

05/06/2013

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office



103657940



MD05-06-13

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

ENERGY MFG. CO., INC.

- ☐ Individual(s) ☐ Association  
☐ Partnership ☐ Limited Partnership  
☒ Corporation- State: DELAWARE  
☐ Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached? ☐ Yes ☒ No

3. Nature of conveyance/Execution Date(s) :

Execution Date(s) APRIL 30, 2013

- ☐ Assignment ☐ Merger  
☒ Security Agreement ☐ Change of Name  
☐ Other \_\_\_\_\_

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? ☐ Yes ☒ No

Name: REGIONS BANK

Street Address: 1900 FIFTH AVENUE NORTH

City: BIRMINGHAM

State: ALABAMA

Country: USA Zip: 35203

- ☐ Individual(s) Citizenship \_\_\_\_\_  
☐ Association Citizenship \_\_\_\_\_  
☐ Partnership Citizenship \_\_\_\_\_  
☐ Limited Partnership Citizenship \_\_\_\_\_  
☒ Corporation Citizenship ALABAMA BANKING CORP.  
☐ Other \_\_\_\_\_ Citizenship \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☒ No  
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s) \_\_\_\_\_ Text \_\_\_\_\_

B. Trademark Registration No.(s)

2253024; 1807080; AND 1943454

Additional sheet(s) attached? ☐ Yes ☒ No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: GUY C. OSWALT III

Internal Address: MAYNARD, COOPER & GALE, P.C.

Street Address: 11 NORTH WATER STREET, STE 27000

City: MOBILE

State: ALABAMA Zip: 36602-5027

Phone Number: (251) 432-0001

Docket Number: \_\_\_\_\_

Email Address: GOSWALT@MAYNARDCOOPER.COM

6. Total number of applications and registrations involved:

05/06/2013 KNGUYEN1 0000178562 3

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$120.00-00

- ☐ Authorized to be charged to deposit account  
☒ Enclosed

8. Payment Information:

05/06/2013 KNGUYEN1 00000035 2253024

01 FC:0521  
Deposit Account Number \_\_\_\_\_ 40.00 00  
Authorized User Name \_\_\_\_\_ 50.00 00

9. Signature:

Guy C. Oswalt III

Signature

Name of Person Signing

5/30/2013

Date

Total number of pages including cover sheet, attachments, and document: 22

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Branch, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK  
REEL: 005026 FRAME: 0022

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT ("this Agreement") dated as of April 30, 2013 is executed by ENERGY MFG. CO., INC., a Delaware corporation, as debtor (the "Borrower"), in favor of REGIONS BANK, an Alabama banking corporation (the "Lender").

### Recitals

A. The Borrower is a party to that certain Credit Agreement dated as of April 30, 2013 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") with the Lender, and pursuant to the Credit Agreement, the Lender has agreed to make a credit facility available to the Borrower.

B. Capitalized terms used in these Recitals have the meanings defined for them above or in Section 1.2. The Borrower has requested that the Lender extend Credit to the Borrower under the Credit Documents. To secure the Obligations, and to induce the Lender to extend Credit to the Borrower under the Credit Documents, the Borrower has agreed to execute and deliver this Agreement to the Lender.

### Agreement

NOW, THEREFORE, in consideration of the foregoing Recitals, and to induce the Lender to extend Credit to the Borrower under the Credit Documents, the Borrower agrees with the Lender as follows:

## ARTICLE 1

### Rules of Construction and Definitions

**SECTION 1.1** Rules of Construction. This Agreement is subject to the rules of construction set forth in the Credit Agreement.

**SECTION 1.2** Definitions. As used in this Agreement, capitalized terms that are not otherwise defined herein have the meanings defined for them in the Credit Agreement and the following terms are defined as follows:

(a) Unless otherwise defined herein, terms used in this Agreement that are defined in Article 9A of the Alabama Uniform Commercial Code (the "UCC") have the meanings defined for them therein.

(b) Collateral Reserve Account is defined in Section 3.4.

(c) Contracts means all requisitions, purchase orders, documents, Instruments, letters of credit and Chattel Paper (tangible or electronic) of the Borrower, including any of the same that related to any Equipment, Inventory or other property described in the granting clauses set

out in Section 2.1, or secure any Accounts, or in connection with which Accounts exist or may be created.

(d) **Copyrights** means and include all of Borrower's rights, title and interest in and to the following whether now owned or hereafter acquired by Borrower or in which Borrower now has or hereafter acquires any rights and wherever located: (a) all copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, copyright applications, and all renewals of any of the foregoing, (b) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past, current or future infringements of any of the foregoing, (c) the right to sue for past, present and future infringements of any of the foregoing, and (d) all rights corresponding to any of the foregoing throughout the world.

(e) **Event of Default** is defined in Section 5.1. An Event of Default "exists" if the same has occurred and is continuing.

(f) **IP License** means any Patent License, Trademark License or other license as to which Lender has been granted a security interest hereunder.

(g) **Licenses** means any and all IP Licenses, operating permits, franchises, and other licenses, authorizations, certifications, permits, or approvals, as the same may from time to time be amended, renewed, restated, reissued, restricted, supplemented or otherwise modified other than construction permits, issued by, or on behalf of, any Governmental Authority now existing or at any time hereafter issued, with respect to the acquisition, construction, renovation, expansion, leasing, ownership and/or operation of any facility.

(h) **Patent or Patents** means, in each case whether now, existing or hereafter arising, all of Borrower's rights, title and interest in and to (a) any and all patents and patent applications, (b) any and all inventions and improvements described and claimed in such patents and patent applications, (c) reissues, divisions, continuations, renewals, extensions and continuations-in-part of any patents and patent applications, (d) income, royalties, damages, claims and payments now or hereafter due and/or payable under and with respect to any patents or patent applications, including, without limitation, damages and payments for past and future infringements, (e) rights to sue for past, present and future infringements of patents, and (f) all rights corresponding to any of the foregoing throughout the world.

(i) **Patent License** means all of the following now owned or hereafter acquired by Borrower or in which Borrower now has or hereafter acquires any rights: any written agreement granting any right to make, use, sell and/or practice any invention or discovery that is the subject matter of a Patent.

(j) **Permits** means all permits, licenses, certificates, approvals and authorizations, however characterized, issued or in any way furnished by a Governmental Authority in connection with the business operations of Borrower or any other Property other than any permits that are not assignable without the consent of another Person, which consent has not or cannot be obtained.

(k) **Permitted Encumbrances** means any Liens and other matters affecting title to the Property that are described in Exhibit A.

(l) **Property** is defined in Section 2.1.

(m) **Security Documents** means all Credit Documents that now or hereafter grant or purport to grant to the Lender any guaranty, collateral or other security for any of the Obligations.

(n) **Tangible Property** means all Equipment, Inventory and other tangible property included in the Property.

(o) **Trademark or Trademarks** means one or all of the following now owned or hereafter acquired by Borrower or in which Borrower now has or hereafter acquires any rights: (i) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of any State of the United States or any other country or any political subdivision thereof, (ii) the goodwill symbolized by any of the foregoing, (iii) any and all licenses of trademarks, service marks, trade names and/or trade styles, whether as licensor or licensee, (iv) any renewals of any and all trademarks, service marks, trade names, trade styles and/or licenses of any of the foregoing, (v) income, royalties, damages and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages, claims, and payments for past, present and future infringements thereof, (vi) rights to sue for past, present and future infringements of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing, and (vii) all rights corresponding to any of the foregoing throughout the world.

(p) **Trademark License** means all of the following now owned or hereafter acquired by Borrower or in which Borrower now has or hereafter acquires any rights: any written agreement granting any right to use any Trademark or Trademark registration.

## ARTICLE 2

### **Security Agreement**

**SECTION 2.1 Granting Clauses.** As security for the Obligations, the Borrower hereby grants to the Lender security title to and a continuing security interest in, and assigns, transfers, conveys, pledges and sets over to the Lender all of the Borrower's right, title and interest in, to and under all assets of the Borrower of every kind, nature and description, wherever located (excluding the Borrower's real property) including the following property, whether now owned or hereafter acquired by the Borrower, and whether now existing or hereafter incurred, created, arising or entered into (collectively, the "Property"):

(a) all Equipment, Inventory and other Tangible Property of the Borrower, and any and all accessions and additions thereto, any substitutions and replacements therefor, and all attachments and improvements placed upon or used in connection therewith, or any part thereof;

(b) all Accounts and Contracts of the Borrower;

(c) all of the Borrower's rights as an unpaid vendor or lienor, including stoppage in transit, replevin, detinue and reclamation;

(d) any other property of the Borrower now or hereafter held by the Lender or by others for the Lender's account;

(e) any Collateral Reserve Account established under Section 3.4 and all moneys and items from time to time on deposit therein;

(f) all Chattel Paper of Borrower;

(g) all Documents of Borrower;

(h) all General Intangibles of Borrower;

(i) all Instruments of Borrower;

(j) all claims of Borrower in any pending litigation and/or claims for any insurance proceeds;

(k) all Permits and Licenses of Borrower and the proceeds thereof, to the extent now or hereafter permitted by applicable law;

(l) all leases and use agreements of personal property entered into by the Borrower as lessor with other persons as lessees, and all rights of the Borrower under such leases and agreements, including the right to receive and collect all rentals and other moneys (including security deposits) at any time payable under such leases and agreements, whether paid or accruing before or after the filing of any petition by or against the Borrower under the federal Bankruptcy Code;

(m) all leases and use agreements of personal property entered into by the Borrower as lessee with other persons as lessor, and all rights, titles and interests of the Borrower thereunder, including the leasehold interest of the Borrower in such property and all options to purchase such property or to extend any such lease or agreement;

(n) all Copyrights, Patents and Trademarks of Borrower;

(o) all moneys of Borrower, all Deposit Accounts and other reserve accounts in which such moneys may at any time be invested and all certificates, instruments and documents of Borrower from time to time representing or evidencing any such moneys;

(p) all Goods and personal property of Borrower, whether tangible or intangible, now owned or hereafter acquired by Borrower or in which Borrower now has or hereafter acquires any rights and wherever located;

(q) all insurance policies related to the foregoing;

(r) all Investment Property of Borrower;

(s) all Supporting Obligations of Borrower;

(t) all Commercial Tort Claims of Borrower;

(u) all Letter of Credit Rights of Borrower;

(v) all Payment Intangibles of Borrower;

(w) all Software of Borrower; and

(x) all rights, interest, dividends, and Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, royalties, issues, profits and products of each of the foregoing and all books, documents, files, ledgers and records in whatever media (whether on computer or otherwise) whether recorded or stored relating to each of the foregoing, and all equipment and general intangibles necessary or beneficial to retain, access or process the information contained in those books and records.

No submission by the Borrower to the Lender of a schedule or other particular identification of Property shall be necessary to vest in the Lender the Liens contemplated by this Agreement in each and every item of Property of the Borrower now existing or hereafter acquired, incurred, created, arising or entered into, but rather such Liens shall vest in the Lender immediately upon the acquisition, creation, incurring or arising of, or entering into, any such item of Property, without the necessity for any other or further action by the Borrower or by the Lender. The Borrower shall take such steps and observe such formalities as the Lender may request from time to time to create and maintain in favor of the Lender the Liens contemplated by this Agreement in all of the Property, whether now owned or hereafter acquired by the Borrower, and whether now existing or hereafter incurred, created, arising or entered into.

### ARTICLE 3

#### **Certain Covenants and Agreements Concerning Accounts and Inventory**

**SECTION 3.1 Documentation Regarding Accounts and Contracts.** The Borrower shall keep accurate and complete records of the Borrower's Accounts and Contracts and shall promptly deliver to the Lender from time to time on request (a) a detailed aged trial balance (Schedule of Accounts), in form and substance acceptable to the Lender, of all then-existing Accounts, (b) the original copy of all Contracts and other documents evidencing or relating to the Accounts so scheduled, (c) such other information relating to the then-existing

Accounts and Contracts as the Lender shall reasonably request, and (d) formal written assignments or schedules specifically describing the Accounts and Contracts and confirming the Lender's Liens thereon.

**SECTION 3.2     Verification of Accounts and Contracts.** Any of the Lender's officers, employees or agents shall have the right at any time in the Lender's name or in the name of the Borrower, to verify with any Account Debtor the validity or amount of, or any other matter relating to, any Accounts and Contracts by mail, telephone, fax or otherwise.

**SECTION 3.3     Documentation Regarding Inventory.** The Borrower shall keep accurate and complete records of the Inventory, and shall promptly furnish to the Lender from time to time on request (a) a current schedule of Inventory in form and substance satisfactory to the Lender, based upon such inventory accounting practices as are satisfactory to the Lender, and (b) the original copy of all documents related to such Inventory. Such schedule of Inventory shall provide the Lender with such information as the Lender shall request.

**SECTION 3.4     Collateral Reserve Account.** Upon request by the Lender, the Borrower shall cause all remittances in payment of the Accounts and Contracts to be deposited with the Lender, or such other bank or banks as the Lender may require, in an account or accounts designated as the Lender may require (collectively, the "Collateral Reserve Account"). Such deposits shall be made by the Borrower daily, and each deposit shall be accompanied by a report prepared by the Borrower in such form as the Lender shall require. The Lender may at its option also deposit to the Collateral Reserve Account any remittances made to the Lender. Funds in the Collateral Reserve Account shall not be subject to withdrawal by the Borrower, but at all times shall be subject to the exclusive dominion and control of the Lender, and may be applied against the Obligations from time to time at the sole discretion of the Lender.

## ARTICLE 4

### Other Covenants and Agreements

**SECTION 4.1     General.** The Borrower covenants and agrees with the Lender as follows:

(a) Without the Lender's prior written consent, the Borrower shall not (1) add to or change any of the locations set forth in Exhibit B; (2) except for the sale of Inventory in the ordinary course of business, remove any Tangible Property from the locations specified therefor in Exhibit B; (3) alter or change its legal name; (4) change the state of its incorporation or registration (if the Borrower was created by such state filing); (5) alter or change its legal form or status (corporate, partnership or otherwise); or (6) merge, in one transaction or in a series of related transactions, into or consolidate with any other entity.

(b) The Borrower shall notify the Lender in writing of any proposed addition to or change in any of the matters described in Section 4.1(a) at least 60 days prior to the date of the proposed change and shall furnish the Lender with any information requested by the Lender in considering the proposed change.

(c) The Borrower is and shall remain the owner of all of the locations described in Section 4.1(a) except any leased locations described in Exhibit B. The Borrower has heretofore delivered to the Lender a written waiver or subordination (in form and substance satisfactory to the Lender) of any Lien with respect to the Property that the owner might have.

(d) The Borrower shall not allow any of the Tangible Property to become affixed to any real estate without the prior written consent of the Lender. If at any time any of the Tangible Property should, notwithstanding the foregoing, be affixed to any real estate, the security interest of the Lender under this Agreement shall nevertheless attach to and include such Tangible Property, and the Borrower hereby authorizes the Lender to file any financing statements required by the Lender to perfect, preserve and protect the Liens of the Lender therein.

(e) The Borrower will not, without the prior written consent of the Lender, (1) sell, lease, license, transfer, convey or otherwise dispose of, any of the Property, except for the sale of Inventory in the ordinary course of business, (2) pledge or grant any security interest in any of the Property to any person, except for Permitted Encumbrances, (3) permit any Lien to attach to any of the Property or any levy to be made thereon or any other financing statement to be on file with respect to any of the Property, except those related to Permitted Encumbrances, or (4) permit any default or violation to occur under any agreement, covenant or restriction included in Permitted Encumbrances.

(f) The Borrower authorizes the Lender to perfect, preserve, continue, amend and maintain the Lender's interest in the Property by whatever actions the Lender in its sole discretion deems appropriate under the UCC or applicable law. The Borrower shall assist and cooperate with the Lender in taking such actions and shall pay all costs and expenses incurred by the Lender in taking such actions. Such actions may include (1) the filing by the Lender of financing statements describing the Property, (2) the Lender's taking possession of the Property, and (3) obtaining an acknowledgment from a person in possession of any of the Property that such person is holding the Property for the benefit of the Lender.

(g) The Borrower shall place a legend in form and substance acceptable to the Lender that gives notice of the Lender's security interest in Chattel Paper (tangible or electronic) on all Chattel Paper (tangible or electronic) currently existing or acquired or created in the future by the Borrower.

(h) The Lender may correct any patent errors in this Agreement or any financing statements or other documents executed in connection herewith.

(i) The Borrower shall inform the Lender in writing of any material adverse change in any of the representations and warranties of the Borrower under this Agreement, promptly after the Borrower shall learn of such change.

(j) The Borrower shall furnish to the Lender from time to time statements and schedules further identifying and describing the Property and such other reports in connection with the Property as the Lender may reasonably request, all in reasonable detail.



(k) The Borrower shall keep and maintain at the Borrower's own cost and expense complete records of the Property, including a record of all payments received and all credits granted with respect to the Property and all other dealings with the Property. Upon request of the Lender, the Borrower shall make proper entries in such records disclosing the assignment of the Property to the Lender and shall segregate and mark such records with the Lender's name in a manner satisfactory to the Lender. If an Event of Default exists, the Borrower shall deliver such records to the Lender on demand.

(l) The Borrower shall not file a release, amendment, partial release, or termination statement with respect to any of the Property without the Lender's prior written consent.

**SECTION 4.2 Taxes and Assessments.** The Borrower shall pay when due all taxes, assessments and other charges levied or assessed against any of the Property, and all other claims that are or may become Liens against any of the Property, except any that are Permitted Encumbrances or that are being contested by Permitted Contests; and should default be made in the payment of same, the Lender, at its option, may pay them.

**SECTION 4.3 Insurance and Risk of Loss.**

(a) The Borrower shall keep the Tangible Property insured in such amounts, with such companies and against such risks as may be satisfactory to the Lender. All such policies shall name the Lender as an additional loss payee and shall contain an agreement by the insurer that they shall not be cancelled without at least 30 days' prior written notice to the Lender. The Borrower shall cause duplicate originals of such insurance policies to be deposited with the Lender. If requested by the Lender, the Borrower shall, at least 10 days prior to the due date, furnish to the Lender evidence of the payment of the premiums due on such policies.

(b) The Borrower hereby assigns to the Lender each policy of insurance covering any of the Property, including all rights to receive the proceeds and returned premiums of such insurance. With respect to all such insurance policies, the Lender is hereby authorized, but not required, on behalf of the Borrower, to collect for, adjust and compromise any losses and to apply, at its option, the loss proceeds (less expenses of collection) to the Obligations, in any order and whether due or not, or to the repair, replacement or restoration of the Property, or to remit the same to the Borrower; but any such application or remittance shall not cure or waive any default by the Borrower and shall not operate to abate, satisfy or release any of the Obligations. If any insurance proceeds are received by the Borrower, the Borrower shall promptly apply such proceeds to the repair, replacement or restoration of the Property unless the Borrower receives contrary directions from the Lender.

(c) In case of a sale pursuant to the default provisions hereof, or any conveyance of all or any part of the Property in extinguishment of the Obligations, title to all such insurance policies and the proceeds thereof and unearned premiums with respect thereto shall pass to and vest in the purchaser of the Property.

(d) The risk of loss or damage to the Property is on the Borrower whether or not the Property is held by or controlled by the Lender.

**SECTION 4.4     Care of Tangible Property; Notice of Loss, etc.** The Borrower shall: (a) at all times maintain the Tangible Property in as good condition as it is now in, reasonable wear and tear alone excepted; (b) not use the Tangible Property, or permit it to be used, in violation of any Governmental Requirement; and (c) notify the Lender immediately in writing of any event causing material loss or depreciation in value of any of the Property and of the amount thereof (other than ordinary wear and tear).

**SECTION 4.5     Filing Fees and Taxes.** The Borrower agrees, to the extent permitted by law, to pay all recording and filing fees, revenue stamps, taxes and other expenses and charges payable in connection with the execution and delivery of the Credit Documents, and the recording, filing, satisfaction, continuation and release thereof.

**SECTION 4.6     Use of Tangible Property.** The Borrower agrees (a) to comply with the terms of any lease covering the premises on which any Tangible Property is located and all Governmental Requirements concerning such premises or the conduct of business thereon; (b) not to conceal or abandon the Tangible Property; and (c) not to lease or hire any of the Tangible Property to any person or permit the same to be leased or used for hire except pursuant to Permitted Encumbrances.

**SECTION 4.7     Application of Payments and Collections.** The Borrower irrevocably waives the right to direct the application of any payments and collections at any time or times hereafter received by the Lender from or on behalf of the Borrower, and the Borrower irrevocably agrees that the Lender shall have the continuing exclusive right to apply and reapply any and all such payments and collections received at any time or times hereafter by the Lender or its agent against the Obligations, in such order and in such proportions as the Lender may deem advisable, whether due or not, and notwithstanding any entry by the Lender upon its books and records.

**SECTION 4.8     Instruments, Documents and Tangible Chattel Paper.** Immediately upon the Borrower's receipt of any Property that consists of or is evidenced or secured by an agreement, Instrument, Document or tangible Chattel Paper, the Borrower shall deliver each original thereof to the Lender, together with appropriate endorsements and assignments in form and substance acceptable to the Lender.

**SECTION 4.9     Electronic Chattel Paper.** The Borrower hereby grants the Lender control of any of the Borrower's electronic Chattel Paper, and the Borrower shall take all actions requested by the Lender that the Lender deems in its sole discretion advisable to establish the Lender's control over such Property.

**SECTION 4.10   Visitation.** The Borrower shall permit representatives of the Lender from time to time (a) to visit and inspect the Property, all records related thereto, the premises upon which any Property is located, and any of the other offices and properties of the Borrower; (b) to inspect and examine the Property and to inspect, audit, check and make abstracts from the books, records, orders, receipts, correspondence and other data relating to the Property or to any transactions between the Borrower and the Lender; (c) to discuss the affairs, finances and accounts of the Borrower with and be advised as to the same by the officers thereof, if a

corporation, or if not by other responsible persons; and (d) to verify the amount, quantity, value and condition of, or any other matter relating to, the Property, all at such times and intervals as the Lender may desire. The Borrower hereby irrevocably authorizes and instructs any accountants acting for the Borrower to give the Lender any information the Lender may request regarding the financial affairs of the Borrower and to furnish the Lender with copies of any documents in their possession related thereto.

**SECTION 4.11 Certification of the Borrower.** Upon request by the Lender, the Borrower shall give the Lender a certification, in written or other record form, attesting that the Borrower has not sold any of the Property unless expressly permitted by this Agreement and has not changed any of the following without the prior written consent of the Lender: (a) the Borrower's legal name; (b) the state of the Borrower's incorporation, organization or registration (if the Borrower was created by such state filing); (c) the Borrower's chief executive office; and (d) the Borrower's principal place of business.

**SECTION 4.12 Further Assurances.** At the Borrower's cost and expense, upon request of the Lender, the Borrower shall duly execute and deliver, or cause to be duly executed and delivered, to the Lender such further instruments and do and cause to be done such further acts as may be reasonably necessary or proper in the opinion of the Lender or its counsel to perfect, preserve and protect the validity and priority of the Liens of the Lender in the Property and to carry out more effectively the provisions and purposes of this Agreement.

**SECTION 4.13 Use and Operation.** Whenever any of the Property is in the possession or control of the Lender, or whether for perfection, enforcement or otherwise, the Borrower agrees to the Lender's unrestricted use and operation of the Property. The Borrower waives any rights it may have to require the Lender to keep all nonfungible Property segregated or separately identifiable and agrees that the Lender may commingle any and all of the Property (fungible or otherwise) with its own without any liability to the Borrower for so doing.

## **ARTICLE 5**

### **Events of Default**

**SECTION 5.1 Events of Default.** The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Agreement (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any Governmental Requirement):

(a) any representation or warranty made in this Agreement or in any of the other Credit Documents shall prove to be false or misleading in any material respect as of the time made; or

(b) any report, certificate, financial statement or other instrument furnished in connection with the Credit, this Agreement or any of the other Credit Documents, shall prove to be false or misleading in any material respect as of the time made; or

(c) default shall be made in the payment when due of any of the Obligations; or

(d) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of the Borrower to be observed or performed pursuant to the terms of this Agreement (other than any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 5.1 specifically dealt with) and such default shall continue unremedied until the first to occur of (1) the date that is thirty (30) days after written notice by the Lender to the Borrower; or (2) the date that is thirty (30) days after the Borrower first obtains knowledge thereof; or

(e) any default or event of default, as therein defined, shall occur under any of the other Credit Documents (after giving effect to any applicable notice, grace or cure period specified therein).

## ARTICLE 6

### Remedies

**SECTION 6.1 Certain Rights of Lender After Default.** If an Event of Default exists that does not already result in the automatic acceleration of the Obligations under another Credit Document, the Lender shall have, in addition to any other rights under this Agreement or the UCC or under applicable law, the right, without notice to the Borrower (or with notice to the Borrower if notice is required and cannot be waived under applicable law), to take any or all of the following actions at the same or different times:

(a) The Lender may (1) notify Account Debtors that Accounts and Contracts have been assigned to the Lender, demand and receive information from Account Debtors with respect to Accounts and Contracts, forward invoices to Account Debtors directing them to make payments to the Lender, collect all Accounts and Contracts in the Lender's or the Borrower's name and take control of any cash or non-cash proceeds of Property; (2) enforce payment of any Accounts and Contracts, prosecute any action or proceeding with respect to Accounts and Contracts, extend the time of payment of Accounts and Contracts, make allowances and adjustments with respect to Accounts and Contracts and issue credits against Accounts and Contracts, all in the name of the Lender or the Borrower; (3) settle, compromise, extend, renew, release, terminate or discharge, in whole or in part, any Account or Contract or deal with the same as the Lender may deem advisable; and (4) require the Borrower to open all mail only in the presence of a representative of the Lender, who may take therefrom any remittance on any of the Property.

(b) The Lender may (1) enter upon the premises of the Borrower or any other place where any Property is located, and through self-help and without judicial process, without first obtaining a final judgment or giving the Borrower notice and opportunity for a hearing and without any obligation to pay rent, remove the Property therefrom to the premises of the Lender or its agent for such time as Lender may desire to collect or liquidate the Property; (2) render any Equipment unusable, (3) require the Borrower to assemble the Tangible Property and make it available to the Lender at the Borrower's premises or any other place selected by the Lender, and to make available to the Lender all of the Borrower's premises and facilities for the purpose of the Lender's taking possession of, removing or putting the Tangible Property in salable form; and

(4) use, and permit the Lender or any purchaser of any of the Property from the Lender to use, without charge, the Borrower's labels, general intangibles and advertising matter or any property of a similar nature, as it pertains to or is included in the Property, in advertising, preparing for sale and selling any Property, and in finishing the manufacture, processing, fabrication, packaging and delivery of the Inventory; and the Borrower's rights under all licenses and all franchise agreements and other general intangibles shall inure to the Lender's benefit.

(c) The Lender, without demand of performance or other demand, advertisement or notice of any kind (except any notice required by law of a proposed disposition of the Property, which may be given in the manner specified in Section 7.1) to or upon the Borrower or any other person (all of which demands, advertisements and notices are hereby expressly waived, to the extent permitted by law), may forthwith collect, receive, appropriate, repossess and realize upon all or any part of the Property, and may forthwith sell, lease, license, assign, give options to purchase, or sell or otherwise dispose of and deliver all or any part of the Property (or contract to do so), in one or more parcels at public or private sale or sales, at any exchange, broker's board or at any of the Lender's offices, on the Borrower's premises or elsewhere at such prices as the Lender may deem best, for cash or on credit or for future delivery without assumption of any credit risk. To the extent permitted by law, the Property shall be sold free of any right of redemption, which right of redemption the Borrower hereby releases. To the extent permitted by applicable law, the Borrower waives all claims, damages, and demands against the Lender arising out of the repossession, retention or sale of the Property.

## **SECTION 6.2      Repossession of the Property; Care and Custody of the Property; etc.**

(a) The Borrower shall give the Lender written notice in the manner set forth in Section 7.1 within 24 hours of the date of repossession if the Borrower alleges that any other property of the Borrower was left on or in the repossessed Property at the time of repossession; and such notice shall be an express condition precedent to any action for loss or damages in connection therewith. After receiving any such notice the Lender will have a reasonable time to notify the Borrower as to where the Borrower can collect such property.

(b) The Borrower irrevocably invites the Lender and its agents to enter upon any premises on which any of the Property is now or hereafter located for all purposes related to the Property, including repossession thereof, and consents to any such entry and repossession. Any such entry by the Lender or its agents shall not be a trespass upon such premises, and any such repossession shall not constitute conversion of any Property. The Borrower agrees to indemnify and hold the Lender harmless against, and hereby releases the Lender from, any actions, claims, costs, liabilities or expenses arising directly or indirectly from any entry upon such premises and any repossession of any Property.

(c) If the Lender shall repossess any Property at a time when no Event of Default exists and the repossessed Property is thereafter returned to the Borrower, the damages therefor, if any, shall not exceed the fair rental value of the repossessed Property for the time it was in the Lender's possession.

(d) The Lender shall be deemed to have exercised reasonable care in the custody and preservation of any Property in its possession if it takes such reasonable actions for that purpose as the Borrower shall request in writing, but the Lender shall have sole power to determine whether such actions are reasonable. Any omission to do any act not requested by the Borrower shall not be deemed a failure to exercise reasonable care.

**SECTION 6.3     Application of Proceeds.** The Lender shall have the continuing exclusive right to apply and reapply the proceeds, including cash or non-cash proceeds (sales on credit or notes or otherwise), resulting from the exercise of any of the rights, powers and remedies of the Lender under this Agreement, against the obligations in such order and in such proportions as the Lender may deem advisable. All expenses incurred in securing the possession of the Property, moving, storing, repairing or finishing the manufacture of the Property and preparing the same for sale, shall become part of the Obligations secured hereby. The Obligors shall remain liable to the Lender for any deficiency.

**SECTION 6.4     Attorney-in-Fact After Default.** At any time when an Event of Default exists, the Lender shall have the following powers: (a) to sell or assign any of the Property upon such terms, for such amounts and at such times as the Lender deems advisable and to execute any bills of sale or assignments in the name of the Borrower in relation thereto; (b) to take control, in any manner, of any item of payment on, or proceeds of the Property; (c) to use the information recorded on or contained in any data processing equipment and computer hardware and software relating to the Property to which the Borrower has access; (d) to settle, adjust, compromise, extend, renew, discharge, terminate or release the Property in whole or in part; (e) to settle, adjust or compromise any legal proceedings brought to collect the Property; (f) to prepare, file and sign the Borrower's name on any proof of claim in bankruptcy or similar document against any Account Debtor; (g) to prepare, file and sign the Borrower's name on any notice of Lien, assignment or satisfaction or termination of Lien or similar document in connection with the Property; (h) to sign, authenticate or endorse the name of the Borrower upon any Chattel Paper, Document, Instrument, invoice, or similar document or agreement relating to the Property; (i) to use the Borrower's stationery and to sign the name of the Borrower to verifications of the Accounts and Contracts and notices thereof to Account Debtors; (j) to notify postal authorities to change the Borrower's mailing address to an address designated by the Lender for receipt of payments on Accounts and Contracts; (k) to enter into contracts or agreements for the processing, fabrication, packaging and delivery of Inventory as said attorney-in-fact or designee or the Lender may from time to time deem appropriate and charge the Borrower's account for any reasonable costs thereby incurred; (l) to exercise all of the Borrower's other rights, powers and remedies with respect to the Property; and (m) to do all acts and things necessary, in the Lender's sole judgment, to carry out the purposes of this Agreement or to fulfill the Borrower's obligations hereunder.

**SECTION 6.5     Default Rate.** If an Event of Default exists, the Obligations shall bear interest at the Default Rate, until the earlier of (a) such time as all of the Obligations are paid in full or (b) no such Event of Default exists.

**SECTION 6.6     No Obligation to Pursue Others.** The Borrower agrees that the Lender has no obligation to attempt to satisfy the obligations by collecting them from any other

person liable for them and the Lender may release, modify or waive any collateral provided by any other person to secure any of the Obligations, all without affecting the Lender's rights against the Borrower. The Borrower waives any right it may have to require the Lender to pursue any other person for any of the Obligations, and that each of the Obligations may be enforced against the Borrower without the necessity of joining any other Obligor, any other holders of liens and any of the Property or any other person, as a party.

**SECTION 6.7**     **Compliance With Other Laws.** The Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Property and such compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Property.

**SECTION 6.8**     **Warranties of Title.** The Lender may in its sole discretion disclaim any warranties of title or the like in the sale or other disposition of the Property. Such disclaimer will not be considered adversely to affect the commercial reasonableness of any sale of the Property.

**SECTION 6.9**     **Remedies Cumulative.** The rights, powers and remedies of the Lender under this Agreement are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.

## **ARTICLE 7**

### **Miscellaneous**

**SECTION 7.1**     **Notices.**

(a) Any request, demand, authorization, direction, notice, consent or other document provided or permitted by this Agreement shall be given in the manner, and shall be effective at the time, provided in Section 7.1 of the Credit Agreement.

(b) Ten Business Days' written notice to the Borrower as provided above shall constitute reasonable notification to the Borrower when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring ten Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

**SECTION 7.2**     **Expenses.** The Borrower shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to the Lender, incurred by the Lender in connection with (a) the negotiation, preparation and review of this Agreement (whether or not the transactions contemplated by this Agreement shall be consummated), (b) the enforcement of this Agreement, (c) the custody and preservation of the Property, (d) the protection or perfection of the Lender's rights and interests under this Agreement in the Property, (e) the exercise by or on behalf of the Lender of any of its rights, powers or remedies under this Agreement and (f) the prosecution or defense of any action or proceeding by or against the Lender, the Borrower, any other Obligor, any Account Debtor, or any one or more of them, concerning any matter related to this Agreement, any of the Property, or any of the Obligations. All such amounts shall bear

interest from the date demand is made at the Default Rate and shall be included in the Obligations secured hereby. The Borrower's obligations under this Section 7.2 shall survive the payment in full of the Obligations and the termination of this Agreement.

**SECTION 7.3**     **Successors and Assigns.** Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the successors and assigns of such party or any other person who becomes bound by this Agreement as a debtor, except that the Borrower may not assign or transfer this Agreement without the prior written consent of the Lender; and all covenants and agreements of the Borrower contained in this Agreement shall bind the Borrower's successors and assigns or any other person who becomes bound by this Agreement as a debtor and shall inure to the benefit of the successors and assigns of the Lender.

**SECTION 7.4**     **Independent Obligations.** The Borrower agrees that each of the obligations of the Borrower to the Lender under this Agreement may be enforced against the Borrower without the necessity of joining any other Obligor, any other holders of Liens in any Property or any other person, as a party.

**SECTION 7.5**     **Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Alabama except as required by mandatory provisions of law (without regard to conflict of law principles) and except to the extent that the validity and perfection of the Liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.

**SECTION 7.6**     **Date of Agreement.** The date of this Agreement is intended as a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on that date.

**SECTION 7.7**     **Separability Clause.** If any provision of the Credit Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**SECTION 7.8**     **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

**SECTION 7.9**     **No Oral Agreements.** This Agreement is the final expression of the agreement between the parties hereto, and this Agreement may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Agreement and the other Credit Documents, and there is no unwritten oral agreement between the parties hereto in existence.

**SECTION 7.10**    **Waiver and Election.** The exercise by the Lender of any option given under this Agreement shall not constitute a waiver of the right to exercise any other option. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Credit



Documents, nor consent to any departure by the Borrower therefrom, shall be effective unless in writing and signed by an authorized officer of the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

**SECTION 7.11 No Obligations of Lender; Indemnification.** The Lender does not by virtue of this Agreement or any of the transactions contemplated by the Credit Documents assume any duties, liabilities or obligations with respect to any of the Property unless expressly assumed by the Lender under a separate agreement in writing, and this Agreement shall not be deemed to confer on the Lender any duties or obligations that would make the Lender directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Borrower agrees to indemnify and hold the Lender harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including attorney's fees) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the Borrower or any Obligor in this Agreement or any other Credit Document; (b) any breach of any of the warranties or obligations of the Borrower or any Obligor under this Agreement or any other Credit Document; and (c) the Property, or the Liens of the Lender thereon. The provisions of this Section 7.11 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Agreement.

**SECTION 7.12 Advances by the Lender.** If the Borrower shall fail to comply with any of the provisions of this Agreement, the Lender may (but shall not be required to) make advances to perform the same, and where necessary enter any premises where any Property is located for the purpose of performing the Borrower's obligations under any such provision. The Borrower agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at the Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Lender of any Event of Default resulting from the Borrower's failure to pay such amounts.

**SECTION 7.13 Rights, Liens and Obligations Absolute.** All rights of the Lender hereunder, all Liens granted to the Lender hereunder, and all obligations of the Borrower hereunder, shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any of the Credit Documents, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Credit Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

**SECTION 7.14 Borrower Liable on Contracts.** Notwithstanding anything in this Agreement to the contrary (a) the Borrower shall remain liable under the Contracts to perform all of the Borrower's duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Lender of any rights hereunder shall not release the Borrower from any of the Borrower's obligations under the Contracts, and (c) the Lender shall

not have any obligation or liability under the Contracts by reason of this Agreement or the receipt by the Lender of any payment hereunder, nor shall the Lender be obligated to perform any of the obligations of the Borrower under the Contracts, to take any action to collect, file and enforce any claim for payment assigned to the Lender hereunder, or to make any inquiry as to the nature or sufficiency of any payment received by it or the adequacy of any performance by any party.

**SECTION 7.15 Termination.** This Agreement and the Lender's Liens in the Property hereunder will not be terminated until one of the Lender's officers signs a written termination agreement. Except as otherwise expressly provided for in this Agreement, no termination of this Agreement shall in any way affect or impair the representations, warranties, agreements or other obligations of the Borrower or the rights, powers and remedies of the Lender under this Agreement with respect to any transaction or event occurring prior to such termination, all of which shall survive such termination. Even if all of the Obligations outstanding at any one time should be paid in full, this Agreement will continue to secure any Obligations that might later be owed the Lender until such written termination agreement has been executed by the Lender. In no event shall the Lender be obligated to terminate its Liens under this Agreement or return or release any of the Property to the Borrower (a) until the payment in full of all Obligations then outstanding, (b) if the Lender is obligated to extend Credit to the Borrower, (c) if any contingent obligation of the Borrower to the Lender remains outstanding or (d) until the expiration of any period for avoiding or setting aside any payment to the Lender under bankruptcy or insolvency laws.

**SECTION 7.16 Reinstatement.** This Agreement, the obligations of the Borrower hereunder, and the Liens, rights, powers and remedies of the Lender hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to the Borrower, any Obligor, or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, any Obligor or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

**SECTION 7.17 Submission to Jurisdiction.** The Borrower irrevocably (a) acknowledges that this Agreement will be accepted by the Lender and performed by the Borrower in the State of Alabama; (b) submits to the jurisdiction of each state or federal court sitting in Jefferson County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement (to enforce the arbitration provisions hereof or, if the arbitration provisions are found to be unenforceable, to determine any issues arising out of or relating to this Agreement) or any of the other Credit Documents (individually, an "Agreement Action"); (c) waives, to the fullest extent permitted by law, any objection or defense that the Borrower may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; (d) agrees that final judgment in any Agreement Action brought in any of the

Courts shall be conclusive and binding upon the Borrower and may be enforced in any other court to the jurisdiction of which the Borrower is subject, by a suit upon such judgment; (e) consents to the service of process on the Borrower in any Agreement Action by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the Borrower at the Borrower's address designated in or pursuant to Section 7.1; (f) agrees that service in accordance with Section 7.17(e) shall in every respect be effective and binding on the Borrower to the same extent as though served on the Borrower in person by a person duly authorized to serve such process; and (g) AGREES THAT THE PROVISIONS OF THIS SECTION, EVEN IF FOUND NOT TO BE STRICTLY ENFORCEABLE BY ANY COURT, SHALL CONSTITUTE "FAIR WARNING" TO THE BORROWER THAT THE EXECUTION OF THIS AGREEMENT MAY SUBJECT THE BORROWER TO THE JURISDICTION OF EACH STATE OR FEDERAL COURT SITTING IN JEFFERSON COUNTY, ALABAMA WITH RESPECT TO ANY AGREEMENT ACTIONS, AND THAT IT IS FORESEEABLE BY THE BORROWER THAT THE BORROWER MAY BE SUBJECTED TO THE JURISDICTION OF SUCH COURTS AND MAY BE SUED IN THE STATE OF ALABAMA IN ANY AGREEMENT ACTIONS. Nothing in this Section 7.17 shall limit or restrict the Lender's right to serve process or bring Agreement Actions in manners and in courts otherwise than as herein provided.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has caused this Agreement dated as of the date first set forth above to be executed by its duly authorized representative.

**ENERGY MFG. CO., INC.,**  
a Delaware corporation

By: 

Name: James C. Delk, Jr.

Its: President

## **EXHIBIT A**

### **(Permitted Encumbrances)**

1. The Lien of ad valorem taxes for taxes that are not yet due and payable at the time under consideration.
2. The Liens granted to the Lender under this Agreement.
3. Other Liens of the Lender.

**EXHIBIT B**

**(Locations)**

1. Address(es) of the Borrower's place(s) of business and chief executive office (if the Borrower has more than one place of business):

1927 First Avenue North  
Birmingham, Alabama 35203

204 Plastic Lane  
Monticello, Iowa 52310

2. Address(es) where Borrower keeps the Borrower's records concerning Accounts:

1927 First Avenue North  
Birmingham, Alabama 35203

204 Plastic Lane  
Monticello, Iowa 52310

3. Address(es) of property owned by the Borrower on which any Tangible Property is or will be located:

204 Plastic Lane  
Monticello, Iowa 52310

4. Address(es) of property not owned by the Borrower on which any Tangible Property is or will be located:

1927 First Avenue North  
Birmingham, Alabama 35203

5. State of incorporation or registration (if the Borrower was created by such state filing):

Delaware