file register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets. The Debtor is hereby authorized to file, register or otherwise record with any and all local and state taxing and other governmental authorities this Order which shall constitute due and sufficient evidence that, upon the Closing, all Liens existing as to the Purchased Assets prior to the Closing have been unconditionally released, discharged and terminated as to the Purchased Assets only (as set forth in this Order).

8. If any person or entity that has filed financing statements or other documents or agreements evidencing Liens on the Purchased Assets shall not have delivered to DLR and/or its designee(s) prior to the date of the transfer, in proper form for filing and executed by the appropriate parties, *termination statements, instruments of satisfaction, releases of all Liens* or other interests which the person or entity has with respect to the Purchased Assets, the Debtor

and DLR and/or its designee(s) are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets.

9. The Sale of the Purchased Assets by the Debtor to DLR and/or its designee(s) shall constitute a legal, valid, and effective transfer of the Purchased Assets and shall vest DLR and/or its designee(s) with all right, title, and interest of the Debtor in and to the Purchased Assets free and clear of all Liens pursuant to Section 363(f) of the Bankruptcy Code, effective as of the Closing, with all such Liens transferring and attaching to the proceeds of the Sale, if any, with the same validity, priority, force and effect that the Liens had on the Purchased Assets immediately prior to Closing.

10. The Sale of the Purchased Assets to DLR and/or its designee(s) under the APAs will constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of all applicable jurisdictions, including, but not limited to, the laws of the Commonwealth of Kentucky.

11. DLR and/or its designee(s) is hereby granted all of the protections provided to a good-faith purchaser under Section 363(m) of the Bankruptcy Code and a good faith creditor under Section 364(e) of the Bankruptcy Code.

12. Pursuant to Sections 105(a) and 363 of the Bankruptcy Code, all Persons (as defined in section 101(41) of the Bankruptcy Code) are hereby enjoined from taking any action against DLR and/or its designee(s) to recover any claim which such Person has solely against the Debtor or the Purchased Assets (as they exist immediately following the Closing).

13. The Debtor is authorized to assign and transfer to DLR and/or its designee(s) all of the Debtor's rights, title and interest (including common law rights) to all of the Debtor's intangible property to be assigned and transferred to DLR and/or its designee(s) under the APAs.

14. All objections and responses concerning the Sale Motion are resolved in accordance with the terms of this Order and as set forth in the record of the hearing on the Sale Motion, if one was held, and to the extent any such objection or response was not otherwise withdrawn, waived, or settled, they are, and all reservations and rights therein are, OVERRULED and DENIED.

15. DLR and/or its designee(s) has not assumed or otherwise become obligated for any of the Debtor's liabilities other than as set forth in the APAs. Consequently, all holders of liabilities retained by the Debtor are hereby enjoined from asserting or prosecuting any Claim (as defined in Section 101(5) of the Bankruptcy Code) or cause of action against DLR and/or its designee(s) or the Purchased Assets to recover on account of any liabilities other than Assumed Liabilities (as defined in the APAs) pursuant to the APAs or other than pursuant to this Order.

16. The assignment of the Assigned Contracts is approved pursuant to Section 363 of the Bankruptcy Code. The Assigned Contracts are valid and binding, in full force and effect, and enforceable in accordance with their terms.

17. There shall be no rent accelerations, assignment fees, increases or any other fees charged to DLR and/or its designee(s) as a result of the assignment of the Assigned Contracts.

18. No counterparty to any Assigned Contract that is being assigned to DLR and/or one or more of its designee(s) pursuant to the APAs has timely objected to the assignment thereof. To the extent any of the Assigned Contracts have enforceable anti-assignment provisions, the Court hereby finds that each counterparty to the Assigned Contracts is deemed to have consented to the assignment of such Assigned Contract(s) pursuant to the APAs as approved hereby.

19. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the APAs and this Order in all respects and further to hear and determine any and

all disputes, including without limitation, those between the Debtor and DLR, as the case may be, including, without limitation, compliance by the Debtor and/or DLR (including their respective designees, officers, employees and agents) with the terms of this Order and the APAs, delivery of the Purchased Assets to DLR and/or one or more of its designee(s), protecting DLR and/or one or more of its designee(s) against any liens, claims, interests, obligations and encumbrances against the Debtor and/or the Purchased Assets, and any non-debtor party to, among other things, any Assigned Contract concerning, *inter alia*, the Debtor's assignment thereof to DLR and/or one or more of its designee(s) under the APAs; provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the APAs or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

20. The provisions of this Order are non-severable and mutually dependent.

21. This Order shall inure to the benefit of DLR and/or one or more of its designee(s), the Debtor and their respective successors and assigns, including but not limited to, any Chapter 7 trustee and shall be binding upon any trustee, party, entity or fiduciary that may be appointed in connection with this case or any other or further case involving the Debtor.

22. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APAs and this Order.

23. This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

Tendered by:

/s/ Laura Day DelCotto, Esq.

Wise DelCotto PLLC

200 N. Upper Street

Lexington, KY 40507

Tel: (859) 231-5800

Fax : (859) 281-1179

Email: ldelcotto@wisedel.com

COUNSEL FOR SIGMA GAS CORPORATION

Pursuant to Local Rule 9022-1(c) Wise DelCotto PLLC shall cause a copy of this Order to be served on all parties listed on Service List A attached, and shall file with the Court a Certificate of Service of the Order upon such parties, within ten (10) days thereof.

Z:\Clients\Sigma Gas Corp\Pleadings\Sale Motion\Sale Order 2007 Aug 6.DOC

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
***William S. Howard***  
**Bankruptcy Judge**  
**Dated: Thursday, August 30, 2007**  
**(wsh)**

Service List A

KISU Service Co., Inc.  
P.O. Box 1084  
Prestonsburg, KY 41653

A.C. Donahue, Esq.  
Donahue Law Group, PSC  
P.O. Box 659  
Somerset, KY 42502

John N. Hughes, PSC  
124 W. Todd Street  
Frankfort, KY 40601

Kentucky Transportation Cabinet  
Division of Right of Way & Utilities  
5<sup>th</sup> Fl. East, 200 Mero Street  
Frankfort, KY 40622

Sara Brooke Jenkins  
c/o Philip Taliaferro III  
P.O. Box 468, 1005 Madison Ave.  
Covington, KY 41011-0468

Billy R. Shelton, Esq.  
Jones, Walters, Turner  
151 N. Eagle Creek, Suite 310  
Lexington, KY 40509

Underwriters Safety  
c/o Theresa A. Gilbert  
156 Market Street  
Lexington, KY 40507

Estill Branham  
P.O. Box 785  
Prestonsburg KY 41653

Lexus Financial Services  
P.O. Box 4102  
Carol Stream IL 60197-4102

Rick Barker  
1346 Honey Branch  
West Liberty, KY 41472

Kentucky State Treasurer  
Pat Montgomery, Sheriff  
P.O. Box 589  
Salyersville, KY 41465

Magoffin County Taxes  
P.O. Box 589  
Salyersville KY 41465

Toyota Motor Credit Corp  
5005 N River Blvd RE  
Cedar Rapids IA 52411-6634

Jerome A. Kanney  
Interstate Natural Gas Company  
347 Thompson Rd, P.O. Box 3385  
Pikeville KY 41502-3385

Dennis L. Rohrer  
Interstate Natural Gas Company  
347 Thompson Road, PO Box 3385  
Pikeville, KY 41502-3385

Charles Lowe, Esq.  
147 Main St  
Pikeville, KY 41501  
**VIA EMAIL**

Kent Hatfield  
Stoll Keenon & Ogden  
400 W Market Street, Suite 2650  
Louisville, KY 40202  
**VIA EMAIL**

City of Salyersville  
Mayor's Office  
P.O. Box 640  
Salyersville KY 41465  
**VIA EMAIL**

Susan Crum  
Auxier Road Gas Company, Inc.  
P.O. Box 785  
Prestonsburg, KY 41653

Kim Crisp  
Auxier Road Gas Company, Inc.  
P.O. Box 785  
Prestonsburg, KY 41653

Barkley J. Sturgill, Esq.  
Fitzpatrick, Osborne Heaberlin & Sturgill,  
Legal Arts Bldg., 119 E. Court St., 2 Fl.  
Prestonsburg KY 41653

Robin Browning Brock  
Interim Trustee  
128 Eula Gray St.  
Harlan, KY 40831

Patricia K. Burgess, Esq.  
Frost Brown Todd LLC  
250 W. Main Street, Suite 2700  
Lexington KY 40507  
**VIA ECF**

Gerald E. Wuetcher ("Jerry")  
Assistant General Counsel, PSC  
211 Sower Blvd., P.O. Box 615  
Frankfort, KY 40601  
**VIA EMAIL**

Garland H. Barr, Esq. ("Andy")  
General Counsel, GOLD  
700 Capitol Avenue, Suite 132  
Frankfort, Kentucky 40601

John O. Morgan, Jr., Esq.  
Attorney for Trustee  
333 W. Vine St., Ste. 310  
Lexington, KY 40507  
**VIA ECF**

John N. Hughes, Esq.  
Attorney for Auxier Road Gas  
124 West Todd Street  
Frankfort, KY 40601  
**VIA ECF**

K. Gail Russell, Esq.  
Goldberg & Simpson, PSC  
P.O. Box 221529  
Louisville KY 40252-1529  
**VIA EMAIL**

Jason L. Hargadon, Esq.  
Geffy & Mayo PLLC  
250 West Main Street, Ste 1900  
Lexington, KY 40507

Jim Pruitt, Esq.  
Pruitt de Bourbon Law Firm  
2nd Street  
Pikeville, KY 41501  
**VIA ECF**

Service List A

Jim Anderson  
National Hotel Corp  
PO BOX 18897 Lenox Square  
Atlanta, Georgia 31126

Elizabeth Brown Alphin  
801 W. Jefferson St.  
Louisville, KY 40202  
**VIA ECF**

Matthew B Bunch  
271 West Short Street, Suite 805  
PO Box 2086  
Lexington, KY 40588-2086  
**VIA ECF**

Ruth Clemmons  
P.O. Box 1023  
Salyersville, KY 41465

Jefferson Gas LLC  
PO Box 24000  
Lexington, KY 40524-4032

UK Workers Care  
P.O. Box 23100  
Louisville KY 40223

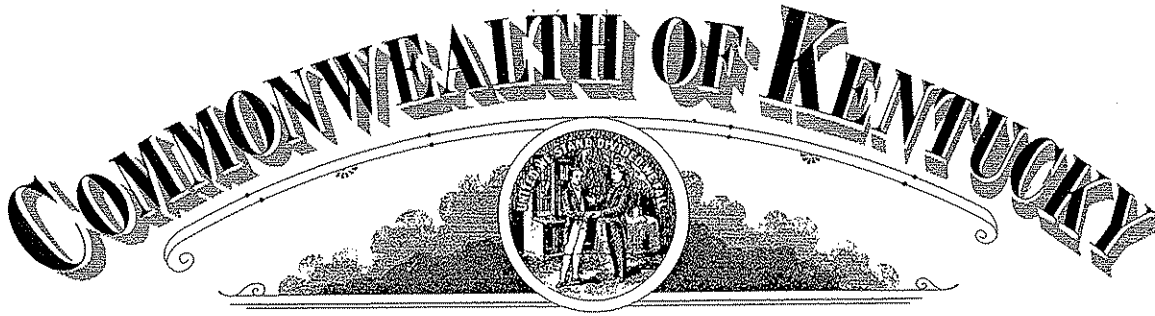
Equitable Resources Exploration  
a Div. Equit Res. Energy Corp.  
1989 E. Stone Drive  
Kingsport TN 37660

Internal Revenue Service  
P.O. Box 21126  
Philadelphia PA 19114

Kentucky Dept. of Revenue  
Legal Br., Bkcy Section  
P.O. Box 5222  
Frankfort, KY 40602







**Trey Grayson  
Secretary of State**

**Certificate**

I, Trey Grayson, Secretary of State for the Commonwealth of Kentucky, do hereby certify that the foregoing writing has been carefully compared by me with the original thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of

ARTICLES OF INCORPORATION FOR  
COW CREEK GAS, INC. FILED ON NOVEMBER 20, 1993.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
Official Seal at Frankfort, Kentucky, this 19th day of September, 2007.



*Trey*

Trey Grayson  
Secretary of State  
Commonwealth of Kentucky  
csorrell/0307731 - Certificate ID: 53381

ARTICLES OF INCORPORATION  
OF  
COW CREEK GAS, INC.

307731  
RECEIVED & FILED  
Nov 20 5 00 PM '92  
BOB DABARGE  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY

KNOWN BY ALL THESE PRESENTS:

The undersigned, JEROME A. KANNEY, 130 HIBBARD STREET, PIKEVILLE, PIKE COUNTY, KENTUCKY 41501, and DENNIS L. ROHRER, 130 HIBBARD STREET, PIKEVILLE, PIKE COUNTY, KENTUCKY 41501, do hereby form a private corporation under the laws of the state of Kentucky.

ARTICLE I

The name and address of the corporation shall be:

COW CREEK GAS, INC.  
130 HIBBARD STREET  
PIKEVILLE, KY 41501

ARTICLE II

694280

The duration of the corporation shall be perpetual.

ARTICLE III

The purpose of the corporation shall be to transact any or all lawful business for which corporations may be incorporated in the State of Kentucky.

ARTICLE IV

The aggregate number of shares of stock which the corporation is authorized to issue shall be 100 shares of common stock of no par value. Each share shall have equal voting rights.

ARTICLE V

In the event any shareholder wishes to sell his or her stock, the right of first refusal must be tendered, pro rata, to the other shareholders at least 60 days before any sale shall be consummated.

ARTICLE VI

The address of the registered office of the corporation shall be: 130 HIBBARD STREET, PIKEVILLE, KENTUCKY 41501 and the name and address of it's registered agent shall be the JEROME A. KANNEY at the above address.

NOV 20 1992  
SECRETARY OF STATE  
COMMONWEALTH OF KY

**ARTICLE VII**

The initial Board of Directors of the Corporation shall consist of two (2) directors, and the directors are to serve until the first annual meeting of the shareholders of the corporation, or until his successors are elected and qualified as:

Jerome A. Kanney  
130 Hibbard Street  
Pikeville, KY 41501

Dennis L. Rohrer  
130 Hibbard Street  
Pikeville, KY 41501

The number of directors thereafter shall be as the Bylaws of the Corporation may provide from time to time.

**ARTICLE VIII**

The name and address of the incorporators are:

Jerome A. Kanney  
130 Hibbard Street  
Pikeville, KY 41501

Dennis L. Rohrer  
130 Hibbard Street  
Pikeville, KY 41501

**ARTICLE IX**

The private property of the shareholders shall not be liable for any debts, liabilities, or obligations of the corporation.

IN WITNESS WHEREOF, the incorporator has hereunto set his hand, in triplicate originals, this 16th day of November, 1992.

Jerome A. Kanney  
Jerome A. Kanney, Incorporator

STATE OF KENTUCKY  
COUNTY OF Pulaski

I, Melissa Fields (Stephens), a notary public for the county and state aforesaid certify that the foregoing Articles of Incorporation were this day produced to me in said county and state by Jerome A. Kanney, incorporator, and acknowledged by him before me to be his free act and deed, individually and as incorporator COW CREEK GAS, INC.

Given under my hand this 16th day of November, 1992.  
My Commission expires September 5, 1995.

Melissa Fields (Stephens)  
NOTARY PUBLIC

IN WITNESS WHEREOF, the incorporator has hereunto set his hand, in triplicate originals, this 16th day of November, 1992.

Dennis L. Rohrer  
Dennis L. Rohrer, Incorporator

STATE OF KENTUCKY  
COUNTY OF Pulaski

I, Melissa Fields (Stephens), a notary public for the county and state aforesaid certify that the foregoing Articles of Incorporation were this day produced to me in said county and state by Dennis L. Rohrer, incorporator, and acknowledged by him before me to be his free act and deed, individually and as incorporator COW CREEK GAS, INC.

Given under my hand this 16th day of November, 1992.  
My Commission expires September 5, 1995.

Melissa Fields (Stephens)  
NOTARY PUBLIC







**Trey Grayson  
Secretary of State**

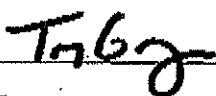
**Certificate**

I, Trey Grayson, Secretary of State for the Commonwealth of Kentucky, do hereby certify that the foregoing writing has been carefully compared by me with the original thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of

ARTICLES OF INCORPORATION FOR  
DLR ENTERPRISES, INC. FILED ON JANUARY 5, 1988.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
Official Seal at Frankfort, Kentucky, this 21st day of September, 2007.



  
\_\_\_\_\_  
Trey Grayson  
Secretary of State  
Commonwealth of Kentucky  
csorrell/0238347 - Certificate ID: 53468

85-11-81-M

# Commonwealth of Kentucky

OFFICE OF  
SECRETARY OF STATE

**BREMER EHRLER**  
Secretary



FRANKFORT,  
KENTUCKY

## CERTIFICATE OF INCORPORATION

I, **BREMER EHRLER**, Secretary of State of the Commonwealth of Kentucky, do hereby certify that Articles of Incorporation of

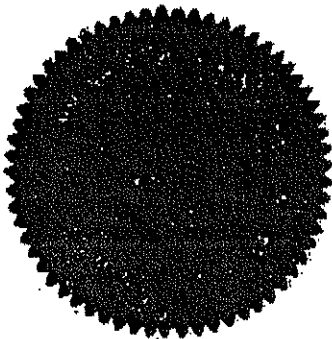
**DLR ENTERPRISES, INC.**

whose initial agent for process is **Dennis Rohrer**

**617 Harmon Branch**

and whose address is **Pikeville, Kentucky 41501**

duly signed according to law, have been filed in my office. I further certify that all taxes, fees and charges payable upon the filing of said Articles of Incorporation have been paid.



SECRETARY OF STATE

Given under my hand and seal of Office as Secretary of State,  
at Frankfort, Kentucky, this **5th**  
day of **JANUARY**, 19 **88**.

*Bremer Ehler*

SECRETARY OF STATE

ASSISTANT SECRETARY OF STATE

ORIGINAL COPY FILED  
SECRETARY OF STATE OF KENTUCKY  
FRANKFORT, KENTUCKY

JAN 05 1988  
OK 125.0

*Dennis Rohrer*  
SECRETARY OF STATE

ARTICLES OF INCORPORATION  
OF  
D L R ENTERPRISES, INC.  
KNOWN BY ALL THESE PRESENTS:

The undersigned, DENNIS ROHRER of 617 HARMONS BRANCH, PIKEVILLE, Pike County, Kentucky does hereby form a private corporation under the laws of the state of Kentucky.

506188

ARTICLE I

The name and address of the corporation shall be: ✓

DLR ENTERPRISES, INC.  
617 HARMONS BRANCH  
PIKEVILLE, KENTUCKY 41501

ARTICLE II

The duration of the corporation shall be perpetual. ✓

ARTICLE III

The purpose of the corporation shall be to transact any or all lawful business for which corporations may be incorporated in the State of Kentucky. ✓

ARTICLE IV

The aggregate number of shares of stock which the corporation is authorized to issue shall be 100 shares of common stock of no par value. Each share shall have equal voting rights. ✓

ARTICLE V

In the event any shareholder wishes to sell his or her stock, the right of first refusal must be tendered, pro rate, to the other shareholders at least 60 days before any sale shall be consummated.

ARTICLE VI

The address of the registered office of the corporation shall be: 617 HARMONS BRANCH, PIKEVILLE, KENTUCKY 41501 and the name and address of it's registered agent shall be DENNIS ROHRER, 617 HARMONS BRANCH, PIKEVILLE, KY 41501. ✓



**ARTICLE VII**

The initial Board of Directors of the Corporation shall consist of one (1) director, and the director is to serve until the first annual meeting of the shareholders of the corporation, or until his successor is elected and qualified as:

DENNIS ROHRER ✓  
617 HARMONS BRANCH  
PIKEVILLE, KENTUCKY 41501

The number of directors thereafter shall be as the Bylaws of the Corporation may provide from time to time.

**ARTICLE VIII**

The name and address of the incorporator is: ✓

DENNIS ROHRER  
617 HARMONS BRANCH  
PIKEVILLE, KY 41501

**ARTICLE IX**

The private property of the shareholders shall not be liable for any debts, liabilities, or obligations of the corporation.

IN WITNESS WHEREOF, the incorporator has hereunto set his hand, in triplicate originals,  
this 31 day of December, 1987.

  
Dennis Rohrer, President

STATE OF KENTUCKY  
COUNTY OF PIKE

I, Sharon K. Hanson, a notary public for the county and state  
aforesaid certify that the foregoing Articles of Incorporation were this day produced to me in  
said county and state by Dennis Rohrer incorporator, and acknowledged by him before me to be  
his free act and deed, individually and as incorporator of DLR ENTERPRISES, INC.

Given under my hand this 31 day of December 1987.  
My Commission expires 12-31-88

  
NOTARY PUBLIC



0238347

Commonwealth of Kentucky  
John Y. Brown III  
Secretary of State

RECEIVED & FILED  
JUL 23 PM 3:28



KD

**Statement of Change of Registered Office, Agent, or Both**

Pursuant to the provisions of Chapters 271B or 273 of the Kentucky Revised Statutes, the undersigned hereby files this statement of change of registered office, registered agent, or both on behalf of

**DLR ENTERPRISES, INC.**

which is organized in the state of Kentucky, and for that purpose submits the following statements:

**Current Registered Agent**

DENNIS ROHRER

**New Registered Agent**

Jerome A. Kanney

**Current Registered Office**

617 HARMONS BRANCH  
PIKEVILLE, KY 41501

**New Registered Office**

276 Thompson Road  
P.O. Box 3385  
Pikeville, KY 41502

The street address of the registered office and the business office of the registered agent, as changed, will be identical.

**Signature**

Dated 7-16-93

*Jerome A. Kanney*  
Signature and Title  
Jerome A. Kanney President  
Print or type Name and Title

**Consent of New Agent**

I, Jerome A. Kanney consent to  
(Print or type name)  
serve as the new registered agent on behalf of this  
corporation.

*Jerome A. Kanney*  
Signature of new Agent

**Filing Instructions**

**Address and agent:** The complete address of the new registered agent must contain a street or other specific location (highway, rural route apartment, apartment building, etc.) A mailing address consisting of only a Post office box (PO box) is not sufficient for the registered office address.

The new agent may be an individual resident of Kentucky, a Kentucky corporation, or a foreign corporation authorized to transact business in Kentucky. The new agent must give written consent to act as agent and, if a corporation (domestic or foreign) is the newly appointed agent, the corporate representative must designate his or her office of the capacity in which he or she signs.

**Who may sign:** The statement of change must be signed by a corporate officer or the chairman of the board of directors.

**Filing Fee and Copies:** Filing fee: \$10.00 for profit business corporation (KRS 271B)

\$5.00 for non-profit corporation (KRS 273)

Submit one (1) original signed Statement of Change and two (2) copies. Two file stamped copies will be returned as evidence of filing. One file stamped copy shall then be filed with the county clerk of the county in which the corporation's registered office is situated. The second file stamped copy shall be retained by the corporation.

Mailing Address: P.O. Box 718, Frankfort, KY 40602-0718

Form #SSC-601

Commonwealth of Kentucky  
John Y. Brown III  
Secretary of State

0238347  
0238347.09

John Y. Brown III  
Secretary of State

**Statement of Change of Registered Office, Agent, or Both**

Pursuant to the provisions of Chapters 271B or 273 of the Kentucky Revised Statutes, the undersigned hereby applies to change the registered office or registered agent, or both on behalf of

Received and Filed  
04/18/2001 04:07 PM  
Fee Receipt: \$10.00  
Radler - P6D1

**DLR ENTERPRISES, INC.**

which is organized in the state of Kentucky, and for that purpose submits the following statements:

1. Name of current registered agent

JEROME A. KANNEY

2. Registered agent is hereby changed to

3. Address of current registered office

276 THOMPSON RD.  
P.O. BOX 3385  
PIKEVILLE, KY 41502

4. Registered office is hereby changed to

347 THOMPSON ROAD  
P.O. BOX 3385  
PIKEVILLE, KY 41502

5. Signature of officer or chairman of the board

*Jerome A. Kanney*  
Signature and title: PRESIDENT  
Type or print name and title:  
Date:

6. Consent of new agent

I consent to serve as the new registered agent on behalf of this corporation.  
Signature of registered agent:  
Type or print name and title, if applicable:



**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF KENTUCKY**  
**PIKEVILLE DIVISION**

IN RE: SIGMA GAS CORPORATION

CASE NO. 04-71003

**RESPONSE TO ORDER TO SHOW CASUE**

Comes now the City of Salyersville by and through the undersigned counsel for its response to order of show cause entered herein states as follows:

The City of Salyersville originally entered into a management agreement with he Governor's Office of Local Development to operate and run Sigma Gas for the benefit of the citizen's of Salyersville. At the time of the agreement the City was considering and being encouraged by GOLD to make an offer of purchase of Sigma Gas.

The city did initially make an offer of purchase of the gas company, however, because of the delays and litigation it became apparent to the City of Salyersville that Sigma Gas was not the income producing property as represented to the City and believed by the City that it would be. In addition, the funds promised to the city by GOLD for maintenance and repairs fell through, apparently because of a lapse or lack of funding by a federal grant. The loss of the funds to maintain and repair along with the constant requirement of the Public Service Commission requiring the City to make costly repairs led the City of Salyersville to conclude that the test project which was the management agreement was not in the best interest of the city.

Mayor Stanley Howard advised Andy Barr with GOLD that the city was not going to renew its management agreement for the year 2007. In addition the Mayor sent debtor's counsel a letter advising that the City of Salyersville would no longer operate Sigma under the management agreement. See Attached. The under signed counsel also points out that he advised all counsel involved and the Public Service Commission during a hearing that the City of Salyersville no longer desired to operate Sigma Gas.

The Mayor and the undersigned counsel were assured that the matter would be resolved or someone else would be contracted to run Sigma. This did not and has not happened.

The City of Salyersville began reimbursing itself for costs directly incurred in operating Sigma Gas after the non-renewal of the management agreement. Sigma Gas could not have operated without the costs associated with it and the City of Salyersville could not have continued to operate the company without reimbursement of the necessary operating expenses.

Respectfully submitted,

/s/Jeffery N. Lovely

Attorney for the City of Salyersville

PO Box 82

Salyersville, KY 41465

606 349 4522

#### CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served via electronic mail on the following:

Gerald Wuetcher – [jwuetcher@ky.gov](mailto:jwuetcher@ky.gov)

K. Gail Russell – [grusell@gsatty.com](mailto:grusell@gsatty.com)

Kent Hatfield – [kent.hatfield@skofirm.com](mailto:kent.hatfield@skofirm.com)

Laura Day DelCotto – [ldelcotto@wisedel.com](mailto:ldelcotto@wisedel.com)

Charles Lowe – [clowjr@yahoo.com](mailto:clowjr@yahoo.com)

Matthew Bunch – [matt@bunchlaw.com](mailto:matt@bunchlaw.com)

This the 11<sup>th</sup> day of July, 2007.

/s/ Jeffery N. Lovely



*City of Salyersville*  
CITY, KENTUCKY 40455-0840  
606/349-2400  
FAX 606/349-2239

November 20, 2006

Laura Day Delcotto, Esq.  
Wise Delcotto PLLC  
219 N. Upper Street  
Lexington, KY 40507-1016

Re: Sigma Gas Corporation ("Sigma")

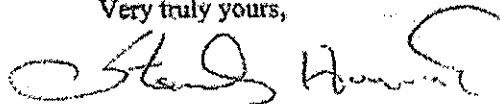
Dear Ms. Delcotto:

As you are likely aware, on December 21, 2004, the City of Salyersville (the "City"), by the unanimous vote of the Salyersville City Council, offered to purchase substantially all of the tangible and intangible assets of Sigma. That offer was subsequently amended on January 4, 2005 and January 28, 2005 (as amended, the "Offer to Purchase"). Please be advised, however, that due to Sigma's recent poor performance, increased costs and the City's recent conclusion that Sigma's assets are not worth more than \$500,000, the City hereby withdraws the Offer to Purchase.

In addition, Sigma and the City, among others, are parties to that certain Renewed Management Agreement (as amended, the "Management Agreement"), which was recently amended to provide that, subject to the City's request, the Management Agreement would continue on a month-to-month basis. Consistent therewith, the City hereby does not request a renewal of the Management Agreement for an additional month. Please be advised, however, that the City will continue operating Sigma without an agreement until another operator can be found. We hereby give notice of termination of the Management Agreement Effective December 1, 2006.

Please contact me if you have any questions.

Very truly yours,



Stanley Howard  
Mayor, City of Salyersville



UNITED STATES BANKRUPTCY COURT  
EASTERN DIVISION OF KENTUCKY  
PIKEVILLE DIVISION

IN RE:

SIGMA GAS CORPORATION

CASE NO. 04-71003

DEBTOR

CHAPTER 7

---

**DEBTOR'S NOTICE OF FILING OF MANAGEMENT AGREEMENT**

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The undersigned counsel for the Debtor, Sigma Gas Corporation ("Debtor") hereby gives notice of the attached Management Agreement, now fully executed by the parties thereto.

Respectfully submitted,

/s/ Laura Day DelCotto, Esq.  
Wise DelCotto PLLC  
219 North Upper Street  
Lexington, KY 40507  
Tel No. (859) 231-5800  
Fax No. (859) 281-1179  
ldelcotto@wwwatty.com  
COUNSEL FOR DEBTOR

**CERTIFICATE OF SERVICE**

In addition to the parties who will be served electronically by the Court's ECF System, the undersigned certifies that a true and accurate copy of the foregoing was served by U.S. First Class Mail on August 8, 2005, on the parties listed below:

Kent Hatfield, Esq.  
Lea Goff, Esq.  
Stoll Keenon & Park, LLP  
400 W Market Street, Suite 2650  
Louisville, KY 40202

Gerald E. Wuetcher ("Jerry")  
Assistant General Counsel  
Public Service Commission of Kentucky  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40601

K. Gail Russell, Esq.  
David Cooper, Esq.  
Goldberg & Simpson, PSC  
Suite 3000, 101 S. Fifth Street  
Louisville KY 40202-3118

/s/ Laura Day DelCotto, Esq.  
COUNSEL FOR THE DEBTOR

*Z:\LDEL COTTO\Clients\Sigma Gas Corp\Pleadings\Notice of Filing Management Agr 2005 Aug 8.doc*

## MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (“**Agreement**”) entered into the 6<sup>th</sup> day of July, 2005 (the “**Effective Date**”) by and between (i) **THE CITY OF SALYERSVILLE** (“**the City**”), a Kentucky city with its address of P.O. Box 640, Salyersville, KY 41465; and (ii) **SIGMA GAS CORPORATION** (“**Sigma**” or “**Debtor**”), Chapter 7 Debtor, a Kentucky corporation with its address of Box 22, Salyersville, KY 41465; and (iii) the **KENTUCKY GOVERNOR'S OFFICE FOR LOCAL DEVELOPMENT** (“**GOLD**”), 1024 Capital Center Drive, Frankfort, KY 40601.

### RECITALS:

WHEREAS, Sigma Gas Corporation, Taxpayer Identification No. 61-1248086, has been placed under the jurisdiction of the United States Bankruptcy Court, Eastern District of Kentucky, Pikeville (the “**Bankruptcy Court**”), Case No. 04-71003, Chapter 7, as filed on October 20, 2004 (the “**Petition**”); and

WHEREAS Sigma operates as a regulated public utility in the business of supplying natural gas (the “**Business**”) including, but not limited to, over 700 low-income residential customers in the City of Salyersville and Magoffin County, Kentucky and environs (collectively, the “**Customers**”); and

WHEREAS, Sigma had been operating the Business without any liability insurance and was thereby in violation of its mortgage obligations and/or

covenants with GOLD; and

WHEREAS, as a result of the Chapter 7 Petition, the Court has determined that the assets of Sigma should be abandoned by the “**Chapter 7 Trustee**” to allow for its continued operations; and

WHEREAS, GOLD is the primary secured creditor of Sigma in an amount exceeding \$1.5 million, (collectively, the “**Secured Amount**”); and

WHEREAS, GOLD, in accordance with 42 USC §3121 et seq. and 13 CFR §308 and other applicable laws and regulations involving a “**Revolving Loan Fund**” (as defined in such statutes and regulations), desires to be repaid the Secured Amount whether the Petition is amended to a Chapter 11 proceeding or otherwise; and

WHEREAS, there is an immediate need for continued operation of the facilities of Sigma to assure continued natural gas service to the Customers and to prevent irreparable harm to the public interest; and

WHEREAS, Salyersville has the ability and the capability to exercise prudent management of all aspects of a natural gas distribution business in the City of Salyersville and Magoffin County, Kentucky and environs, as a regulated public utility, and currently has liability insurance coverage; and

WHEREAS, Sigma desires, subject to Bankruptcy Court approval, to engage Salyersville to exercise prudent management of the Sigma facilities as an

independent contractor for Sigma, and Salyersville desires to do so upon the terms and conditions hereinafter set forth, if and until a sale of Sigma and/or its assets occurs (the “**Sale**”) and is approved by the Bankruptcy Court and GOLD (and/or by the Public Service Commission of Kentucky, to the extent such approval is applicable). This Agreement shall become effective only upon its approval by the Bankruptcy Court, with the date of said approval being the “**Effective Date.**”

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements herein contained, and incorporating all of the above recitals, each of Salyersville, Sigma and GOLD mutually agree as follows:

1. Sigma agrees to retain Salyersville as an independent contractor to manage and exercise prudent management of Sigma, for a “**Term**” of **six months** commencing upon the Effective Date of this Agreement, unless this Agreement is earlier terminated as herein provided. This Agreement may be renewed for separate, additional one-month periods (the “**Renewal**”) only upon written request by Salyersville (the “**Request for Renewal**”) provided to each of Sigma, GOLD and the Bankruptcy Court before or on the 20<sup>th</sup> day of the month preceding the month named in the Request for Renewal. The Request for Renewal shall be granted or denied in writing by GOLD within five days of its receipt of the Request. Any Renewal shall be subject to the consent of the Bankruptcy Court and the Public Service Commission of Kentucky, to the extent

applicable.

2. The relationship between Salyersville and Sigma is that of independent contractor under this Agreement. No other relationship is intended by this Agreement. Sigma hereby engages Salyersville to comprehensively and lawfully exercise prudent management of Sigma and maintain its natural gas distribution and transmission system solely for the benefit of the Customers, using all of Sigma's properties, equipment, facilities, meters and services.

3. Salyersville shall employ, furnish and supervise all its own personnel necessary for exercising prudent management of Sigma solely for the benefit of providing gas service to the Customers, always proceeding in a cost-effective manner in accordance with local, state and federal regulatory requirements. Salyersville shall exercise prudent management of Sigma for the benefit of the customers. Salyersville shall enter into a binding consulting agreement with Jefferson Gas Company to assure that Salyersville has access to the expertise requisite to exercise prudent business management of a utility.

Salyersville agrees to oversee and provide all billings of Customers, emergency repairs of the Sigma system, bookkeeping, preparation of financial reports, and all other ordinary regulatory compliance matters. Salyersville further agrees, during the Term and any Renewal, to provide for Sigma liability insurance in limits acceptable to GOLD and the Public Service Commission of



Kentucky, with such acceptable limits to be, at minimum, **ONE MILLION DOLLARS (\$1,000,000)** per occurrence and **TWO MILLION DOLLARS (\$2,000,000)** in the aggregate (the “**Coverage**”).

To minimize its overhead expenses, Salyersville, during the Term, may not further employ or hire, whether on a full, part-time or independent-contractor basis, any employees, staff, laborers, office personnel or others to provide for the daily operations of Sigma without the prior, written approval of GOLD.

Salyersville shall act on behalf of Sigma during the Term or any Renewal in a safe, reasonable manner and in accordance with all applicable local, state and federal laws and this Agreement, always conducting business in a commercially reasonable manner to minimize any costs to Sigma.

Sigma shall be operated initially on the rate schedules and tariffs currently in effect on the Effective Date of this Agreement, and thereafter at revised rates and tariffs as may be approved by the Public Service Commission of Kentucky.

All accounts and operations of Sigma shall be maintained separately from those of Salyersville, without any commingling of funds.

For purposes of financial oversight, GOLD and the Public Service Commission of Kentucky shall have the right to inspect any and all of Sigma’s

or Salyersville's financial records *with respect to this Agreement* at any time during the Term, during any Renewal thereof, and at any time thereafter.

For purposes of Court oversight, Salyersville shall file with Debtor's counsel and GOLD a monthly financial report on the operations of Sigma on the Fifth (5<sup>th</sup>) day of each month. Debtor's counsel shall provide the Bankruptcy Court with a copy of this report. Each report shall include a complete itemization of actual expenses detailing Sigma's expense activity of the preceding month.

4. "Sigma" means all the real and personal tangible and intangible property owned or possessed by Sigma, as specified in Debtor's Petition, or any such assets which will in the future be owned or possessed by Sigma, and properties in which Sigma has contractual rights to own, possess or control, or such properties which Sigma in the future will have the contractual rights to own, possess or control, and which are used or in the future may be used to manage the operation and maintenance of Sigma including, but not by way of limitation, the following: (a) vehicles, (b) equipment, (c) tools, (d) inventory, (e) repair and replacement parts and materials, (f) furniture and fixtures, (g) machinery, (h) property rights, easements, franchises, and other contractual rights, (i) cash on hand, deposits and/or accounts receivables, (j) chattel paper, (k) contract rights, and (l) real property and buildings and all improvements and/or mineral rights thereon.

5. The parties warrant to and covenant with each other that each has the legal power and authority to enter into this Agreement, to perform all acts required to be performed by each of them, and that the execution and delivery of this Agreement has been duly authorized by all necessary corporate actions, and this Agreement constitutes legally binding obligations of each of Salyersville, Sigma and GOLD, enforceable in accordance with its terms and conditions.

6. Sigma shall pay Salyersville, as compensation for services rendered, a “**Management Fee**” of **ONE DOLLAR (\$1.00)** for the Term of this Agreement or for any Renewal thereof (prorated for any partial Renewal). It is understood by the parties hereto that Salyersville’s intention and desire in executing this Agreement is to familiarize and educate itself regarding the methods and exercise of prudent management of the Business and to thereby benefit and better serve the Customers and other citizens, who are its constituents.

7. Prior to the Effective Date, Salyersville shall submit to GOLD operational budgets for the each of the six months of the Term, with said budgets to be in all respects acceptable to GOLD, and each of the six budgets must have received GOLD’s approval prior to the Effective Date. The first budget period shall extend from July 1, 2005 to July 31, 2005. During the Term or any Renewal, budgets may be amended, however, all amendments proposed by

Salyersville are subject to the approval or rejection by GOLD.

Regarding any Renewal, Salyersville shall submit a budget to GOLD simultaneous with its Request for Renewal by the twentieth (20<sup>th</sup>) day of the month preceding the month named in the Request and the budget. Subsequent approvals or rejections of the submitted budgets shall be made by GOLD within five days of its receipt of the Request.

No expenses of any kind or nature, including the Reimbursed Expenses (as hereinafter defined), shall be paid by GOLD unless approved by GOLD in advance of the Term (or any Renewal), *excepting legitimate emergencies*. In the event of such an emergency, Sigma and/or Salyersville shall notify GOLD immediately of the situation and the anticipated expenditure.

8. Sigma shall reimburse Salyersville the actual invoiced amount for all necessary documented expenses incurred as a result of the exercise of prudent management of Sigma solely for the benefit of the Customers. Salyersville shall make all reasonable efforts to exercise prudent management of Sigma within the limits of the approved budget. **“Reimbursed Expenses”** are strictly limited to pre-approved salaries, wages and related taxes and benefits; postage; property, casualty, liability and workers’ compensation insurance; gas purchase costs (paid in advance prior to transporting the gas to the Customers); gas transportation costs; transmission and distribution materials, supplies, meters, pipes,

compressors and regulators; and emergency situations.

9. If in any month of the Term or any Renewal the operating revenues from the Customers are inadequate to reimburse Salyersville for its expenses (the “**Deficiency**”), operating revenues from subsequent months and any funds which remain from the **FIFTY THOUSAND DOLLAR (\$50,000)** Line of Credit issued under the previous Management Agreement (and approved by the Bankruptcy Court) may be used to fund the Deficiency and reimburse Salyersville for the amount of the Deficiency. Salyersville agrees to assume the debt incurred by Sigma under the Line of Credit extended in the previous Management Agreement and repay it in accordance with the previously established provisions regarding the Line of Credit. These provisions shall continue for as many months as necessary to reimburse Salyersville its total reimbursable expenses, however, should a Deficiency of expense outlays to receivables exist on the closing date of the Sale, payment of such Deficiency shall be the sole responsibility of Salyersville. On the closing date of the Sale, any and all receivables due from the time period prior to the closing date of the Sale shall remain the property of Salyersville.

GOLD expressly reserves the right, but not the obligation, to directly prepay any natural gas provider, rather than reimbursing Salyersville after the fact, in the event that any outstanding amounts are due for gas.

In consideration of the monies GOLD may pay for expenses incurred by Salyersville and/or the Debtor post-Petition, GOLD shall have a first lien on Sigma's assets in an amount equal to any and all expenses it pays post-Petition under this Agreement. This lien shall encumber all post-Petition assets of the Debtor of any nature and form whatsoever including, but not limited to, post-Petition receivables, inventory, equipment, general intangibles, chattel paper and contract rights. Excepting its own pre-Petition lien, which shall remain in effect, GOLD's lien herein established shall have priority over any other debt on any assets acquired post-Petition. Upon Bankruptcy Court approval of this Agreement, it is recognized that appropriate notice has been given and hearing has been held for granting of the lien and the Bankruptcy Court finds that the Debtor could find no other means of credit other than as detailed under this Agreement.

Salyersville shall make a payment to GOLD by the 20<sup>th</sup> day of each month of the Term or of a Renewal of not less than ten percent (10%) of the total balance due to GOLD on the Line of Credit. Upon expiration of the initial Term or of a Renewal that is not renewed, the entire balance drawn on the Line of Credit shall become immediately due and owing. Upon termination for any reason or without cause, Salyersville shall be responsible for any Deficiency and it shall become immediately due and payable.

Sigma retains and assumes all risk of loss related to the assets or any other property in excess of any liability insurance coverage.

10. This Agreement may be terminated without cause by Salyersville and/or GOLD upon five (5) days prior written notice given to the other party, the Bankruptcy Court and the Public Service Commission of Kentucky. Should the Public Service Commission of Kentucky or any Court of the Commonwealth of Kentucky, subsequent to the Effective Date, approve the transfer of the Sigma stock to Jerome A. Kanney and Dennis Rohrer, this Agreement shall become void and the Term or any Renewal shall terminate five days following the date of the approval.

11. Nothing herein shall prevent the sale of Sigma or its assets if such sale is approved by the Bankruptcy Court, nor shall the Term or any Renewal preclude or delay in any way the Sale, and the Sale, upon its approval by the Bankruptcy Court, shall terminate the remainder of the Term or any Renewal currently in effect under this Agreement.

No assets of Sigma and/or of any of its affiliates shall be transferred, conveyed or encumbered without the prior written approval of GOLD and the Bankruptcy Court, which approvals shall not be unreasonably withheld, delayed or conditioned.

12. It is understood and agreed that, should any portion of any clause or

paragraph of this Agreement be deemed too broad to permit enforcement to its full extent, then such restriction shall be enforced to the maximum extent permitted by law, and the parties consent and agree that such scope may be modified accordingly in any proceeding brought to enforce such restriction. Further, it is agreed that, should any provision in this Agreement be entirely unenforceable, the remaining provisions of the Agreement shall not be affected thereby.

13. This Agreement shall be governed by, and construed under and in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules.

14. This Agreement shall be binding upon and inure to the benefit of the parties and there shall be no assignment of same.

15. This Agreement contains all the terms, conditions, and promises of the parties. No modification or waiver of this Agreement, or of any provision herein, shall be valid or binding, unless executed in writing by the parties hereto. No waiver by any party or any breach of any term or provision of this Agreement shall be construed as a waiver of any succeeding breach of the same or any other term or provision.

16. Absent any breach of this Agreement, Salyersville and its officers, agents, representatives, employees and directors, shall not be liable for any actions, debts, contracts or other activities of Sigma beyond the extent covered by



the liability and other insurance coverage set forth herein. It is expressly understood and agreed by and between Salyersville and Sigma that only Sigma, and not either GOLD and/or any designee of the Bankruptcy Court, shall save Salyersville harmless from any losses sustained by Salyersville on account of any suit, judgment, execution, claim or demand whatsoever resulting from negligence and/or willful misconduct on the part of Sigma under the terms of this Agreement. By entering into this Agreement, Salyersville does not agree to assume responsibility for any prior acts of Sigma, or any future claims against Sigma that occurred pre-Petition.

Salyersville shall notify Sigma, with copies provided to each of GOLD and the Bankruptcy Court, within seven (7) days after presentation of any claim or demand.

Notwithstanding any provision and condition to the contrary contained herein, under no circumstances shall GOLD or the Commonwealth of Kentucky be liable to any third party, including the Customers, relating to the transactions covered by this Agreement.

Salyersville shall not be liable to Sigma or the Customers for any failure, delay or interruption of service, or for any failure in the performance of any duties and obligations under this Agreement due to strikes, Acts of God, government restriction or regulation, enemy action, civil commotion, unavoidable

casualty or similar acts beyond the direct control of Salyersville.

17. In the event any party defaults or violates any provision of this Agreement, the complaining party shall notify the other parties in writing of such breach or default, giving the other party five days within which to comply fully with the terms of the Agreement and remedy such breach or default. Remedy for failure to rectify any such breach or default within the five-day cure period shall be actionable in any court with jurisdiction. Any notice shall be given in person or sent by U.S. Certified or registered mail addressed to the parties notified from the party giving such notice. Any notice sent by mail shall be considered given on the postmark date when addressed as follows:

**The City of Salyersville:**

Mayor's Office  
Salyersville City Hall  
P. O. Box 640  
Salyersville, KY 41465

**Sigma Gas Corporation:**

Laura Day Delcotto  
Wise, Delcotto, PLLC  
219 N. Upper St.  
Lexington, KY 40507

**Governor's Office for Local Development:**

Governor's Office for Local Development  
c/o Garland H. "Andy" Barr, General Counsel  
1024 Capital Center Drive, Suite 340  
Frankfort, KY 40601

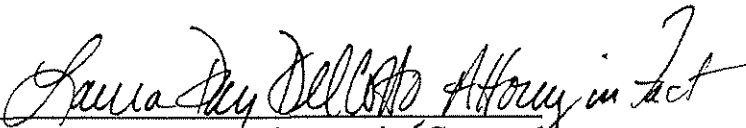
**Public Service Commission of Kentucky:**

Gerald E. Wuetcher  
Assistant General Counsel  
Public Service Commission of Kentucky  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40601


18. This Agreement is contingent upon approval by and shall not become effective until the Bankruptcy Court enters an order approving it.

THE PARTIES, INTENDING TO BE LEGALLY BOUND, have executed this Agreement as of the Effective Date.

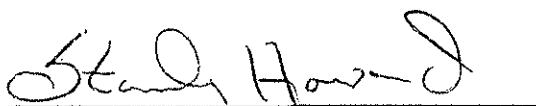
**SIGMA GAS CORPORATION:**

  
By: Laura Day Delcotto, its Counsel

**GOVERNOR'S OFFICE FOR LOCAL  
DEVELOPMENT (GOLD):**

  
By: Ellen Williams, its Commissioner

**CITY OF SALYERSVILLE**

  
By: Stanley Howard, its Mayor



FROM : CITY OF SALYERSVILLE

PHONE NO. : 6063492449

Nov. 30 2006 06:09AM P2

*City of Salyersville*SALYERSVILLE, KENTUCKY 41465-0640  
806/349-2400  
FAX 806/349-2449

November 20, 2006

Laura Day Delcotto, Esq.  
Wise Delcotto PLLC  
219 N. Upper Street  
Lexington, KY 40507-1016

Re: Sigma Gas Corporation ("Sigma")

Dear Ms. Delcotto:

As you are likely aware, on December 21, 2004, the City of Salyersville (the "City"), by the unanimous vote of the Salyersville City Council, offered to purchase substantially all of the tangible and intangible assets of Sigma. That offer was subsequently amended on January 4, 2005 and January 28, 2005 (as amended, the "Offer to Purchase"). Please be advised, however, that due to Sigma's recent poor performance, increased costs and the City's recent conclusion that Sigma's assets are not worth more than \$500,000, the City hereby withdraws the Offer to Purchase.

In addition, Sigma and the City, among others, are parties to that certain Renewed Management Agreement (as amended, the "Management Agreement"), which was recently amended to provide that, subject to the City's request, the Management Agreement would continue on a month-to-month basis. Consistent therewith, the City hereby does not request a renewal of the Management Agreement for an additional month. Please be advised, however, that the City will continue operating Sigma without an agreement until another operator can be found. We hereby give notice of termination of the Management Agreement Effective December 1, 2006.

Please contact me if you have any questions.

Very truly yours,

Stanley Howard  
Mayor, City of Salyersville



312527



**Trey Grayson  
Secretary of State**

**Certificate of Administrative Dissolution**

I, Trey Grayson, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

**SIGMA GAS CORPORATION**

incorporated in Kentucky on March 11, 1993, but has not maintained a registered agent since August 9, 2005. Accordingly, the corporation was administratively dissolved on January 8, 2006.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 10<sup>th</sup> day of January, 2006.



*Trey*

Trey Grayson  
Secretary of State  
Commonwealth of Kentucky  
Ghance/0312527







**U.S. DEPARTMENT OF COMMERCE**  
Economic Development Administration  
ATLANTA REGIONAL OFFICE  
Suite 1820  
401 West Peachtree St., N.W.  
Atlanta, Georgia 30308-3510

February 28, 2007

Mr. Garland "Andy" Barr  
General Counsel  
Governor's Office for Local Government  
Gas System Restoration and Development  
Project Review Board  
1024 Capital Center Drive, Suite 340  
Frankfort, Kentucky 40601

Re: Kentucky Governor's Office for Local Development (GOLD)  
Revolving Loan Fund (RLF)  
EDA Award No. 04-19-1885.01 for RLF  
In re: Sigma Gas Company (Sigma) Case No. 04-71003 in the U.S. Bankruptcy Court,  
Eastern District of Kentucky (Bankruptcy Case)  
DLR Enterprises, Inc. (DLR)

Dear Andy:

This correspondence is in response to your letter to me (Request Letter) dated February 27, 2007 requesting EDA's variance from EDA's RLF program suspension allowing GOLD to a.) proceed with the settlement with DLR in the Bankruptcy Case as set out in the Request Letter and b.) enter a definitive written agreement with DLR for the sale and transfer of the assets of Sigma to DLR for the sum of Seven Hundred Fifty Thousand and no/100 (\$750,000) as described in the Request Letter. The assets of Sigma are part of the RLF.

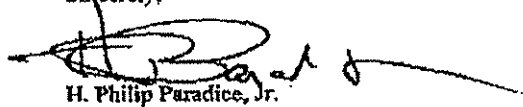
In correspondence dated November 30, 2005 (Suspension Letter) from EDA to Ellen Williams as Commissioner of GOLD, EDA directed GOLD to immediately suspend all lending activities with and for the RLF. Subject to the limitations noted below, this correspondence shall serve to temporarily suspend the terms and provisions of the Suspension Letter for the limited and expressed purpose of GOLD proceeding with the settlement agreement described in a.) above and executing the definitive agreement described in b.) above. This temporary suspension is granted by EDA on the understanding and agreement that i.) the \$750,000 net proceeds from this sale of Sigma's assets to DLR are to be placed in the RLF and ii.) the terms and provisions of the definitive agreement described in b.) above are substantively consistent with the terms and provisions set out in the Request Letter. In the event the terms and provisions of the definitive agreement are not substantively consistent with the terms and provisions of the Request Letter, GOLD shall obtain EDA's prior written approval of the definitive agreement.

Except as expressly set forth in this correspondence, it is understood and agreed that all terms and provisions of the Suspension Letter remain unchanged and in full force and effect.

Gerald "Andy" Barr  
February 28, 2007  
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Do not hesitate to contact Gil Patterson at 404-730-3000 if you have any questions regarding this correspondence.

Sincerely,



H. Philip Paradise, Jr.  
Director, Atlanta Region



**ASSET PURCHASE AGREEMENT**  
**(Rural Business)**

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement") is made this the \_\_\_ day of September, 2007, by and between (i) **SIGMA GAS CORPORATION**, a Kentucky corporation, for itself and on behalf of its Chapter 7 bankruptcy estate (collectively, "Seller") and (ii) **DLR ENTERPRISES, INC.**, a Kentucky corporation (the "Purchaser"). The Seller and Purchaser may be referred to hereinafter together as the "Parties" or individually as a "Party." Otherwise, capitalized terms used herein and not otherwise defined shall have the meanings set forth in Article I.

**RECITALS:**

A. On October 20, 2004, the Seller filed a voluntary petition for relief (the "Bankruptcy Case") under Chapter 7 of Title 11 of the United States Code (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Kentucky (the "Bankruptcy Court"), Case No. 04-71003.

B. Due to the potential liabilities related thereto, the Chapter 7 Trustee of Sigma's Bankruptcy Case abandoned all of the bankruptcy estate's interest(s) in Sigma's assets on or about October 27, 2004 [Docket No. 29]. Notwithstanding that fact, the Court retained jurisdiction over the Bankruptcy Case to facilitate a sale of Sigma's assets to ensure continued service to Sigma's customers.

C. Seller is the owner of certain assets and rights used in the distribution of natural gas, all as more fully described herein (collectively, the "Business"). More specifically, the Business consists of gas operations (i) located principally within the limits of the City of Salyersville, Kentucky (the "City Limits", which is designated by the black dotted line on the map attached hereto as Exhibit A and incorporated by reference) and the end-use customer taps wherever located, whether within or outside the City Limits (the "City Business") and (ii) located principally outside the limits of the City of Salyersville, Kentucky, excluding any end-use customer taps (the "Rural Business"), all as more specifically set forth on the map attached hereto as Exhibit A and incorporated by reference.

D. The Business has continued to operate throughout the pendency of the Bankruptcy Case pursuant to a Management Agreement (as amended, the "Management Agreement") between, among others, the Seller and the City of Salyersville, as authorized by one or more orders of the Bankruptcy Court.

E. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, substantially all of the assets and rights of and to the Rural Business as more fully described herein, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with Sections 105 and 363 and other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

F. The Purchased Assets are assets of the Seller, which are to be purchased by the Purchaser, free and clear of all liens, claims, encumbrances and interests, including without

limitation all sales taxes, income taxes and delinquent or past due property taxes, except as otherwise provided herein, pursuant to a final, non-appealable order of the Bankruptcy Court approving such sale pursuant to Sections 105 and 363 of the Bankruptcy Code, which order will include the authorization for the assignment to the Purchaser of the Assigned Contracts and liabilities thereunder, if any, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with other applicable provisions of the Bankruptcy Code.

**NOW, THEREFORE** in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth below, the Parties agree as follows:

## ARTICLE I

### DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings specified, unless the context expressly or by necessary implication otherwise requires:

“Accounts Receivable” means all accounts, accounts receivable and other sums owed or otherwise payable to Seller in the ordinary course of the Rural Business.

“Affiliate” means a person which, directly or indirectly, alone or through one or more intermediaries, controls, or is controlled by, or is under common control with a specified Person.

“Agreement” means this Agreement by and among the parties identified above as originally executed and delivered, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, together with all schedules made a part hereof and incorporated herein by the references thereto.

“Allocation” has the meaning specified in Section 9.3.

“Assigned Contracts” has the meaning specified in Section 2.1(f).

“Assumed Liabilities” has the meaning specified in Section 3.1.

“Bankruptcy Case” has the meaning specified in the Recitals of this Agreement.

“Bankruptcy Court” has the meaning specified in the Recitals of this Agreement.

“Bankruptcy Code” has the meaning specified in the Recitals of this Agreement.

“Business” has the meaning specified in the Recitals of this Agreement.

“City Business” has the meaning specified in the Recitals of this Agreement.

“Closing” has the meaning specified in Section 4.2.

“Closing Date” has the meaning specified in Section 4.2.

“Contracts” means those contracts of the Seller which have been abandoned by the Chapter 7 Trustee of Seller’s bankruptcy estate and vested in the Debtor as more fully set forth in paragraph B of the Recitals above.

“DLR” means DLR Enterprises, Inc. and/or one or more designee(s).

“DLR Claim” means the full amount of the principal and interest and any other amounts due under those obligations of the Seller evidenced in that certain Proof of Claim [Claim No. 4] filed with the Bankruptcy Court in the Bankruptcy Case on or about December 15, 2006.

“Excluded Assets” has the meaning specified in Section 2.2.

“Excluded Liabilities” has the meaning specified in Section 3.2.

“Expenses” has the meaning specified in Section 3.1.

“Final Court Order” has the meaning specified in Section 10.7.

“GOLD” means the Commonwealth of Kentucky, Governor’s Office for Local Development f/k/a Commonwealth of Kentucky, Department for Local Government.

“GOLD Claim” means the full amount of the principal and interest and any other amounts due under those obligations of the Seller evidenced in that certain Amended Proof of Claim [Amended Claim No. 2] filed by GOLD with the Bankruptcy Court in the Bankruptcy Case on or about December 15, 2006.

“Governmental Authority” means any federal, state, local, foreign or other governmental, regulatory or administrative agency, political subdivision, department, commission, board, bureau, division, court, authority, body, tribunal or instrumentality, including, but not limited to, the PSC.

“IRS” means the United States of America, Internal Revenue Service.

“Law” means any and all federal, state, local and foreign statutes (civil and criminal), laws, ordinances, regulations, codes, rules, permits, judgments, directives, orders and decrees now in effect.

“Lease” and “Leases” mean the leases of real and personal property where the Seller is either lessor or lessee which have been abandoned by the Chapter 7 Trustee of Seller’s bankruptcy estate and vested in the Debtor as more fully set forth in paragraph B of the Recitals above.

“Liability” or “Liabilities” means all debts, adverse claims, liabilities and obligations, direct, indirect or contingent, including, without limitation, those arising under any law, rule or

regulation of any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or imposed by any court or any arbitrator of any kind, and those arising in connection with products sold by, or under contracts, agreements (whether written or oral), leases, commitments or undertakings, whether incurred before or after the Closing.

“Lien” means any mortgage, deed of trust, lien, lease, equity, security interest, pledge, conditional sale agreement, title retention agreement, claim (including without limitation sales tax, income tax and property tax claims), charge, title defect, easement, license, assignment, right-of-way, covenant, condition, restriction, limitation, option, adverse or equitable claim or right or any other encumbrance of any kind.

“Management Agreement” has the meaning specified in the Recitals of this Agreement.

“Material Adverse Effect” means such fact, event, change or effect which has resulted in or could reasonably be expected to result in a material adverse effect on or change in the Business, Purchased Assets, operations, results of operations, condition (financial or otherwise), properties, assets, Liabilities or prospects of the applicable Person.

“Order of Approval” has the meaning specified in Section 10.7.

“Permits” has the meaning specified in Section 2.1(e).

“Person” means an individual, corporation, limited liability company, partnership, association, trust, joint venture or other entity or organization, including, without limitation, a Governmental Authority.

“Products” means all products and services of Seller relating to the Rural Business.

“PSC” means the Kentucky Public Service Commission.

“PSC Application” means the application(s) to be filed with the PSC by Purchaser seeking approval of the transfer of ownership of the Purchased Assets to Purchaser and/or its designee(s) pursuant to this Agreement.

“PSC Approval Order” means a final and non-appealable order entered by the PSC approving the transfer of ownership of the Purchased Assets to Purchaser and/or its designee(s) on the terms proposed in the PSC Application without material modification.

“Purchased Assets” has the meaning specified in Section 2.1.

“Purchase Price” has the meaning specified in Section 4.1.

“Purchaser” has the meaning specified in the preamble of this Agreement.

“Purchaser Documents” has the meaning specified in Section 6.2.

“Retained Contracts” has the meaning specified in Section 2.2(b).

“Rural Business” has the meaning specified in the Recitals of this Agreement.

“Seller” has the meaning specified in the preamble of this Agreement.

“Seller Documents” has the meaning specified in Section 5.2.

“Tax” or “Taxes” means: (i) any and all taxes (whether federal, state, local or foreign) including, without limitation, net or gross income, gross receipts, net proceeds, profits, property, sales, use, capital stock, net worth, occupation, value added, ad valorem, transfer, franchise, recapture, excise, windfall, withholding, payroll, social security, workers’ compensation, unemployment compensation or employment taxes, tariffs, imposts, duties, levies, fees or governmental charges of any nature whatsoever, whether disputed or not, together with any interest, penalties or additions to tax imposed with respect to any of the foregoing, and (ii) any obligations under any agreements or arrangements with respect to any tax or taxes described in clause (i) above.

“Transaction Taxes” has the meaning given in Section 9.1.

## ARTICLE II

### SALE AND PURCHASE OF ASSETS

2.1 Assets Purchased. Upon the terms and subject to the conditions set forth in the Agreement and for the consideration set forth in Section 4.1, Seller agrees to sell, transfer, convey and assign to Purchaser, and Purchaser agrees to purchase, take and acquire from Seller, at the Closing on the Closing Date, free and clear of all liens, claims, encumbrances and interests, including Liens, pursuant to Sections 105 and 363 of the Bankruptcy Code, and otherwise transferred on an AS IS, WHERE IS, basis with all faults, all of Seller’s assets, properties, privileges, claims, rights, titles and interest related to, used in, arising from or necessary or desirable to operate the Rural Business, whether idle or in use, tangible or intangible, and whether or not reflected on the books and records of Seller, wherever located, except for the Excluded Assets (collectively, the “Purchased Assets”). The Purchased Assets include, but are not limited to:

(a) all potentially commercially productive wells, all mains, lines, valves, regulators, meters, service connections, regulator stations, and related equipment and appurtenances, all other equipment and tangible personal property, including without limitation all hardware, office equipment, furniture and fixtures, office materials and supplies, inventory, spare parts, furnishings, vehicles, computers and other tangible personal property of every kind and description which are held for use principally, used or usable in the operation of the Rural Business;

(b) all Products;



(c) all cash, cash equivalents and bank deposits existing as of the Closing Date and remaining after payment of current operating expenses and Expenses;

(d) all Accounts Receivable, deposits and deposits of customers, security deposits and any net operating losses of Seller;

(e) the permits, rights-of-way, easements, licenses, franchises, certificates of occupancy, variances, exemptions, orders and other governmental authorizations, consents, waivers, registrations and approvals necessary to conduct the Rural Business, including any pending applications therefor as set forth in Schedule 2.1(e), in each case to the extent the same are assignable (the "Permits");

(f) all Contracts and Leases listed in Schedule 2.1(f) (the "Assigned Contracts");

(g) all books and records of Seller relevant to, or otherwise necessary to conduct the Rural Business, including, without limitation, data processing records, employment and personnel records, customer lists, files and records, advertising and marketing data and records, credit records, records relating to suppliers, and other data, in each case whether in hard copy or electronic form;

(h) all computer software programs and databases used or held for use by Seller in the conduct of the Rural Business, whether owned, licensed, leased, or internally developed (in each case, subject to applicable restrictions);

(i) those items described in Schedule 2.1(i); and

(j) such items or rights as the Purchaser, in its sole discretion, may declare in writing to Seller at or prior to the Closing to be Purchased Assets provided, however, such election by Purchaser shall not increase the Purchase Price.

2.2 Excluded Assets. The following assets (the "Excluded Assets") are excluded from the Purchased Assets and shall not be purchased and sold hereunder and no definition of any asset shall be deemed to include any Excluded Assets:

(a) the capital stock of Seller;

(b) any Contracts or Leases which are not Assigned Contracts, including, but not limited to, contracts between the Seller and/or its agents or managers and Jefferson Gas, LLC or its subsidiaries or affiliates and contracts between the Seller and/or its agents or managers and the City of Salyersville ("Retained Contracts");

(c) any gas sales, distribution, exchange, gathering or transportation agreements between the Seller and/or its agents or managers and any third party, including without limitation Jefferson Gas, LLC, which shall be deemed Retained Contracts;

(d) any avoidance claims available to Seller under Chapter 5 of the Bankruptcy Code and all claims relating to Excluded Liabilities;

(e) all assets related to the City Business; and

(f) those items described in Schedule 2.2(f); and

(g) such items or rights as the Purchaser, in its sole discretion, may declare in writing to Seller at or prior to the Closing to be Excluded Assets provided, however, such election by Purchaser shall not reduce the Purchase Price.

2.3 Passage of Title and Risk of Loss. Legal and equitable title and risk of loss with respect to the Purchased Assets will not pass to Purchaser until such Purchased Assets are transferred to Purchaser at the Closing following entry of the Final Court Order.

### ARTICLE III

#### ASSUMPTION OF OBLIGATIONS AND LIABILITIES

3.1 Assumption of Liabilities. Subject to the terms and conditions of this Agreement, and in partial consideration of the transfer to Purchaser of the Purchased Assets, Purchaser shall assume (collectively, the “Assumed Liabilities”), as of the Closing Date, (i) all liabilities and obligations of the Seller under the Assigned Contracts from and after the Closing Date; (ii) all obligations of Seller related to events occurring on or after the Closing under the Assigned Contracts and (iii) all Chapter 7 administrative expenses of the Seller, as defined by Section 503(b) of the Bankruptcy Code, owing as of, or accrued to, the Closing, that GOLD and/or the Gas System Restoration and Development Project Account Review Board would be otherwise required to pay, including the outstanding professional fees of Debtor’s counsel previously as a carve-out pursuant to prior Orders of the Court (the “Expenses”).

3.2 Excluded Liabilities. Anything in this Agreement to the contrary notwithstanding, Purchaser shall not assume, or in any way be liable or responsible for, whether arising by contract, tort, operation of law or otherwise, any Liabilities of Seller, except as specifically provided for in Section 3.1. The Excluded Liabilities shall include, but not be limited to, (i) all trade payables, secured debt and other debts and obligations of Seller; (ii) all administrative expenses as defined by Section 503(b) of the Bankruptcy Code and other claims relating to the proceedings before the Bankruptcy Court except for the Expenses as stated in Section 3.1; and (iii) all customer deposits.

### ARTICLE IV

#### CONSIDERATION; CLOSING

4.1 Purchase Price.

(a) The purchase price to be paid by Purchaser to Seller in consideration for the transfer of the Purchased Assets (the “Purchase Price”) shall be paid in cash or equivalent at

Closing to Seller, or for the benefit of Seller to any third party, or account or accounts at Seller's direction upon the fulfillment of all Conditions Precedent and the execution and delivery of all documents required by this Agreement and shall be made up of the following:

(1) Subject to subsection (b) hereafter, Purchaser shall waive its right to receive payment on all or part of the GOLD Claim from the Seller;

(2) Subject to subsection (b) hereafter, Purchaser shall waive its right to receive payment on all or part of the DLR Claim from the Seller;

(3) After payment from current cash or current receivables of the Seller and payment by the City of Salyersville of all obligations under that certain Agreed Order Resolving Show Cause Order [Docket No. 230], cash sufficient to pay all allowed, but unpaid, Expenses;

(b) Seller and Purchaser agree that Purchaser is entitled to credit bid at the Closing any claims secured by Liens that may be owned or controlled by Purchaser or any Affiliate of Purchaser as of the Closing Date as allowed by Section 363(k) of the Bankruptcy Code. As between the Seller and Purchaser, it is anticipated and agreed that Purchaser may and will credit bid some or all of the (x) GOLD Claim; (y) DLR Claim; and (z) all other debt owned or controlled by Purchaser and/or its designee(s) in the full amount of the principal, interest and other obligations then due and payable thereon.

(c) Purchaser shall provide documentation of its rights regarding the GOLD Claim and any other claims it may use as consideration at or prior to the Closing.

4.2 Closing. The sale and purchase of the Purchased Assets and assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place at the offices of FROST BROWN TODD LLC in Lexington, Kentucky or at some other location mutually agreeable between the Parties, on a mutually acceptable date but not later than the tenth (10<sup>th</sup>) business day after all of the Conditions Precedent have been satisfied or waived by both Parties in writing, or at such other date, place or time as the parties may hereto mutually agree (the "Closing Date"). The Closing shall be deemed to have occurred on the opening of business on the Closing Date. On the Closing Date, Seller will deliver to Purchaser all documents of transfer, assignment or consent reasonably requested by Purchaser, including, without limitation, bills of sale and assignments, all properly executed and, where necessary, in recordable form. On the Closing Date, Purchaser will deliver to Seller such documents of assumption reasonably requested by Seller and if necessary, all properly executed.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser as follows:

5.1 Due Organization. The entity constituting the Seller is a (i) corporation duly incorporated, validly existing but in bad standing under the laws of the Commonwealth of

Kentucky and (ii) Chapter 7 debtor under the Bankruptcy Code acting on behalf of itself and its bankruptcy estate. Subject to any necessary authority from the Bankruptcy Court and/or PSC, Seller has full corporate power and authority to carry on the Business as conducted, and to own, lease and operate its Business, assets and properties as conducted, including, without limitation, the Purchased Assets and the Business.

5.2 Authority and Binding Effect. Subject to the approval of this Agreement by the Bankruptcy Court and/or the PSC, Seller or its authorized representative has the full legal right, power and authority to execute and deliver this Agreement as such is in accordance with Seller's rights and duties pursuant to KRS 271B.14-050, and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Seller (or an authorized representative of Seller) and the consummation of the transactions contemplated hereby will be duly and validly authorized by the directors and shareholders of Seller (or an authorized representative of Seller as approved by the Bankruptcy Court) at or prior to the Closing, and no further action is necessary to authorize this Agreement or the performance of the transactions contemplated hereby, other than the Order of Approval and PSC Approval Order. This Agreement and the other agreements, documents, certificates and instruments required to be delivered by Seller in accordance with the provisions hereof (the "Seller Documents") have been, with respect to this Agreement, and will be, with respect to all other Seller Documents, duly executed and delivered by Seller by duly authorized officers (or an authorized representative of Seller as approved by the Bankruptcy Court), as applicable, enforceable against Seller in accordance with their terms, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally.

5.3 Non-Contravention. Except as set forth on Schedule 5.3 hereto and subject to approval of the Bankruptcy Court and/or PSC, the execution and delivery of the Seller Documents by Seller (or an authorized representative of Seller) and the consummation of the transactions contemplated hereby, in accordance with the Final Court Order, will not and would not, with or without the giving of notice, upon the lapse of time or both: (a) conflict with or result in a breach or violation of any Articles of Incorporation, By-Laws, or other corporate documents of Seller, (b) result in a violation of any injunction, ruling, award, writ or Law to which Seller, any of its properties, assets, rights or interest, including without limitation, the Purchased Assets or the Business, are subject or bound, (c) result in a violation of any Law of any Governmental Authority which is applicable to the Seller, any of its properties, assets, rights or interest, including without limitation, the Purchased Assets or the Business, or (d) result in a breach or violation of, constitute a default under or adversely affect the rights and benefits afforded to Seller by any contract or undertaking, including any express or implied warranty, to which Seller is a party or by which Seller (or any of its properties, assets, rights or interest, including, without limitation, the Purchased Assets or the Business) is subject or bound, or give any party the right to terminate, amend, abandon, refuse to perform or otherwise change the existing rights or obligations thereunder, or give any party the right to create any Lien or other rights or adverse interests upon any right, property or asset of Seller, including, without limitation, the Purchased Assets or the Business.

5.4 Recent Activities. Since August 30, 2007, the Seller has taken no action that would constitute a Material Adverse Effect on the Purchased Assets and/or the Business.

5.5 Title to Purchased Assets. Except as otherwise provided herein, Seller represents and warrants that, as of the Closing Date, pursuant to the Final Court Order, it shall convey to Purchaser good and marketable title to the Purchased Assets, free and clear of all mortgages, liens, pledges, charges, claims, security interests, encumbrances or restrictions of any kind including, but not limited to, all Liens.

5.6 Compliance with Laws. Except as set forth on Schedule 5.6, to the knowledge of Seller, Seller is in substantial compliance with all applicable statutes, orders, rules and regulations with which Seller is required to comply in connection with the Business and the Purchased Assets, except where the failure to do so, individually or in the aggregate, would not result in a Material Adverse Effect on the Purchaser or its ownership or use of the Purchased Assets.

5.7 Assigned Contracts. True and complete copies of all of the Contracts and Leases designated by the Purchaser to be Assigned Contracts (including all amendments and addenda thereto and all instruments in any way modifying or affecting any thereof) listed either specifically or generally on Schedule 2.1(f), will be delivered by Seller to Purchaser on or before 30 days prior to the Closing. All such agreements are valid, enforceable, and in full force and effect in accordance with their terms. To the knowledge of Seller, there are no existing disputes between Seller and any other party to any of such agreements.

5.8 Fees, Fines and Taxes. Except as set forth on Schedule 5.8, all fees, fines and Taxes including, without limitation, income, property, sales, use, severance, franchise, value added, employees' income withholding and social security Taxes, imposed by the United States or by any foreign country or by any state, county, municipality, subdivision or instrumentality of the United States or of any foreign country, or by any other taxing, licensing or regulatory authority, which are due or payable by Seller and which could in any way attach to or affect the Purchased Assets, and all interest and penalties thereon, whether disputed or not, have been paid in full or provision for the payment thereof has been made; all tax returns and other reports required to be filed in connection therewith have been accurately prepared and duly and timely filed; and all deposits required by Law to be made by Seller with respect to employees' withholding taxes have been duly made. Except as set forth on Schedule 5.8, Seller has not been delinquent in the payment of any foreign or domestic fee, Tax, assessment or governmental charge or deposit which could in any way attach to or affect the Purchased Assets; there is no Tax deficiency or claim outstanding or, to the knowledge of Seller, proposed or assessed against it which would in any way attach to or affect the Purchased Assets. To the knowledge of Seller, there are no pending investigations or proceedings relating to, or claims asserted for Taxes or assessments against the Seller. There is no litigation now pending against the Seller, nor is there any matter under discussion with the IRS, or other Governmental Authority, relating to any Taxes or assessments or any claims or deficiencies with respect thereto.

5.9 No Brokers. Seller has not engaged or used the services of a broker, finder, or similar person in connection with the sale of the Purchased Assets and, based upon the action of

Seller, or its agents or its affiliates, no person shall be entitled to a brokerage commission, finder's fee or like payment in connection with this Agreement or in connection with the consummation of the transactions contemplated hereby.

5.10 Disclosure. No representation or warranty or any other statement by Seller contained in this Agreement or in any instrument, certificate or other document furnished or to be furnished by Seller to Purchaser or its representatives in connection herewith or pursuant hereto contains or will contain any untrue or inaccurate statement of a material fact, or omit or fail to state a material fact necessary to make the statements contained herein or therein not materially misleading.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

6.1 Due Organization. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and has full corporate power to own, lease and operate its properties and to conduct its business.

6.2 Authority and Binding Effect. Purchaser has the full legal right, power and authority to execute and deliver this Agreement and, subject to Bankruptcy Court and PSC approval, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by written consent or resolutions duly adopted by the shareholders of Purchaser as required, and no further action is necessary to authorize this Agreement or the performance of the transactions contemplated hereby. This Agreement and the other agreements, documents, certificates and instruments required to be delivered by Purchaser in accordance with the provisions hereof (the "Purchaser Documents") have been, with respect to this Agreement, and will be, with respect to all other Purchaser Documents, duly executed and delivered by Purchaser by duly authorized officers, as applicable, enforceable against Purchaser in accordance with their terms.

6.3 Non-Contravention. The execution and delivery of this Agreement by Purchaser and the consummation of the transactions contemplated hereby will not or would not, with or without the giving of notice, upon the lapse of time or both: (a) conflict with or result in a breach or violation of any Articles of Incorporation, By-Laws, or other corporate documents of Purchaser, or (b) result in a violation of any applicable Law, or any contract or undertaking, including any express or implied warranty, to which Purchaser is a party or by which Purchaser (or any of its rights, properties or assets) is subject or bound.

6.4 Brokers and Agents. Purchaser represents and warrants that no broker or agent is entitled to any fee or commission in connection with this transaction and agrees to indemnify Seller against all damages arising out of claims, actions, suits, proceedings, demands or

assessments for fees or commission of brokers employed or alleged to have been employed by such indemnifying party.

6.5 Availability of Funds. Subject to Section 4.1, on the Closing Date and to the extent necessary, the Purchaser will have sufficient funds available to finance and consummate the transactions contemplated by this Agreement including the payment of the Purchase Price and the satisfaction of the Assumed Liabilities.

## ARTICLE VII

### COVENANTS OF SELLER

Seller covenants and agrees with Purchaser as follows:

7.1 Access and Cooperation; Due Diligence. Seller will, and will direct the City of Salyersville to, afford to the directors, officers, employees, consultants, agents, advisors and representatives of Purchaser free and full access to all of the Business, properties, assets, contracts and records during normal business hours upon reasonable notice and will deliver or make available to Purchaser such financial, operating and other information as to the Business, Purchased Assets, operations, results of operations, condition (financial or otherwise), properties, assets, liabilities or prospects of Seller as Purchaser may from time to time reasonably request. Seller will cooperate with Purchaser, its directors, officers, shareholders, employees, consultants, agents, advisors and representatives in the preparation of any documents, information or materials required by this Agreement. No information or knowledge obtained in any investigation pursuant to this Section or otherwise shall affect or be deemed to modify any representation or warranty contained in this Agreement or the conditions to the obligations of the parties to consummate the transactions contemplated hereby.

7.2 Conclusion of Bankruptcy Case. Upon the Closing Date, the Seller will proceed to conclude the Bankruptcy Case on terms determined by the Seller, provided, however, that in completing its Bankruptcy Case, no creditors or other parties in interest will be offered an interest, whether equity or some other interest, in the Rural Business or Purchased Assets.

7.3 Conduct of Business Pending Closing. From the date hereof until Closing, and subject to any applicable orders of the Bankruptcy Court, Seller shall, and will direct the City of Salyersville to, conduct the Business and use its best efforts prior to Closing to keep the Business intact and to preserve the goodwill of customers and others having relations with the Rural Business including, but not limited to, continuing to operate the Rural Business pursuant to the terms of the Management Agreement and that certain Agreed Order Resolving Show Cause Order [Docket No. 230]. Subject to any applicable orders of the Bankruptcy Court, from the date hereof until Closing, and in order to assure continuity of the Rural Business, Purchaser will have, and is hereby granted, the permission and authority from Seller to (i) interview and solicit Seller employees and management concerning possible employment with Purchaser, (ii) have regular access to, visit and investigate the Business and Purchased Assets, and to have Purchaser's employees on site for extended periods to both perform due diligence and begin the process of transition planning, (iii) consult with Seller as it relates to Purchaser's transition plans

and (iv) attend to such other matters as the Parties may agree to concerning Purchaser's involvement with the Business pending Closing.

7.4 Notification of Certain Matters. Prior to the Closing, Seller shall give prompt notice to Purchaser of (i) the occurrence or non-occurrence of any event (including a Material Adverse Effect) which would cause or would be likely to cause any material representation or warranty of Seller contained herein to be materially untrue or inaccurate as of the Closing; and (ii) any failure of Seller to comply with or satisfy any material covenant, condition or agreement to be complied with or satisfied by Seller prior to or at the Closing. The delivery of any notice pursuant to this Section 7.4 shall not be deemed to modify any representation or warranty hereunder of the Party delivering such notice.

7.5 Further Assurance. Seller agrees to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action as may be reasonably necessary or desirable to carry out the transactions contemplated hereby, including, without limitation, to more effectively transfer, convey, assign and deliver to Purchaser and protect Purchaser's right, title and interest in any of the Purchased Assets and/or Assigned Contracts, or to enable Purchaser to exercise and enjoy any or all of the rights and benefits of Seller with respect thereto.

## ARTICLE VIII

### COVENANTS OF PURCHASER

Purchaser covenants and agrees with Seller as follows:

8.1 Performance under Assigned Contracts. On or before fourteen (14) days prior to the Closing Date, the Purchaser will designate the Assigned Contracts that it intends for the Seller to assign to Purchaser. All Retained Contracts shall be retained by the Seller and shall constitute Excluded Assets. The Purchaser shall (i) from and after the Closing Date assume all obligations and liabilities of the Seller under the Assigned Contracts that accrue from and after the Closing Date and (ii) from and after the Closing Date take all actions necessary to satisfy its obligations and liabilities under the terms and conditions of each of the Assigned Contracts.

## ARTICLE IX

### TAXES

9.1 Taxes Related to Purchase of Purchased Assets. All Taxes, including, without limitation, all state and local Taxes in connection with the transfer of the Purchased Assets (but excluding any Taxes based on income) (collectively, "Transaction Taxes"), that may be imposed by reason of the sale, transfer, assignment and delivery of the Purchased Assets, shall be paid by the Seller if the transactions contemplated herein are closed and such liability is determined to be due and payable, and Purchaser shall not be liable in any way for such Transaction Taxes. The Purchaser and the Seller agree to cooperate to determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement pursuant to



Section 9.2. The Purchaser agrees to assist the Seller reasonably in the preparation and filing of any and all required returns for or with respect to such Transaction Taxes with any and all appropriate taxing authorities. Notwithstanding the foregoing, Purchaser agrees to pay all recording and filing fees only in connection with the transfer of the Purchased Assets.

9.2 Cooperation on Tax Matters. The Purchaser and the Seller agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Tax matters and for the answer to any inquiry from any Governmental Authority relating to Tax matters. The Purchaser agrees to retain possession, at its own expense, of all accounting, business, financial and Tax records and information (i) relating to the Purchased Assets or the Assumed Liabilities that are in existence on the Closing Date and transferred to the Purchaser hereunder, or (ii) coming into existence after the Closing Date, that relate to the Purchased Assets or the Assumed Liabilities before the Closing Date, for a period of at least six (6) years from the Closing Date, and will give the Seller notice and an opportunity to retain any such records if the Purchaser determines to destroy or dispose of them after such period. In addition, from and after the Closing Date, the Purchaser agrees that it will provide access to the Seller and its attorneys, accountants and other representatives (after reasonable notice and during normal business hours and without charge), to the books, records, documents and other information relating to the Purchased Assets or the Assumed Liabilities as the Seller may reasonably deem necessary to (x) properly prepare for, file, prove, answer, prosecute and/or defend any such tax return, claim, filing, tax audit, tax protest, suit, proceeding or answer or (y) administer or complete the Bankruptcy Case (and the Purchaser shall give the Seller notice and an opportunity to retain any such records if the Purchaser determines to destroy and dispose of them prior to the completion of the Bankruptcy Case). Such access shall include, without limitation, access to any computerized information retrieval systems relating to the Purchased Assets or the Assumed Liabilities. Notwithstanding any of the foregoing, Purchaser may require Seller to first sign a Confidentiality Agreement in form and substance agreeable to Purchaser prior to granting Seller any right to access granted hereunder.

9.3 Allocation of Purchase Price and Purchase Price Allocation Forms. The Purchaser and the Seller shall use good faith efforts to agree, at or before the Closing, on a reasonable allocation of the Purchase Price and the Assumed Liabilities among the Purchased Assets (the "Allocation"). The Seller and the Purchaser will cooperate in filing with the Internal Revenue Service their respective Forms 8594 as provided for in Section 1060 of the Internal Revenue Code on a basis consistent with the Allocation, and the Allocation shall be reflected on any tax returns required to be filed as a result of the transactions contemplated hereby.

## ARTICLE X

### CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser hereunder are subject to satisfaction or written waiver by Purchaser on or prior to the Closing Date of all of the following conditions:

10.1 Representations and Warranties; Performance of Obligations. All the representations and warranties of Seller contained or incorporated in this Agreement shall be true, complete and correct as of the Closing Date in all material respects as though such representations and warranties had been made on and as of that time; all the terms, covenants and conditions of this Agreement to be complied with or performed by Seller at or before the Closing shall have been duly performed or complied with in all material respects.

10.2 No Pending Action. No (a) claim, investigation, action, suit, proceeding, arbitration or litigation, either administrative or judicial, at law or in equity, by any Governmental Authority, or by any other Person shall have been instituted, threatened or be pending on the Closing Date, except for the Bankruptcy Case (i) for the purposes of challenging, prohibiting, enjoining, restricting or delaying the consummation of this Agreement, or the transactions contemplated by this Agreement, (ii) which claims damages against Purchaser as a result of the consummation of the transactions contemplated hereby or otherwise claims that this Agreement or the consummation thereof is improper, or (iii) which could materially adversely affect the right of Purchaser to retain or use in any manner the Purchased Assets or conduct any aspect of the Business after the Closing, or (b) injunction, ruling, award, writ or restraining order shall be in effect prohibiting any of the transactions contemplated by this Agreement.

10.3 No Material Adverse Effect. No event, proceeding, development or circumstance shall have occurred with respect to Seller which has had or could reasonably be expected to have a Material Adverse Effect on the Business or the Purchased Assets; provided, however, that an event or condition that affects the economy or the Seller's industry shall not constitute a Material Adverse Effect.

10.4 No Adverse Laws. There shall not have been enacted any Law which would or could (a) prohibit or prevent the consummation of the transactions contemplated hereby, (b) materially adversely affect the right of Purchaser to retain or use in any manner the Purchased Assets or to conduct any aspect of the Business in any jurisdiction, or (c) have a Material Adverse Effect upon the Business or the Purchased Assets.

10.5 Approval Motion. The Seller shall use its reasonable best efforts to file a motion with the Bankruptcy Court (the "Approval Motion") as soon as reasonably practicable after execution of this Agreement in form and substance reasonably satisfactory to the Seller and Purchaser which, by the terms thereof, shall constitute, among other things, a motion to approve the sale by Seller of the Purchased Assets to Purchaser pursuant to Section 363 of the Bankruptcy Code.

10.6 Private Sale. The Approval Motion shall provide for a private sale by Seller of the Purchased Assets to Purchaser and shall not provide for an auction of the Purchased Assets.

10.7 Final Court Order. On or prior to September 15, 2007, an order from the Bankruptcy Court, or from such other court of competent jurisdiction as is exercising jurisdiction over the Bankruptcy Case at the time of entry of such order, shall have been entered approving the transactions contemplated by this Agreement providing for the transfer of the Purchased Assets by Seller to Purchaser free and clear of interests pursuant to the Bankruptcy Code in form and content reasonably satisfactory to Purchaser (the "Order of Approval"). The Order of Approval shall become final and non-appealable or not stayed in conjunction with an appeal before the Closing Date, and if appealed, 11 days after entry of such order dismissing the appeal or affirming such order, which period shall have expired before the Closing Date (the "Final Court Order").

10.8 PSC Application. The Seller shall use its reasonable best efforts to support Purchaser's filing of the PSC Application with the PSC and efforts to obtain approval by the PSC of the transfer of ownership of the Purchased Assets in all respects and shall not take any actions inconsistent therewith.

10.9 PSC Approval Order. The PSC Approval Order shall have been entered by the PSC on or before December 5, 2007 approving the transfer of ownership of the Purchased Assets to Purchaser and/or its designee(s) on the terms proposed in the PSC Application without material modification.

10.10 Consent and Approvals. All material consents and approvals of and filings with the Bankruptcy Court, PSC, any Governmental Authority and or other Person which are necessary for the consummation of the transactions contemplated herein shall have been obtained and made including, but not limited to, the Final Court Order and PSC Approval Order.

## ARTICLE XI

### CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller with respect to actions to be taken on the Closing Date are subject to the satisfaction or written waiver of Seller on or prior to the Closing Date of the following conditions:

11.1 Representations and Warranties; Performance of Obligations. All representations and warranties of Purchaser contained or incorporated in this Agreement shall be true, complete and correct in all material respects as of the Closing Date as though such representations and warranties had been made on and as of that time; all of the terms, covenants and conditions of this Agreement to be complied with or performed by Purchaser at or before the Closing shall have been duly performed or complied with in all material respects.

11.2 Consent and Approvals. All material consents and approvals of and filings with the Bankruptcy Court, PSC and any Governmental Authority which are necessary for the

consummation of the transactions contemplated herein shall have been obtained and made including, but not limited to, the Final Court Order and PSC Approval Order.

## ARTICLE XII

### TERMINATION

12.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date:

(a) by mutual written consent of the Seller and the Purchaser before the entry of the Order of Approval;

(b) by the Purchaser, by notice to the Seller, if (i) the Purchaser has previously provided the Seller with written notice of a failure to perform any material covenant contained in this Agreement and the Seller has failed within five (5) business days after receipt of such notice to perform such covenant or provide adequate assurance to the Purchaser of the Seller's ability to perform such covenant and such failure, individually or in the aggregate with any other such failure, results in a Material Adverse Effect, (ii) the Bankruptcy Court fails or refuses to enter the Order of Approval; and/or (iii) PSC fails or refuses to enter the PSC Approval Order;

(c) by the Purchaser, by notice to the Seller, if the sale of the Purchased Assets is proposed or required to be conducted by public auction and Purchaser is not (i) selected as the "stalking horse" bidder for such auction and (ii) granted overbid protections, a break-up fee and other protections and rights customary for this type of transaction in connection therewith acceptable to Purchaser.

(d) automatically, upon the Seller consummating any transaction (or series of transactions) involving a sale of all or substantially all of the Purchased Assets to a purchaser or purchasers other than the Purchaser, or any Affiliate, designee or nominee of the Purchaser;

(e) by the Seller, upon notice to the Purchaser, upon a material breach of the terms and conditions of this Agreement by the Purchaser, or if any condition to the obligation of the Seller to consummate the transactions contemplated by this Agreement cannot be satisfied within the time frames, if any, set forth in this Agreement;

(f) by the Purchaser, upon notice to the Seller, upon a material breach of the terms and conditions of this Agreement by the Seller, or if any condition to the obligation of the Purchaser to consummate the transactions contemplated by this Agreement cannot be satisfied within the time frames, if any, set forth in this Agreement.

12.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 12.1 hereof, this Agreement shall become null and void and have no effect, without any Liability on the part of any party or its directors, officers, members or shareholders. Nothing in this Section 12.2 shall relieve any party to this Agreement of liability for breach of this

Agreement or impair the right of any party to compel specific performance by another party of its obligations under this Agreement.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

13.1 **Cooperation.** Seller and Purchaser shall, subject to the terms and provisions hereof, deliver or cause to be delivered to the other on the Closing Date, and at such other times and places as shall be reasonably agreed to, such additional documents and instruments as the other may reasonably request for the purpose of carrying out the transactions contemplated by this Agreement. Seller will cooperate and use its reasonable best efforts to, and will direct the City of Salyersville to, have the directors, officers, shareholders and employees of Seller or the City of Salyersville cooperate with Purchaser prior to and after the Closing Date in furnishing information, evidence, testimony and other assistance in connection with any tax return filing obligations, actions, proceedings, arrangements or disputes of any nature with respect to matters pertaining to all periods prior to the Closing Date. Purchaser will make all of the books and records included in the Purchased Assets available to Seller after the Closing Date for any reasonable purpose.

13.2 **Successors and Assigns.** Each term and provision of this Agreement shall be binding upon and enforceable against and inure to the benefit of any successors or assigns of Purchaser and Seller. Nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the Parties hereto and their respective successors and assigns any rights or remedies under or by reason of this Agreement.

13.3 **Entire Agreement.** This Agreement (including the schedules attached hereto and the documents contemplated hereby), the Asset Purchase Agreement dated of even date herewith between Sigma Gas Corporation and DLR relating to the City Business (including the schedules attached thereto and the documents contemplated thereby), and the Settlement Agreement between the Parties and GOLD dated July 18, 2007, set forth the entire understanding of the Parties relating to the subject matter hereof and supersedes all agreements, arrangements and understanding relating thereto made prior to or on the date hereof, written or oral, between the parties to this Agreement.

13.4 **Counterparts.** This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original but all such counterparts together shall constitute one and the same instrument.

13.5 **Expenses.** Whether or not the transactions contemplated by this Agreement are consummated, and except as provided for in Section 3.1, each Party to this Agreement shall pay its own costs and expenses in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, including, but not limited to, attorneys' fees and costs, accountants' fees and other professional fees and expenses.

13.6 Notices. All notices and other communications under this Agreement shall be in writing and shall be given by hand delivery, facsimile, or nationally recognized overnight courier, and shall be deemed to have been duly given (1) if delivered by hand, on the date of such delivery, (2) if delivered by facsimile, on the date of such delivery, with receipt of appropriate confirmation, and (3) if delivered by nationally recognized overnight courier, on the business day following dispatch to the respective persons named below:

If to Seller: SIGMA GAS CORPORATION  
c/o Laura Day DelCotto, Esq.  
Wise DelCotto, PLLC  
200 N. Upper St.  
Lexington, KY 40507

If to Purchaser: DLR ENTERPRISES, INC.  
P.O. Box 3385  
Pikeville, KY 41502-3385  
Attn: Jerry Kanney

With a copy to:

Patricia K. Burgess, Esq.  
Martin B. Tucker, Esq.  
FROST BROWN TODD LLC  
250 W. Main Street, Suite 2700  
Lexington, KY 40507-1749

or to such other address as the person to whom notice is to be given may have previously furnished to the other in writing in the manner set for above.

13.7 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky without giving effect to the conflict of law principles thereof.

13.8 Reformation and Severability. In case any provision of this Agreement shall be held to be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality and enforceability of the remaining provisions of this Agreement and the future application of such provision shall not in any way be affected or impaired thereby (but only if and to the extent such validity would not materially and adversely frustrate the Parties' essential objective herein).

13.9 Remedies Cumulative. No right, remedy or election given by any term of this Agreement shall be deemed exclusive but each shall be cumulative with all other rights, remedies and elections available at law or in equity.

13.10 Captions. The headings of this Agreement are inserted for convenience only, shall not constitute a part of this Agreement or be used to construe or interpret any provision hereof.

13.11 Representation by Counsel. Each Party to this Agreement represents and warrants that such Party has been represented by counsel in the negotiation, drafting and execution of this Agreement. Accordingly, no provision of this Agreement shall be construed against any Party on the grounds that Party drafted the provision or caused it to be drafted.

13.12 Amendments; Waivers. This Agreement may be amended, modified or canceled (only in accordance with Article XII hereof) and the terms or covenants hereof may be waived, only by a written instrument executed by the Parties hereto, or in the case of a waiver, by the Party waiving compliance. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

**[SPACE INTENTIONALLY BLANK; SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, this Agreement has been duly executed and delivered by the duly authorized officers or other authorized representative of Seller and Purchaser as of the date first written above.

**SIGMA GAS CORPORATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

("Seller")

**DLR ENTERPRISES, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

("Purchaser")



**Exhibit A**

**(Map)**

**Schedule 2.1(e)**

**(pending permits, etc.)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 2.1(f)**

**(Assigned Contracts)**

1. Pipeline Operating Agreement dated December 1, 1993 by and between **EQUITABLE RESOURCES EXPLORATION** and Sigma Gas Corporation
2. All oil and gas leases

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 2.1(i)**

**(uncategorized Purchased Assets)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 2.2(f)**

**(uncategorized Excluded Assets)**

1. All plugged or inactive wells

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 5.3**

**(Seller's Non-Contravention Exceptions)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 5.6**

**(Seller's Compliance with Laws Exceptions)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 5.8**

**(Seller's Fees, Fines and Taxes Exceptions)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**



**ASSET PURCHASE AGREEMENT**  
**(City Business)**

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement") is made this the \_\_\_ day of September, 2007, by and between (i) **SIGMA GAS CORPORATION**, a Kentucky corporation, for itself and on behalf of its Chapter 7 bankruptcy estate (collectively, "Seller") and (ii) **DLR ENTERPRISES, INC.**, a Kentucky corporation (the "Purchaser"). The Seller and Purchaser may be referred to hereinafter together as the "Parties" or individually as a "Party." Otherwise, capitalized terms used herein and not otherwise defined shall have the meanings set forth in Article I.

**RECITALS:**

A. On October 20, 2004, the Seller filed a voluntary petition for relief (the "Bankruptcy Case") under Chapter 7 of Title 11 of the United States Code (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Kentucky (the "Bankruptcy Court"), Case No. 04-71003.

B. Due to the potential liabilities related thereto, the Chapter 7 Trustee of Sigma's Bankruptcy Case abandoned all of the bankruptcy estate's interest(s) in Sigma's assets on or about October 27, 2004 [Docket No. 29]. Notwithstanding that fact, the Court retained jurisdiction over the Bankruptcy Case to facilitate a sale of Sigma's assets to ensure continued service to Sigma's customers.

C. Seller is the owner of certain assets and rights used in the distribution of natural gas, all as more fully described herein (collectively, the "Business"). More specifically, the Business consists of gas operations (i) located principally within the limits of the City of Salyersville, Kentucky (the "City Limits", which is designated by the black dotted line on the map attached hereto as Exhibit A and incorporated by reference) and the end-use customer taps wherever located, whether within or outside the City Limits (the "City Business") and (ii) located principally outside the limits of the City of Salyersville, Kentucky, excluding any end-use customer taps (the "Rural Business"), all as more specifically set forth on the map attached hereto as Exhibit A and incorporated by reference.

D. The Business has continued to operate throughout the pendency of the Bankruptcy Case pursuant to a Management Agreement (as amended, the "Management Agreement") between, among others, the Seller and the City of Salyersville, as authorized by one or more orders of the Bankruptcy Court.

E. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, substantially all of the assets and rights of and to the City Business as more fully described herein, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with Sections 105 and 363 and other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

F. The Purchased Assets are assets of the Seller, which are to be purchased by the Purchaser, free and clear of all liens, claims, encumbrances and interests, including without

limitation all sales taxes, income taxes and delinquent or past due property taxes, except as otherwise provided herein, pursuant to a final, non-appealable order of the Bankruptcy Court approving such sale pursuant to Sections 105 and 363 of the Bankruptcy Code, which order will include the authorization for the assignment to the Purchaser of the Assigned Contracts and liabilities thereunder, if any, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with other applicable provisions of the Bankruptcy Code.

**NOW, THEREFORE** in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth below, the Parties agree as follows:

## ARTICLE I

### DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings specified, unless the context expressly or by necessary implication otherwise requires:

“Accounts Receivable” means all accounts, accounts receivable and other sums owed or otherwise payable to Seller in the ordinary course of the City Business.

“Affiliate” means a person which, directly or indirectly, alone or through one or more intermediaries, controls, or is controlled by, or is under common control with a specified Person.

“Agreement” means this Agreement by and among the parties identified above as originally executed and delivered, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, together with all schedules made a part hereof and incorporated herein by the references thereto.

“Allocation” has the meaning specified in Section 9.3.

“Assigned Contracts” has the meaning specified in Section 2.1(f).

“Assumed Liabilities” has the meaning specified in Section 3.1.

“Bankruptcy Case” has the meaning specified in the Recitals of this Agreement.

“Bankruptcy Court” has the meaning specified in the Recitals of this Agreement.

“Bankruptcy Code” has the meaning specified in the Recitals of this Agreement.

“Business” has the meaning specified in the Recitals of this Agreement.

“City Business” has the meaning specified in the Recitals of this Agreement.

“Closing” has the meaning specified in Section 4.2.

“Closing Date” has the meaning specified in Section 4.2.

“Contracts” means those contracts of the Seller which have been abandoned by the Chapter 7 Trustee of Seller’s bankruptcy estate and vested in the Debtor as more fully set forth in paragraph B of the Recitals above.

“DLR” means DLR Enterprises, Inc. and/or one or more designee(s).

“DLR Claim” means the full amount of the principal and interest and any other amounts due under those obligations of the Seller evidenced in that certain Proof of Claim [Claim No. 4] filed with the Bankruptcy Court in the Bankruptcy Case on or about December 15, 2006.

“Excluded Assets” has the meaning specified in Section 2.2.

“Excluded Liabilities” has the meaning specified in Section 3.2.

“Expenses” has the meaning specified in Section 3.1.

“Final Court Order” has the meaning specified in Section 10.7.

“GOLD” means the Commonwealth of Kentucky, Governor’s Office for Local Development *f/k/a* Commonwealth of Kentucky, Department for Local Government.

“GOLD Claim” means the full amount of the principal and interest and any other amounts due under those obligations of the Seller evidenced in that certain Amended Proof of Claim [Amended Claim No. 2] filed by GOLD with the Bankruptcy Court in the Bankruptcy Case on or about December 15, 2006.

“Governmental Authority” means any federal, state, local, foreign or other governmental, regulatory or administrative agency, political subdivision, department, commission, board, bureau, division, court, authority, body, tribunal or instrumentality, including, but not limited to, the PSC.

“IRS” means the United States of America, Internal Revenue Service.

“Law” means any and all federal, state, local and foreign statutes (civil and criminal), laws, ordinances, regulations, codes, rules, permits, judgments, directives, orders and decrees now in effect.

“Lease” and “Leases” mean the leases of real and personal property where the Seller is either lessor or lessee which have been abandoned by the Chapter 7 Trustee of Seller’s bankruptcy estate and vested in the Debtor as more fully set forth in paragraph B of the Recitals above.

“Liability” or Liabilities” means all debts, adverse claims, liabilities and obligations, direct, indirect or contingent, including, without limitation, those arising under any law, rule or

regulation of any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or imposed by any court or any arbitrator of any kind, and those arising in connection with products sold by, or under contracts, agreements (whether written or oral), leases, commitments or undertakings, whether incurred before or after the Closing.

“Lien” means any mortgage, deed of trust, lien, lease, equity, security interest, pledge, conditional sale agreement, title retention agreement, claim (including without limitation sales tax, income tax and property tax claims), charge, title defect, easement, license, assignment, right-of-way, covenant, condition, restriction, limitation, option, adverse or equitable claim or right or any other encumbrance of any kind.

“Management Agreement” has the meaning specified in the Recitals of this Agreement.

“Material Adverse Effect” means such fact, event, change or effect which has resulted in or could reasonably be expected to result in a material adverse effect on or change in the Business, Purchased Assets, operations, results of operations, condition (financial or otherwise), properties, assets, Liabilities or prospects of the applicable Person.

“Order of Approval” has the meaning specified in Section 10.7.

“Permits” has the meaning specified in Section 2.1(e).

“Person” means an individual, corporation, limited liability company, partnership, association, trust, joint venture or other entity or organization, including, without limitation, a Governmental Authority.

“Products” means all products and services of Seller relating to the City Business.

“PSC” means the Kentucky Public Service Commission.

“PSC Application” means the application(s) to be filed with the PSC by Purchaser seeking approval of the transfer of ownership of the Purchased Assets to Purchaser and/or its designee(s) pursuant to this Agreement.

“PSC Approval Order” means a final and non-appealable order entered by the PSC approving the transfer of ownership of the Purchased Assets to Purchaser and/or its designee(s) on the terms proposed in the PSC Application without material modification.

“Purchased Assets” has the meaning specified in Section 2.1.

“Purchase Price” has the meaning specified in Section 4.1.

“Purchaser” has the meaning specified in the preamble of this Agreement.

“Purchaser Documents” has the meaning specified in Section 6.2.

“Retained Contracts” has the meaning specified in Section 2.2(b).

“Rural Business” has the meaning specified in the Recitals of this Agreement.

“Seller” has the meaning specified in the preamble of this Agreement.

“Seller Documents” has the meaning specified in Section 5.2.

“Tax” or “Taxes” means: (i) any and all taxes (whether federal, state, local or foreign) including, without limitation, net or gross income, gross receipts, net proceeds, profits, property, sales, use, capital stock, net worth, occupation, value added, ad valorem, transfer, franchise, recapture, excise, windfall, withholding, payroll, social security, workers’ compensation, unemployment compensation or employment taxes, tariffs, imposts, duties, levies, fees or governmental charges of any nature whatsoever, whether disputed or not, together with any interest, penalties or additions to tax imposed with respect to any of the foregoing, and (ii) any obligations under any agreements or arrangements with respect to any tax or taxes described in clause (i) above.

“Transaction Taxes” has the meaning given in Section 9.1.

## **ARTICLE II**

### **SALE AND PURCHASE OF ASSETS**

2.1 Assets Purchased. Upon the terms and subject to the conditions set forth in the Agreement and for the consideration set forth in Section 4.1, Seller agrees to sell, transfer, convey and assign to Purchaser, and Purchaser agrees to purchase, take and acquire from Seller, at the Closing on the Closing Date, free and clear of all liens, claims, encumbrances and interests, including Liens, pursuant to Sections 105 and 363 of the Bankruptcy Code, and otherwise transferred on an AS IS, WHERE IS, basis with all faults, all of Seller’s assets, properties, privileges, claims, rights, titles and interest related to, used in, arising from or necessary or desirable to operate the City Business, whether idle or in use, tangible or intangible, and whether or not reflected on the books and records of Seller, wherever located, except for the Excluded Assets (collectively, the “Purchased Assets”). The Purchased Assets include, but are not limited to:

(a) all potentially commercially productive wells, all mains, lines, valves, regulators, meters, service connections, regulator stations, and related equipment and appurtenances, all other equipment and tangible personal property, including without limitation all hardware, office equipment, furniture and fixtures, office materials and supplies, inventory, spare parts, furnishings, vehicles, computers and other tangible personal property of every kind and description which are held for use principally, used or usable in the operation of the City Business;

(b) all Products;

(c) all cash, cash equivalents and bank deposits existing as of the Closing Date and remaining after payment of current operating expenses and Expenses;

(d) all Accounts Receivable, deposits and deposits of customers, security deposits and any net operating losses of Seller;

(e) the permits, rights-of-way, easements, licenses, franchises, certificates of occupancy, variances, exemptions, orders and other governmental authorizations, consents, waivers, registrations and approvals necessary to conduct the City Business, including any pending applications therefor as set forth in Schedule 2.1(e), in each case to the extent the same are assignable (the "Permits");

(f) all Contracts and Leases listed in Schedule 2.1(f) (the "Assigned Contracts");

(g) all books and records of Seller relevant to, or otherwise necessary to conduct the City Business, including, without limitation, data processing records, employment and personnel records, customer lists, files and records, advertising and marketing data and records, credit records, records relating to suppliers, and other data, in each case whether in hard copy or electronic form;

(h) all computer software programs and databases used or held for use by Seller in the conduct of the City Business, whether owned, licensed, leased, or internally developed (in each case, subject to applicable restrictions);

(i) those items described in Schedule 2.1(i); and

(j) such items or rights as the Purchaser, in its sole discretion, may declare in writing to Seller at or prior to the Closing to be Purchased Assets provided, however, such election by Purchaser shall not increase the Purchase Price.

2.2 Excluded Assets. The following assets (the "Excluded Assets") are excluded from the Purchased Assets and shall not be purchased and sold hereunder and no definition of any asset shall be deemed to include any Excluded Assets:

(a) the capital stock of Seller;

(b) any Contracts or Leases which are not Assigned Contracts, including, but not limited to, contracts between the Seller and/or its agents or managers and Jefferson Gas, LLC or its subsidiaries or affiliates and contracts between the Seller and/or its agents or managers and the City of Salyersville ("Retained Contracts");

(c) any gas sales, distribution, exchange, gathering or transportation agreements between the Seller and/or its agents or managers and any third party, including without limitation Jefferson Gas, LLC, which shall be deemed Retained Contracts;

(d) any avoidance claims available to Seller under Chapter 5 of the Bankruptcy Code and all claims relating to Excluded Liabilities;

(e) all assets related to the Rural Business; and

(f) those items described in Schedule 2.2(f); and

(g) such items or rights as the Purchaser, in its sole discretion, may declare in writing to Seller at or prior to the Closing to be Excluded Assets provided, however, such election by Purchaser shall not reduce the Purchase Price.

2.3 Passage of Title and Risk of Loss. Legal and equitable title and risk of loss with respect to the Purchased Assets will not pass to Purchaser until such Purchased Assets are transferred to Purchaser at the Closing following entry of the Final Court Order.

### **ARTICLE III**

#### **ASSUMPTION OF OBLIGATIONS AND LIABILITIES**

3.1 Assumption of Liabilities. Subject to the terms and conditions of this Agreement, and in partial consideration of the transfer to Purchaser of the Purchased Assets, Purchaser shall assume (collectively, the "Assumed Liabilities"), as of the Closing Date, (i) all liabilities and obligations of the Seller under the Assigned Contracts from and after the Closing Date; (ii) all obligations of Seller related to events occurring on or after the Closing under the Assigned Contracts and (iii) all Chapter 7 administrative expenses of the Seller, as defined by Section 503(b) of the Bankruptcy Code, owing as of, or accrued to, the Closing, that GOLD and/or the Gas System Restoration and Development Project Account Review Board would be otherwise required to pay, including the outstanding professional fees of Debtor's counsel previously as a carve-out pursuant to prior Orders of the Court (the "Expenses").

3.2 Excluded Liabilities. Anything in this Agreement to the contrary notwithstanding, Purchaser shall not assume, or in any way be liable or responsible for, whether arising by contract, tort, operation of law or otherwise, any Liabilities of Seller, except as specifically provided for in Section 3.1. The Excluded Liabilities shall include, but not be limited to, (i) all trade payables, secured debt and other debts and obligations of Seller; (ii) all administrative expenses as defined by Section 503(b) of the Bankruptcy Code and other claims relating to the proceedings before the Bankruptcy Court except for the Expenses as stated in Section 3.1; and (iii) all customer deposits.

### **ARTICLE IV**

#### **CONSIDERATION; CLOSING**

4.1 Purchase Price.

(a) The purchase price to be paid by Purchaser to Seller in consideration for the transfer of the Purchased Assets (the "Purchase Price") shall be paid in cash or equivalent at

Closing to Seller, or for the benefit of Seller to any third party, or account or accounts at Seller's direction upon the fulfillment of all Conditions Precedent and the execution and delivery of all documents required by this Agreement and shall be made up of the following:

(1) Subject to subsection (b) hereafter, Purchaser shall waive its right to receive payment on all or part of the GOLD Claim from the Seller;

(2) Subject to subsection (b) hereafter, Purchaser shall waive its right to receive payment on all or part of the DLR Claim from the Seller;

(3) After payment from current cash or current receivables of the Seller and payment by the City of Salyersville of all obligations under that certain Agreed Order Resolving Show Cause Order [Docket No. 230], cash sufficient to pay all allowed, but unpaid, Expenses;

(b) Seller and Purchaser agree that Purchaser is entitled to credit bid at the Closing any claims secured by Liens that may be owned or controlled by Purchaser or any Affiliate of Purchaser as of the Closing Date as allowed by Section 363(k) of the Bankruptcy Code. As between the Seller and Purchaser, it is anticipated and agreed that Purchaser may and will credit bid some or all of the (x) GOLD Claim; (y) DLR Claim; and (z) all other debt owned or controlled by Purchaser and/or its designee(s) in the full amount of the principal, interest and other obligations then due and payable thereon.

(c) Purchaser shall provide documentation of its rights regarding the GOLD Claim and any other claims it may use as consideration at or prior to the Closing.

4.2 Closing. The sale and purchase of the Purchased Assets and assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place at the offices of FROST BROWN TODD LLC in Lexington, Kentucky or at some other location mutually agreeable between the Parties, on a mutually acceptable date but not later than the tenth (10<sup>th</sup>) business day after all of the Conditions Precedent have been satisfied or waived by both Parties in writing, or at such other date, place or time as the parties may hereto mutually agree (the "Closing Date"). The Closing shall be deemed to have occurred on the opening of business on the Closing Date. On the Closing Date, Seller will deliver to Purchaser all documents of transfer, assignment or consent reasonably requested by Purchaser, including, without limitation, bills of sale and assignments, all properly executed and, where necessary, in recordable form. On the Closing Date, Purchaser will deliver to Seller such documents of assumption reasonably requested by Seller and if necessary, all properly executed.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser as follows:

5.1 Due Organization. The entity constituting the Seller is a (i) corporation duly incorporated, validly existing but in bad standing under the laws of the Commonwealth of



Kentucky and (ii) Chapter 7 debtor under the Bankruptcy Code acting on behalf of itself and its bankruptcy estate. Subject to any necessary authority from the Bankruptcy Court and/or PSC, Seller has full corporate power and authority to carry on the Business as conducted, and to own, lease and operate its Business, assets and properties as conducted, including, without limitation, the Purchased Assets and the Business.

5.2 Authority and Binding Effect. Subject to the approval of this Agreement by the Bankruptcy Court and/or the PSC, Seller or its authorized representative has the full legal right, power and authority to execute and deliver this Agreement as such is in accordance with Seller's rights and duties pursuant to KRS 271B.14-050, and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Seller (or an authorized representative of Seller) and the consummation of the transactions contemplated hereby will be duly and validly authorized by the directors and shareholders of Seller (or an authorized representative of Seller as approved by the Bankruptcy Court) at or prior to the Closing, and no further action is necessary to authorize this Agreement or the performance of the transactions contemplated hereby, other than the Order of Approval and PSC Approval Order. This Agreement and the other agreements, documents, certificates and instruments required to be delivered by Seller in accordance with the provisions hereof (the "Seller Documents") have been, with respect to this Agreement, and will be, with respect to all other Seller Documents, duly executed and delivered by Seller by duly authorized officers (or an authorized representative of Seller as approved by the Bankruptcy Court), as applicable, enforceable against Seller in accordance with their terms, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally.

5.3 Non-Contravention. Except as set forth on Schedule 5.3 hereto and subject to approval of the Bankruptcy Court and/or PSC, the execution and delivery of the Seller Documents by Seller (or an authorized representative of Seller) and the consummation of the transactions contemplated hereby, in accordance with the Final Court Order, will not and would not, with or without the giving of notice, upon the lapse of time or both: (a) conflict with or result in a breach or violation of any Articles of Incorporation, By-Laws, or other corporate documents of Seller, (b) result in a violation of any injunction, ruling, award, writ or Law to which Seller, any of its properties, assets, rights or interest, including without limitation, the Purchased Assets or the Business, are subject or bound, (c) result in a violation of any Law of any Governmental Authority which is applicable to the Seller, any of its properties, assets, rights or interest, including without limitation, the Purchased Assets or the Business, or (d) result in a breach or violation of, constitute a default under or adversely affect the rights and benefits afforded to Seller by any contract or undertaking, including any express or implied warranty, to which Seller is a party or by which Seller (or any of its properties, assets, rights or interest, including, without limitation, the Purchased Assets or the Business) is subject or bound, or give any party the right to terminate, amend, abandon, refuse to perform or otherwise change the existing rights or obligations thereunder, or give any party the right to create any Lien or other rights or adverse interests upon any right, property or asset of Seller, including, without limitation, the Purchased Assets or the Business.

5.4 Recent Activities. Since August 30, 2007, the Seller has taken no action that would constitute a Material Adverse Effect on the Purchased Assets and/or the Business.

5.5 Title to Purchased Assets. Except as otherwise provided herein, Seller represents and warrants that, as of the Closing Date, pursuant to the Final Court Order, it shall convey to Purchaser good and marketable title to the Purchased Assets, free and clear of all mortgages, liens, pledges, charges, claims, security interests, encumbrances or restrictions of any kind including, but not limited to, all Liens.

5.6 Compliance with Laws. Except as set forth on Schedule 5.6, to the knowledge of Seller, Seller is in substantial compliance with all applicable statutes, orders, rules and regulations with which Seller is required to comply in connection with the Business and the Purchased Assets, except where the failure to do so, individually or in the aggregate, would not result in a Material Adverse Effect on the Purchaser or its ownership or use of the Purchased Assets.

5.7 Assigned Contracts. True and complete copies of all of the Contracts and Leases designated by the Purchaser to be Assigned Contracts (including all amendments and addenda thereto and all instruments in any way modifying or affecting any thereof) listed either specifically or generally on Schedule 2.1(f), will be delivered by Seller to Purchaser on or before 30 days prior to the Closing. All such agreements are valid, enforceable, and in full force and effect in accordance with their terms. To the knowledge of Seller, there are no existing disputes between Seller and any other party to any of such agreements.

5.8 Fees, Fines and Taxes. Except as set forth on Schedule 5.8, all fees, fines and Taxes including, without limitation, income, property, sales, use, severance, franchise, value added, employees' income withholding and social security Taxes, imposed by the United States or by any foreign country or by any state, county, municipality, subdivision or instrumentality of the United States or of any foreign country, or by any other taxing, licensing or regulatory authority, which are due or payable by Seller and which could in any way attach to or affect the Purchased Assets, and all interest and penalties thereon, whether disputed or not, have been paid in full or provision for the payment thereof has been made; all tax returns and other reports required to be filed in connection therewith have been accurately prepared and duly and timely filed; and all deposits required by Law to be made by Seller with respect to employees' withholding taxes have been duly made. Except as set forth on Schedule 5.8, Seller has not been delinquent in the payment of any foreign or domestic fee, Tax, assessment or governmental charge or deposit which could in any way attach to or affect the Purchased Assets; there is no Tax deficiency or claim outstanding or, to the knowledge of Seller, proposed or assessed against it which would in any way attach to or affect the Purchased Assets. To the knowledge of Seller, there are no pending investigations or proceedings relating to, or claims asserted for Taxes or assessments against the Seller. There is no litigation now pending against the Seller, nor is there any matter under discussion with the IRS, or other Governmental Authority, relating to any Taxes or assessments or any claims or deficiencies with respect thereto.

5.9 No Brokers. Seller has not engaged or used the services of a broker, finder, or similar person in connection with the sale of the Purchased Assets and, based upon the action of

Seller, or its agents or its affiliates, no person shall be entitled to a brokerage commission, finder's fee or like payment in connection with this Agreement or in connection with the consummation of the transactions contemplated hereby.

5.10 Disclosure. No representation or warranty or any other statement by Seller contained in this Agreement or in any instrument, certificate or other document furnished or to be furnished by Seller to Purchaser or its representatives in connection herewith or pursuant hereto contains or will contain any untrue or inaccurate statement of a material fact, or omit or fail to state a material fact necessary to make the statements contained herein or therein not materially misleading.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

6.1 Due Organization. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and has full corporate power to own, lease and operate its properties and to conduct its business.

6.2 Authority and Binding Effect. Purchaser has the full legal right, power and authority to execute and deliver this Agreement and, subject to Bankruptcy Court and PSC approval, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by written consent or resolutions duly adopted by the shareholders of Purchaser as required, and no further action is necessary to authorize this Agreement or the performance of the transactions contemplated hereby. This Agreement and the other agreements, documents, certificates and instruments required to be delivered by Purchaser in accordance with the provisions hereof (the "Purchaser Documents") have been, with respect to this Agreement, and will be, with respect to all other Purchaser Documents, duly executed and delivered by Purchaser by duly authorized officers, as applicable, enforceable against Purchaser in accordance with their terms.

6.3 Non-Contravention. The execution and delivery of this Agreement by Purchaser and the consummation of the transactions contemplated hereby will not or would not, with or without the giving of notice, upon the lapse of time or both: (a) conflict with or result in a breach or violation of any Articles of Incorporation, By-Laws, or other corporate documents of Purchaser, or (b) result in a violation of any applicable Law, or any contract or undertaking, including any express or implied warranty, to which Purchaser is a party or by which Purchaser (or any of its rights, properties or assets) is subject or bound.

6.4 Brokers and Agents. Purchaser represents and warrants that no broker or agent is entitled to any fee or commission in connection with this transaction and agrees to indemnify Seller against all damages arising out of claims, actions, suits, proceedings, demands or

assessments for fees or commission of brokers employed or alleged to have been employed by such indemnifying party.

6.5 Availability of Funds. Subject to Section 4.1, on the Closing Date and to the extent necessary, the Purchaser will have sufficient funds available to finance and consummate the transactions contemplated by this Agreement including the payment of the Purchase Price and the satisfaction of the Assumed Liabilities.

## ARTICLE VII

### COVENANTS OF SELLER

Seller covenants and agrees with Purchaser as follows:

7.1 Access and Cooperation; Due Diligence. Seller will, and will direct the City of Salyersville to, afford to the directors, officers, employees, consultants, agents, advisors and representatives of Purchaser free and full access to all of the Business, properties, assets, contracts and records during normal business hours upon reasonable notice and will deliver or make available to Purchaser such financial, operating and other information as to the Business, Purchased Assets, operations, results of operations, condition (financial or otherwise), properties, assets, liabilities or prospects of Seller as Purchaser may from time to time reasonably request. Seller will cooperate with Purchaser, its directors, officers, shareholders, employees, consultants, agents, advisors and representatives in the preparation of any documents, information or materials required by this Agreement. No information or knowledge obtained in any investigation pursuant to this Section or otherwise shall affect or be deemed to modify any representation or warranty contained in this Agreement or the conditions to the obligations of the parties to consummate the transactions contemplated hereby.

7.2 Conclusion of Bankruptcy Case. Upon the Closing Date, the Seller will proceed to conclude the Bankruptcy Case on terms determined by the Seller, provided, however, that in completing its Bankruptcy Case, no creditors or other parties in interest will be offered an interest, whether equity or some other interest, in the City Business or Purchased Assets.

7.3 Conduct of Business Pending Closing. From the date hereof until Closing, and subject to any applicable orders of the Bankruptcy Court, Seller shall, and will direct the City of Salyersville to, conduct the Business and use its best efforts prior to Closing to keep the Business intact and to preserve the goodwill of customers and others having relations with the City Business including, but not limited to, continuing to operate the City Business pursuant to the terms of the Management Agreement and that certain Agreed Order Resolving Show Cause Order [Docket No. 230]. Subject to any applicable orders of the Bankruptcy Court, from the date hereof until Closing, and in order to assure continuity of the City Business, Purchaser will have, and is hereby granted, the permission and authority from Seller to (i) interview and solicit Seller employees and management concerning possible employment with Purchaser, (ii) have regular access to, visit and investigate the Business and Purchased Assets, and to have Purchaser's employees on site for extended periods to both perform due diligence and begin the process of transition planning, (iii) consult with Seller as it relates to Purchaser's transition plans

and (iv) attend to such other matters as the Parties may agree to concerning Purchaser's involvement with the Business pending Closing.

7.4 Notification of Certain Matters. Prior to the Closing, Seller shall give prompt notice to Purchaser of (i) the occurrence or non-occurrence of any event (including a Material Adverse Effect) which would cause or would be likely to cause any material representation or warranty of Seller contained herein to be materially untrue or inaccurate as of the Closing; and (ii) any failure of Seller to comply with or satisfy any material covenant, condition or agreement to be complied with or satisfied by Seller prior to or at the Closing. The delivery of any notice pursuant to this Section 7.4 shall not be deemed to modify any representation or warranty hereunder of the Party delivering such notice.

7.5 Further Assurance. Seller agrees to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action as may be reasonably necessary or desirable to carry out the transactions contemplated hereby, including, without limitation, to more effectively transfer, convey, assign and deliver to Purchaser and protect Purchaser's right, title and interest in any of the Purchased Assets and/or Assigned Contracts, or to enable Purchaser to exercise and enjoy any or all of the rights and benefits of Seller with respect thereto.

## ARTICLE VIII

### COVENANTS OF PURCHASER

Purchaser covenants and agrees with Seller as follows:

8.1 Performance under Assigned Contracts. On or before fourteen (14) days prior to the Closing Date, the Purchaser will designate the Assigned Contracts that it intends for the Seller to assign to Purchaser. All Retained Contracts shall be retained by the Seller and shall constitute Excluded Assets. The Purchaser shall (i) from and after the Closing Date assume all obligations and liabilities of the Seller under the Assigned Contracts that accrue from and after the Closing Date and (ii) from and after the Closing Date take all actions necessary to satisfy its obligations and liabilities under the terms and conditions of each of the Assigned Contracts.

## ARTICLE IX

### TAXES

9.1 Taxes Related to Purchase of Purchased Assets. All Taxes, including, without limitation, all state and local Taxes in connection with the transfer of the Purchased Assets (but excluding any Taxes based on income) (collectively, "Transaction Taxes"), that may be imposed by reason of the sale, transfer, assignment and delivery of the Purchased Assets, shall be paid by the Seller if the transactions contemplated herein are closed and such liability is determined to be due and payable, and Purchaser shall not be liable in any way for such Transaction Taxes. The Purchaser and the Seller agree to cooperate to determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement pursuant to

Section 9.2. The Purchaser agrees to assist the Seller reasonably in the preparation and filing of any and all required returns for or with respect to such Transaction Taxes with any and all appropriate taxing authorities. Notwithstanding the foregoing, Purchaser agrees to pay all recording and filing fees only in connection with the transfer of the Purchased Assets.

9.2 Cooperation on Tax Matters. The Purchaser and the Seller agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Tax matters and for the answer to any inquiry from any Governmental Authority relating to Tax matters. The Purchaser agrees to retain possession, at its own expense, of all accounting, business, financial and Tax records and information (i) relating to the Purchased Assets or the Assumed Liabilities that are in existence on the Closing Date and transferred to the Purchaser hereunder, or (ii) coming into existence after the Closing Date, that relate to the Purchased Assets or the Assumed Liabilities before the Closing Date, for a period of at least six (6) years from the Closing Date, and will give the Seller notice and an opportunity to retain any such records if the Purchaser determines to destroy or dispose of them after such period. In addition, from and after the Closing Date, the Purchaser agrees that it will provide access to the Seller and its attorneys, accountants and other representatives (after reasonable notice and during normal business hours and without charge), to the books, records, documents and other information relating to the Purchased Assets or the Assumed Liabilities as the Seller may reasonably deem necessary to (x) properly prepare for, file, prove, answer, prosecute and/or defend any such tax return, claim, filing, tax audit, tax protest, suit, proceeding or answer or (y) administer or complete the Bankruptcy Case (and the Purchaser shall give the Seller notice and an opportunity to retain any such records if the Purchaser determines to destroy and dispose of them prior to the completion of the Bankruptcy Case). Such access shall include, without limitation, access to any computerized information retrieval systems relating to the Purchased Assets or the Assumed Liabilities. Notwithstanding any of the foregoing, Purchaser may require Seller to first sign a Confidentiality Agreement in form and substance agreeable to Purchaser prior to granting Seller any right to access granted hereunder.

9.3 Allocation of Purchase Price and Purchase Price Allocation Forms. The Purchaser and the Seller shall use good faith efforts to agree, at or before the Closing, on a reasonable allocation of the Purchase Price and the Assumed Liabilities among the Purchased Assets (the "Allocation"). The Seller and the Purchaser will cooperate in filing with the Internal Revenue Service their respective Forms 8594 as provided for in Section 1060 of the Internal Revenue Code on a basis consistent with the Allocation, and the Allocation shall be reflected on any tax returns required to be filed as a result of the transactions contemplated hereby.

## ARTICLE X

### CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser hereunder are subject to satisfaction or written waiver by Purchaser on or prior to the Closing Date of all of the following conditions:

10.1 Representations and Warranties; Performance of Obligations. All the representations and warranties of Seller contained or incorporated in this Agreement shall be true, complete and correct as of the Closing Date in all material respects as though such representations and warranties had been made on and as of that time; all the terms, covenants and conditions of this Agreement to be complied with or performed by Seller at or before the Closing shall have been duly performed or complied with in all material respects.

10.2 No Pending Action. No (a) claim, investigation, action, suit, proceeding, arbitration or litigation, either administrative or judicial, at law or in equity, by any Governmental Authority, or by any other Person shall have been instituted, threatened or be pending on the Closing Date, except for the Bankruptcy Case (i) for the purposes of challenging, prohibiting, enjoining, restricting or delaying the consummation of this Agreement, or the transactions contemplated by this Agreement, (ii) which claims damages against Purchaser as a result of the consummation of the transactions contemplated hereby or otherwise claims that this Agreement or the consummation thereof is improper, or (iii) which could materially adversely affect the right of Purchaser to retain or use in any manner the Purchased Assets or conduct any aspect of the Business after the Closing, or (b) injunction, ruling, award, writ or restraining order shall be in effect prohibiting any of the transactions contemplated by this Agreement.

10.3 No Material Adverse Effect. No event, proceeding, development or circumstance shall have occurred with respect to Seller which has had or could reasonably be expected to have a Material Adverse Effect on the Business or the Purchased Assets; provided, however, that an event or condition that affects the economy or the Seller's industry shall not constitute a Material Adverse Effect.

10.4 No Adverse Laws. There shall not have been enacted any Law which would or could (a) prohibit or prevent the consummation of the transactions contemplated hereby, (b) materially adversely affect the right of Purchaser to retain or use in any manner the Purchased Assets or to conduct any aspect of the Business in any jurisdiction, or (c) have a Material Adverse Effect upon the Business or the Purchased Assets.

10.5 Approval Motion. The Seller shall use its reasonable best efforts to file a motion with the Bankruptcy Court (the "Approval Motion") as soon as reasonably practicable after execution of this Agreement in form and substance reasonably satisfactory to the Seller and Purchaser which, by the terms thereof, shall constitute, among other things, a motion to approve the sale by Seller of the Purchased Assets to Purchaser pursuant to Section 363 of the Bankruptcy Code.

10.6 Private Sale. The Approval Motion shall provide for a private sale by Seller of the Purchased Assets to Purchaser and shall not provide for an auction of the Purchased Assets.

10.7 Final Court Order. On or prior to September 15, 2007, an order from the Bankruptcy Court, or from such other court of competent jurisdiction as is exercising jurisdiction over the Bankruptcy Case at the time of entry of such order, shall have been entered approving the transactions contemplated by this Agreement providing for the transfer of the Purchased Assets by Seller to Purchaser free and clear of interests pursuant to the Bankruptcy Code in form and content reasonably satisfactory to Purchaser (the "Order of Approval"). The Order of Approval shall become final and non-appealable or not stayed in conjunction with an appeal before the Closing Date, and if appealed, 11 days after entry of such order dismissing the appeal or affirming such order, which period shall have expired before the Closing Date (the "Final Court Order").

10.8 PSC Application. The Seller shall use its reasonable best efforts to support Purchaser's filing of the PSC Application with the PSC and efforts to obtain approval by the PSC of the transfer of ownership of the Purchased Assets in all respects and shall not take any actions inconsistent therewith.

10.9 PSC Approval Order. The PSC Approval Order shall have been entered by the PSC on or before December 5, 2007 approving the transfer of ownership of the Purchased Assets to Purchaser and/or its designee(s) on the terms proposed in the PSC Application without material modification.

10.10 Consent and Approvals. All material consents and approvals of and filings with the Bankruptcy Court, PSC, any Governmental Authority and or other Person which are necessary for the consummation of the transactions contemplated herein shall have been obtained and made including, but not limited to, the Final Court Order and PSC Approval Order.

## ARTICLE XI

### CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller with respect to actions to be taken on the Closing Date are subject to the satisfaction or written waiver of Seller on or prior to the Closing Date of the following conditions:

11.1 Representations and Warranties; Performance of Obligations. All representations and warranties of Purchaser contained or incorporated in this Agreement shall be true, complete and correct in all material respects as of the Closing Date as though such representations and warranties had been made on and as of that time; all of the terms, covenants and conditions of this Agreement to be complied with or performed by Purchaser at or before the Closing shall have been duly performed or complied with in all material respects.

11.2 Consent and Approvals. All material consents and approvals of and filings with the Bankruptcy Court, PSC and any Governmental Authority which are necessary for the



consummation of the transactions contemplated herein shall have been obtained and made including, but not limited to, the Final Court Order and PSC Approval Order.

## ARTICLE XII

### TERMINATION

12.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date:

(a) by mutual written consent of the Seller and the Purchaser before the entry of the Order of Approval;

(b) by the Purchaser, by notice to the Seller, if (i) the Purchaser has previously provided the Seller with written notice of a failure to perform any material covenant contained in this Agreement and the Seller has failed within five (5) business days after receipt of such notice to perform such covenant or provide adequate assurance to the Purchaser of the Seller's ability to perform such covenant and such failure, individually or in the aggregate with any other such failure, results in a Material Adverse Effect, (ii) the Bankruptcy Court fails or refuses to enter the Order of Approval; and/or (iii) PSC fails or refuses to enter the PSC Approval Order;

(c) by the Purchaser, by notice to the Seller, if the sale of the Purchased Assets is proposed or required to be conducted by public auction and Purchaser is not (i) selected as the "stalking horse" bidder for such auction and (ii) granted overbid protections, a break-up fee and other protections and rights customary for this type of transaction in connection therewith acceptable to Purchaser.

(d) automatically, upon the Seller consummating any transaction (or series of transactions) involving a sale of all or substantially all of the Purchased Assets to a purchaser or purchasers other than the Purchaser, or any Affiliate, designee or nominee of the Purchaser;

(e) by the Seller, upon notice to the Purchaser, upon a material breach of the terms and conditions of this Agreement by the Purchaser, or if any condition to the obligation of the Seller to consummate the transactions contemplated by this Agreement cannot be satisfied within the time frames, if any, set forth in this Agreement;

(f) by the Purchaser, upon notice to the Seller, upon a material breach of the terms and conditions of this Agreement by the Seller, or if any condition to the obligation of the Purchaser to consummate the transactions contemplated by this Agreement cannot be satisfied within the time frames, if any, set forth in this Agreement.

12.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 12.1 hereof, this Agreement shall become null and void and have no effect, without any Liability on the part of any party or its directors, officers, members or shareholders. Nothing in this Section 12.2 shall relieve any party to this Agreement of liability for breach of this

Agreement or impair the right of any party to compel specific performance by another party of its obligations under this Agreement.

### ARTICLE XIII

#### MISCELLANEOUS

13.1 Cooperation. Seller and Purchaser shall, subject to the terms and provisions hereof, deliver or cause to be delivered to the other on the Closing Date, and at such other times and places as shall be reasonably agreed to, such additional documents and instruments as the other may reasonably request for the purpose of carrying out the transactions contemplated by this Agreement. Seller will cooperate and use its reasonable best efforts to, and will direct the City of Salyersville to, have the directors, officers, shareholders and employees of Seller or the City of Salyersville cooperate with Purchaser prior to and after the Closing Date in furnishing information, evidence, testimony and other assistance in connection with any tax return filing obligations, actions, proceedings, arrangements or disputes of any nature with respect to matters pertaining to all periods prior to the Closing Date. Purchaser will make all of the books and records included in the Purchased Assets available to Seller after the Closing Date for any reasonable purpose.

13.2 Successors and Assigns. Each term and provision of this Agreement shall be binding upon and enforceable against and inure to the benefit of any successors or assigns of Purchaser and Seller. Nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the Parties hereto and their respective successors and assigns any rights or remedies under or by reason of this Agreement.

13.3 Entire Agreement. This Agreement (including the schedules attached hereto and the documents contemplated hereby), the Asset Purchase Agreement dated of even date herewith between Sigma Gas Corporation and DLR relating to the Rural Business (including the schedules attached thereto and the documents contemplated thereby), and the Settlement Agreement between the Parties and GOLD dated July 18, 2007, set forth the entire understanding of the Parties relating to the subject matter hereof and supersedes all agreements, arrangements and understanding relating thereto made prior to or on the date hereof, written or oral, between the parties to this Agreement.

13.4 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original but all such counterparts together shall constitute one and the same instrument.

13.5 Expenses. Whether or not the transactions contemplated by this Agreement are consummated, and except as provided for in Section 3.1, each Party to this Agreement shall pay its own costs and expenses in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, including, but not limited to, attorneys' fees and costs, accountants' fees and other professional fees and expenses.

13.6 Notices. All notices and other communications under this Agreement shall be in writing and shall be given by hand delivery, facsimile, or nationally recognized overnight courier, and shall be deemed to have been duly given (1) if delivered by hand, on the date of such delivery, (2) if delivered by facsimile, on the date of such delivery, with receipt of appropriate confirmation, and (3) if delivered by nationally recognized overnight courier, on the business day following dispatch to the respective persons named below:

If to Seller:                   SIGMA GAS CORPORATION  
                                          c/o Laura Day DelCotto, Esq.  
                                          Wise DelCotto, PLLC  
                                          200 N. Upper St.  
                                          Lexington, KY 40507

If to Purchaser:               DLR ENTERPRISES, INC.  
                                          P.O. Box 3385  
                                          Pikeville, KY 41502-3385  
                                          Attn: Jerry Kanney

With a copy to:

                                          Patricia K. Burgess, Esq.  
                                          Martin B. Tucker, Esq.  
                                          FROST BROWN TODD LLC  
                                          250 W. Main Street, Suite 2700  
                                          Lexington, KY 40507-1749

or to such other address as the person to whom notice is to be given may have previously furnished to the other in writing in the manner set for above.

13.7 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky without giving effect to the conflict of law principles thereof.

13.8 Reformation and Severability. In case any provision of this Agreement shall be held to be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality and enforceability of the remaining provisions of this Agreement and the future application of such provision shall not in any way be affected or impaired thereby (but only if and to the extent such validity would not materially and adversely frustrate the Parties' essential objective herein).

13.9 Remedies Cumulative. No right, remedy or election given by any term of this Agreement shall be deemed exclusive but each shall be cumulative with all other rights, remedies and elections available at law or in equity.

13.10 Captions. The headings of this Agreement are inserted for convenience only, shall not constitute a part of this Agreement or be used to construe or interpret any provision hereof.

13.11 Representation by Counsel. Each Party to this Agreement represents and warrants that such Party has been represented by counsel in the negotiation, drafting and execution of this Agreement. Accordingly, no provision of this Agreement shall be construed against any Party on the grounds that Party drafted the provision or caused it to be drafted.

13.12 Amendments; Waivers. This Agreement may be amended, modified or canceled (only in accordance with Article XII hereof) and the terms or covenants hereof may be waived, only by a written instrument executed by the Parties hereto, or in the case of a waiver, by the Party waiving compliance. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

**[SPACE INTENTIONALLY BLANK; SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers or other authorized representative of Seller and Purchaser as of the date first written above.

**SIGMA GAS CORPORATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

("Seller")

**DLR ENTERPRISES, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

("Purchaser")

**Exhibit A**

**(Map)**

**Schedule 2.1(e)**

**(pending permits, etc.)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 2.1(f)**

**(Assigned Contracts)**

1. Pipeline Operating Agreement dated December 1, 1993 by and between **EQUITABLE RESOURCES EXPLORATION** and Sigma Gas Corporation
2. All oil and gas leases

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**



**Schedule 2.1(i)**

**(uncategorized Purchased Assets)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 2.2(f)**

**(uncategorized Excluded Assets)**

1. All plugged or inactive wells

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 5.3**

**(Seller's Non-Contravention Exceptions)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 5.6**

**(Seller's Compliance with Laws Exceptions)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**

**Schedule 5.8**

**(Seller's Fees, Fines and Taxes Exceptions)**

**[TO BE SUPPLEMENTED OR AMENDED  
ON OR BEFORE 14 DAYS BEFORE CLOSING]**



## KEY EMPLOYEES

**Kevin Garrett: Superintendent; Responsible for day-to-day operations.** Mr. Garrett has been with Mr. Kanney's and Mr. Rohrer's companies since 1998, and has extensive training in the operation of gas pipeline systems. Additional information concerning the qualifications of Mr. Garrett was filed with the Commission in Case No. 2005-00073.

**Michael Burke: CPA, responsible for financial services and analysis.** Mr. Burke has been controller of Interstate Natural Gas Company, owned by Mr. Kanney and Mr. Rohrer, since 2001. He began his career with Ernst & Young, and worked for the First National Bank of Pikeville, Bank One, and Matewan National Bank as controller and chief financial officer before going to work in the energy industry. In 1997, he became controller and chief financial officer of Sunny Ridge Mining Company. Afterward, he served as controller of Black Mountain Resources. Additional information concerning the qualifications of Mr. Burke was filed with the Commission in Case No. 2005-00073.

**James Glass: Management.** Mr. Glass is a graduate of the University of Arkansas with a degree in marketing and management. His experience prior to joining Mr. Kanney and Mr. Rohrer includes supervision of up to 150 employees and responsibility for a \$38 million budget. Additional information concerning the qualifications of Mr. Glass was filed with the Commission in Case No. 2005-00073.

**James Meade: Management.** Mr. Meade is a graduate of Eastern Kentucky University, and holds a degree in Business Administration, Accounting. Mr. Meade has over fourteen years' experience in the accounting field, and served in the United States Army as a finance specialist for four years. Additional information concerning the qualifications of Mr. Meade was filed with the Commission in Case No. 2005-00073.

**Randy Iricks: Field Supervisor.** Mr. Iricks has been with Mr. Kanney and Mr. Rohrer's companies since 1999, and has had extensive training in pipeline safety, installation of regulators and meters, and other aspects of operating a gas utility. Additional information concerning the qualifications of Mr. Iricks was filed with the Commission in Case No. 2005-00073.

**Jackie Whitt: Field Supervisor.** Mr. Whitt has worked for Mr. Kanney and Mr. Rohrer since 2000, and has had extensive training in gas field operations. Additional information concerning the qualifications of Mr. Whitt was filed with the Commission in Case No. 2005-00073.

**Jaime Chaney: Billing, collections, PSC reporting.** Ms. Chaney has eight years' experience working for Mr. Kanney and Mr. Rohrer.

**Barry Lucas: PSC Financial Reports.** Mr. Lucas is a certified public accountant.

**Mike Potter: Surveying, Permitting and Engineering.** Mr. Potter is a Land Surveyor registered in Kentucky.

***Joe Dickerson: Management.*** Mr. Dickerson earned his BS in Business Management and Economics at New York University. He has worked for Mr. Kanney's and Mr. Rohrer's companies since 2005 and has attended numerous pipeline safety courses and conferences

***Glen Blackburn, Jason Wesley, Shane Thacker: Repair and Maintenance.*** Mr. Blackburn, Mr. Wesley, and Mr. Thacker have attended various pipeline safety courses and conferences.