

**ORIGINAL
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West Florida Natural Gas Co.

"energy for all seasons"

J.E. McIntyre
President

Call Box 1460
301 Maple Avenue
Panama City, FL 32402
(904) 872-6100

900564-64

November 19, 1990

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: West Florida Natural Gas Consumption Report

Dear Mr. Tribble:

Enclosed are the original and twelve copies of the West Florida Natural Gas Company Consumption Report for the coaltar pit loan the company has with Sun Bank, National Association. This filing is in compliance with Florida Administrative Code section 25-8.009.

If you have any questions regarding the report, please feel free to contact me at (904)872-6150.

Sincerely,

Traci Bean
Accountant

- ACK
- AFA
- APP _____
- CAF _____
- CMJ _____
- CTR Enclosures
- EMR
- LEB
- LIN
- OPC _____
- RON _____
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PSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consummation Report For : Docket No. 900564-GU
West Florida Natural Gas Company : Filed:
Term Loan on Coal Tar Pit in Ocala, :
Florida :
:

**CONSUMMATION REPORT
FOR TERM LOAN ON COALTAR
PIT IN OCALA, FLORIDA
WEST FLORIDA NATURAL GAS COMPANY**

Pursuant to Chapter 366, Florida Statutes and Chapter 25-8, Florida Administrative Code, West Florida Natural Gas Company ("WFNG" or "Company") hereby submits the following information regarding the term loan.

(1) On September 28, 1990, West Florida Natural Gas Company entered into an agreement with Sun Bank, National Association ("Bank") for a term loan for the environmental clean-up project in Ocala, Florida. The agreement stipulated that WFNG would borrow up to a maximum of two million dollars (\$2,000,000). The loan will be funded in two advances. The first advance will be in the amount of one million five hundred thousand dollars (\$1,500,000) and bears a fixed interest rate that is eleven and forty-four one hundredths percent per annum (11.44%), simple interest, with principal and interest payments due monthly beginning November 1, 1990. The second advance will be in the amount of five hundred thousand dollars, provided, however, if the second advance is not requested by WFNG and made by the Bank prior to October 1, 1992, the Bank's obligation to make the advance shall terminate. The interest rate on the second advance will be two hundred fifty (250) basis points above the Bank's three year cost of funds as it exists at the time

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the second advance is funded. The first advance on the term loan is terminated on October 1, 1993 with the final payment of one million sixty-two thousand five hundred dollars (\$1,062,500) plus accrued interest. The loan may also be terminated by payment in full by WFNG. The enclosed loan agreement contains additional covenants.

(2) The debt agreement for the term loan provides for a fixed interest rate of eleven and forty-four one hundredths percent per annum (11.44%), simple interest. This interest is due monthly.

(3) The expenses of the loan were: Legal Fees, \$4,350; UCC Search and Certificate of Good Standing, \$45; and other miscellaneous expenses, \$415. The closing statement is Exhibit D, found on page 45 of this report.

(4) Copies of the Amended and Restated Loan Agreement and the Promissory Note are submitted herewith. There was no prospectus, and no form S-7 or 10K was necessary.

(5) Closing opinions of Thompson and Knight, counsel to West Florida Natural Gas Company and closing opinions of Akerman, Senterfitt, and Eidson, environmental counsel to West Florida Natural Gas Company are enclosed.

(6) With respect to section 1(c) of Rule 25-8.009 of the Florida Administrative Code, no filings were made with the Securities and Exchange Commission or any state regulatory body other than the Florida Public Service Commission, regarding the issue.

(7) Other pertinent documents are also enclosed in this report.

WHEREFORE, WFNG submits the Consummation Report for the loan described herein.

WEST FLORIDA NATURAL GAS COMPANY


James E. McIntyre, President
and Chief Executive Officer

**WEST FLORIDA NATURAL GAS COMPANY
Consummation Report for Term Loan and
Renewal of Revolving Line of Credit
List of Exhibits**

- | | |
|------------------|---|
| Exhibit A | Amended and Restated Loan Agreement |
| Exhibit B | Photocopy of Promissory Note |
| Exhibit C | Letters of Opinion |
| Exhibit D | Loan Closing Statement and Closing Costs |
| Exhibit E | Certificates of Resolution and Incumbency
Certificates |
| Exhibit F | Guaranty Agreement |
| Exhibit G | Affidavit of Trust Company Bank |

AMENDED AND RESTATED LOAN AGREEMENT

THIS AMENDED AND RESTATED LOAN AGREEMENT (the "Agreement") made and entered into as of this 28th day of September, 1990, by and between:

SUN BANK, NATIONAL ASSOCIATION, a national banking association with its principal place of business located at 200 South Orange Avenue, Orlando, Florida 32801 (hereinafter referred to as "Bank"),

and

WEST FLORIDA NATURAL GAS COMPANY, a Florida corporation, with its principal place of business located at 301 Maple Avenue, Panama City, Florida 32402 (hereinafter referred to as "Borrower").

W I T N E S S E T H:

WHEREAS, the Bank has made a working capital line of credit loan to the Borrower pursuant to the terms of that certain Loan Agreement dated May 25th, 1990 (the "Loan Agreement"); and

WHEREAS, the Borrower has requested the Bank to (i) renew its commitment under the working capital line of credit loan and extend the term of that loan until December 31, 1991, and (ii) extend a term loan to it in the principal amount of \$2,000,000.00 for the purpose of funding the costs associated with completing the removal of certain hazardous wastes from a facility owned by the Borrower in Ocala, Florida; and

WHEREAS, the Bank has agreed to renew its commitment pursuant to the working capital line of credit loan, extend the term of said loan, and extend the term loan to the Borrower.

NOW, THEREFORE, in consideration of the premises and the monies to be advanced hereunder by Bank to Borrower, the parties hereto, intending to be legally bound, agree as follows:

1. **Definitions.** As used herein:

(a) "Account" means an immediate right to payment for goods and services sold or leased and includes any right to payment under a contract whether or not it has been earned by performance.

(b) "Bonds" shall mean those Bonds referred to in the Indenture of Mortgage, Deed of Trust and Security Agreement dated as of June 30, 1988 between the Borrower and the Bank as Trustee.

(c) "Borrowing Base" means, at any date of determination thereof (which date and determination shall be in the Bank's discretion), an amount equal to (i) seventy-five percent (75%) of the Qualified Accounts and (ii) fifty percent (50%) of the Qualified Inventory; provided, however, in no event shall the aggregate principal balance of all Revolving Loans outstanding hereunder at any one time exceed \$1,000,000.00.

(d) "Borrowing Base Certificate" means a certificate executed and certified correct by an officer of the Borrower, in a form acceptable to the Bank, setting forth a calculation of Borrowing Base and borrowing capability under this Agreement.

(e) "Consent Order" means that certain Consent Order between the State of Florida Department of Environmental Regulation and the Borrower in connection with Case No. 86-0666 dated January 20th, 1988 as it may be amended, supplemented or modified from time to time.

(f) "Current Debt" means those Liabilities of the Borrower or any portion thereof, the maturity of which will not extend beyond one (1) year from the date said determination is to be made.

(g) "Equipment" means all goods used by the Borrower in its business.

(h) "Existing Indebtedness" means any and all indebtedness of the Borrower shown on the balance sheet of the Borrower as of June 30, 1989 together with any additions, renewals or extensions thereof; provided, however, any additional indebtedness must be advanced pursuant to the Bonds and the incurrence of such additional indebtedness shall not adversely affect the Borrower's compliance with the financial covenants hereof.

(i) "Fixed Charges" means the sum of (a) 100% of the amount of all rentals under all operating leases payable during such period by the Borrower, (b) all interest and all amortization of debt discount (excluding any discount of a debt instrument which was issued concurrently with any equity instrument) and expense on all indebtedness of the Borrower, including the imputed interest in respect of capitalized rentals of the Borrower, and (c) all required or regularly scheduled principal payments of the Borrower.

(j) "Funded Debt" shall mean and include without duplication,

(1) any liability or obligation payable more than one year from the date of creation thereof, which under GAAP is shown on the balance sheet of the Borrower as a Liability (including capitalized lease obligations but excluding reserves for deferred income taxes and other reserves to the extent that such reserves do not constitute an obligation),

(2) indebtedness payable more than one (1) year from the date of creation thereof which is secured by any lien on property owned by the Borrower, whether or not the indebtedness secured thereby shall have been assumed by Borrower,

(3) guarantees, endorsements (other than endorsements of negotiable instruments for collection in the ordinary course of business), and other contingent liabilities of the Borrower (whether direct or indirect) in connection with the obligation, stock, or dividends of any person,

(4) obligations under any contract providing for the making of loans, advances, or capital contributions by the Borrower to any person in order to enable such person primarily to maintain working capital, net worth, or any other balance sheet condition or to pay debts, dividends, or expenses, and

(5) obligations under any other contract which, in economic effect, is substantially equivalent to a guarantee of the Borrower;

all as determined in accordance with GAAP.

(k) "Guarantor" shall mean West Florida Gas Inc., a Florida corporation.

(l) "Guaranty" shall mean the Guaranty Agreement dated of even date herewith of the Guarantor in favor of the Bank together with any modifications or extensions thereof.

(m) "Intangible Assets" shall mean those assets of the Borrower which are (i) deferred assets, other than prepaid insurance and prepaid taxes; (ii) patents, copyrights, trademarks, trade names, franchises, good will, experimental expenses and other similar assets which would be classified as "intangible assets" under GAAP; (iii) the cost of assets acquired in excess of book value; and (iv) treasury stock and any write-up of the value of any assets after June 30, 1989 unless in accordance with GAAP.

(n) "Inventory" means all goods held for sale or lease in Borrower's business.

(o) "Liability" or "Total Liabilities" means all liabilities (primary, secondary, direct, contingent, sole, joint or several) due or to become due or that may be hereafter contracted or acquired of Borrower.

(p) "Loan" or "Loans" shall mean the Revolving Loans or Term Loans made pursuant to this Agreement.

(q) "Pro-Forma Fixed Charges" means, as of the date of any determination thereof, the maximum aggregate amount of Fixed Charges which would have become payable by the Borrower in such period determined on a pro-forma basis giving effect as of the beginning of such period to the incurrence of any proposed indebtedness and the concurrent retirement, if any, of outstanding indebtedness. For the purposes of all computations of Pro Forma Fixed Charges under Paragraph 5(1) hereof, interest charges on indebtedness evidenced by an obligation bearing interest at a variable rate or at different fixed rates shall be calculated on the basis of the interest rate payable in respect of such obligation on and as of the last day of the period for which such interest charges are to be computed.

(r) "Prime Rate" shall mean the annual interest rate announced by Sun Banks, Inc. from time to time, as the prime rate (which interest rate is only a benchmark, is purely discretionary and is not necessarily the best or lowest interest rate charged borrowing customers of any subsidiary bank of Sun Banks, Inc.).

(s) "Qualified Accounts" shall mean all Accounts of the Borrower excluding such Accounts outstanding at any time which have not been paid in full ninety (90) days from and after the date of the invoice or billing statement representing the Account.

(t) "Qualified Inventory" shall mean all of the Borrower's Inventory.

(u) "Revolving Loans" shall mean the loan or loans up to but not exceeding the principal amount of \$1,000,000.00 made to the Borrower by the Bank in accordance with the terms of this Agreement.

(v) "Tangible Assets" shall mean all assets of the Borrower, all as determined in accordance with GAAP, but excluding Intangible Assets.

(w) "Tangible Net Worth" shall mean the excess of (i) Tangible Assets over (ii) Total Liabilities, all as determined in accordance with GAAP.

(x) "Term Loans" shall mean the term loan or loans in a principal amount not to exceed \$2,000,000.00 made to the Borrower

by the Bank in accordance with the terms of this Agreement and the applicable note or notes evidencing the Term Loans.

2. Accounting Terms. All accounting terms used herein shall be construed in accordance with generally accepted accounting principles ("GAAP") (unless such terms are specifically defined otherwise herein) consistently applied and all financial data prepared pursuant to this Agreement shall be prepared in accordance with GAAP. In the event of ambiguities or changes in GAAP, the more conservative principle or interpretation shall be used.

3. Loans. (a) Revolving Loan. The Bank agrees, on the terms and conditions set forth herein, to lend to the Borrower from time to time, upon the Borrower's request, up to the lesser of (i) the Borrowing Base or (ii) \$1,000,000.00. Said loans may be in the form of actual cash advances or, if approved by the Bank, may be in the form of commitments to advance funds pursuant to Letters of Credits (whether standby or commercial) issued on behalf of the Borrower; provided, however, the aggregate of the actual cash advances together with the total commitments to advance funds pursuant to Letters of Credit (whether or not funds are actually advanced pursuant thereto) shall not exceed \$1,000,000.00 at any one time. The Revolving Loan may revolve during the term of the Revolving Loan; accordingly, during the term of the Revolving Loan, the Borrower may borrow up to the maximum principal amount of said Revolving Loan, repay all or any portion of such principal amount of said Revolving Loan, and reborrow up to such maximum principal amount, subject to the terms and conditions set forth herein; provided, however, that at least once each calendar year (beginning in 1990) the Borrower shall reduce to a nominal amount (less than \$100.00) the aggregate outstanding principal balance under the promissory note or notes evidencing the Revolving Loan, and for a period of forty-five (45) consecutive days from the date of such reduction, the Borrower shall request and the Bank shall make, no advances with respect to the Revolving Loan. The Bank's commitment to advance funds hereunder shall expire on December 31, 1991 unless reaffirmed by Bank in writing prior to that date or terminated earlier as provided herein. Borrower shall execute its promissory note or notes for all loans and advances made by Bank to Borrower under this Agreement, each of said notes to be payable as provided herein and to bear interest at the rate hereinafter provided. At any time, the aggregate principal amount of all said advances under the Revolving Loan and Letters of Credit together with commitments to advance funds pursuant to Letters of Credit as provided herein shall never exceed the sum of \$1,000,000.00. The actual principal balance due the Bank at any given date will be determined not by the face amount of the note or notes referred to herein, but by the amount actually advanced by the Bank to Borrower (including any advances made in connection with any commitments to advance funds pursuant to a

letter of credit issued by the Bank on behalf of the Borrower), plus interest thereon, less any sums collected by Bank in payment of interest and in reduction of principal of the Revolving Loan. Notwithstanding the interest rate provided on any said notes, the interest rate on any and all principal sums remaining from time to time unpaid hereunder shall be at a per annum rate which shall be the Prime Rate plus one-half of one percent (0.5%); provided however, that said interest rate shall never exceed the maximum rate allowed, from time to time, by law, with any change in the Prime Rate to be effective on the day any such change in the Prime Rate is announced by the Bank.

(b) **Term Loans.** The Bank agrees to lend to the Borrower up to the maximum principal amount of the Term Loan on the terms and conditions set forth herein. The Term Loan will be advanced in two advances, the first advance will be in the amount of \$1,500,000.00 and the second advance will be in the amount of \$500,000.00; provided, however, if the second advance is not requested by the Borrower and made by the Bank prior to October 1, 1992, the Bank's obligation to make said advance shall terminate. The interest rate on the second advance will be two hundred fifty (250) basis points above the Bank's three year cost of funds as it exists at the time the second advance is funded. The repayment of the Term Loan represented by the second advance will be amortized over the remaining portion of the ten year period that commences on the date the first advance is funded with a balloon payment due on October 1, 1993. The Borrower will execute and deliver to the Bank such note or notes as may be necessary to evidence the advances under the Term Loans. The Term Loans shall bear interest as set forth in their respective notes and shall be due and payable in accordance with the terms thereof.

4. **Negative Covenants.** Except for the Existing Indebtedness and the security interest created pursuant thereto and as otherwise provided herein, so long as any Liability to Bank is outstanding, Borrower will not without the prior written consent of Bank, borrow from anyone except Bank on security of, or pledge or grant any security interest in any of its Accounts or Inventory to anyone except Bank, or permit any lien or encumbrance to attach to any of its Accounts or Inventory, or any levy to be made thereon, or any financing statement (except Bank's financing statement) to be on file with respect thereto.

5. **Affirmative Covenants.** Borrower represents and warrants the following:

(a) The Borrower (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, (ii) has all the requisite power and authority, corporate and otherwise, to own its properties and assets and to carry on its business as is now conducted and proposed to be

conducted, (iii) is duly qualified to do business and is in good standing in every jurisdiction in which the character of its properties or assets owned and the nature of its activities conducted make such qualification necessary, and (iv) has the corporate authority to execute and deliver, and to perform its obligations under this Agreement, the note and the other loan documents.

(b) The execution and performance of the loan documents by the Borrower (i) have been duly authorized by all requisite corporate action, (ii) will not violate (A) any provision of law, any governmental rule or regulation, any order of any court or other entity of government or the Articles of Incorporation or Bylaws of the Borrower or (B) any provision of any indenture, agreement, or other instrument to which the Borrower is a party or by which the Borrower or any of its properties or assets are bound, (iii) will not be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, and (iv) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Borrower other than is permitted by the terms hereof.

(c) The Borrower shall at all times preserve and maintain in full force and effect its corporate existence, powers, rights, licenses, permits and franchises in the jurisdiction of its incorporation; continue to conduct and operate its business substantially as conducted and operated during the present and preceding fiscal year of the Borrower; operate in substantial compliance with all applicable laws, statutes, regulations, certificates of authority and orders in respect of the conduct of its business; and qualify as a foreign corporation in each jurisdiction in which such qualification is necessary or appropriate in view of its business and operations.

(d) The Borrower will not consolidate with or merge into any other corporation, or permit another corporation to merge into it (unless the Borrower is the surviving corporation), or dissolve or take or omit to take any action which would result in the dissolution of Borrower or acquire all or substantially all the properties or assets of any other person, or enter into any arrangement, directly or indirectly, with any person whereby the Borrower shall sell or transfer any property, real or personal, whether now owned or hereafter acquired, having a fair market value in the aggregate as to all such arrangements outstanding during the term of this Agreement in excess of \$750,000.00.

(e) The Borrower will provide to the Bank (i) a monthly aging report of Borrower's Accounts, (ii) a monthly Borrowing Base Certificate, (iii) a compliance certificate in form satisfactory to the Bank to be delivered to the Bank at the end

of each calendar quarter and (iv) other information or financial reports as Bank may from time to time specify or require. Borrower will permit Bank or its nominee to examine all of Borrower's records relating thereto at any time, and to make extracts therefrom.

(f) At all times during the term of this Agreement, the ratio of Liabilities of Borrower to its Tangible Net Worth shall not exceed 2.75:1.0.

(g) At all times during the term of this Agreement, the Tangible Net Worth of the Borrower shall be equal to or greater than \$6,200,000.00.

(h) Each fiscal year during the term of this Agreement, commencing with the fiscal year ending June 30, 1989, the Borrower shall retain earnings in an amount equal to at least twenty-five percent (25%) of its net after-tax income; provided, however, Borrower will not make any distributions unless it has satisfied its principal and interest payments due during such fiscal year on its Funded Debt and Current Debt.

(i) At all times during the term of this Agreement, the Debt Service Coverage Ratio of the Borrower, measured at the end of each of the Borrower's fiscal quarters, beginning June 30, 1989, for Borrower's preceding four fiscal quarters, shall equal or exceed 1.5:1.0. For the purposes hereof, the "Debt Service Coverage Ratio" shall equal the ratio of (i) net income after taxes plus depreciation, amortization, interest expense and non-cash charges to (ii) the sum of (A) principal and interest payments due during such fiscal year on Funded Debt and Current Debt, and (B) cash dividends or cash payments.

(j) Except for Existing Indebtedness and as otherwise provided herein, the Borrower will not create, incur, assume, or suffer to exist any Liabilities other than Liabilities described in clauses (i) or (ii) of this subsection:

(i) endorsements in the ordinary course of business of negotiable instruments in the course of collection; and

(ii) trade payables incurred by the Borrower in the ordinary course of business and liabilities on the Borrower's books as of June 30, 1989.

(k) For any fiscal quarter of Borrower beginning after June 30, 1989, Borrower shall not permit any distribution to be made in either cash, stock or other property to the extent that any such distribution when aggregated with any other distribution made by Borrower exceeds seventy-five percent (75%) of the Borrower's aggregate net income for the preceding fiscal quarter;

provided, however, Borrower will not make any distributions unless it has satisfied its principal and interest payments due during such fiscal year on its Funded Debt and Current Debt.

(l) The Borrower shall be permitted to incur additional indebtedness provided that (i) the cash available for Fixed Charges for the four fiscal quarters immediately preceding the date such additional indebtedness is to be incurred is not less than one hundred fifty percent (150%) of the Pro Forma Fixed Charges for such four fiscal quarters and (ii) after giving effect to the incurrence of such additional indebtedness, the Borrower shall not be in default of any covenant, financial or otherwise.

(m) The Borrower shall promptly provide the Bank with such current and complete information with regard to rate hearings or regulatory proceedings involving the Borrower as the Bank may request and will promptly report any developments to Bank which may have an adverse impact on its current or future earnings.

(n) The Borrower shall provide to the Bank an opinion from corporate counsel for the Borrower in form acceptable to Bank.

(o) The Borrower will not make any substantial change in the basic type of business conducted by the Borrower as of June 30, 1989.

(p) The Borrower will submit to Bank unaudited financial statements, including a balance sheet and income statement within sixty (60) days of the end of each fiscal quarter and audited financial statements, certified without material qualification by a nationally recognized independent certified public accountant shall be submitted to the Bank within one hundred twenty (120) days after the end of the Borrower's fiscal year.

(q) The Borrower will keep accurate and complete records of its Accounts and Inventory.

(r) The Borrower shall maintain its primary Florida banking relationship with the Bank or with designated affiliates of the Bank.

(s) The Borrower will pay and discharge when due all taxes, levies and other charges on all of its real or personal property.

(t) The Borrower shall maintain insurance on its real and personal property in such amounts, types and with such insurers as are acceptable to Bank, which insurance, in any case,

shall be comparable to the insurance coverage maintained by similarly situated companies in Borrower's industry.

(u) The Guaranty shall remain in full force and effect for so long as the Bank has an obligation hereunder to advance funds to the Borrower and the Guarantor shall not seek to cancel the Guaranty.

(v) The Borrower has complied and will at all times continue to comply with the terms of the Consent Order and any other directives from any regulatory agency relating to the completion of the removal of hazardous waste from the Borrower's facility described in the Consent Order. The Borrower will use its best efforts to effect the removal of the hazardous waste materials from the property described in the Consent Order in a timely manner and will keep the Bank advised of all developments relating thereto.

6. Representations and Warranties. Borrower represents and warrants that Borrower is and will be absolute owner of all of its Accounts, Equipment, Inventory and all of its other real and personal property, clear of all encumbrances and security interests whatsoever except for those relating to the Existing Indebtedness.

7. Default. If at any time any warranty, representation, certificate or statement of Borrower is not true, or if any Liability or any part or installment thereof or interest thereon is not paid when due, or if any event of default as defined in any note or other evidence of Liability held by Bank should occur, or if Borrower should fail to observe or perform any agreement or term hereof, or if the Borrower or the Guarantor shall be in default under any material agreement to which either is a party, or if Bank at any time deems itself insecure, Bank may, at its option, thereupon or thereafter declare all Liabilities of Borrower to Bank, or any of them selected by Bank (notwithstanding any provisions thereof) immediately due and payable without demand or notice of any kind and the same thereupon shall immediately become and be due and payable without demand or notice (but with such adjustments, if any, with respect to interest or other charges as may be provided for in the promissory note or other writing evidencing such Liability), and Borrower shall pay to Bank on demand any and all costs and expenses, including legal expenses and reasonable attorneys' fees including costs, expenses and attorneys' fees on appeal, incurred or paid by Bank in protecting and enforcing Liabilities and the right of Bank hereunder. Any notice of sale, disposition or other intended action by Bank, sent to Borrower at the address specified in the preamble to this agreement, or such other address of Borrower as may from time to time be shown on Bank's records, at least five (5) days prior to such action, shall constitute reasonable notice to Borrower.

8. Waiver of Notice. Borrower waives presentment, notice of dishonor and protest of all commercial paper at any time held by Bank on which Borrower is in any way liable, notice of non-payment at maturity of any and all Accounts, and except where required hereby, notice of action taken by Bank; or by any act or omission on the part of Bank, its officers, agents and employees, except willful misconduct.

9. Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to pay, and save the Bank harmless against liability for the payment of, all out-of-pocket expenses arising in connection with this transaction, all taxes, together in each case with interest and penalties, if any, which may be payable in respect of the execution, delivery and performance of this Agreement or the execution, delivery and performance of the notes issued under or pursuant to this Agreement (excepting only any tax on or measured by net income of the Bank determined in substantially in the same manner, other than the rate of tax, as net income is presently determined under the Internal Revenue Code), the reasonable legal fees and expenses (whether incurred at trial, any bankruptcy or appellate proceeding or otherwise) of counsel to the Bank in connection with the negotiation, preparation and enforcement of this Agreement, the notes or any of the other loan documents.

10. Miscellaneous. No waiver by Bank of any default shall operate as a waiver of any other default or of the same default on a future occasion. No delay or omission on the part of Bank in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Bank of any right or remedy shall preclude or affect any other or further exercise thereof or the exercise of any other right or remedy. Time is of the essence of this Agreement. The provisions of this Agreement are cumulative and in addition to the provisions of any Liability and any note or other writing evidencing any Liability secured by this Agreement, and Bank shall have all the benefits, rights and remedies of and under any Liability and any note or other writing evidencing any Liability secured hereby. The singular pronoun, when used herein, shall include the plural, and the neuter shall include the masculine and feminine. All rights of Bank hereunder shall inure to the benefit of its successors and assigns; and all obligations of Borrower shall bind the heirs, executors, administrators, successors and assigns of each Borrower. BORROWER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY CIVIL ACTION ARISING OUT OF, OR BASED UPON, THIS AGREEMENT. If this Agreement is not dated when executed by the Borrower, the Bank is authorized, without notice to the Borrower, to date this Agreement.

11. Term. This Agreement may be terminated by Borrower by the payment of all sums due hereunder, including any prepayment

penalties applicable to Term Loans, at any time, and the Bank's obligation to make Revolving Loans may be terminated by Bank upon thirty (30) days written notice to the Borrower, mailed or delivered to the address shown in the preamble of this agreement or to the last known address of the Borrower or other party to whom such notice is addressed, shown on the records of the Bank or otherwise known, and upon the expiration of said thirty (30) day period Bank shall be under no obligation to make further advances hereunder but in any event Bank's commitment to advance funds under the Revolving Loan hereunder shall terminate on December 31, 1991 unless renewed in writing prior to that time; but no such termination shall in any way affect the rights and liabilities of the parties hereunder relating to loans made and collateral pledged prior to the date named in such notice.

12. General. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

13. Amendment and Restatement. This Agreement is an amendment and restatement of that certain Loan Agreement, dated May 25, 1990, by and between the Bank and the Borrower. As such, it replaces said Loan Agreement. The Borrower represents that there are no defaults under said Loan Agreement as of the date hereof.

IN WITNESS WHEREOF, Borrower and Bank have caused these presents to be executed by their proper officers under due corporate authority, and their corporate seals to be affixed, this the day and year first above written.

BORROWER:

WEST FLORIDA NATURAL GAS COMPANY

By: James E. McIntyre
James E. McIntyre
President

ATTEST: D.W. Hughes
Name D.W. HUGHES
Title: SECRETARY

(CORPORATE SEAL)

BANK:

SUN BANK, NATIONAL ASSOCIATION

By: 
Kathryn Sikes, Vice President



\$ 1,500,000.00

PROMISSORY NOTE

Exhibit B

Docket No. 900564-GU
September 28 19 90

The undersigned (whether one or more hereinafter called "Maker"), jointly and severally, promise(s) to pay to the order of Sun Bank, National Association (herein called "Bank") at its offices located at Orlando Florida, One Million Five Hundred Thousand and 00/100 DOLLARS (\$1,500,000.00), together with interest from the date hereof at the rate hereinafter provided, in the following manner.

REPAYMENT SCHEDULE:

Single Payment: Principal Due in Full On: _____ Interest Payable: _____

Instalment Payment (including interest): In _____ (No.) _____ (Period)

Instalments of \$ _____ commencing on _____, 19 _____, and on the same

date thereafter, together with a FINAL PAYMENT of \$ _____ due on _____, 19 _____, together with, at the bank's option, a late charge not to exceed 5% of the amount of any payment or payments in default, if the original principal amount above is fifty thousand dollars (\$50,000) or less and is repayable in instalments.

Instalment Payment (plus interest): 35 _____ (No.) _____ (Period)

Principal instalments of \$ 12,500.00, plus interest, commencing on November 1, 19 90, and on the same day of each successive month thereafter, together with a FINAL PAYMENT of \$ 1,062,500.00 plus accrued interest due and payable on October 1, 19 93

together with, at the bank's option, a late charge not to exceed 5% of the amount of any payment or payments in default, if the original principal amount above is fifty thousand dollars (\$50,000) or less and is repayable in instalments.

Multiple Payment: Principal and interest are payable as follows: _____

ON DEMAND: Principal payable ON DEMAND with interest payable _____ commencing on _____ and each _____ thereafter.

THE INTEREST RATE IS AS FOLLOWS: If checked here, the interest rate provided herein shall be computed on the basis of a 360 day year and shall be calculated for the actual number of days elapsed.

VARIABLE INTEREST RATE:

Not applicable

Applicable, provided however that the interest rate charged hereunder shall never exceed the maximum rate allowed, from time to time, by law.

If applicable, the interest rate stated herein shall, from time to time, automatically increase or decrease so that at all times it shall be equivalent to (check appropriate box and complete):

_____ % over the annual interest rate announced by Sun Banks, Inc., from time to time, as the prime rate (which interest rate is only a bench mark, is purely discretionary and is not necessarily the best or lowest rate charged borrowing customers of any subsidiary bank of Sun Banks, Inc.). Any such change in prime rate will increase or decrease your periodic interest payments. Any change in prime rate shall be effective at the beginning of the business day on which such change is announced; or,

_____ % over the _____

FIXED RATE Applicable at 11.44% per annum, simple interest. Not Applicable.

SERVICE FEE A Service fee of the lesser of \$50.00 or 2 percent of the principal amount of this loan, which will not be refunded in the event of prepayment.

In the event any instalment of principal or interest or any part thereof is not paid when it becomes due, or in the event of any default thereunder, the principal sum remaining unpaid hereunder, together with all accrued and past due interest thereon, shall immediately and without notice become due and payable at the election of the holder at any time thereafter.

Notwithstanding any rate of interest provided herein, the interest rate on any payment or payments of principal or interest, or any part thereof, which is not made when due shall, thereafter, be at the maximum rate allowed, from time to time, by law. You will not be entitled to a refund of any service fee. Minimum interest of \$10.00 on any single payment loan or \$15.00 on any instalment loan will be charged on loans not exceeding \$50,000.

This note is SECURED UNSECURED (Notwithstanding the fact that this note is marked 'unsecured', Maker understands and agrees that any other security interest the Bank now holds or may hereafter acquire from the Maker may secure this note).

As security for the payment of this note Maker has pledged or deposited with Bank and hereby grants to Bank a security interest in the following property: This Promissory Note is the Note referred to in the Amended and Restated Loan Agreement dated of even date herewith by and between the Bank and the Maker, as it may be amended from time to time, and is subject to all the terms and conditions thereof.

(including all cash, stock and other dividends and all rights to subscribe for securities incident to, declared, or granted in connection with such property and including any returned or unearned premiums from any insurance financed hereunder), which property, together with all additions and substitutions hereafter pledged or deposited with Bank is called the Collateral. The Collateral is also pledged as security for all other liabilities (primary, secondary, direct, contingent, sole, joint or several), due or to become due or which may be hereafter contracted or acquired, of each Maker (including each Maker and any other person) to Bank. The surrender of this note, upon payment or otherwise, shall not affect the right of Bank to retain the Collateral for such other liabilities.

Maker understands and agrees that the additional agreements and provisions on the reverse side hereof, hereby incorporated by reference, constitute agreements of the Maker and a part of this note. Maker acknowledges receipt of a completed copy of this note.

NOTICE TO COSIGNER. You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to be sure you can afford to pay if you have to, and that you want to accept this responsibility. You may also have to pay late fees or collection costs, which increase this amount. The Bank can collect this debt from you without first trying to collect from the borrower. The Bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record. This notice is not the contract that makes you liable for the debt.

WEST FLORIDA NATURAL GAS COMPANY
ADDRESS: 301 Maple Avenue Panama City Florida 32402
By: James E. McIntyre, President (SEAL) September 28, 1990

(SEAL) Date

This space for Bank records only

PROCEEDS	DOCUMENT STAMPS	OTHER CHARGES	NOTE AMOUNT
OFFICER INITIALS	NOTE NUMBER	ACCOUNT NUMBER	SERVICE FEE

The variable interest rate is not adjustable and if this note is payable on demand, the payee reserves and is hereby granted the right to adjust the interest rate from time to time by ~~inserting a new rate~~ such adjusted rate provided however that such adjusted rate shall exceed the maximum rate allowed from time to time by law.

Additions, reductions or exchanges of, or substitutions for the Collateral, payments on account of this note or increases of the name of, or other items made partially or wholly upon the Collateral, may from time to time, be made without affecting the provisions of this note.

If Bank deems itself insecure, or upon the happening of any of the following events, each of which shall constitute a default hereunder, all liabilities of each Maker to Bank shall thereupon or thereafter, at the option of the Bank, without notice or demand and become due and payable: (a) failure of any Obligor (which term shall mean and include each Maker, endorser, surety and guarantor of this note, to perform any agreement hereunder, to pay interest hereon when due or requested or demanded or to pay any other obligation of Bank when due; (b) the death of any Obligor; (c) the filing of a petition under the Bankruptcy Code or any other applicable law, or against any Obligor, or an application for the appointment of a receiver or the making of an order for the entry of a judgment against any Obligor; (d) the taking of any action against the property of any Obligor; (e) the taking of any action against the property of Bank; or (f) the taking of any action against the property of any Obligor.

Bank shall have the benefit of all equities and defenses which any Obligor may have against the property of any Obligor, but Bank shall not be bound to exhaust such equities and defenses. Bank shall have the benefit of all equities and defenses which any Obligor may have against the property of any Obligor, but Bank shall not be bound to exhaust such equities and defenses.

Bank shall have the benefit of all equities and defenses which any Obligor may have against the property of any Obligor, but Bank shall not be bound to exhaust such equities and defenses. Bank shall have the benefit of all equities and defenses which any Obligor may have against the property of any Obligor, but Bank shall not be bound to exhaust such equities and defenses.

Bank shall exercise reasonable care in the custody and preservation of the Collateral to the extent required by applicable law and if it takes such action for that purpose it shall be deemed to have exercised reasonable care. Bank shall not be liable for any loss of or damage to the Collateral if it takes such action for that purpose to preserve the Collateral.

Bank shall have the right, which may be exercised at any time whether or not this note is due, to notify the Obligors on any Collateral to make payment to Bank on any amount due or to become due thereon. In the event of any default hereunder, Bank and its creditors hereon shall not be limited to the following rights: (i) to pledge or transfer this note and the Collateral and Bank shall thereupon be relieved of all duties and responsibilities hereunder, and relieved from any and all liability with respect to any Collateral transferred; and any proceeds or transfers shall for all purposes stand in the place of Bank hereunder and have all the effect as if they were made in the name of itself or its nominee.

GUARANTEE

In addition to the liability as endorser, which the undersigned hereby assumes, for value received and intending to be legally bound, the undersigned (and if more than one, each of them jointly and severally) (a) hereby become surety to the payee of the within note, its successors, endorsees and assigns, for the payment of the within note, and hereby unconditionally guarantee the payment of the within note and all extensions or renewals thereof and all sums payable under or by virtue thereof, including, without limitation, all amounts of principal and interest and all expenses (including attorney's fees) incurred in the collection thereof, the enforcement of the rights thereunder or with respect to any security therefor and the enforcement hereof, and waive presentment, demand, notice of dishonor, protest and all other notices whatsoever; and (b) consent and agree that all or any of the Collateral may be exchanged, released, surrendered or sold from time to time; (c) that the payment of the note or any of the liabilities of the Maker thereof, may be enforced by said note renewed any number of times and for any period, whether or not longer than the original period of said note; and that the holder of said note may grant any releases, compromises or indulgences with respect to said note or any extensions or renewals thereof or any security therefor or to any party liable thereunder or hereon (including but not limited to failure or refusal to exercise one or more of the rights or remedies provided by said note); and (d) that any of the provisions of said note may be modified, all without notice to or consent of and without affecting the liability of the undersigned as endorser and surety; and further consent and agree that any of the undersigned may be sued by the holder hereof with or without consent of the other endorser or makers of said note and without first or contemporaneously undertaking to enforce any rights with respect to any security therefor or any of them, and without first or contemporaneously undertaking to enforce any rights with respect to any security therefor or any of them.

The undersigned acknowledges having received and read the NOTICE TO CO-SIGNER appearing on the reverse side hereof.

(DATE) _____ (SEAL) _____
(DATE) _____ (SEAL) _____
(DATE) _____ (SEAL) _____

FLORIDA DOCUMENTARY STAMP TAX REQUIRED BY LAW IN THE AMOUNT OF \$ _____ HAS BEEN PAID OR WILL BE PAID DIRECTLY TO THE DEPARTMENT OF REVENUE CERTIFICATE OF REGISTRATION # _____

RENEWAL NOTE STAMPS ON ORIGINAL

STATE OF GEORGIA

COUNTY OF Fulton

On this 25 day of September, 1990, personally appeared James E. McIntyre, President of West Florida Natural Gas Company, and before me executed the foregoing attached Promissory Note of even date herewith in the principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) payable by West Florida Natural Gas Company to Sun Bank, National Association.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public

My Commission Expires:

Notary Public, Fulton County, Georgia
My Commission Expires Aug. 18, 1991

(NOTARIAL SEAL)

THOMPSON & KNIGHT

ATTORNEYS AND COUNSELORS

3800 FIRST CITY CENTER

1700 PACIFIC AVENUE

DALLAS, TEXAS 75201

(214) 698-1700

FAX (214) 698-0700 TELEX 70-6286

1800 FIRST REPUBLICBANK TOWER
501 CHERREY STREET
FORT WORTH, TEXAS 76102

1800 SAN JACINTO CENTER TOWER LANE
88 SAN JACINTO BOULEVARD
AUSTIN, TEXAS 78701

DIRECT DIAL:
(214) 698-

September 28, 1990

Sun Bank, National Association
200 South Orange Avenue
Orlando, Florida 32801

Re: West Florida Gas Inc.
West Florida Natural Gas Company

Gentlemen:

We are acting as counsel for West Florida Natural Gas Company, a Florida corporation ("Borrower"), and West Florida Gas Inc., a Florida corporation ("Guarantor"), in connection with a credit facility providing for (i) advances to and letters of credit for the account of Borrower by Sun Bank, National Association, a national banking association (the "Bank"), from time to time of up to \$1,000,000, and (ii) a term loan or loans by the Bank to Borrower, not to exceed \$2,000,000. Such facility is evidenced by the terms and provisions of the Amended and Restated Loan Agreement of even date herewith between Borrower and the Bank (the "Loan Agreement"). The advances to Borrower pursuant to the Loan Agreement are evidenced by (i) that certain promissory note dated May 25, 1990, in the original principal amount of \$1,000,000, made payable by Borrower to the order of the Bank (the "Working Capital Note") and (ii) that certain promissory note of even date herewith, in the original principal amount of \$1,500,000, made payable by Borrower to the order of the Bank (the "Term Note") (the Working Capital Note and the Term Note being herein collectively referred to as the "Notes"). The performance by Borrower of its obligations under the Loan Agreement and the Notes has been guaranteed by Guarantor pursuant to the Guaranty Agreement of even date herewith between Guarantor and the Bank (the "Guaranty"). We participated in and are familiar with the corporate proceedings of Borrower relating to the execution and delivery of the Loan Agreement and the Term Note and of Guarantor relating to the execution and delivery of the Guaranty.

In connection with the foregoing, we have researched such questions of law and examined the originals or copies, certified or otherwise authenticated to our satisfaction, of (i) the Loan

**Sun Bank, National Association
September 28, 1990
Page 2**

Agreement, the Term Note and the Certificate of Resolution of Board of Directors and Incumbency Certificate of Borrower executed in connection with the execution and delivery of the Loan Agreement (the "Other Borrower Document"), (ii) the Guaranty and the Certificate of Resolution of Board of Directors and Incumbency Certificate of Guarantor executed in connection with the execution and delivery of the Guaranty (the "Other Guarantor Document"), and (iii) such corporate records, agreements or other instruments of Borrower and Guarantor, certificates of public officials and of officers of Borrower and Guarantor and other instruments and documents as we have deemed necessary to require as a basis for the opinions hereinafter expressed. As to various questions of fact material to such opinions, we have relied upon the representations and warranties of Borrower and Guarantor set forth in the Loan Agreement and Guaranty, respectively, and upon certificates or statements of officers of Borrower and Guarantor.

Based upon the foregoing and in reliance thereon, and subject to the qualifications hereinafter specified, we advise you that in our opinion:

1. Each of Borrower and Guarantor is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida.

2. Borrower has the corporate power and authority to execute, deliver and perform the Loan Agreement and the Term Note, and to borrow under the Loan Agreement. Guarantor has the corporate power and authority to execute, deliver and perform the Guaranty. The Loan Agreement, the Term Note and the Guaranty have been duly authorized, executed and delivered by Borrower and Guarantor, as the case may be, and, assuming (i) the due execution and delivery thereof on behalf of the Bank, (ii) that funds are advanced to Borrower by the Bank under the Loan Agreement and the Term Note and (iii) that the laws of the State of Texas were to be applied to govern the construction and interpretation of the Loan Agreement, the Term Note and the Guaranty, constitute the legal, valid and binding obligations of Borrower and Guarantor, as the case may be, enforceable against Borrower and Guarantor, as the case may be, in accordance with their respective terms.

3. To the best of our knowledge after due inquiry, except for the approval of the Florida Public Service Commission (the "FPSC") referred to in paragraph (b) below, no consent, license, approval or authorization of, or registration or declaration with, any governmental body, authority, bureau or agency is required in connection with the execution and delivery by Borrower of the Loan Agreement, the Term Note and the Other Borrower Document, or in connection with the execution and delivery by Guarantor of the Guaranty and the Other Guarantor Document.

Sun Bank, National Association
September 28, 1990
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4. The execution, delivery and performance of the Loan Agreement, the Term Note and the Other Borrower Document, and of the Guaranty and the Other Guarantor Document, have been duly authorized by all necessary corporate proceedings on the part of Borrower and Guarantor, respectively.

5. The execution, delivery and performance by Borrower of the Loan Agreement, the Term Note and the Other Borrower Document, and by Guarantor of the Guaranty and the Other Guarantor Document, will not conflict with or result in a breach or violation of any terms or provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the creation of any lien, pledge, mortgage, security interest or encumbrance upon any assets or properties of Borrower or Guarantor pursuant to (i) the Articles of Incorporation or Bylaws of either Borrower or Guarantor or (ii) the agreements listed on Schedule A hereto. We have been advised by officers of Borrower and Guarantor that Schedule A is a complete list of all material agreements to which Borrower or Guarantor is a party or by which either of them or any of their respective properties or assets may be bound, and we have relied on such advice without any independent investigation.

The opinions expressed above are subject to the following qualifications:

(a) We do not purport to be experts as to laws of any jurisdiction other than the United States and the State of Texas, and, except as hereinafter provided in paragraph (b) below, we express no opinion herein as to the effect that the laws and decisions of courts of any jurisdiction other than the United States and the State of Texas may have upon such opinions. In this regard, we wish to call your attention to the provisions of the Loan Agreement, the Term Note and the Guaranty designating the laws of the State of Florida (which may differ in material respects from the laws of the State of Texas) as those which govern the construction and interpretation of the Loan Agreement, the Term Note and the Guaranty. We express no opinion herein as to the legality, validity or enforceability of the Loan Agreement, the Term Note and the Guaranty under Florida law.

(b) To the extent that the opinions expressed above may relate to or be governed by or construed under the Florida General Corporation Act, such opinions include opinions with respect to such Act. However, we wish to advise you that we are not members of the bar of the State of Florida and our knowledge with respect to its General Corporation Act is derived solely from a reading of that statute without consideration of any judicial or administrative interpretations thereof. Furthermore, we express

Sun Bank, National Association
September 28, 1990
Page 4

no opinion herein as to matters within the jurisdiction of, laws relating to or decisions of the FPSC. In this regard, we wish to call your attention to the fact that it has come to our attention that the execution and delivery of the Loan Agreement, the Term Note and the Other Borrower Document by Borrower and the consummation of the transactions contemplated thereby require the prior approval of the FPSC.

(c) The enforceability of the respective obligations of the parties to the Loan Agreement, the Term Note and the Guaranty, and the availability of certain rights and remedies provided for therein, may be limited by (i) the rights of the United States of America under the Federal Tax Lien Act of 1966, as amended, liens under Title IV of the Employee Retirement Income Security Act of 1974, as amended, and the power of the United States of America and other governmental authorities to take actions injurious to the Bank under the principle of sovereign immunity, (ii) principles of equity and (iii) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws applicable to creditors' rights generally. The enforceability of particular obligations, rights and remedies provided for in the foregoing agreements may also be limited by various additional state and federal laws and judicial decisions, but in our opinion such additional limitations do not substantially interfere with the practical realization of the benefits expressed in the foregoing instruments except for the consequences of any procedural delay which may result therefrom. Furthermore, we express no opinion with respect to the enforceability of any provision in the foregoing agreements providing for a waiver or release by the parties thereto.

(d) To the extent that any provision in the Loan Agreement, the Term Note or the Guaranty seeks to indemnify the indemnitee from consequences of its own negligence, you should be aware that the Texas Supreme Court has held in Ethyl Corp. v. Daniel Construction Company, 725 S.W.2d 705 (Tex. 1987), that parties seeking to indemnify the indemnitee from consequences of its own negligence must express that intent in specific terms within the four corners of the contract.

The opinions expressed herein are solely for the benefit of the Bank, and, without our prior written consent, may not be quoted in whole or in part or otherwise referred to in any legal opinion, document or other report and may not be furnished to any other person or entity.

Very truly yours,

Thompson & Knight

KEC/wpc

SCHEDULE A

1. Two Bond Purchase Agreements each dated as of June 30, 1988, between Borrower and each of The Northwestern Mutual Life Insurance Company ("NML") and the Mutual Life Insurance Company of New York ("MONEY").

2. Indenture of Mortgage, Deed of Trust and Security Agreement dated as of June 30, 1988, between Borrower and the Bank, as Trustee.

3. Two Warrant Agreements each dated as of June 30, 1988, between Guarantor and each of NML and MONEY, and the Warrants issued thereunder.

4. Two Note Agreements each dated as of June 30, 1988, between Guarantor and each of NML and MONEY, as amended.

5. Guaranty dated May 25, 1990, executed by Guarantor in favor of the Bank.

AKERMAN, SENTERFITT & EIDSON

ATTORNEYS AT LAW

FIRSTSTATE TOWER
200 SOUTH ORANGE AVENUE
POST OFFICE BOX 221
ORLANDO, FLORIDA 32802-0221
(407) 843-7000
TELECOPY (407) 843-8610
CABLE ADDRESS AKER-SENT-ORL
TELTX 80-4328

September 28, 1990

Sun Bank, National Association
200 South Orange Avenue
4th Level, Tower Building
Orlando, Florida 32801

Attention: Ms. Kathryn Sikes
Vice President

Re: West Florida Natural Gas Company

Dear Ms. Sikes:

This firm serves as special environmental counsel to West Florida Natural Gas Company (the "Company") in connection with the Company's prior operation of a coal gas manufacturing plant located at 728 N. E. Osceola Avenue, Ocala, Florida (the "Facility"). This opinion is furnished to you by us as a condition precedent to the funding of a \$2,000,000 term loan extended by Sun Bank, National Association (the "Bank") to the Company.

The Company has previously entered into a Consent Order with the Florida Department of Environmental Regulation (the "FDER") on January 20, 1988. The Consent Order, a copy of which is attached hereto, requires the Company to:

- (i) Undertake a contamination assessment of the Facility to characterize the nature and extent of soil and ground water quality impacts resulting from past Facility operations;
- (ii) Submit a feasibility study which evaluates alternatives for remediation in order to identify the most cost effective and environmentally sound remedial action for the site; and

(iii) Undertake site remediation and restoration.

The Consent Order further provides that the FDER will waive its rights to seek judicial imposition of damages and civil penalties and its right to recover legal and/or administrative costs incurred by the State of Florida for violations of law associated with the environmental impacts resulting from the Company's prior coal gas manufacturing operation at the Facility if the Company completely and timely performs its obligations under the Consent Order.

To date, the Company has (i) undertaken an assessment of the facility to characterize the nature and extent of soil and ground water quality impacts, (ii) submitted a proposal for removal of liquid coal tar and impacted soils from the site as an interim remedial measure and (iii) undertaken site remediation in the form of removal of approximately 10,000 tons of liquid coal tar and impacted soils. The Company is currently in the process of evaluating various alternatives for remediation of the contaminated soils remaining on site and completing contamination assessment activities in accordance with the terms and conditions of the Consent Order.

It is our opinion that, as of the date hereof, the Company is in compliance with all of the material terms and conditions of the Consent Order. Accordingly, at this time, the FDER has no legal basis to seek judicial imposition of damages or civil penalties or to recover legal and/or administrative costs incurred by the State of Florida for violations of law associated with the environmental impacts resulting from the Company's prior coal gas manufacturing operation at the Facility.

The federal counterpart to the FDER, the Environmental Protection Agency, is not a party to the Consent Order and, accordingly, has not waived its right to impose damages or penalties upon the Company. We believe that the Environmental Protection Agency will not seek to impose any such damages or penalties as long as the Company continues to timely comply with the Consent Order.

Sincerely,

AKERMAN, SENTERFITT & EIDSON


William L. Pence

WLP:WNB:av

DER CERTIFIED MAIL NO. P-655-626-644

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION**

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

Complainant,

vs.

WEST FLORIDA NATURAL
GAS COMPANY,

Respondent.

IN THE OFFICE OF THE
CENTRAL FLORIDA DISTRICT

OGC CASE NO. 86-0666

CONSENT ORDER

This Consent Order is made and entered into between the State of Florida Department of Environmental Regulation ("Department") and West Florida Natural Gas Company ("Respondent"), 233 Southwest Third Street, Ocala, Florida 32671. The Department finds and the parties agree:

1. The Department is the administrative agency of the State of Florida which has the authority to administer and enforce the provisions of Chapter 403, Florida Statutes (F.S.), and rules promulgated thereunder, Florida Administrative Code (F.A.C.) Chapter 17. The Department is further authorized to enter into a Consent Order wherein all parties and the Department, by negotiation, have arrived at a mutually acceptable resolution of alleged violations of law for the purpose of achieving full and expeditious compliance with Chapter 403, F. S. The Consent Order shall not be considered an admission by Respondent of any violation of or liability under

any applicable federal, state or local laws and regulations or under any federal or state common law, nor shall it be used as evidence in any administrative proceeding or proceeding at law, except an action involving the terms and conditions or implementation of this Order, or as otherwise provided herein. It is agreed that the purpose of this Consent Order is the expeditious and cost saving resolution of the alleged violations by Respondent of Chapter 403, F.S.

2. Respondent is a Florida Corporation and is a person within the meaning of Sections 403.031(5) and 403.703(3), Florida Statutes.

3. Respondent is the owner of a parcel of real estate located at 613 N. E. Osceola Avenue, Ocala, Florida ("Plant Site"). Respondent alleges that prior to the mid-1950's, Respondent conducted a coal gasification operation at the Plant Site, and that the coal gasification operation was discontinued around the early to mid-1950's.

4. Coal tar by-products were generated by Respondent through its past coal gasification operations and were routinely stored by Respondent on its facility grounds. Respondent alleges such activity was common practice at the time and was not prohibited by laws and regulations existing at the time.

5. Respondent maintains that its past coal gasification operation was not a coking operation. The parties agree that wastes generated by Respondent, if they were not generated by a coking operation, are not listed hazardous wastes, specifically K087 ("decanter tank tar sludge from coking operations"), pursuant to Chapter 40, Code of Federal Regulations Part 261 (40 CFR 261).

6. Some of the coal tar produced during Respondent's past coal

gasification operations is still present at its facility. The major constituents of concern, as evidenced by results of studies conducted at other similar disposal sites throughout the country, are polynuclear aromatic hydrocarbons, phenolic compounds, heavy metals and cyanide.

7. Respondent denies that any actual or threatened releases requiring removal or remedial action are occurring or have occurred at the Plant Site, and denies any liability for any activities at, or circumstances presented at or by, conditions at the Plant Site. However, in order to avoid difficult, prolonged and complicated litigation regarding these issues, the parties recognize that the public interest is best served by this voluntary agreement to determine, if necessary, an effective and expeditious remedy for the Plant Site.

8. Respondent's consultant ERN-South, prepared a Contamination Assessment Plan (CAP) dated April 30, 1987. The CAP was submitted to the Department's Central Florida District Office on May 1, 1987.

9. Department has reviewed the CAP, and found that it adequately meets the necessary objectives of a contamination assessment plan. Department approval of the CAP was issued on December 7, 1987.

THEREFORE, having reached resolution of the matter, pursuant to Florida Administrative Code Rule 17-103.110(3) Respondent and the Department mutually agree and it is

ORDERED:

10. Respondent shall implement the CAP within ten (10) days of the effective date of this Consent Order.

11. Respondent shall implement the "Corrective Actions for Groundwater Contamination Cases" which are attached as Exhibit I, within the time frames set forth therein.

12. Respondent waives its right to a hearing or judicial review of the terms of this Consent Order, except as provided in Paragraph 14 below.

13. The Department reserves the right to split samples with Respondent throughout the sampling program and to take samples on its own initiative in order to verify completion of steps in the sampling and clean-up program.

14. In the event the Department makes an assessment determination or modification request pursuant to the provisions of Exhibit I, the Department shall provide written notice of the decision to Respondent by certified mail, return receipt requested. Respondent may file a petition for a formal or informal administrative proceeding, if it contests the aforementioned assessment, determination or modification request, pursuant to Section 120.57, F. S., and F.A.C. Chapters 17-103 and 28-5. The petition must conform with the requirements of F.A.C. Rule 28-5.201, and must be received by the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within fourteen (14) days of receipt of the notice. Failure to file a petition within this time period shall constitute a waiver by Respondent of its right to request an administrative proceeding under Section 120.57, Florida Statutes. The determination, assessment or modification request upon expiration of the fourteen (14) day time period, if no petition is filed, or the Final

Administrative Order as a result of the filing of a petition, shall be incorporated by reference into this Consent Order and made a part of it. All other aspects of the Consent Order shall remain in full force and effect at all times. If Respondent seeks an administrative proceeding pursuant to this paragraph, which would unreasonably delay corrective actions required by this Consent Order, the Department may, in lieu of or in addition to the administrative proceeding, file any suit authorized by law to obtain judicial resolution of the issues unresolved at the time of the request for administrative proceeding.

15. Persons not parties to this Consent Order whose substantial interests are affected by this Consent Order have a right, pursuant to Section 120.57, Florida Statutes, to petition for an administrative determination (hearing) on it. The petition must conform to the requirements of Chapters 17-103 and 28-5, Florida Administrative Code, and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 14 days of receipt of this notice. Failure to file petition within the 14 days constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Section 120.57, Florida Statutes.

16. Respondent shall allow all authorized representatives of the Department access to the property at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules of the Department.

17. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations, or ordinances.

18. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit future violations of applicable statutes or the rules promulgated thereunder.

19. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages, civil or criminal penalties, as well as its right to recover legal and/or administrative costs incurred by the State of Florida, for alleged violations outlined in this Consent Order or with respect to matters which are the subject of this Consent Order, provided that this waiver shall not apply to proceedings involving the enforcement of the terms and conditions of this Consent Order.

20. Nothing contained herein shall affect any right, claim or course of action that Respondent may have against parties not subject to this Consent Order.

21. Nothing herein shall be construed to limit the authority of the Department to take action necessary against Respondent to respond to, or to recover the costs of responding to, conditions at or from the site which may present an imminent hazard to the public health, safety, welfare or the environment, if:

A. The conditions were previously unknown to or undetected by the Department;

B. The conditions result from the implementation of the Remedial Action Plan or this Consent Order; or

C. Other previously unknown facts arise or are discovered after entry of this Consent Order.

22. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

23. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties and criminal penalties.

24. Any modification of the terms and conditions of this Consent Order shall be effective upon being reduced to writing and executed by both the Respondent and the Department.

25. All reports, plans, and data required by this Consent Order to be submitted to the Department should be sent in triplicate to:

Environmental Manager
Enforcement Section
Central Florida District
Department of Environmental Regulation
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

26. This Consent Order is final agency action of the Department pursuant to Section 120.69, Florida Statutes, and Florida Administrative Code Rule 17-103.110(3), and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

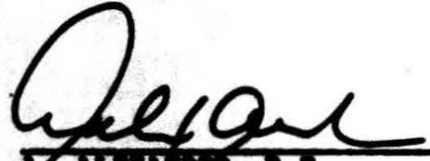
1-14-88

Date



JOHN SAWYER, General Manager
West Florida Natural
Gas Company
233 Southwest Third Street
Ocala, Florida 32671

DONE AND ORDERED this 7th day of January, 1988,
at Orlando, Orange County, Florida.



M. ALEXANDER, P.E.
District Manager
Central Florida District
State of Florida Department
of Environmental Regulation
3319 Naguire Boulevard
Suite 232
Orlando, Florida 32803-3767

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52,
Florida Statutes, with the designated Depart-
ment Clerk, receipt of which is hereby acknow-
ledged.

Cyrus B. Bassini
CLERK

1/14/88
Date

EXHIBIT I

**CORRECTIVE ACTIONS FOR
GROUNDWATER CONTAMINATION CASES**

1. Within 45 days of completion of the tasks in the CAP, Respondent shall submit a written contamination assessment report ("CAR") to the Department. The CAR shall:

- (a) Summarize and analyze all CAP tasks;
- (b) Discuss the CAP objectives; and
- (c) Specify conclusions regarding CAP objectives.

2. The Department shall review the CAR and determine whether it has adequately met the following objectives:

- (a) Establish the aerial and vertical extent of soil, sediment, surface water and groundwater contamination;
- (b) Determine and confirm the contaminant source(s); mechanisms of contaminant transport; rate and direction of contaminant movement in the air, soils, surface water and groundwater; and rate and direction of groundwater flow;
- (c) Provide a complete characterization of the contamination plume(s); and
- d) Determine whether interim remedial measures are necessary to abate any imminent hazard.

In the event that additional information is necessary to evaluate the CAR, the Department shall make a written request and Respondent shall provide all requested information within 20 days of receipt

of said request unless the requested information requires additional field work in which case the Respondent shall submit in writing to the Department a reasonable schedule for completing the field work needed to provide the requested information.

3. If the Department determines from review of the CAR that there is a need for a Feasibility Study ("FS"), Respondent shall submit to the Department for its review a Feasibility Study Plan ("FSP"). The FSP shall be submitted within 30 days of receipt by Respondent of the Department's determination that a FS for a particular site is necessary. The purpose of the FS is to develop and evaluate all alternatives in order to identify the most cost effective and environmentally sound remedial action for the site. The FSP shall provide an outline of the elements to be included in the FS and shall explain how Respondent plans to address each of the elements. The FSP shall provide a detailed description of the technical approach Respondent shall use to address each task to be conducted during the FS. At a minimum, the FSP shall address the following task elements:

(a) The objectives of the remedial action, as required by Department rules and state and federal statutes; e.g., to prevent groundwater contamination; to remove, contain or render harmless the contamination source; to clean up to the water quality criteria and minimum standards in Florida Administrative Code Chapter 17-3;

(b) Risk assessment, which shall include consideration of the toxicity, transport mechanisms, persistence in the environment, and impacts on human health and the environment of the substances associated with the site;

(c) Methods to quantify contaminant movement off-site, to identify impact zones, and to identify and quantify hazardous zones;

(d) Development of criteria for evaluation of remedial alternatives for the site, to include at a minimum, environmental protection, environmental effects, implementability, capital costs, operations and maintenance costs, present worth, safety requirements during implementation, reliability, operation and maintenance requirements, feasibility, time required to achieve cleanup, and legal consideration of the alternatives;

(e) Identification and review of pertinent treatment, containment, removal and disposal technologies;

(f) Screening of technologies to detect the most appropriate technologies and to eliminate those clearly not feasible or appropriate;

(g) Pilot tests or bench tests to evaluate the alternatives if necessary;

(h) Review and selection of potential remedial alternatives using criteria established in tasks (d) through (g) above;

(i) Selection of the best remedial alternative; and

(j) A reasonable timetable for completion of the tasks.

4. The Department shall review the FSP and provide Respondent with a response to the proposal. Respondent shall not implement the FS tasks until Respondent receives written notification from the Department that the FSP has been approved.

5. In the event that additional information is necessary for

the Department to evaluate the PSP, the Department shall make a written request, and Respondent shall provide all requested information in writing to the Department within 20 days from receipt of said request.

6. In the event that the Department determines that the PSP submitted by Respondent does not adequately address the objectives in Paragraph 3, the Department will notify Respondent in writing of the PSP's deficiencies. Respondent shall then have 20 days from the Department's notification to submit a modified PSP addressing the deficiencies noted by the Department.

7. Subject to the provisions of Paragraph 14 of the Consent Order, if the Department determines upon review of the resubmitted PSP that the PSP still is not adequate, the Department, at its option, may choose either to:

(a) Draft specific modifications to the PSP and notify Respondent in writing that the Department's modifications shall be incorporated in the PSP; or

(b) Notify Respondent that Respondent has failed to comply with Paragraph 6 above, in which case the Department may do any or all of the following: take legal action to enforce compliance, file suit to recover damages and civil penalties, or complete the corrective actions outlined herein and recover the costs of completion from Respondent.

8. Once the PSP, with modifications, if any, has been approved by the Department, it shall become effective and shall be implemented by Respondent within ten days of the Department's notification to Respondent that the PSP has been approved.

9. Within 45 days of completing the FS, Respondent shall submit a FS Report to the Department. The FS Report shall:

- (a) Summarize and analyze all FS task results; and
- (b) Propose a conceptual remedial action plan based on the selection process carried out in the FS.

10. The Department shall review the FS Report and determine whether it has adequately met the remedial action objectives. In the event that additional information is necessary to evaluate the FS report, the Department shall make a written request and Respondent shall provide all requested information within 20 days from receipt of said request.

11. Within 45 days of receipt of written approval of the FS Report from the Department or within 30 days of the Department's determination pursuant to Paragraph 14 of the Consent Order that no FS is necessary, Respondent shall submit to the Department a detailed Remedial Action Plan ("RAP"). The RAP shall include:

- (a) Design and construction details for the remedial alternative selected;
- (b) Operational details of the remedial action;
- (c) QA/QC and safety plans; and
- (d) Proposed methodology for evaluation of the site status after the remedial action is complete to verify accomplishment of the goals of the RAP.

12. Remedial tasks shall be designed to achieve cleanup of the contaminated areas to levels that meet the water quality standards and criteria established by the Department, or such other levels as may be set forth in the FS Report, if done.

13. The Department shall review the proposed RAP and provide Respondent with a written response to the proposal. Respondent shall not implement the RAP until Respondent receives written notification from the Department that the RAP has been approved.

14. In the event that additional information is necessary for the Department to evaluate the RAP, the Department shall make a written request to Respondent for the information, and Respondent shall provide all requested information in writing to the Department within 20 days from receipt of said request unless the requested information requires additional field work, in which case the Respondent shall submit in writing to the Department a reasonable schedule for completing the field work needed to provide the requested information.

15. In the event that the Department determines that the RAP submitted by the Respondent does not adequately address the objectives set forth in Paragraphs 11 and 12, the Department will notify the Respondent in writing of the RAP's deficiencies. The Respondent shall then have 20 days from the Department's notification to resubmit a modified RAP addressing the deficiencies noted by the Department.

16. Subject to the provisions of Paragraph 14 of the Consent Order, if the Department determines upon review of the resubmitted RAP that the RAP still does not adequately address the objectives of the RAP, the Department, at its option, may choose to either:

(a) Draft specific modifications to the RAP and notify the Respondent in writing that the Department's modifications shall be incorporated in the RAP; or

comply with Paragraph 15 above, in which case the Department may do any or all of the following: take legal action to enforce compliance, file suit to recover damages and civil penalties, or complete the corrective actions outlined herein and recover the costs of completion from Respondent.

17. Once a RAP has been approved by the Department, it shall become effective and shall be implemented within ten days of the Department's notification to the Respondent that the RAP has been approved. The RAP shall incorporate all required modifications to the RAP identified by the Department.

18. On the first working day of each month, after beginning implementation of a CAP, FSP or RAP, Respondent shall submit written progress reports to the Department. These progress reports shall describe the status of each required CAP, FSP and RAP task. The reports shall be submitted until planned tasks have been completed to the satisfaction of the Department.

19. Respondent shall provide written notification to the Department at least ten days prior to installing monitoring or recovery wells, and shall allow Department personnel the opportunity to observe the location and installation of the wells. All necessary approvals must be obtained from the Water Management District before Respondent installs the wells.

20. Respondent shall provide written notification to the Department at least ten days prior to any sampling, and shall allow Department personnel the opportunity to observe sampling or to take split samples. Raw data shall be exchanged between the Respondent and the Department as soon as the data are available.

21. If any event occurs which causes delay or the reasonable likelihood of delay in the achievement of the requirements of these Corrective Actions, Respondent shall have the burden of proving that the delay was or will be caused by circumstances beyond the reasonable control of Respondent, and could not have been or cannot be overcome by due diligence. Upon occurrence of the event Respondent shall promptly notify the Department verbally and shall, within seven calendar days, notify the Department in writing of the anticipated length and cause of delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. Such agreement shall be confirmed by letter from the Department accepting or, if necessary, modifying the extension request. Respondent shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this paragraph shall constitute a waiver of Respondent's right to request an extension of time to complete the requirements of these corrective actions. Increased costs of performance of any of the activities set forth in these Corrective Actions or changed economic circumstances shall not be considered circumstances beyond the control of Respondent.

22. Respondent shall immediately notify the Department of any problems encountered by Respondent which require modification of any

task in the approved CAP, PSP or RAP, and obtain Department approval prior to implementing any such modified tasks.

23. All sampling and analysis required under these Corrective Actions shall be accomplished pursuant to the following procedures:

(a) All sampling shall be done in the manner consistent with Standard Operation Procedures and Quality Assurance Manual, August, 1980, U.S. Environmental Protection Agency, Region IV, and Supplement "A" thereto, June, 1981, FDER;

(b) All laboratory data submitted shall contain a complete explanation of quality control procedures used to guarantee the reliability and accuracy of analytical data, and those laboratory procedures used shall be those approved by the Department. The test methods to be used in analyzing any parameters shall be the EPA approved test methods for the specific parameter to be analyzed unless otherwise notified by the Department;

(c) All field testing, sample collection and preservation, and laboratory testing, including quality control procedures, shall be in accordance with the QA/QC plan approved by the Department on 1/19/88.

24. Should the Department conclude that cleanup of the contaminated area to levels meeting the standards and criteria set forth in Chapter 17-3, Florida Administrative Code, is not feasible, or should Respondent not completely implement the RAP as approved by the Department, the Department may seek restitution from Respondent for environmental damages resulting from pollution of the groundwater as a result of Respondent's actions. Subject to the provisions of paragraph 14 of the Consent Order, within 20 days of

receipt of Department notification of its intent to seek said restitution, Respondent may pay the amount of the damages or may, if it so chooses, initiate negotiations with the Department regarding the monetary terms of restitution to the State. Subject to the provisions of paragraph 14 of the Consent Order, Respondent is aware that should a negotiated sum or other compensation for environmental damages not be agreed to by the Department and Respondent within 20 days of receipt of Department notification of its intent to seek restitution, the Department may institute appropriate action, either administrative, through a Notice of Violation, or judicial, in a court of competent jurisdiction through a civil complaint to recover Department assessed environmental damages pursuant to Section 403.141, Florida Statutes.

LOAN CLOSING STATEMENT

DATE: **SEPTEMBER 28, 1990**

LENDER: **SUN BANK, NATIONAL ASSOCIATION**

BORROWER: **WEST FLORIDA NATURAL GAS COMPANY**

RE: **RENEWAL OF REVOLVING LINE OF CREDIT LOAN IN THE MAXIMUM
PRINCIPAL AMOUNT OF \$1,000,000.00; TERM LOAN IN THE
PRINCIPAL AMOUNT OF \$2,000,000.00**

<u>CLOSING COSTS</u>	<u>AMOUNT</u>
Legal Fees - Payable to Akerman, Senterfitt & Eidson	\$ 4,350.00
UCC Search and Certificate of Good Standing	\$ 45.00
Miscellaneous Disbursements (Duplicating; Delivery Charges; Long Distance Telephone; Telecopy Fees; etc.)	\$ 415.00
Total Loan Closing Costs	\$ 4,810.00

By execution of this Loan Closing Statement, Borrower certifies it to be correct and agrees and consents to payment of the indicated fees, costs and expenses. Borrower further acknowledges and agrees to fulfill its obligation to pay any reasonable further or additional fees, costs or expenses incurred by Lender or its counsel in connection with any post-closing matters.


LENDER:

SUN BANK, NATIONAL ASSOCIATION

By: 
Kathryn Sikes
Vice President

BORROWER:

WEST FLORIDA NATURAL GAS COMPANY

By: 
James E. McIntyre
President

**CERTIFICATE OF RESOLUTION
OF BOARD OF DIRECTORS
AND INCUMBENCY CERTIFICATE OF
WEST FLORIDA NATURAL GAS COMPANY**

September 28, 1990

I, D. W. Hughes, hereby certify to Sun Bank, National Association, a national banking association, ("Bank"), that I am the duly elected Secretary of West Florida Natural Gas Company, a Florida corporation (the "Corporation"); that the following is a true and correct copy of Resolutions adopted by the Board of Directors of the Corporation dated ~~Sept. 27~~ 28, 1990; and that said Resolutions are in full force and effect have not been rescinded or modified:

"WHEREAS, Sun Bank, National Association located at 200 South Orange Avenue, Orlando, Florida 32801, (the "Bank"), has agreed, to renew its \$1,000,000.00 working capital credit facility extended to West Florida Natural Gas Company (the "Corporation") and extend the term of the \$1,000,000.00 working capital loan made pursuant thereto (the "Working Capital Loan") until December 31 1991;

WHEREAS, the Bank has also agreed to extend to the Corporation a term loan in the principal amount of \$2,000,000.00 for the purpose of funding the costs associated with completing the removal of certain hazardous wastes from a facility owned by the Corporation in Ocala, Florida (the "Term Loan") (the Working Capital Loan and the Term Loan are hereinafter referred to as the "Loans");

WHEREAS, it is in the best interests of this Corporation that said Loans be extended and made.

NOW, THEREFORE:

BE IT RESOLVED that this Corporation obtain the Loans from the Bank;

BE IT FURTHER RESOLVED THAT any one of the President, any Vice-President, the Treasurer, the Secretary or any other officer of this Corporation be and they are hereby each and all authorized, empowered and directed in the name and on behalf of this Corporation and under its corporate seal, to make, enter into, execute and deliver with and to the Bank, an amended and restated loan agreement, promissory notes, and any other instruments or agreements with such changes in the terms and conditions as such officer in his sole discretion deems appropriate and which may be requested or required by the Bank in connection with said Loans;

BE IT FURTHER RESOLVED THAT any one of the President, any Vice-President, the Treasurer, the Secretary or any other officer of this Corporation be and they are hereby each and all authorized and directed in the name and on behalf of this Corporation to carry out and fulfill the purposes and intent of the Resolutions contained herein including, but not limited to, the documents and instruments set forth in these Resolutions;

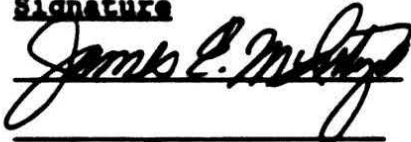
BE IT FURTHER RESOLVED that the Secretary (or any other officer) of this Corporation be and he is hereby authorized and directed to furnish the Bank with a copy of the foregoing Resolutions and to certify the same, and to certify that the provisions of said Resolutions are in conformity with the Charter and By-Laws of this Corporation and that said Resolutions are in full force and effect and have not been rescinded or modified; and the Bank shall be indemnified and saved harmless by this Corporation from any and all claims, demands, expenses, costs and damages resulting from or growing out of honoring or relying on the signature or other authority (whether or not properly used) of any officer whose name and signature was so certified, or refusing to honor any signature or authority not so certified;

BE IT FURTHER RESOLVED, that the foregoing Resolutions are adopted in addition to, and not in replacement or limitation of, and shall not be limited by, any and all other

Resolutions heretofore adopted by this Corporation governing any transaction with or involving the Bank, and the foregoing Resolutions contained herein shall continue in force until express written notice of their prospective rescission or modification, as to future transactions not then existing or committed for by the Bank, has been furnished to and received by the Bank; and

BE IT FURTHER RESOLVED, that any and all prior and existing agreements and transactions by or on behalf of this Corporation with the Bank be and the same hereby are in all respects ratified, approved and confirmed."

I do further certify that said meeting of the Board of Directors of the Corporation was duly held in accordance with the By-Laws of the Corporation and applicable Florida law; that I am the custodian of the minutes of said Board of Directors; that the following officers are duly qualified and acting officers of the Corporation:

<u>Name</u>	<u>Signature</u>	<u>Office</u>
James E. McIntyre		President
Robert D. Bondurant		Treasurer
D. W. Hughes		Secretary

that there is no provision in the Charter or By-Laws of the Corporation limiting the power of the Board of Directors to pass the foregoing Resolutions and that the same are in conformity with the provisions of said Charter and By-Laws; and that the corporate seal impressed hereon is the true corporate seal of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary and affixed the seal of the Corporation, pursuant to due and lawful corporate authority, this 27 day of September, 1990.



 D. W. Hughes Secretary of
 West Florida Natural Gas Company

(CORPORATE SEAL)

**CERTIFICATE OF RESOLUTION
OF BOARD OF DIRECTORS
AND INCUMBENCY CERTIFICATE OF
WEST FLORIDA GAS INC.**

September 28, 1990

I, Daniel W. Hughes, hereby certify to SUN BANK, NATIONAL ASSOCIATION (the "Bank"), that I am the duly elected Secretary of WEST FLORIDA GAS INC., a Florida corporation (the "Corporation"); that the following is a true and correct copy of Resolutions adopted by the Board of Directors of the Corporation at a meeting held on Sept 27, 1990; and that said Resolutions are in full force and effect and have not been rescinded or modified:

"WHEREAS, Sun Bank, National Association located at 200 South Orange Avenue, Orlando, Florida 32801, (the "Bank"), has agreed, to renew its \$1,000,000.00 working capital credit facility extended to West Florida Natural Gas Company (the "Borrower") and extend the term of the \$1,000,000.00 working capital loan made pursuant thereto (the "Working Capital Loan") until December 31 1991;

WHEREAS, the Bank has also agreed to extend to the Borrower a term loan in the principal amount of \$2,000,000.00 for the purpose of funding the costs associated with completing the removal of certain hazardous wastes from a facility owned by the Borrower in Ocala, Florida (the "Term Loan") (the Working Capital Loan and the Term Loan are hereinafter referred to as the "Loans");

WHEREAS, the Bank is unwilling to renew and/or extend said Loans unless this West Florida Gas Inc. (the "Corporation") absolutely and unconditionally guarantees said Loans; and

WHEREAS, it is in the best interest of this Corporation that said Loans be made and be guaranteed by this Corporation.

NOW, THEREFORE:

BE IT RESOLVED that this Corporation absolutely and unconditionally guarantee the full and prompt payment of said Loans; and

BE IT FURTHER RESOLVED THAT any one of the President, any Vice-President, the Treasurer, the Secretary or any other officer of this Corporation be and they are hereby each and all authorized, empowered and directed in the name and on behalf of this Corporation and under its corporate seal, to make, enter into, execute and deliver with and to the Bank, the absolute and unconditional guaranty of this Corporation and any other instruments or agreements with such changes in the terms and conditions as such officer in his sole discretion deems appropriate and which may be requested or required by the Bank in connection with said Loans; and

BE IT FURTHER RESOLVED THAT any one of the President, any Vice-President, the Treasurer, the Secretary or any other officer of this Corporation be and they are hereby each and all authorized and directed in the name and on behalf of this Corporation to carry out and fulfill the purposes and intent of the Resolutions contained herein including, but not limited to, the documents and instruments set forth in these Resolutions and the Bank shall be indemnified and saved harmless by this Corporation from any and all claims, demands, expenses, costs and damages resulting from or growing out of honoring or relying on the signature or other authority (whether or not properly used) of any officer whose name and signature was so certified, or refusing to honor any signature or authority not so certified; and

RESOLVED FURTHER, that the foregoing Resolutions are adopted in addition to, and not in replacement or limitation of, and shall not be limited by, any and all other resolutions heretofore adopted by this Corporation governing any transaction with or involving the Bank, and the foregoing Resolutions shall continue in force until express written notice of their prospective rescission or modification, as to future transactions not then existing or committed for by the Bank, has been furnished to and received by the Bank; and

RESOLVED FURTHER, that any and all prior existing agreements and transactions by or on behalf of this Corporation with the Bank be and the same hereby are in all respects ratified, approved and confirmed.

BE IT FURTHER RESOLVED that the Secretary (or any other officer) of this Corporation be and he is hereby authorized and directed to furnish the Bank with a copy of the foregoing Resolutions and to certify the same, and to certify that the provisions of said Resolutions are in conformity with the Charter and By-Laws of this Corporation and that said Resolutions are in full force and effect and have not been rescinded or modified."

I do further certify that said meeting of the Board of Directors of the Corporation was held in accordance with the By-Laws of the Corporation; that I am the custodian of the minutes of said Board of Directors; that the following officers are the duly qualified and acting officers of the Corporation:

<u>Name</u>	<u>Signature</u>	<u>Office</u>
James E. McIntyre		President
Robert D. Bondurant		Treasurer
D. W. Hughes		Secretary

that there is no provision in the Charter or By-Laws of the Corporation limiting the power of the Board of Directors to pass the foregoing Resolutions and that the same are in conformity with the provisions of said Charter and By-Laws; and that the corporate seal impressed hereon is the true corporate seal of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary and affixed the seal of the Corporation, pursuant to due and lawful corporate authority, this 27 day of September, 1990.



D. W. Hughes, Secretary
West Florida Gas Inc.

(CORPORATE SEAL)

GUARANTY AGREEMENT

From

WEST FLORIDA GAS INC.

To

SUN BANK, NATIONAL ASSOCIATION

For Indebtedness Of

WEST FLORIDA NATURAL GAS COMPANY

September 28, 1990

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(The Table of Contents for this Guaranty Agreement is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Guaranty Agreement.)

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4	Consent to Creditor's Acts	3
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GUARANTY AGREEMENT

This absolute and unconditional guaranty given by the undersigned, WEST FLORIDA GAS INC. hereinafter called the "Guarantor", to induce SUN BANK, NATIONAL ASSOCIATION, hereinafter called the "Creditor," having a business address of 200 South Orange Avenue, Orlando, Florida 32801, to extend credit to or otherwise become or remain the creditor of WEST FLORIDA NATURAL GAS COMPANY (hereinafter called the "Borrower") having a business address of 301 Maple Avenue, Panama City, Florida 32402.

WHEREAS, the Creditor has previously extended a revolving loan to the Borrower in the maximum principal amount of \$1,000,000.00;

WHEREAS, the Borrower has requested the Creditor to advance an additional loan to it in the amount of \$2,000,000.00;

WHEREAS, the Creditor is unwilling to advance those funds unless the Guarantor guarantees the repayment of each of the loans in accordance with the terms hereof;

NOW, THEREFORE, in consideration of the foregoing, the Guarantor does hereby agree with the Creditor as follows:

1. Obligation of Guarantor. The Guarantor absolutely and unconditionally guarantees to the Creditor, its successors and assigns (whether collateral assigns or otherwise), the prompt and full payment in United States currency and performance to the Creditor at the place of business of the Creditor set forth above or at such other place and to such other person as the Creditor may designate at maturity of any and every obligation, in connection with which either as maker, drawer, guarantor, endorser or otherwise, whether directly, indirectly or contingently, the Borrower is, either individually or jointly or severally with any other person or persons, now or shall become at any time in the future liable to the Creditor including advances under the Revolving Loan and Term Loans made pursuant to the Loan Agreement dated as of May 25, 1990 between the Borrower and the Creditor or the Amended and Restated Loan Agreement dated of even date herewith between the Borrower and the Creditor, with interest thereon at the rate or rates provided in the obligations guaranteed hereby or at the maximum rate allowed from time to time by law in Florida, whichever is less, until payment in full has been received by Creditor, together with all attorneys' fees, costs and expenses of collection whether suit be brought or not, including costs, expenses and attorneys' fees on appeal if an appeal is taken from any suit, incurred by the Creditor, in connection with any matter covered by this Guaranty. The

Guarantor also absolutely and unconditionally guarantees the full and timely performance of all duties and obligations whatsoever of the Borrower to Creditor, whether now existing or hereafter arising, and agrees in the event the Borrower fails to fully and timely perform any of said duties and obligations to fully and timely perform same.

2. Term of Guaranty. The liability of the Guarantor hereunder shall continue until the earlier of (i) one (1) year after this Guaranty is marked "Cancelled" by the Creditor and returned to the Guarantor or, (ii) until the Creditor shall receive written notice, by registered mail signed by the Guarantor, cancelling this Guaranty, but such cancellation shall not affect in any way the continuing liability of the Guarantor on any transactions covered by this Guaranty up to the time of the actual receipt by the Creditor of such notice of cancellation, including any advances or other monies which may at any time thereafter be made by the Creditor to the Borrower pursuant to any agreement, promissory note or other instrument or document evidencing any indebtedness of the Borrower to the Creditor, entered into prior to the receipt by the Creditor of said notice by the Guarantor. Notwithstanding the receipt by the Creditor of any notice of cancellation hereunder, the Creditor may in its discretion amend, modify and renew in any way whatsoever any agreement, promissory note or other instrument or document evidencing any indebtedness of the Borrower to the Creditor and in existence at the time said notice of cancellation is received by the Creditor, all without affecting in any way whatsoever the continuing liability of the Guarantor hereunder, but the liability of the Guarantor solely in regard to the principal amount owed the Creditor shall not exceed the amount of principal owing to the Creditor at the time said notice of cancellation is received by the Creditor together with such additional amounts as may thereafter be advanced by the Creditor to or on behalf of the Borrower pursuant to any such agreement, promissory note or other instrument or document in existence at the time said notice is received by the Creditor. In the event said notice of cancellation is given, the liability of the Guarantor shall continue without limitation whatsoever for all amounts other than principal (which is limited under the preceding sentence) due the Creditor such as interest, attorney's fees, costs, and other such amounts.

3. Bankruptcy of Borrower. Notwithstanding that the Guaranty may have been cancelled under paragraph 2, and/or returned to the Guarantor, to the extent the Borrower has made any payments to the Creditor within the one (1) year period following the date this Guaranty was so cancelled, and the Guarantor was obligated under this Guaranty for said payments, the liability of the Guarantor hereunder shall at all times continue for the amounts so paid by the Borrower to the Creditor. If, for any reason, (e.g. bankruptcy, or otherwise), the Creditor

is not permitted to retain the payments so made by the Borrower during said one (1) year period, the Guarantor shall be liable under this Guaranty for the amount of such payments as if this Guaranty had never been cancelled and the Creditor shall be entitled to recover said amount so paid by the Borrower within said one (1) year period. Anything in this Guaranty to the contrary notwithstanding, if at any time this Guaranty is to be cancelled under the provisions of paragraph 2, the Creditor may retain this Guaranty for a period of one (1) year after the date said Guaranty is to be so cancelled and in the event no bankruptcy petition has been filed against the Borrower for the one (1) year period following the date the Guaranty is to be so cancelled, then, in that event, the Guaranty shall be returned to the Guarantor. If, however, a bankruptcy petition has been filed against the Borrower during said one (1) year period and the Borrower has made payments to the Creditor during said one (1) year period, this Guaranty shall not be cancelled and/or returned to the Guarantor unless and until a decision by a court of competent jurisdiction, or other agreement has been entered or reached, pursuant to which the Creditor shall be entitled to retain all such monies paid during said one (1) year period. If, as set forth above, the Creditor is obligated to return to the Borrower any monies so paid during said one (1) year period, this Guaranty shall not be cancelled (notwithstanding it being marked "Cancelled" and returned to the Guarantor) and the Guarantor shall continue to be liable to the Creditor for all monies paid during said one (1) year period. If the Creditor shall have marked this Guaranty "cancelled" and/or returned this Guaranty to the Guarantor, and under the provisions of this paragraph 3 or paragraph 2, the Guarantor has continuing liability to the Creditor for certain amounts which the Creditor has or is obligated to return to the Borrower, then, in such case, the Creditor may enforce its rights under this Guaranty upon any copy of this Guaranty notwithstanding the fact that the original of this Guaranty may have been marked "Cancelled" and/or returned to the Guarantor.

4. Consent to Creditor's Acts. The Guarantor consents, without affecting in any way the Guarantor's liability to the Creditor hereunder, that the Creditor may, without notice or consent of the Guarantor and upon such terms as it may deem advisable and with or without consideration and after notice of cancellation is received by the Creditor under paragraph 2 hereof: (a) extend, in whole or in part, by renewal or otherwise, and as often as the Creditor may wish, the time of payment of any indebtedness owing by the Borrower to the Creditor, or held by the Creditor as security for any such obligation; (b) release, surrender, exchange, modify, impair, or extend the period of duration, or the time for performance or payment, of any collateral securing any obligation of the Borrower to the Creditor; (c) settle or compromise any claim of the Creditor against the Borrower, if any, or against any other

person, firm or corporation, whose obligation is held by the Creditor as collateral security for any obligation of the Borrower to the Creditor; and (d) release in whole or in part any person liable for the payment of any obligation of the Borrower to the Creditor including, but not limited to, any person liable as an endorser, guarantor or judgment debtor (if the Creditor obtains a judgment on any obligation of the Borrower) of said obligation and, in any event, any such release shall not affect the liability of the Guarantor for the entire amount of any and every obligation of the Borrower to the Creditor. Further, the Creditor shall not be under any obligation whatsoever to obtain or perfect or to maintain the perfection of any security interest or other lien on property to secure indebtedness of the Borrower to the Creditor and the Creditor shall have no obligation to, and shall not have any liability for failing to, obtain or perfect or to maintain the perfection of any security interest or lien on property to secure indebtedness of the Borrower. Any failure of the Creditor to obtain and perfect or to maintain the perfection of any security interest or lien shall not affect in any way whatsoever the obligation of the Guarantor to the Creditor under this Guaranty. The Guarantor hereby ratifies and confirms any such extension, renewal, release, surrender, exchange, modification, impairment, settlement, or compromise, and all such actions shall be binding upon the Guarantor who hereby waives all defenses, counterclaims, or offsets which the Guarantor might have by reason thereof.

5. Waivers by Guarantor. The Guarantor waives: (a) notice of acceptance of this Guaranty by the Creditor; (b) notice of presentment, demand for payment, notice of dishonor or protest of any of the Borrower's obligations or the obligation of any person, firm, or corporation, if any, held by the Creditor as collateral security for the Borrower's obligation; (c) notice of the failure of any person, firm, or corporation to pay to the Creditor any indebtedness held by the Creditor as collateral security for any obligation of the Borrower; (d) failure of the Creditor to obtain and perfect or maintain the perfection or priority of any security interest or lien, if any, on property to secure any indebtedness of the Borrower; and (e) all defenses, offsets and counterclaims which the Guarantor may at any time have to any claim of the Creditor against the Borrower.

6. Subrogation. Nothing herein contained is intended or shall be construed to give to Guarantor any right of subrogation in or under any note, security document or any other loan document evidencing in any way or relating to any obligation of the Borrower to the Creditor which is or may be covered by this Guaranty, any right to participate in any way therein, or in the right, title and interest of the Creditor in and to any collateral, if any, covered by any loan or security documents relating to any such obligations notwithstanding any payments

made by Guarantor under this Guaranty, all such rights of subrogation and participation being hereby expressly waived and released.

7. Subordination. In the event that for any reason whatsoever, the Borrower is now or hereafter becomes indebted to the Guarantor, the Guarantor agrees that the amount of such indebtedness and all interest thereon shall at all times be subordinate as to lien, if any, the time of payment and in all other respects to all obligations of the Borrower to the Creditor which are covered by this Guaranty, and that the Guarantor shall not be entitled to enforce or receive payment thereof until all sums then due and owing to the Creditor shall have been paid in full. If any payment shall have been made to the Guarantor by the Borrower on any said indebtedness during any time that there are obligations outstanding from the Borrower to the Creditor which are covered by this Guaranty, the Guarantor shall hold in trust all such payments for the benefit of the Creditor and shall make said payments to the Creditor to be credited and applied against obligations of the Borrower to the Creditor, whether matured or unmatured, in accordance with the discretion of the Creditor.

8. Representations by Guarantor. The Guarantor represents that, at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of the liability of the Guarantor to the Creditor hereunder, or the immediate taking effect of this Guaranty as the sole agreement between the Guarantor and the Creditor with respect to guaranteeing the Borrower's obligation to the Creditor.

9. Remedies of Creditor. The Creditor may at its option proceed in the first instance against the Guarantor to collect any obligation covered by this Guaranty, without first proceeding against the Borrower for said obligation, or any other person, firm or corporation liable for said obligation, and without first resorting to any property at any time held by the Creditor as collateral security, if any, for said obligation and without any marshalling of assets whatsoever. The Creditor may at any time and from time to time, without demand or notice, appropriate and set off against deposit balances, funds, accounts, items, certificates of deposit and moneys and apply the same to the obligations of the Guarantor hereunder. The Creditor shall further have any other rights provided by law or under any other document, all of which rights are cumulative.

10. Construction and Benefit. This Guaranty is delivered and made in, and shall be construed pursuant to and governed by, the laws of the State of Florida, and is binding upon the Guarantor and his legal representatives and successors, and shall inure to the benefit of the Creditor, its successors and assigns.

11. Miscellaneous. In the event it becomes necessary for the Creditor to exercise its rights under this Guaranty, whether suit be brought or not, the Guarantor shall be liable for all costs and attorneys' fees incurred by the Creditor, including costs and attorneys' fees incurred by the Creditor on appeal. To the extent the Guarantor is obligated to make any payments to the Creditor under this Guarantee, the Creditor may offset and retain in payment of said amounts any and all monies of the Guarantor in the possession of the Creditor at any time, including, but not limited to, any accounts of the Guarantor at the Creditor. In the further event the Creditor obtains a final judgment against the Guarantor upon this Guaranty, the judgment shall bear interest not at the judgment rate but at the highest rate permitted by applicable law from time to time in effect at the time of said judgment. Further, the Guarantor agrees that the proper venue for any action which may be brought under this Guaranty, in addition to any other venue permitted by law, shall be in the county in which is located the Creditor's business office as designated above or the office of an assignee of this Guaranty. The term "Creditor" shall be deemed to include the aforementioned Creditor and all its departments and any individual, partnership or corporation acting as its nominee or agent, and any of its corporate subsidiaries or affiliates, the stock of which is owned or controlled, directly or indirectly, by it or by any affiliate of the Creditor. The term "Borrower" shall include the individual or individuals, association, partnership, corporation or other entity named herein as Borrower and (a) any successor individual or individuals, association, partnership, corporation or other entity to which all or substantially all of the business or assets of said Borrower shall have been transferred, and (b) any other corporation into or with which said Borrower shall have been merged, consolidated, reorganized, purchased or absorbed.

12. Financial Statements. At the request of the Creditor, the Guarantor shall, from time to time, prepare and deliver to the Creditor a complete and current financial statement of the Guarantor setting forth all the assets and liabilities of the Guarantor (and to the extent any person other than the Guarantor has any interest in said assets or any person other than the Guarantor is jointly liable for any of said obligations, said matters shall be set forth in their entirety in the financial statements) all signed by the Guarantor under oath as being true and correct.

13. Complete Agreement. The whole of this Guaranty is herein set forth and there is no verbal or other written agreement, and no understanding or custom affecting the terms hereof. This

Guaranty can be modified only by a written instrument signed by the party to be charged therewith.

IN WITNESS WHEREOF, the Guarantor has signed this agreement on the 28 day of September, 1990.

WEST FLORIDA GAS INC.

By: James E. McIntyre
James E. McIntyre, President

(CORPORATE SEAL)

Attest:

Daniel W. Hughes
Daniel W. Hughes, Secretary

STATE OF FLORIDA Georgia
COUNTY OF Fulton

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared James E. McIntyre and Daniel W. Hughes, as the President and Secretary respectively of the above named corporation, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 28 th day of September, 1990.

Daniel W. Hughes
Notary Public

(NOTARIAL SEAL)

My commission expires:

Notary Public, Fulton County, Georgia
My Commission Expires Aug. 18, 1991

AFFIDAVIT

STATE OF GEORGIA

COUNTY OF Fulton

BEFORE ME, the undersigned authority, personally appeared Robert M. Youngblood who, upon being duly sworn, deposes and says:

1. That he/she is the Officer of Trust Company Bank (the "Bank") in Atlanta, Georgia.

2. That in connection with that certain Amended and Restated Loan Agreement executed as of the 23 day of September, 1990, by and between West Florida Natural Gas Company (the "Borrower") and Sun Bank, National Association (the "Lender"), the Borrower executed a Promissory Note dated September 23, 1990 in the principal amount of \$1,500,000.00 (the "Note"), which Note was delivered to me in Atlanta, Georgia for safekeeping, as agent for the Lender.

3. That such Note is presently held by the Bank in Atlanta, Georgia and will continue to be held by the Bank in Atlanta, Georgia until satisfied.

FURTHER AFFIANT SAYETH NOT.

TRUST COMPANY BANK

By: Robert M. Youngblood
As its Officer

SWORN TO and SUBSCRIBED before me this 23 day of September, 1990.

Ann Hughes
NOTARY PUBLIC
State of Georgia
My commission expires:

My Commission Expires Aug. 13, 1991