

# NEW APPLICATION

## UNISOURCE ENERGY SERVICES, INC

One South Church Avenue, Suite 200, Tucson, Arizona 85701

Post Office Box 711, Tucson, Arizona 85702

### ORIGINAL



0000015233

Erik Bakken  
Corporate Counsel  
Mail Stop UE201

Telephone: 520-884-3615  
Fax: 520-884-3601  
ebakken@tep.com

December 30, 2004

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

G-04204A-05-0002

Arizona Corporation Commission

### DOCKETED

JAN - 3 2005

DOCKETED BY

Re: **Application for Approval of Sale of Certain Assets of UNS Gas, Inc.**

Dear Sir or Madam:

On behalf of UNS Gas, Inc. ("UNSG"), a wholly-owned subsidiary of UniSource Energy Services, Inc., enclosed for filing with your office is UNSG's application for Arizona Corporation Commission approval of the sale of certain assets ("Application").

In addition, I have enclosed a conformed copy of the Application. Please return this conformed copy of the Application, stamped with the evidence of filing, in the enclosed postage-paid and addressed envelope.

If you have any questions or need additional information, please call me at (520) 884-3615.

Sincerely,

Erik Bakken

AZ CORP COMMISSION  
DOCUMENT CONTROL

2005 JAN - 3 P 12: 58

### RECEIVED

Enclosures

NEW APPLICATION

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

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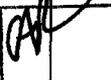
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AZ CORP COMMISSION  
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**MARC SPITZER**  
Chairman  
**WILLIAM A. MUNDELL**  
Commissioner  
**JEFF HATCH-MILLER**  
Commissioner  
**MIKE GLEASON**  
Commissioner  
**KRISTIN K. MAYES**  
Commissioner

DOCKETED BY 

G-04204A-05-0002

IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. E-  
UNSG GAS, INC. FOR APPROVAL OF THE OF ) APPLICATION FOR APPROVAL OF SALE  
THE SALE OF CERTAIN ASSETS ) OF CERTAIN ASSETS  
)

UNSG Gas, Inc. ("UNSG" or "Company"), through undersigned counsel, and pursuant to A.R.S. § 40-285, requests approval of sale of specific facilities, consisting of an Operating Headquarters, and located at 501 N. Sixth Street, Prescott, to the City of Prescott. In support of this request, UNSG states as follows:

1. UNSG is a public service corporation that is authorized to provide, and is providing, gas service in the State of Arizona. UNSG owns a metal building, storage shed, fenced yard and associated property in Prescott ("Prescott Building"). The legal description for the Prescott Building is attached as Exhibit A. Currently the operations and service employees, vehicles, and equipment are housed in the Prescott Building. Due to the growth of the Prescott Valley District, this location is inadequate for UNSG's current needs.

2. The Prescott Building is, and has been, necessary and useful in UNSG's performance of its duties to the public. Consequently, UNSG is requesting approval of the sale of the Prescott Building pursuant to A.R.S. § 40-285.A.

1           3.       The City of Prescott has entered into an agreement to purchase the  
2 Prescott Building ("Sales Agreement") for \$495,000 in an all-cash transaction. A  
3 copy of the Sales Agreement is attached as Exhibit B<sup>1</sup>. The City of Prescott intends  
4 to convert the Prescott Building into a fire station. This Sixth Street location will  
5 provide a replacement location for a fire station and administrative offices impacted  
6 by the road widening project at Iron Springs and Williamson Valley roads.

7           4.       UNSG will use the funds from the sale of the Prescott Building to  
8 construct a new building that will provide enough space to house its Operations,  
9 Service, and Engineering personnel. The new location, east of the airport, will allow  
10 for much safer and more efficient access to the outlying service areas managed from  
11 this office, including Prescott, Prescott Valley, Chino, Paulden, Dewey, Humbolt,  
12 Mayer, and Black Canyon City.

13           5.       Under the terms of the Sales Agreement, UNSG will lease-back the  
14 Prescott Building for approximately one year while the new building is under  
15 construction. A copy of the Sales Agreement with the associated Commercial Lease  
16 Agreement is attached as Exhibit B<sup>1</sup>. Upon completion of the new building and the  
17 relocation of personnel from the Prescott Building, there will be a seamless  
18 transition for UNSG's customers.

19           6.       The City of Prescott and UNSG desire to close this transaction with  
20 Arizona Corporation Commission ("Commission") approval as soon as possible.  
21 Accordingly, UNSG requests that this matter be considered by the Commission on an  
22 expedited basis. UNSG will work with the Commission Staff to provide necessary  
23 information and assistance, as needed to expedite this proceeding.

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<sup>1</sup> Full execution is contingent on Commission approval.



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Mike Gleason, Commissioner  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Kristin K. Mayes, Commissioner  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Lyn Farmer, Chief Hearing Officer  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Chris Kempley, Chief Counsel  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

**Copy of the foregoing mailed  
this 30th day of December 2004 to:**

John R. Moffitt  
City Attorney  
City of Prescott  
PO Box 2059  
Prescott, AZ 86302

EXHIBIT A

## EXHIBIT A-1

All that portion of the Northeast quarter of the Southeast quarter of Section 33, Township 14 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the East quarter corner of Section 33, above Township and Range; thence South 95.3 feet to a point on the section line; thence North 88 degrees, 36 minutes, West, 9.24 feet to an iron stake marking the Northeast corner of the tract, which is the actual POINT OF BEGINNING; thence South 00 degrees, 09 minutes, East, 125 feet to a nail in a tie; thence North 88 degrees, 36 minutes, West, 214.5 feet to an iron pin, 1141 feet Northerly from the center line of Sheldon Street in the City of Prescott; thence North 01 degrees, 20 minutes, East, 125 feet to an iron pin; thence South 88 degrees, 36 minutes, East, 211.2 feet to the Northeast corner, the PLACE OF BEGINNING.

AND all that portion of the Northeast quarter of the Southeast quarter of Section 33, Township 14 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

COMMENCING at the intersection of the Easterly line of said Section 33 with the centerline of the main branch line of said Railway Company, thence South 47 degrees, 37 minutes, 25 seconds, West (bearing assumed for purposes of this description) along said centerline 124.34 feet; thence North 27 degrees, 31 minutes, 00 seconds, West, 67.40 feet; thence North 15 degrees, 28 minutes, 15 seconds, West, 290.00 feet; thence Northerly along the arc of a curve that is tangent to the preceding course, concave Easterly and having a radius of 2281.83 feet, through a central angle of 3 degrees, 50 minutes, 13 seconds, a distance of 151.47 feet to a point in the Westerly prolongation of the Southerly line of that certain parcel of land as described in Deed to Southern Union Gas Company recorded in Book 197, Pages 317 and 318, Records of said County, last said point being the TRUE POINT OF BEGINNING for the parcel herein described; thence continuing Northerly along said curve having a radius of 2261.83 feet, through a central angle of 3 degrees, 13 minutes, 39 seconds, a distance of 127.41 feet to a point in the Westerly prolongation of the Northerly line of said Gas Company's parcel of land; thence South 88 degrees, 48 minutes, 00 seconds, East along last said prolongation 35.73 feet to a point in the Westerly line of said Gas Company's parcel of land; thence South 01 degrees, 08 minutes, 00 seconds, West along said Westerly line 125.00 feet to a point in first said Westerly prolongation; thence North 88 degrees, 48 minutes, 00 seconds, West along first said prolongation 11.09 feet to the TRUE POINT OF BEGINNING.

## EXHIBIT A-2

A portion of Lot 13, Lot J, Lot N, and Lot O of the 6<sup>th</sup> Street Subdivision as recorded in Book 28 of Maps, pages 62-63, records of Yavapai County Recorder and that portion of Section 33, Township 14 North, Range 2 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

COMMENCING at the West quarter corner of Section 34, township 14 North, Range 2 West, which was found a 2 ½ inch General Land Office Brass Cap at said corner, and which said corner bears South 00 degrees, 11 minutes, 53 seconds East, a distance of 1827.48 feet from the closing corner of said Sections 33 and 34, Township 14 North, Range 2 West, which was found a 2 ½ inch General Land Office Brass Cap at said closing corner;

thence North 00 degrees, 11 minutes, 53 seconds West, a distance of 28.45 feet to the TRUE POINT OF BEGINNING;

thence South 89 degrees, 56 minutes, 07 seconds East, a distance of 53.55 feet;

thence North 00 degrees, 14 minutes, 36 seconds East, a distance of 12.00 feet;

thence South 89 degrees, 56 minutes, 07 seconds East, a distance of 182.97 feet to a point on the Northwesterly right-of-way line of EZ Street as dedicated on the plat of the 6<sup>th</sup> Street Subdivision as recorded in Book 28 of Maps, pages 62-63, records of the Yavapai County Recorder;

thence Southwesterly along the Northwesterly right-of-way line of EZ Street, along a non-tangent curve to the right with a radius of 195.00 feet, an arc length of 96.85 feet, a central angle of 28 degrees, 27 minutes, 25 seconds, and a chord bearing of South 36 degrees, 23 minutes, 58 seconds West with a chord distance of 95.86 feet;

thence South 50 degrees, 37 minutes, 41 seconds West, a distance of 47.14 feet along the Northwesterly right-of-way line of EZ Street;

thence Southwesterly along the Northwesterly right-of-way line of EZ Street, along a tangent curve to the left with a radius of 300.00 feet, an arc length of 40.64 feet, a central angle of 07 degrees, 45 minutes, 41 seconds, and a chord bearing South 46 degrees, 44 minutes, 51 seconds West with a chord distance of 40.61 feet;

thence South 89 degrees, 41 minutes, 56 seconds West, a distance of 113.26 feet to a point on the Section line between Sections 33 and 34;

thence South 89 degrees, 41 minutes, 56 seconds West, a distance of 36.49 feet;

thence North 00 degrees, 11 minutes, 53 seconds West, a distance of 123.98 feet;

thence South 89 degrees, 56 minutes, 07 seconds East, a distance of 36.50 feet to the TRUE POINT OF BEGINNING.

EXCEPT all oil, gas and other minerals as reserved in instrument recorded in Book 986 of Official Records, pages 281-286 and in Book 2101 of Official Records, page 116.

TOGETHER with that certain easement as created in Book 2394 of Official Records, pages 750-756, inclusive.

**EXHIBIT B**

**CITY OF PRESCOTT**  
**AGREEMENT FOR SALE OF REAL PROPERTY**

THIS AGREEMENT, dated November \_\_\_\_\_, 2004, by and between UNS Gas, Inc., an Arizona Corporation, (hereinafter referred to as the "Seller", with its principal place of business located at PO Box 711, FM 100, Tucson, Arizona, 85702, and the CITY OF PRESCOTT, an Arizona municipality (hereinafter referred to as "Buyer").

IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. Seller agrees to sell and convey to the Buyer, and Buyer agrees to purchase from Seller, the property and all buildings and appurtenances located at 501 North Sixth Street, Prescott, Arizona, as more particularly described and under the terms and conditions as set forth in the attached Exhibits "A-1" and "A-2", attached hereto and made a part hereof.

2. The purchase price is \$495,000.00, payable as follows:

(a) The sum of \$5,000.00 as earnest money, to be paid upon the execution of this Agreement.

(b) The balance of \$490,000.00 to be paid upon the close of escrow.

3. The Seller warrants that Seller is the owner of a good and fee simple title to the property herein sold, free and clear of all liens and encumbrances, subject only to the following:

(a) Applicable zoning regulations.

(b) Utility, drainage and other easements of record in the records of the Yavapai County Recorder.

(c) Mineral rights reserved in the patents to the land.

4. In order to effectuate the terms of this Agreement, Seller and Buyer shall promptly execute and deliver any and all documents required by the City.

5. The closing of escrow shall be at Transnation Title Company, 600 E. Gurley Street, Prescott, Arizona, on November 30, 2004 (the "Closing Date"). On the Closing Date, Buyer shall make payment as provided in Section 2 of this Agreement to the Seller, and Seller shall execute and deliver to the city: (i) a good and sufficient Warranty Deed in proper form for recording, and (ii) the parties shall share equally all recording and transfer taxes and fees, including the cost of

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

recording the deed and any and all closing costs not hereinbefore specified. Notwithstanding the foregoing, the Close Date may be extended until no later than December 31, 2004 in the event that the Buyer has not received and approved a Phase I Environmental Assessment.

6. Upon the close of escrow, the parties shall execute a lease in the form attached hereto as Exhibit "B", and the Seller shall be entitled to remain in possession of the premises until December 31, 2005, pursuant to the terms and conditions as contained in Exhibit "B". The Buyer shall be entitled to possession of the premises upon the termination of the attached lease. The parties further agree that Transnation Title Company is hereby instructed to withhold the sum of \$26,000.00 from disbursement to Seller, to retain said sum in escrow, and to make monthly payments to the Buyer in accordance with the Lease attached hereto as Exhibit "B".

7. Buyer understands that this document and Exhibits "A-1", "A-2", and "B" set forth the entire agreement between the parties and that no agent or representative of Seller has any authority to change or modify this agreement in any manner, or to make any agreement or representation on behalf of the Seller not set forth herein.

8. Pursuant to A.R.S. §38-511, the City of Prescott may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Prescott is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this contract on behalf of the City of Prescott from any other party to the contract, arising as a result of this contract.

9. (A) This Agreement is conditioned upon the approval of both the Arizona Corporation Commission and the Prescott City Council. In the event that both the Arizona Corporation Commission and the Prescott City Council do not approve this Agreement by November 30, 2004, then the earnest money paid by Buyer pursuant to Paragraph 2(A) above shall be returned to Buyer.

(B) In the event that the Buyer does not approve a Phase I Environmental Assessment by December 31, 2004, then the earnest money paid by Buyer pursuant to Paragraph 2(A) above shall be returned to Buyer.

10. All notices to Buyer shall be sent to: City of Prescott, c/o Fire Chief, Post Office Box 2059, Prescott, Arizona 86302, with a copy to the Prescott City Manager, PO Box 2059, Prescott, Arizona 86302.

11. All notices to the Seller shall be sent to UNS Gas, Inc., PO Box 711, FM 100, Tucson, AZ 85702, ATTN: Scott Rathbun, Director, Asset & Facilities Management.

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

DATED THIS \_\_\_\_\_ day of November, 2004.

\_\_\_\_\_  
SELLER

DATED this \_\_\_\_\_ day of November, 2004.

DARRELL WILLIS  
Fire Chief {Buyer}

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
MARIE L WATSON  
City Clerk

JOHN R MOFFITT  
City Attorney

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

## COMMERCIAL LEASE

**THIS AGREEMENT**, made this \_\_\_ day of November, 2004 by and between the City of Prescott, an Arizona municipality, hereinafter referred to as "Lessor", and UNS Gas, Inc., with its principal place of business located at PO Box 711, FM 100, Tucson, Arizona, 85702, hereinafter referred to as "Lessee";

### WITNESSETH:

**WHEREAS** the Lessor is the owner of certain real and personal property herein described, which is available for lease; and

**WHEREAS** Lessee desires to lease the real property herein described for commercial purposes; and

**WHEREAS** the parties desire to establish an Agreement to insure a future lease of the commercial property described herein, now, therefore,

**IN CONSIDERATION OF THE PREMISES** and the mutual covenants herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by each party to the other, the parties hereto agree as follows:

1. **PREMISES.** That the subject of this Agreement is the real property more particularly described as: 501 North Sixth Street, Prescott, Arizona, more particularly described in the attached Exhibit "A", together with all buildings, improvements and fixtures thereon, all of which shall be used by the Lessee for commercial purposes during the term of this Agreement.

2. **TERM.** The term of this Agreement shall be from the close of escrow for the demised property to be purchased by the Lessee, through December 31, 2005.

3. **WARRANTY.** At the commencement of the term, Lessee shall accept the premise and fixtures in its existing condition. No representations, statements or warranties, express or implied, have been made by or on behalf of the Lessors as to the condition thereof. In no event shall the Lessor be liable for any defect in such property or for any limitation on its use.

4. **RENT.**

(A) Lessee shall pay to Lessor rent, in equal monthly installments, on the first (1<sup>st</sup>) day of each month during the term hereof, in the amount of \$2,000.00 per month plus tax; provided, however, that rent for the initial period will be prorated based upon the date of close of escrow. All rental payments shall be made by Transnation Title, in accordance with Paragraph 6 of that certain Agreement for Sale of Real Property between the Lessor and Lessee herein.

(B) All rental payments due under the terms of this lease shall be made to the Lessor at P. O. Box 2059, Prescott, Arizona 86302, ATTN: Cashier, unless and until another

address is designated by Lessor for receipt of payment. All rental payments due herein are due and payable on the first (1<sup>st</sup>) day of each month, and a late charge of TWO HUNDRED DOLLARS (\$200.00) shall be added to each payment received by the Lessor five (5) days after said rent becomes due and payable.

**5. RIGHT TO RE-ENTER.** If any rent shall be due and unpaid or if default shall be made in any of the covenants contained herein, it shall be lawful for Lessor and/or its designee to re-enter the premises and remove therefrom all persons and personal property of the Lessee then occupying same.

**6. CITY AND STATE TAXES.** In addition Lessee shall pay to Lessor, as part of each monthly rental payment, an amount equal to all taxes measured by the gross rental receipts (rental taxes) which Lessor is required to pay by reason of the amounts paid by Lessee to Lessor under this lease, as determined by any taxes imposed by the City of Prescott, County of Yavapai, and the State of Arizona.

**7. REAL PROPERTY TAXES.** Lessee, in addition to the rent provided for herein, shall pay or reimburse Lessor for all taxes and assessments upon the leased property, and upon the building and improvements thereon, which are assessed during the lease term.

**8. PERSONAL PROPERTY TAXES.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment, and all other personal property of Lessee contained in the premises or elsewhere, and when possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessors.

**9. SURRENDER OF PREMISES.** Subject to the terms and conditions herein provided, it is agreed that at the expiration of the term of this Agreement, or any sooner termination of this Agreement, Lessee will quit and surrender the premises, in as good order and condition as reasonable use and wear thereof will permit, damage by the elements excepted. If the Lessee should hold over the said term with the consent, express or implied, of Lessor, such holding over shall be construed as a tenancy only from month to month, and the Lessee shall continue to pay the prevailing rent for such term as Lessee holds same.

**10. USE.** Lessee shall use the premises exclusively for the business offices of UNS and for no other purpose without Lessors' prior written consent.

(A) Lessee shall, at Lessee's expense, comply with all applicable statutes, ordinances, rules, regulations, orders, and requirements in effect during the term or any part of the term hereof regulating the use by Lessee of the premises.

(B) Lessee hereby accepts the premises in the condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, and state laws, ordinances, and regulations governing and regulating the use of the premises, and accepts this lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that neither Lessor nor Lessor's agents have made any representation or warranty as

to the suitability of the premises for the conduct of Lessee's business.

**11. UTILITIES AND GLASS.** The Lessee further agrees to pay all water, fuel, light, power, gas, telephone and all other utilities in or about the leased premises, and the Lessor shall in no way be responsible therefor. The Lessee hereby agrees to take full responsibility for all plate glass and other glass in and about the leased premises, and should any plate glass insurance be carried, the premium shall be paid by the Lessee.

**12. LESSEE'S OBLIGATIONS.** Lessee shall, at its expense and throughout the term of this lease, maintain, service, replace, and keep in good repair the interior structure and mechanical equipment, including such items as floors, ceilings, walls, doors, glass, plumbing, cleaning, heating and cooling equipment, air conditioning, partitions, and electrical fixtures, the roof and exterior of the premises, and surrender the same upon the expiration of the term herein or renewal thereof in the same condition as received, ordinary wear and use excepted. On the last day of the term hereof, or on any sooner termination, Lessee shall surrender the premises to Lessor in the same condition as received, broom-clean, ordinary wear and tear excepted. Lessee shall repair any damage to the premises occasioned by the removal of its trade fixtures, furnishings, and equipment, which shall include the patching and filling of holes and repair of any structural damage.

**13. KEEPING PREMISES CLEAN.** Lessee agrees to keep the leased premises inside and outside clean and neat at all times, including sidewalks, parking area and front and rear yards.

**14. ALTERATIONS AND ADDITIONS.** Alterations and additions may not be made to the leased premises without the prior written consent of the Lessor, any alteration or addition of the premises, excepting movable furniture and machinery and trade fixtures, shall become part of the realty and shall belong to the Lessor upon termination of this lease. However, this shall not prevent the Lessee from installing trade fixtures, machinery, or other trade equipment in conformance with the ordinances of the City of Prescott, Yavapai County, Arizona, and the leased premises are not damaged by such removal. Lessee shall keep the leased premises, the building and the property in which the leased premises are situated, free from any liens arising out of any work performed for, material furnished to, or obligations incurred by the Lessee. It is further understood and agreed that under no circumstance is the Lessee to be deemed the agent of the Lessor for any alteration, repair or operation of the building upon the leased premises, the same being done at the sole expense of the Lessee, and all contractors, materialmen, mechanics, and laborers, are hereby charged with the notice that they must look to Lessee only for the payment of any charge for work done and materials furnished upon the leased premises during the term of this lease.

**15. LIENS CREATED BY LESSEE.** Lessee shall have no power to do any act or to make any contract that may create or be the foundation for any lien upon the premises or other estate or reversion of the Lessor in the demised premises or upon any building or improvement thereon, and should any such lien be filed, the Lessee at its own cost and expense shall bond or otherwise discharge the same within ten days after the filing thereof.

16. **LESSEE'S FIXTURES.** Lessee may install in the premises any new fixtures Lessee deems desirable and they shall remain Lessee's property. Lessee may remove these fixtures at any time but shall repair any damage caused by removal. No fixtures shall be installed which effect the structural integrity or external appearance of the leased premises without Lessors' prior written consent. Any fixtures or other property of Lessee remaining on the premises after termination of the lease shall, after seven (7) days, become the property of the Lessors.

17. **LANDLORD'S LIEN.** Lessee hereby agrees that the Lessor shall have a first and superior lien on all fixtures and personal property belonging to the Lessee in and about said building as additional security for the performance of this lease.

18. **PROHIBITION AGAINST ASSIGNMENT.** Lessee shall not assign, mortgage or encumber this lease nor sublet nor permit the leased property or any part thereof to be used by others, without the prior written consent of the Lessor in each instance. If this lease is assigned, or the leased property or any part thereof is sublet or occupied by anybody other than the Lessee, the Lessor may, after default by the Lessee, collect rent from the assignee, sublessee or occupant, and apply the net amount collected to the rent reserved. No such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, sublessee or occupant as a tenant or lessee, or a release of the Lessee from further performance by the Lessee of the covenants in this lease. The consent of the Lessor to an assignment or subletting shall not be construed to relieve the Lessee from obtaining the consent, in writing, of the Lessor to any further assignment or subletting.

19. **PROHIBITION AGAINST LESSEE.** Lessee shall not, at any time, without first obtaining the Lessor's express written consent:

(A) Change, whether by alteration, replacement, rebuilding or otherwise, the exterior color or architectural treatment of the leased property, or the building in which the same is located, or any part thereof, whether the interior or exterior of said building, including the grounds therein;

(B) Perform any act or carry on any practice which may damage, mar or deface the leased property or the building in which said property is located;

(C) Install, operate or maintain in the leased property any electrical equipment which will overload the electrical system therein or any part thereof, beyond its reasonable capacity for proper and safe operation as determined by Lessors.

20. **RIGHT OF ENTRY TO LESSOR.** Lessee shall permit an inspection of the leased property by the Lessor, or its agents or representatives, and by or on behalf of prospective purchasers and prospective tenants, during reasonable hours, at any time during the lease term. If admission to the leased property for such purposes cannot be obtained, or if at any time an entry shall be deemed necessary for the protection of the property, whether for the benefit of the Lessor or Lessee, the Lessor, its agents or representatives, may enter the leased property to accomplish such

purposes. The provisions contained in this paragraph are not to be construed as creating or increasing any obligation on the part of the Lessor under this lease.

**21. DAMAGE OR INJURY TO PERSON OR PROPERTY.** Lessee hereby agrees to exempt, indemnify and hold harmless the Lessor from any and all liability for any damage or injury to person or property caused by or resulting from electricity, gas, water, rain, wind or any leak or flow from or into any part of said building, or from any other damage or injury resulting from any other cause or happening whatsoever.

**22. INDEMNITY.** Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the premises or from the conduct of Lessee's business or from any activity, work, or things done, permitted, or suffered by Lessee in or about the premises or elsewhere and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of the lease or arising from any negligence of the Lessee, or any of the Lessee's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim. Lessee upon written notice from Lessor shall defend the same at Lessee's expense by counsel of the Lessor's choosing. Lessee, as a material part of the consideration to Lessor, hereby assumes all risks of damage to property or injury to persons, in, upon, or about the premises arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor.

**23. REPAIRS OR REPLACEMENT IN EVENT OF THEFT OR VANDALISM.** Notwithstanding anything to the contrary herein contained, Lessee agrees to repair or replace without delay and at his own sole cost, expense, and risk any and all portions of the leased premises that may be damaged by theft, burglary, vandalism, or by malicious mischief. Such repairs and replacements shall be made promptly, as and when necessary. All repairs and replacements shall be in quality and class at least equal to the original work. On default of the Lessee in making such repairs and replacements, Lessors may, but shall not be required to, make such repairs and replacements, chargeable to the Lessee's account, and the expenses thereof shall constitute and collectable as additional rent.

**24. DAMAGE BY FIRE OR OTHER CASUALTY.** No destruction or damage to any building or improvement on the leased property by fire, windstorm, or any other casualty shall entitle Lessee to surrender possession of the leased property, to terminate this lease, to violate any of its provisions, or to cause any rebate or abatement in rent then due or thereafter becoming due under the terms hereof.

**25. INSURANCE.** Lessee shall keep all buildings, improvements, and personalty on the leased premises, including all alterations, additions and improvements, insured against loss or damage by fire, with all standard extended coverage that may be required by Lessor. The insurance called for under this provision shall include, but necessarily be limited to, a comprehensive public liability insurance policy. The insurance shall be in an amount sufficient to prevent Lessor and Lessee from becoming co-insurers under the provisions of the applicable

policies of insurance, in a reasonable amount to be determined by Lessor in its sole discretion. Lessee shall further provide insurance against liability for bodily injury and property damage, in an amount and in forms of insurance policies as may be reasonably required by Lessor in its sole discretion, for the benefit of Lessor. All insurance provided by Lessee as required by this covenant shall be carried in favor of the Lessor and Lessee as their respective interests may appear. All insurance shall be written with responsible companies that the Lessor approves of, with the policies and the amounts thereof to be determined solely at the discretion of the Lessor. If Lessee shall fail to procure and maintain said insurance, Lessor may, but shall not be required to, procure and maintain the same, at the expense of Lessee.

**26. DEFAULTS.** The occurrence of any one or more of the following events shall constitute a material default and breach of this lease by Lessee:

(A) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, or to provide proof of payment of said amounts upon demand of Lessor.

(B) The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this lease to be observed or performed by Lessee, other than described in paragraph "A" above, where such failure shall continue for a period of fifteen (15) days after written notice hereof from Lessor to Lessee; provided however, that if the nature of Lessee's default is such that more than fifteen (15) days are reasonably required for its cure, then Lessee shall not be deemed to be in default, if Lessee commenced such cure within said fifteen-day period and thereafter diligently prosecutes such cure to completion.

(C) (i) The making by Lessee of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the premises or of Lessee's interest in the lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the premises or of Lessee's interest in this lease, where such seizure is not discharged within thirty (30) days.

**27. NON-PAYMENT OF RENT.** In addition to any other remedy provided for in this lease, Lessee further agrees with Lessor that upon the non-payment of the whole or any part of the said rent or other payment due hereunder at the time when same is promised to be paid by the said Lessee, the Lessor at its election, may either distrain for said rent due, or declare this lease at an end and recover possession of said premises, as though the same were held by forcible detainer, said Lessee hereby waiving any notice of such election or any demand for rent; and further, that in the event said premises or part thereof shall be deserted during said term or of the breach of any of the other terms, covenants or agreements herein contained, and by the Lessee to be kept and performed, the Lessor may declare this lease to be at an end and become entitled to the immediate possession of said premises and may pursue any other remedy provided for herein; or

they may treat this lease as continuing and take, have and recover any damages they may have sustained by reason of such breach.

**28. INDEPENDENT COVENANT FOR PAYMENT OF RENT.** The covenant of the Lessee to pay rent shall at all times be recognized as an independent covenant under the terms of this lease and shall in no way be construed to be dependent upon any other clause, condition or covenant contained herein.

**29. INTEREST ON PAST DUE OBLIGATIONS.** Except as expressly herein provided, any amount due to Lessors not paid when due shall bear interest at eighteen percent (18%) per annum from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this lease.

**30. NOTICES.** Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by regular mail, addressed to Lessor or Lessee respectively at the address set forth after their signatures at the end of this lease, or at their last known business address.

**31. WAIVER BY LESSOR.** The waiver by the Lessor of any breach or breaches by the lessee of any one or more of the covenants, agreements, conditions, or obligations herein contained or the acceptance of any delinquent payments shall not bar the Lessors' right to declare a forfeiture or to employ any other rights or remedies of the said Lessors in the event of any subsequent breach of any such or other covenants, agreements, conditions, or obligations. Any entry and/or re-entry by the Lessor, whether had or taken under what is generally known as summary proceedings, or otherwise, as provided by the terms of this lease, shall not be deemed to absolve or discharge the Lessee from liability hereunder.

**32. SEVERABILITY.** The invalidity of any provision of this lease as determined by a Court of competent jurisdiction, shall in no way effect the validity of any other provision hereof, so long as the original intent of the parties is not defeated thereby.

**33. CHANGE IN LEASE.** The making, execution and delivery of this lease has not been induced by any representation, statement, warranties or agreements other than those herein expressed. It is mutually agreed by and between the parties hereto that this agreement supercedes all other previous and/or other agreements bearing upon the above premises, and it is further agreed that no changes to or in this lease shall be made without being in writing, signed by all of the parties hereto.

**34. RESERVATION BY LANDLORD.** Lessor reserves the right to make improvements and additions upon the real property. Any such additions or improvements, if not an integral part of the Lessee's premises, shall be property of Lessor and shall not be deemed part of the premises leased to Lessee.

**35. CONSTRUCTION.** The terms and conditions of this agreement shall be construed and governed in accordance with the laws of the State of Arizona.

**36. TIME IS OF THE ESSENCE.** Time is of the essence in this agreement. The failure of either party to require the strict performance by the other of any provision of this agreement shall not be deemed a waiver of the right of said party thereafter to require strict performance of that or any other provision of this agreement in accordance with the terms hereof, and without notice.

**37. SUCCESSORS IN INTEREST.** The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, personal representatives, successors and assigns of the parties hereto, and shall inure to their benefit.

**38. PROOF OF INSURANCE AND TAX PAYMENTS.** Lessee hereby agrees to provide, upon demand, proof of payments of any and all real property taxes, personal property taxes, sales taxes, and insurance coverage as called for under the terms of this agreement. The breach by the Lessee to provide proof of any payments as called for under the terms of this lease agreement, or immediately upon demand, shall be deemed a material breach of the terms of this agreement.

**39. PREPARATION OF AGREEMENT.** This agreement was prepared by JOHN R. MOFFITT, Prescott City Attorney. Lessee acknowledges that JOHN R. MOFFITT has in no way represented or advised Lessee, and that Lessee has the option and right at all times hereof to obtain independent counsel of its own choosing in entering into this agreement

**40. CONFLICT OF INTEREST.** Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the City is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the agreement. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of the City of Prescott from any other party to the agreement arising as a result of this agreement.

**41. ALTERNATE DISPUTE RESOLUTION.** The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute

DATED this 23 day of November, 2004.

UNS Gas, Inc.

By:   
Name: SCOTT RATHON  
Title: DIRECTOR ASSET & FACILITIES MANAGEMENT

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott  
this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

ROWLE P. SIMMONS, Mayor

ATTEST:

APPROVED AS TO FORM:

MARIE L WATSON  
City Clerk

JOHN R MOFFITT  
City Attorney