



# Mercantile Bank

14252

RECORDATION NO. \_\_\_\_\_ Filed 1425

PLEASE RETURN  
TO  
SHANK, IRWIN, & CONANT  
ATTORNEYS AT LAW  
1100 LTV TOWER  
DALLAS, TEXAS 75201  
ATTN: H. WILLIAMS, L.A.

JAN 16 1984 3 45 PM

Jim R. Hamilton  
Executive Vice President

January INTERSTATE COMMERCE COMMISSION

No. \_\_\_\_\_  
JAN 16 1984  
50  
ICC Washington, D. C.

Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423  
ATTENTION: Mildred Lee  
Room 2303

4-016A032

Dear Ms. Lee:

Pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. §11303, enclosed for recordation are two (2) originals of a Security Agreement and Assignment from Burke Energy Corporation, a Nevada corporation, with offices at 12th and Main Streets, Hutchison, Kansas 67501, as Mortgagor, to Mercantile National Bank at Dallas, a national banking association, with offices at 1704 Main Street, Dallas, Texas 75201, as Mortgagee, covering the mortgage of thirty-seven (37) liquid petroleum railroad tank cars marked and numbered BRKX 1 through BRKX 14, inclusive, BRKX 125 through BRKX 128, inclusive, BRKX 218, BRKX 221, BRKX 226, BRKX 232, BRKX 235, BRKX 707, BRKX 717, BRKX 727, BRKX 737, BRKX 747, BRKX 767, BRKX 770 through BRKX 776, inclusive, and BRKX 778. Also enclosed is a check for \$50.00 representing the filing fee for the Security Agreement and Assignment.

Please return one original to the undersigned at 1704 Main Street, Dallas, Texas 75201, Attention: Jim R. Hamilton, Executive Vice President.

Should you have any questions or comments concerning the recordation requirements, please contact Robert N. Rule, at Shank, Irwin & Conant, 1000 LTV Tower, 1525 Elm Street Dallas, Texas 75201, (214) 720-9677.

Very truly yours,

MERCANTILE NATIONAL BANK  
AT DALLAS, a national  
banking association

By: Jim R. Hamilton  
Jim R. Hamilton,  
Executive Vice President

RECEIVED  
JAN 16 3 40 PM '84  
FEDERAL RESERVE  
OPERATION BR.



# Mercantile Bank

Jim R. Hamilton  
Executive Vice President

January 9, 1984

Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423  
ATTENTION: Mildred Lee  
Room 2303

Dear Ms. Lee:

Pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. §11303, enclosed for recordation are two (2) originals of a Security Agreement and Assignment from Burke Energy Corporation, a Nevada corporation, with offices at 12th and Main Streets, Hutchison, Kansas 67501, as Mortgagor, to Mercantile National Bank at Dallas, a national banking association, with offices at 1704 Main Street, Dallas, Texas 75201, as Mortgagee, covering the mortgage of thirty-seven (37) liquid petroleum railroad tank cars marked and numbered BRKX 1 through BRKX 14, inclusive, BRKX 125 through BRKX 128, inclusive, BRKX 218, BRKX 221, BRKX 226, BRKX 232, BRKX 235, BRKX 707, BRKX 717, BRKX 727, BRKX 737, BRKX 747, BRKX 767, BRKX 770 through BRKX 776, inclusive, and BRKX 778. Also enclosed is a check for \$50.00 representing the filing fee for the Security Agreement and Assignment.

Please return one original to the undersigned at 1704 Main Street, Dallas, Texas 75201, Attention: Jim R. Hamilton, Executive Vice President.

Should you have any questions or comments concerning the recordation requirements, please contact Robert N. Rule, Jr. at Shank, Irwin & Conant, 1000 LTV Tower, 1525 Elm Street, Dallas, Texas 75201, (214) 720-9677.

Very truly yours,

MERCANTILE NATIONAL BANK  
AT DALLAS, a national  
banking association

BY:   
Jim R. Hamilton,  
Executive Vice President

Interstate Commerce Commission  
Washington, D.C. 20423

1/17/84

OFFICE OF THE SECRETARY

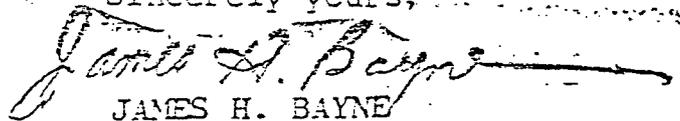
Jim R. Hamilton  
Executive Vice Pres.  
1704 Main Street  
Dallas, Texas 75201

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **1/16/84** at **3:45pm** and assigned re-  
recording number(s).  
**14252**

Sincerely yours,



JAMES H. BAYNE

Secretary

Enclosure(s)

JAN 16 1984 - 3 45 PM  
INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT  
AND  
ASSIGNMENT

THIS SECURITY AGREEMENT AND ASSIGNMENT dated December 29, 1983, from BURKE ENERGY CORPORATION, a Nevada corporation (hereinafter referred to as the "Borrower") and MERCANTILE NATIONAL BANK AT DALLAS, a national banking association (hereinafter referred to as the "Bank"),

W I T N E S S E T H:

WHEREAS, Borrower is in default with respect to certain obligations owed to Bank;

WHEREAS, the Borrower desires that Bank lend Borrower certain additional sums and that Bank forbear in the exercise of its rights with respect to the aforesaid default; and

WHEREAS, Bank is willing to lend additional sums to Borrower and is willing to forbear in the exercise of its rights with respect to the aforesaid default;

NOW, THEREFORE, to induce the Bank to lend additional sums to Borrower, to induce the Bank to forbear in the exercise of its rights with respect to the aforesaid default and to provide for the prompt payment of the Indebtedness (as hereinafter defined), the Borrower hereby grants, sells, assigns, conveys, transfers and sets over to the Bank all of its right, title and interest in and to the liquid petroleum railroad tank cars listed and described in Exhibit "A" attached hereto and made a part hereof for all purposes the same as if copied herein in full, together with all accessories, equipment, parts and appurtenances appertaining or attached to any of such railroad tank cars, whether now owned or hereafter acquired, along with all substitutions, replacements, additions, improvements, accessions and accumulations to any or all of such railroad tank cars; said security interest to include a lien on all proceeds, assessments and substitutions of and for such railroad tank cars (which railroad tank cars are hereinafter referred to as the "Collateral");

TO HAVE AND TO HOLD the Collateral unto the Bank and its successors and assigns for the use and benefit of the Bank and subsequent holders of the Indebtedness (as hereinafter defined).

Terms of Assignment

1. This Security Agreement and Assignment (hereinafter referred to as the "Security Agreement") is executed and delivered by the Borrower to provide for and to secure the payment of the indebtedness described below (hereinafter collectively referred to as the "Indebtedness"):

(a) One certain Renewal Promissory Note of even date herewith executed by Borrower, as maker, payable to the order of Bank in the original principal amount of \$2,500,000 and providing for interest as specified therein, and any and all renewals, increases, extensions, refundings, substitutions or consolidations of or for said Renewal Promissory Note, or any part thereof (hereinafter referred to as the "Note");

W/S

(b) A \$1,000,000 City of McPherson, Kansas Industrial Revenue Bond Series A, 1982 (Burke Energy Corporation) dated August 27, 1982, by and among Borrower, as tenant, Bank, as purchaser, and the City of McPherson, Kansas, as issuer, (hereinafter referred to as the "Series A Bond");

(c) A \$9,000,000 City of McPherson, Kansas Industrial Revenue Bond Series B, 1982 (Burke Energy Corporation) dated August 27, 1982, by and among Borrower, as tenant, Bank, as purchaser, and the City of McPherson, Kansas, as issuer, (hereinafter referred to as the "Series B Bond");

(d) One certain Loan and Security Agreement dated July 16, 1981, by and between Borrower and Bank (hereinafter referred to as the "Loan Agreement");

(e) All indebtedness, obligations and liabilities arising pursuant to the provisions of this Security Agreement, and any and all renewals, increases, substitutions, consolidations or extensions of any such item of indebtedness, or any part thereof;

(f) All loans and advances which Bank may hereafter make to Borrower, and any and all renewals, increases, substitutions, consolidations or extensions of the same, or any part thereof; and

(g) All other and additional debts, obligations and liabilities of every kind and character of Borrower, now or hereafter existing in favor of Bank, regardless of whether such debts, obligations and liabilities be direct or indirect, primary or secondary, joint, several or joint and several, fixed or contingent, and regardless of whether such present or future debts, obligations and liabilities may, prior to their acquisition by Bank, be or have been payable to, or be or have been in favor of, some other person or have been acquired by Bank in a transaction with one other than Borrower, together with any and all renewals, increases, substitutions, consolidations and extensions of such debts, obligations and liabilities, or any part thereof (it being contemplated that Bank may lend additional sums of money to Borrower from time to time, but shall not be obligated to do so, and that all such additional sums and loans shall be part of the Indebtedness).

2. Until, but only until, the occurrence and continuation of an event which constitutes an Event of Default (as hereinafter defined), the Borrower may exercise all rights under the Collateral, including, without limitation, the right to receive all monies due or to become due thereunder.

3. If one or more of the following events (hereinafter referred to as "Events of Default") shall occur and be continuing: (a) Borrower shall fail to pay when due the principal of or interest on the Note, or any installment thereof; (b) any representation or warranty made under this Security Agreement or in any certificate or statement furnished or made to the Bank pursuant hereto, or in connection herewith, or in connection with any document furnished hereunder, shall prove to be untrue in any respect as of the

date on which such representation or warranty is made; (c) default shall be made in the performance of any of the covenants or obligations of the Borrower herein contained; (d) default shall be made in respect of any obligation for borrowed money other than the Note, for which Borrower is liable (directly, by assumption, as guarantor or otherwise), or any obligation secured by any mortgage, pledge or other security interest, lien, charge or encumbrance with respect thereto, any property of Borrower, or in respect of any agreement relating to any such obligation; (e) Borrower shall (i) apply for, or consent to, the appointment of a receiver, trustee, intervenor or liquidator of all or a substantial part of its assets, or (ii) be adjudicated bankrupt or involvent or file a voluntary petition in bankruptcy or admit in writing that it is unable to pay its debts as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization or insolvency proceedings; (f) an order, judgment or decree shall be entered by any court of competent jurisdiction or other competent authority appointing a receiver, custodian, trustee, intervenor or liquidator of or for Borrower or of or for all or substantially all of the assets of Borrower and such order shall not be discharged within a sixty (60) day period; or (g) a default shall occur under the terms of the Note, the Loan Agreement, the Series A Bond, the Series B Bond or any other instrument executed in connection herewith or therewith; then, and in any such event, the Bank may declare the principal of and all interest then accrued on the Note and any other liabilities hereunder to be forthwith due and payable whereupon the same shall forthwith become due without presentment, demand, protest, notice of intent to accelerate or any other notice of any kind, all of which Borrower hereby expressly waives, anything contained herein or in the Note to the contrary notwithstanding. Nothing herein contained shall be construed as limiting in any way any events of default enumerated in the Note or any other document executed in connection with the transaction contemplated herein.

4. Bank, in addition to the rights and remedies provided for in the preceding paragraphs, shall have all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State of Texas, and Bank shall be entitled to avail itself of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of said indebtedness and the enforcement of the covenants contained herein and the foreclosure of the security interest created hereby and the resort to any remedy provided hereunder or provided by the Uniform Commercial Code as adopted in the State of Texas, or by any other law of such state, shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

5. The requirement of reasonable notice to the Borrower of the time and place of any public sale of the collateral or of the time after which any private sale, shall be satisfied if such notice is mailed, postage prepaid, to the Borrower at 12th and Main Streets, Hutchison, Kansas 67501 at least five (5) business days before the date of any public sale or at least five (5) business days before the time after which any private sale or other disposition is to be made.

6. The security interest herein granted shall not be affected by nor affect any other security taken for the

Indebtedness, or any part thereof; and any extensions or increases may be made of the Indebtedness, or any part thereof, and this security interest and any releases may be executed of the collateral, or any part thereof, herein conveyed without affecting the priority of this security interest or the validity thereof with reference to any third person, and the holder of the Indebtedness shall not be limited by any election of remedies if he chooses to foreclose this security interest by suit. The right to sell under the terms hereof shall also exist cumulative with such suit; and one method so resorted to shall nor bar the other, but both may be exercised at the same or different times, nor shall one be a defense to the other.

7. Upon payment of the Indebtedness in full, the Bank shall take, upon the request and at the expense of the Borrower, all action reasonably necessary to cause this Security Agreement to be released of record.

8. The Borrower hereby covenants, agrees and specifically undertakes hereby with the Bank, so long as any of the Indebtedness shall be outstanding that:

(a) the Borrower will, at its own expense, from time to time, take all action necessary or advisable to perfect the Bank's rights in the Collateral. In addition, upon the request of the Bank, Borrower will execute and deliver such further certificates, instruments or documents, and take such further actions, as may be deemed reasonably necessary or advisable by the Bank for the more effective vesting in it of the Collateral hereby assigned or intended to be assigned, including, without limitation, the execution and filing of financing and continuation statements and this Security Agreement under the applicable law in all jurisdictions where any records of the Borrower pertaining to any of the Collateral are kept; and to the extent permitted by applicable law, from time to time in effect, the Borrower hereby authorizes the Bank to sign and file any such financing or continuation statements without necessity of the same being signed by the Borrower;

(b) the Borrower will not sell, assign, convey, mortgage, encumber or otherwise transfer any of the Collateral to anyone other than the Bank;

(c) during the continuation of an event which constitutes an Event of Default, the Bank may endorse the name of the Borrower on all notes, checks, drafts, bills of exchange, money orders, commercial paper of any kind whatsoever and any other document received in the payment of monies due under or in connection with this Security Agreement, and the Bank, or any officer or employee thereof, is hereby irrevocably constituted and appointed the agent and attorney-in-fact for the Borrower for the foregoing purposes;

(d) the Bank shall not have any obligation under the Collateral by reason of or arising out of this Security Agreement or be obligated to perform any of the obligations or duties of the Borrower thereunder or hereunder; and

(g) nothing in this Security Agreement shall in any manner relieve the Borrower of its obligations to pay the Indebtedness except to the extent that the Bank applies to such Indebtedness, pursuant to the terms of this Security Agreement, monies actually and indefeasibly received by it.

9. No failure or delay on the part of the Bank in exercising any power or rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Security Agreement nor consent to any departure therefrom shall in any event be effective unless the same be in writing and then such waiver or consent shall be effective only in the specific instance for the purpose for which given.

10. This Security Agreement shall be binding upon, and shall inure to the benefit of, the Borrower and the Bank, and their respective heirs, successors and assigns, including any subsequent holder of the Note. This instrument shall be deemed to be made under and governed by the laws of the State of Texas.

11. Nothing contained in this Security Agreement shall be construed as modifying in any respect the rights and remedies granted to the Bank in the Note in the event of a default by the Borrower.

12. If an Event of Default should occur, the Bank shall, in addition to the rights and remedies set forth hereinabove, have all of the rights and remedies provided by the Texas Business and Commerce Code and otherwise at law or in equity.

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed on the date first above written.

BURKE ENERGY CORPORATION, a  
Nevada corporation

By:   
Martin M. Burke, President

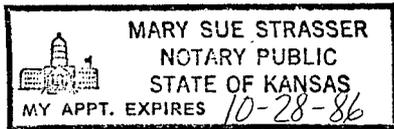
MERCANTILE NATIONAL BANK AT  
DALLAS, a national banking  
association

By:   
Daniel S. Preston,  
Vice President

THE STATE OF KANSAS §  
§  
COUNTY OF RENO §

Before me, a notary public, on this day personally appeared MARTIN M. BURKE, President of BURKE ENERGY CORPORATION, a Nevada corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the free act and deed of said corporation, for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 29<sup>th</sup> day of December, 1983.



Mary Sue Strasser  
Notary Public in and for  
Reno County, Kansas

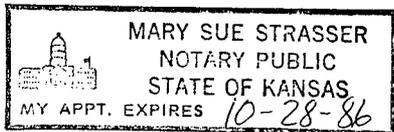
My Commission Expires:

October 28, 1986

THE STATE OF KANSAS §  
§  
COUNTY OF RENO §

Before me, a Notary Public, on this day personally appeared DANIEL S. PRESTON, Vice President of MERCANTILE NATIONAL BANK AT DALLAS, a national banking association, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the free act and deed of said national banking association, for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 29<sup>th</sup> day of December, 1983.



Mary Sue Strasser  
Notary Public in and for  
Reno County, Kansas

My Commission Expires:

October 28, 1986

EXHIBIT "A"  
to Security Agreement and Assignment

Thirty-seven (37) liquid petroleum tank cars marked and numbered BRKX 1 through BRKX 14, inclusive, BRKX 125 through BRKX 128, inclusive, BRKX 218, BRKX 221, BRKX 226, BRKX 232, BRKX 235, BRKX 707, BRKX 717, BRKX 727, BRKX 737, BRKX 747, BRKX 767, BRKX 770 through BRKX 776, inclusive, and BRKX 778.