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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF AKRON
THERMAL, LIMITED
PARTNERSHIP AND AKRON
THERMAL COOLING, LLC FOR
AUTHORITY TO ENTER INTO AN
ARRANGEMENT WITH THE
SUMMIT COUNTY PORT
AUTHORITY FOR THE ISSUANCE
OF REVENUE BONDS, TERM LOAN,
AND A MODIFICATION OF A LEASE

CASE NO. 07-29-HC-AIS

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JOINT APPLICATION FOR AUTHORITY TO ENTER INTO AN
ARRANGEMENT FOR THE ISSUANCE OF REVENUE BONDS, TERM LOAN,
AND MODIFICATION OF A LEASE

Pursuant to Section 4905.40-42, Revised Code, Akron Thermal, Limited Partnership ("Thermal") and Akron Thermal Cooling, LLC ("Cooling"), seek Commission approval to enter into an arrangement with the Summit County Port Authority for the issuance of Revenue Bonds for an amount currently estimated up to \$6,250,000. Thermal and Cooling also seek approval to enter into a term loan of up to \$1.5 million. In addition, approval is sought for the modification of a lease.

In support of their Joint Application, Thermal and Cooling respectfully state as follows:

1. Thermal is a limited partnership duly organized and existing under the laws of the State of Delaware and is authorized to engage in the business of providing steam and hot water through pipes or tubing to consumers within the central business district in downtown Akron, Ohio. Thermal's limited partner is Thermal Ventures II,

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Limited Partnership, a Delaware limited partnership; its general partner is Opportunity Parkway, LLC, an Ohio limited liability company.

2. Thermal is a public utility as defined in Sections 4905.02 and 4905.03(A)(9), Revised Code, and is regulated by and is subject to the jurisdiction of the Public Commission of Ohio (the "Commission"). Thermal provides service to approximately 200 steam and hot water customers.

3. The steam system in Akron was first developed by the City of Akron and operated by the City of Akron from 1974-1995. It was part of a combination trash burning and steam producing plant.

4. Cooling is an Ohio limited liability company established for the purpose of owning and operating the cooling or chilled water operations in Akron, Ohio.

5. Cooling is also a public utility as defined in Sections 4905.02 and 4905.03(A)(9), Revised Code and is also subject to the jurisdiction of the Commission. It is owned by Thermal Ventures II, L.P. ("TVII"), a Delaware partnership authorized to do business in Ohio. Cooling serves approximately 12 chilled water customers in Akron.

REVENUE BONDS

6. Thermal and Cooling seek Commission authority to enter into an arrangement with the Summit County Port Authority ("the Port Authority"). The proposed Revenue Bonds (the "Bonds") are expected to be issued by the Port Authority within the Port Authority's Fixed Rate Financing Program. The Port Authority will use the Bond proceeds to make a loan to Thermal and Cooling. The Bonds are expected to be rated "BBB +" by Fitch Ratings.

7. The Project funds will be used to retire existing discounted obligations of Thermal and Cooling as well as to fund restructuring costs, a bond reserve fund and costs of the issuance of the Bonds (the "Project").

8. Under this arrangement, the Port Authority will acquire a leasehold interest or other interest satisfactory to the Port Authority in the Project and lease the Project to Thermal and Cooling for the term of the Bonds. The Lease will be a triple net lease and will require Thermal and Cooling to be responsible for: (a) any and all costs and expenses in connection with the Project including, sales, property, and use taxes, and any other taxes, assessments, levies, fees, and charges imposed against the Project or the Lease, and (b) removal of all liens (other than permitted liens) against the Project.

9. A Primary Bond Reserve equal to ten percent of the principal amount of the Bonds is required. The Primary Bond Reserve will be funded with a cash deposit to be funded with bond proceeds.

10. The Bonds will be secured by a second mortgage on all real property owned by and the leasehold interest of Thermal and Cooling as well as a second security interest in all equipment owned by Thermal and Cooling, subject to the Lender's interest.

11. The current projected amount of financing through this bond arrangement will be up to \$6,250,000. There will be a Bond Reserve Fund of up to \$625,000 and the projected financing costs are up to approximately \$200,000. The projected interest rate is 5.95%, but is subject to market conditions and will be set approximately one week before closing. The projected financing closing date is February 8, 2007. The first interest payment would be due on or about May 15, 2007

and the last principal payment would be due on or about May 15, 2017. All of these amounts, rates, and dates are subject to modification.

12. Lease payments to the Trustee from Thermal and Cooling will be due on the first day of each month. Such payments will be required to be paid by wire transfer. Lease payments will be secured by the City of Akron in the form of a guaranty. Such guaranty will require annual appropriation and will be called upon in the event Thermal and Cooling fail to meet their payment obligations under the Lease. The monthly lease payments will consist of any principal and interest due on the Bonds, the program administrator fee and the Bond Trustee fee.

13. The estimated financing costs for the Program include underwriting fees, legal fees, Bond rating fees, printing costs, Bond Trustee fees and other related costs. The financing costs may increase if significant changes or delays occur after the execution of the Term Sheet. The estimated fees do not include Thermal and Cooling's legal counsel or other consultants. With the approval of the Port Authority, such costs may be included in the financing.

14. The loan will be subject to a Yield Maintenance Premium in the event of a pre-payment. The Yield Maintenance Premium is defined as "the excess, if any, of the Discounted Value of the Called Principal over the sum of the Called Principal". Therefore, the actual premium payable, if any, will depend upon the market interest rates on comparable term U.S. Treasury securities plus one percent (1%) which would be the rate the Called Principal is discounted at the time the loan is optionally prepaid, compared to such interest rates at the time the loan was closed.

TERM LOAN

15. Thermal and Cooling seek Commission approval of a term loan of up to \$1.5 million from FirstMerit Bank, N.A. ("FirstMerit") The purpose of the term loan will be to provide working capital to Thermal and Cooling. The funds from the term loan will be placed in FirstMerit Bank to be drawn down as needed, and FirstMerit will be the company's primary depository institution. The term of the term loan is 120 months from the date of closing and the amortization will be over ten years. There will be 120 monthly principal and interest payments. The rate will be a 10 year COF plus 250 bps, but the facility will be re-priced annually. FirstMerit will have a first and best blanket lien position on all business assets including, but not limited to, accounts, inventory, equipment and intangibles, as well as an assignment of the leasehold interest. FirstMerit will also have a first and best security interest in \$150,000 in account at FirstMerit. There will be fees of \$7,500 plus out-of-pocket expenses. Thermal Ventures II, LP will be a guarantor and there will be a Support Agreement from the City of Akron which will provide credit enhancement to this facility. Attached as Exhibit 1(B) is the financing commitment/term sheet from FirstMerit.

MODIFICATION TO OPERATING LEASE

16. The existing lease between the City of Akron and Thermal which was approved by the Commission in Case No. 97-1059-HT-AIS is being modified. Modifications will be filed when they become available.

17. Attached are the following exhibits submitted in support of this Application:

Exhibit 1A – Summit County Port Authority Revenue Bonds, Executive Summary and Resolution Subject to Approval

Exhibit 1B – Commitment Letter/Term Sheet as to Term Loan (subject to revision)

Exhibit 1C – Current Lease (Modified Lease to be filed when available)

Exhibit 2 - Balance Sheet and Income Statement

Exhibit 3 - Verification of officers of Opportunity Parkway, LLC, the general partner of Akron Thermal, Limited Partnership and of the officers of Akron Thermal Cooling, LLC. (Signed copies will be filed as soon as they become available.)

WHEREFORE, Akron Thermal, Limited Partnership and Akron Thermal Cooling, LLC respectfully request that the Commission approve and authorize the arrangement with the Summit County Port Authority for the issuance of Revenue Bonds, the approximately \$1.5 million term loan, and the modifications to the lease, and grant such other relief as the Commission finds to be fair and reasonable under the circumstances.

Respectfully submitted,

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EXHIBIT 1A

Summit County Port Authority Revenue Bonds Executive Summary and Resolution Subject to Approval

SUMMIT COUNTY PORT AUTHORITY

Executive Summary Akron Thermal Project

Date: January 16, 2007

Project Description and Financing Structure:

Akron Thermal, Limited Partnership and Akron Thermal Cooling, LLC (collectively, Akron Thermal) generate and distribute steam and chilled water to buildings primarily in and around downtown Akron (including hospitals). The facility used by Akron Thermal is the City of Akron's former recycle energy plant (the "Project Facility") which Akron Thermal will lease from the City under an operating lease arrangement. The Project is the acquisition by the Port Authority of a leasehold interest in the Project Facility. The Port Authority will issue its Bond Fund Program Bonds to pay the cost of acquiring an interest in the Project Facility. The Port Authority will then lease the Project Facility to Akron Thermal under a Lease Agreement. Akron Thermal will make rental payments to the Port Authority under the Lease Agreement in amounts necessary to pay the debt service on the Bonds when due.

Under a Cooperative Agreement with the Port Authority, the City of Akron (the City) has agreed to make payments from its nontax revenues in an amount necessary to pay debt service on the Bonds when due, to the extent that Akron Thermal has failed to make its required rental payments.

Lessee:

Akron Thermal, Limited Partnership
Akron Thermal Cooling, LLC

Cooperative Party:

City of Akron

Estimated Project Costs:

\$6,250,000

Port Authority Bonds:

not to exceed **\$6,500,000** – maturing May 15, 2017

Other Financing:

\$1,500,000 term loan from FirstMerit Bank

Security for Financing:

Second mortgage on Project, subordinate to FirstMerit Bank

Expected Tax Status of Bonds:

Taxable

Projected Closing Date:

March 1, 2007

SUMMIT COUNTY PORT AUTHORITY

RESOLUTION NO.: 2007-002

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$6,500,000 SUMMIT COUNTY PORT AUTHORITY BOND FUND PROGRAM TAXABLE DEVELOPMENT REVENUE BONDS, FOR THE PURPOSE OF FINANCING THE COSTS OF "PORT AUTHORITY FACILITIES" WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE; AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE TO SECURE SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A COOPERATIVE AGREEMENT, A BASE LEASE, A LEASE AGREEMENT AND A BOND PLACEMENT AGREEMENT; AND AUTHORIZING THE DISTRIBUTION OF A DISCLOSURE STATEMENT IN CONNECTION WITH SUCH BONDS; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Summit County Port Authority (the "Port Authority"), a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "State"), is authorized and empowered, by virtue of the laws of the State, including without limitation, Sections 4582.43 and 4582.431, Ohio Revised Code, (a) to issue its revenue bonds and revenue notes for the purpose of financing of costs of acquiring, constructing, installing, equipping or improving port authority facilities located within the County of Summit, Ohio (the "County"), (b) to enter into agreements with respect to the financing, acquisition, construction, equipping, improvement and installation of such facilities and to provide for a pledge of certain revenues sufficient to pay the principal of and interest and any premium on those revenue bonds and revenue notes, (c) to secure those revenue bonds by a trust indenture as supplemented by a supplemental indenture, as provided herein, and (d) to enact this Bond Legislation and to enter into the Supplemental Indenture, the Cooperative Agreement, the Base Lease, the Lease Agreement and the Placement Agreement, each as defined in Section 1, upon the terms and conditions provided herein and therein; and

WHEREAS, the Project will enhance, foster, aid, provide for or promote economic development in the County by creating and preserving jobs and employment opportunities, and the Port Authority is authorized and empowered by Section 13 of Article VIII, Ohio Constitution, and Sections 4582.21 through 4582.59, Ohio Revised Code, as enacted and amended from time to time, to finance the costs of the acquisition of an interest in the Project by issuing and selling its revenue obligations therefor; and

WHEREAS, this Legislative Authority has determined that it is necessary and proper and in the best interest of the Port Authority to issue revenue bonds in the aggregate principal amount not to exceed \$6,500,000 to finance the costs of an interest in port authority facilities to be acquired by the Port Authority.

NOW, THEREFORE, BE IT RESOLVED by the board of directors (the "Board") of the Summit County Port Authority:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this resolution, unless the context or use clearly indicates another meaning or intent, the words and terms used herein shall have the meaning set forth below. Words and terms not defined in this Section 1 shall have the meanings ascribed to them in the Indenture and the Lease Agreement.

"Act" means Chapter 4482, Revised Code, as enacted and amended from time to time pursuant to Section 13 of Article VIII of the Ohio Constitution.

"Base Lease" means the Base Lease between the Port Authority and the Contracting Party.

"Basic Indenture" means the Trust Indenture dated as of July 1, 2004 between the Port Authority and the Trustee.

"Bond Legislation" means, as to the Series Bonds, this resolution providing for the issuance of the Series Bonds, as amended or supplemented from time to time.

"Bond Registrar" means such term as defined in the Basic Indenture.

"Bond Reserve Deposit" means such term as defined in the Supplemental Indenture.

"Bond Service Charges" means, as to the Series Bonds, such term as defined in the Basic Indenture.

"Bonds" means the Series Bonds and any other series of Bonds hereafter authorized by and issued pursuant to Section 2.02 of the Basic Indenture and secured by the Basic Indenture and the Supplemental Indenture.

"Chairman" means the Chairman of the Board of the Port Authority.

"City" means the City of Akron, Ohio, a municipal corporation located in the County and duly organized and validly existing under the Constitution and laws of the State and its Charter.

"Closing Date" means the date of delivery of the Series Bonds.

"Contracting Party" means, collectively, Akron Thermal, Limited Partnership, a limited partnership duly organized and validly existing under the laws of the State of Delaware and authorized to do business in the State, and Akron Thermal Cooling, LLC, a limited partnership duly organized and validly existing under the laws of the State, or any successor Contracting Party under the Lease Agreement.

"Contribution Payments" means the payments to be made by the City to the Trustee for the benefit of the Port Authority, as defined in, and in accordance with the terms of, the Cooperative Agreement.

“Cooperative Agreement” means the Cooperative Agreement among the Port Authority, the City, the Trustee and the Contracting Party.

“Final Terms Certificate” means, as to the Series Bonds, a certificate signed by the President or other officer of the Port Authority, as provided in Section 3 of this resolution.

“Fiscal Officer” means the fiscal officer or the assistant fiscal officer of the Port Authority.

“Indenture” means the Basic Indenture, as amended by the Second Supplemental Trust Indenture dated as of March 1, 2005 between the Port Authority and the Trustee, as supplemented by the Supplemental Indenture, and as may be further amended or supplemented from time to time, providing for issuance of the Series Bonds.

“Lease Agreement” means the Lease Agreement between the Port Authority and the Contracting Party pursuant to which the Port Authority will lease the Project Facility to the Contracting Party, as the same may be amended or supplemented from time to time.

“Original Purchaser” means the Original Purchaser of the Series Bonds, as provided in the Placement Agreement.

“Placement Agent” means, as to the Series Bonds, Robert W. Baird & Co. Incorporated.

“Placement Agreement” as to the Series Bonds, means the Bond Placement Agreement among the Port Authority, the Contracting Party and the Placement Agent, providing for the private placement of the Series Bonds.

“Port Authority” means the Summit County Port Authority, Ohio, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State.

“President” means the President of the Port Authority.

“Person” means such term as defined in the Basic Indenture.

“Pledged Revenues” means such term as defined in the Indenture.

“Project Facility” means such term as defined in the Base Lease, constituting “port authority facilities” as defined in the Act.

“Rental Payments” means such term as defined in the Lease Agreement.

“Register” means such term as defined in the Basic Indenture.

“Secretary” means the Secretary or the Assistant Secretary of the Port Authority.

“Series Bonds” means the Summit County Port Authority Bond Fund Program Taxable Development Revenue Bonds (Akron Thermal Project) authorized by the Bond Legislation and issued by the Port Authority under the Indenture.

“Special Funds” means such term as defined in the Basic Indenture.

“State” means the State of Ohio.

“Supplemental Indenture” means the Supplemental Trust Indenture between the Port Authority and the Trustee, supplementing the Basic Indenture and providing for issuance of the Series Bonds.

“Trustee” means U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, until a successor Trustee shall have become such pursuant to the applicable provisions of the Basic Indenture, and thereafter “Trustee” shall mean the successor Trustee.

The captions and headings in this Bond Legislation are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or sections of the Bond Legislation.

Section 2. Findings and Determinations. This Board hereby finds and determines that:

(a) By virtue of the laws of the State, including Article VIII, Section 13 of the Ohio Constitution and the Act, the Port Authority is authorized and empowered to do the following:

- (1) to acquire, construct, install and equip “port authority facilities,” or interests therein, as defined in Section 4582.21(E) of the Act, and issue its revenue bonds and revenue notes to finance the costs of such facilities;
- (2) enter into an indenture supplemental to the Basic Indenture to evidence such bond indebtedness and to provide for “revenues,” as defined in Section 4582.21(G) of the Act, and as referenced in Section 4582.48 of the Act, sufficient to pay the principal of, premium, if any, and interest on those bonds;
- (3) enter into the Cooperative Agreement pursuant to which (i) the Port Authority will agree to issue the Series Bonds to provide for financing the costs of acquiring an interest in the Project Facility, funding the Bond Reserve Deposit and paying the costs of issuance of the Series Bonds and (ii) the City will agree to make Contribution Payments, if any, when due;
- (4) enter into the Base Lease pursuant to which it will acquire an interest in the Project Facility from the Contracting Party;

- (5) enter into the Lease Agreement pursuant to which it will lease the Project Facility to the Contracting Party; and
- (6) secure bonds and notes and other obligations of the Port Authority by a pledge and assignment of certain revenues and other interests, including securing the payment of the Bond Service Charges on the Series Bonds by assigning to the Trustee the Rental Payments to be received from the Contracting Party under the Lease Agreement and the Contribution Payments to be received from the City under the Cooperative Agreement.

(b) Under the Indenture, including the Supplemental Indenture authorized under this resolution, the Port Authority is authorized to issue and sell the Series Bonds, and to apply a portion of the proceeds derived from the sale of the Series Bonds to financing the costs of acquiring an interest in the Project Facility in accordance with the Cooperative Agreement and the Base Lease.

(c) Under the Lease Agreement, the Port Authority is authorized to lease the Project Facility to the Contracting Party and to collect Rental Payments from the Contracting Party thereunder.

(d) Under the Cooperative Agreement, the Port Authority is authorized to obtain the agreement of the City to make Contribution Payments, if any, when due thereunder.

(e) The Project Facility is a "port authority facility" as defined in the Act and is consistent with the purposes of Article VIII, Section 13 of the Ohio Constitution.

(f) The proposed use of the Project Facility is in furtherance of the purposes of the Act in that it will enhance, foster, aid, provide for and promote economic development within the jurisdiction of the Port Authority by creating and preserving jobs and employment opportunities and improving the economic welfare of the people in the County.

(g) Paying the costs of acquiring an interest in the Project Facility will require the Port Authority to issue, sell and deliver the Series Bonds in the principal amount not to exceed \$6,500,000 under the Indenture.

(h) All formal actions of this Board relating to the enactment of this resolution were taken in an open meeting of this Board. All deliberations of this Board and of any of its committees that resulted in formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22, Revised Code.

Section 3. Authorization of Series Bonds. Pursuant to the authority of the Act and the Bond Legislation, the Port Authority shall, issue, sell and deliver the Series Bonds in the aggregate principal amount not to exceed \$6,500,000 for the purpose of financing the costs of acquiring an interest in the Project Facility in accordance with the Base Lease and the Cooperative Agreement, funding the Bond Reserve Deposit and paying the costs of issuance of the Series Bonds. The Series Bonds shall be designated "Summit County Port Authority Bond Fund Program Taxable Development Revenue Bonds (Akron Thermal Project)," or such other designation(s) as shall be set

forth in the Final Terms Certificate. The aggregate principal amount of Series Bonds, not exceeding \$6,500,000, shall be as determined in the Final Terms Certificate.

Section 4. Terms and Provisions of Series Bonds.

(a) Terms of Indenture. The Series Bonds are being issued pursuant to the Indenture and are subject to all the terms and conditions thereof. The terms of the Series Bonds provided for in the Indenture not included in this Bond Legislation are incorporated herein by reference.

(b) Form and Numbering. The Series Bonds will be issued initially in fully registered form, will be exchangeable in the manner and on the terms provided in the Indenture and will be numbered as determined by the Trustee. The Series Bonds will be in denominations permitted or required by the Indenture and will be dated as provided in the Indenture.

(c) Maturity and Interest Rate. The Series Bonds will mature on the date or dates and will bear interest from their dates at the rates per annum, payable on each Interest Payment Date, as set forth in the Supplemental Indenture and the Final Terms Certificate, based on advice of the Placement Agent and approved by the President, provided in no event shall the final maturity of the Series Bonds exceed 15 years nor shall the average rate of interest on the Series Bonds exceed 9% per annum.

(d) Redemption of Series Bonds. The Series Bonds will be subject to such optional redemption, optional default redemption and extraordinary optional redemption terms as shall be provided in the Indenture.

(e) Payment. Bond Service Charges on the Series Bonds will be payable as provided in the Indenture.

(f) Execution. The Series Bonds will be signed on behalf of the Port Authority by the President or the Chairman. Such signature may be by facsimile.

(g) Registrar. The Trustee will be the initial Bond Registrar for the Series Bonds and may resign, be removed, or a successor Bond Registrar may be appointed, pursuant to the provisions of the Indenture.

Section 5. Security for the Series Bonds. To the extent provided in, and except as otherwise permitted under the Indenture, the Series Bonds shall be equally and ratably (a) payable solely from the Pledged Revenues and the Special Funds and moneys and investments therein to provide for payment of Bond Service Charges of the Bonds; and (b) secured by the Indenture.

Anything in the Bond Legislation or the Bonds to the contrary notwithstanding, neither the Bond Legislation, the Series Bonds, nor the Indenture will constitute a debt or pledge of the faith and credit of the Port Authority, and each Series Bond must contain on its face a statement to that effect and to the effect that such Series Bond is payable solely from the Pledged Revenues and the Special Funds in accordance with the Indenture. Nothing in the Bond Legislation, however, prohibits the Port Authority, of its own volition, from using to the extent that it is authorized by law

to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of the Indenture, the Bond Legislation or any of the Series Bonds.

Section 6. Sale of Series Bonds. The Series Bonds will be sold to the Original Purchaser in accordance with the terms of the Placement Agreement and the Final Terms Certificate. The Board authorizes and directs the President to finalize the terms of the Series Bonds in the Final Terms Certificate, to make the necessary arrangements with the Placement Agent to establish the date, location, procedure and conditions for the delivery of the Series Bonds, and to take all steps necessary to effect due execution, authentication and delivery of the Series Bonds under the terms of the Bond Legislation, the Indenture and the Final Terms Certificate, to the extent not provided in the Placement Agreement.

The President, the Chairman, the Secretary, the Fiscal Officer and any other officer of the Board, alone or in conjunction with any of the others, are authorized to enter into, sign and deliver, in the name and on behalf of the Port Authority, the Placement Agreement and to sign and deliver the Final Terms Certificate, provided that the Placement Agreement and the Final Terms Certificate shall be approved by the President, shall not be inconsistent with this Bond Legislation and the Act, and shall not be substantially adverse to the Port Authority. The approval of those instruments shall be conclusively evidenced by their execution.

Section 7. Acquisition of Interest in Project Facility; Lease of Project Facility; Allocation of Proceeds of Series Bonds. The Port Authority is authorized to acquire an interest in the Project Facility pursuant to the terms of the Base Lease and the Cooperative Agreement. The proceeds of the Series Bonds shall be deposited with the Trustee under the Indenture and disbursed by the Trustee in accordance with the Indenture to pay the costs of acquiring an interest in the Project Facility, funding the Bond Reserve Deposit and issuing the Series Bonds.

Section 8. Documents and Transcripts. In order to secure the payment of the Bond Service Charges and to provide for the issuance and sale of the Series Bonds, the Board authorizes and directs the President, the Chairman, the Secretary, the Fiscal Officer and any other officer of the Board, alone or in conjunction with any of the others, to sign and deliver, in the name and on behalf of the Port Authority, the Supplemental Indenture, the Cooperative Agreement, the Base Lease, the Lease Agreement and such other documents, instruments and certificates as shall be required thereunder (collectively, the "Authority Documents"), provided that such Authority Documents shall be approved by the President, shall not be inconsistent with this Bond Legislation and the Act, and shall not be substantially adverse to the Port Authority. The approval of the Authority Documents shall be conclusively evidenced by their execution.

The Board further authorizes and directs the President, the Chairman, the Secretary, the Fiscal Officer and any other appropriate officer of the Board, as appropriate, alone or in conjunction with any of the others, to sign and deliver, such certifications, financing statements, assignments and instruments as are, the opinion of bond counsel to the Port Authority, necessary or appropriate to perfect the pledges set forth in the Bond Legislation and in the Indenture, and to consummate the transactions provided for in the Bond Legislation, the Authority Documents, the Final Terms Certificate and the Placement Agreement.

The use and distribution of a preliminary disclosure document, in form on file with the Secretary, and of a final disclosure document consistent with preliminary disclosure document, the Bond Legislation and the Indenture and approved by the President, are hereby authorized.

The Secretary or other appropriate officer of the Board will furnish to the Trustee a true transcript of proceedings, certified by the Secretary or other officer, of all proceedings had with reference to the issuance of the Series Bonds, together with such information for the records as is necessary to determine the regularity and validity of the issuance of the Series Bonds.

Section 9. Prevailing Wage Rates. As provided in Section 4582.37 of the Act, all wages paid to laborers and mechanics employed on the Project shall be paid at not less than the prevailing rates of wages for laborers and mechanics for each class of work called for by the Project, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

Section 10. Effective Date. This resolution shall take effect immediately upon its enactment.

RESOLUTION NO.: 2007-002

INTRODUCED: January 16, 2007

ADOPTED: January __, 2007

Board Secretary

Board Chairman

On roll call:

SUMMIT COUNTY PORT AUTHORITY

RESOLUTION NO.: 2007-002

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$6,500,000 SUMMIT COUNTY PORT AUTHORITY BOND FUND PROGRAM TAXABLE DEVELOPMENT REVENUE BONDS, FOR THE PURPOSE OF FINANCING THE COSTS OF "PORT AUTHORITY FACILITIES" WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE; AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE TO SECURE SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A COOPERATIVE AGREEMENT, A BASE LEASE, A LEASE AGREEMENT AND A BOND PLACEMENT AGREEMENT; AND AUTHORIZING THE DISTRIBUTION OF A DISCLOSURE STATEMENT IN CONNECTION WITH SUCH BONDS; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Summit County Port Authority (the "Port Authority"), a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "State"), is authorized and empowered, by virtue of the laws of the State, including without limitation, Sections 4582.43 and 4582.431, Ohio Revised Code, (a) to issue its revenue bonds and revenue notes for the purpose of financing of costs of acquiring, constructing, installing, equipping or improving port authority facilities located within the County of Summit, Ohio (the "County"), (b) to enter into agreements with respect to the financing, acquisition, construction, equipping, improvement and installation of such facilities and to provide for a pledge of certain revenues sufficient to pay the principal of and interest and any premium on those revenue bonds and revenue notes, (c) to secure those revenue bonds by a trust indenture as supplemented by a supplemental indenture, as provided herein, and (d) to enact this Bond Legislation and to enter into the Supplemental Indenture, the Cooperative Agreement, the Base Lease, the Lease Agreement and the Placement Agreement, each as defined in Section 1, upon the terms and conditions provided herein and therein; and

WHEREAS, the Project will enhance, foster, aid, provide for or promote economic development in the County by creating and preserving jobs and employment opportunities, and the Port Authority is authorized and empowered by Section 13 of Article VIII, Ohio Constitution, and Sections 4582.21 through 4582.59, Ohio Revised Code, as enacted and amended from time to time, to finance the costs of the acquisition of an interest in the Project by issuing and selling its revenue obligations therefor; and

WHEREAS, this Legislative Authority has determined that it is necessary and proper and in the best interest of the Port Authority to issue revenue bonds in the aggregate principal amount not to exceed \$6,500,000 to finance the costs of an interest in port authority facilities to be acquired by the Port Authority.

NOW, THEREFORE, BE IT RESOLVED by the board of directors (the "Board") of the Summit County Port Authority:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this resolution, unless the context or use clearly indicates another meaning or intent, the words and terms used herein shall have the meaning set forth below. Words and terms not defined in this Section 1 shall have the meanings ascribed to them in the Indenture and the Lease Agreement.

"Act" means Chapter 4482, Revised Code, as enacted and amended from time to time pursuant to Section 13 of Article VIII of the Ohio Constitution.

"Base Lease" means the Base Lease between the Port Authority and the Contracting Party.

"Basic Indenture" means the Trust Indenture dated as of July 1, 2004 between the Port Authority and the Trustee.

"Bond Legislation" means, as to the Series Bonds, this resolution providing for the issuance of the Series Bonds, as amended or supplemented from time to time.

"Bond Registrar" means such term as defined in the Basic Indenture.

"Bond Reserve Deposit" means such term as defined in the Supplemental Indenture.

"Bond Service Charges" means, as to the Series Bonds, such term as defined in the Basic Indenture.

"Bonds" means the Series Bonds and any other series of Bonds hereafter authorized by and issued pursuant to Section 2.02 of the Basic Indenture and secured by the Basic Indenture and the Supplemental Indenture.

"Chairman" means the Chairman of the Board of the Port Authority.

"City" means the City of Akron, Ohio, a municipal corporation located in the County and duly organized and validly existing under the Constitution and laws of the State and its Charter.

"Closing Date" means the date of delivery of the Series Bonds.

"Contracting Party" means, collectively, Akron Thermal, Limited Partnership, a limited partnership duly organized and validly existing under the laws of the State of Delaware and authorized to do business in the State, and Akron Thermal Cooling, LLC, a limited partnership duly organized and validly existing under the laws of the State, or any successor Contracting Party under the Lease Agreement.

"Contribution Payments" means the payments to be made by the City to the Trustee for the benefit of the Port Authority, as defined in, and in accordance with the terms of, the Cooperative Agreement.

"Cooperative Agreement" means the Cooperative Agreement among the Port Authority, the City, the Trustee and the Contracting Party.

"Final Terms Certificate" means, as to the Series Bonds, a certificate signed by the President or other officer of the Port Authority, as provided in Section 3 of this resolution.

"Fiscal Officer" means the fiscal officer or the assistant fiscal officer of the Port Authority.

"Indenture" means the Basic Indenture, as amended by the Second Supplemental Trust Indenture dated as of March 1, 2005 between the Port Authority and the Trustee, as supplemented by the Supplemental Indenture, and as may be further amended or supplemented from time to time, providing for issuance of the Series Bonds.

"Lease Agreement" means the Lease Agreement between the Port Authority and the Contracting Party pursuant to which the Port Authority will lease the Project Facility to the Contracting Party, as the same may be amended or supplemented from time to time.

"Original Purchaser" means the Original Purchaser of the Series Bonds, as provided in the Placement Agreement.

"Placement Agent" means, as to the Series Bonds, Robert W. Baird & Co. Incorporated.

"Placement Agreement" as to the Series Bonds, means the Bond Placement Agreement among the Port Authority, the Contracting Party and the Placement Agent, providing for the private placement of the Series Bonds.

"Port Authority" means the Summit County Port Authority, Ohio, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State.

"President" means the President of the Port Authority.

"Person" means such term as defined in the Basic Indenture.

"Pledged Revenues" means such term as defined in the Indenture.

"Project Facility" means such term as defined in the Base Lease, constituting "port authority facilities" as defined in the Act.

"Rental Payments" means such term as defined in the Lease Agreement.

"Register" means such term as defined in the Basic Indenture.

"Secretary" means the Secretary or the Assistant Secretary of the Port Authority.

“Series Bonds” means the Summit County Port Authority Bond Fund Program Taxable Development Revenue Bonds (Akron Thermal Project) authorized by the Bond Legislation and issued by the Port Authority under the Indenture.

“Special Funds” means such term as defined in the Basic Indenture.

“State” means the State of Ohio.

“Supplemental Indenture” means the Supplemental Trust Indenture between the Port Authority and the Trustee, supplementing the Basic Indenture and providing for issuance of the Series Bonds.

“Trustee” means U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, until a successor Trustee shall have become such pursuant to the applicable provisions of the Basic Indenture, and thereafter “Trustee” shall mean the successor Trustee.

The captions and headings in this Bond Legislation are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or sections of the Bond Legislation.

Section 2. Findings and Determinations. This Board hereby finds and determines that:

(a) By virtue of the laws of the State, including Article VIII, Section 13 of the Ohio Constitution and the Act, the Port Authority is authorized and empowered to do the following:

- (1) to acquire, construct, install and equip “port authority facilities,” or interests therein, as defined in Section 4582.21(E) of the Act, and issue its revenue bonds and revenue notes to finance the costs of such facilities;
- (2) enter into an indenture supplemental to the Basic Indenture to evidence such bond indebtedness and to provide for “revenues,” as defined in Section 4582.21(G) of the Act, and as referenced in Section 4582.48 of the Act, sufficient to pay the principal of, premium, if any, and interest on those bonds;
- (3) enter into the Cooperative Agreement pursuant to which (i) the Port Authority will agree to issue the Series Bonds to provide for financing the costs of acquiring an interest in the Project Facility, funding the Bond Reserve Deposit and paying the costs of issuance of the Series Bonds and (ii) the City will agree to make Contribution Payments, if any, when due;
- (4) enter into the Base Lease pursuant to which it will acquire an interest in the Project Facility from the Contracting Party;

- (5) enter into the Lease Agreement pursuant to which it will lease the Project Facility to the Contracting Party; and
- (6) secure bonds and notes and other obligations of the Port Authority by a pledge and assignment of certain revenues and other interests, including securing the payment of the Bond Service Charges on the Series Bonds by assigning to the Trustee the Rental Payments to be received from the Contracting Party under the Lease Agreement and the Contribution Payments to be received from the City under the Cooperative Agreement.

(b) Under the Indenture, including the Supplemental Indenture authorized under this resolution, the Port Authority is authorized to issue and sell the Series Bonds, and to apply a portion of the proceeds derived from the sale of the Series Bonds to financing the costs of acquiring an interest in the Project Facility in accordance with the Cooperative Agreement and the Base Lease.

(c) Under the Lease Agreement, the Port Authority is authorized to lease the Project Facility to the Contracting Party and to collect Rental Payments from the Contracting Party thereunder.

(d) Under the Cooperative Agreement, the Port Authority is authorized to obtain the agreement of the City to make Contribution Payments, if any, when due thereunder.

(e) The Project Facility is a "port authority facility" as defined in the Act and is consistent with the purposes of Article VIII, Section 13 of the Ohio Constitution.

(f) The proposed use of the Project Facility is in furtherance of the purposes of the Act in that it will enhance, foster, aid, provide for and promote economic development within the jurisdiction of the Port Authority by creating and preserving jobs and employment opportunities and improving the economic welfare of the people in the County.

(g) Paying the costs of acquiring an interest in the Project Facility will require the Port Authority to issue, sell and deliver the Series Bonds in the principal amount not to exceed \$6,500,000 under the Indenture.

(h) All formal actions of this Board relating to the enactment of this resolution were taken in an open meeting of this Board. All deliberations of this Board and of any of its committees that resulted in formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22, Revised Code.

Section 3. Authorization of Series Bonds. Pursuant to the authority of the Act and the Bond Legislation, the Port Authority shall, issue, sell and deliver the Series Bonds in the aggregate principal amount not to exceed \$6,500,000 for the purpose of financing the costs of acquiring an interest in the Project Facility in accordance with the Base Lease and the Cooperative Agreement, funding the Bond Reserve Deposit and paying the costs of issuance of the Series Bonds. The Series Bonds shall be designated "Summit County Port Authority Bond Fund Program Taxable Development Revenue Bonds (Akron Thermal Project)," or such other designation(s) as shall be set

forth in the Final Terms Certificate. The aggregate principal amount of Series Bonds, not exceeding \$6,500,000, shall be as determined in the Final Terms Certificate.

Section 4. Terms and Provisions of Series Bonds.

(a) Terms of Indenture. The Series Bonds are being issued pursuant to the Indenture and are subject to all the terms and conditions thereof. The terms of the Series Bonds provided for in the Indenture not included in this Bond Legislation are incorporated herein by reference.

(b) Form and Numbering. The Series Bonds will be issued initially in fully registered form, will be exchangeable in the manner and on the terms provided in the Indenture and will be numbered as determined by the Trustee. The Series Bonds will be in denominations permitted or required by the Indenture and will be dated as provided in the Indenture.

(c) Maturity and Interest Rate. The Series Bonds will mature on the date or dates and will bear interest from their dates at the rates per annum, payable on each Interest Payment Date, as set forth in the Supplemental Indenture and the Final Terms Certificate, based on advice of the Placement Agent and approved by the President, provided in no event shall the final maturity of the Series Bonds exceed 15 years nor shall the average rate of interest on the Series Bonds exceed 9% per annum.

(d) Redemption of Series Bonds. The Series Bonds will be subject to such optional redemption, optional default redemption and extraordinary optional redemption terms as shall be provided in the Indenture.

(e) Payment. Bond Service Charges on the Series Bonds will be payable as provided in the Indenture.

(f) Execution. The Series Bonds will be signed on behalf of the Port Authority by the President or the Chairman. Such signature may be by facsimile.

(g) Registrar. The Trustee will be the initial Bond Registrar for the Series Bonds and may resign, be removed, or a successor Bond Registrar may be appointed, pursuant to the provisions of the Indenture.

Section 5. Security for the Series Bonds. To the extent provided in, and except as otherwise permitted under the Indenture, the Series Bonds shall be equally and ratably (a) payable solely from the Pledged Revenues and the Special Funds and moneys and investments therein to provide for payment of Bond Service Charges of the Bonds; and (b) secured by the Indenture.

Anything in the Bond Legislation or the Bonds to the contrary notwithstanding, neither the Bond Legislation, the Series Bonds, nor the Indenture will constitute a debt or pledge of the faith and credit of the Port Authority, and each Series Bond must contain on its face a statement to that effect and to the effect that such Series Bond is payable solely from the Pledged Revenues and the Special Funds in accordance with the Indenture. Nothing in the Bond Legislation, however, prohibits the Port Authority, of its own volition, from using to the extent that it is authorized by law

to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of the Indenture, the Bond Legislation or any of the Series Bonds.

Section 6. Sale of Series Bonds. The Series Bonds will be sold to the Original Purchaser in accordance with the terms of the Placement Agreement and the Final Terms Certificate. The Board authorizes and directs the President to finalize the terms of the Series Bonds in the Final Terms Certificate, to make the necessary arrangements with the Placement Agent to establish the date, location, procedure and conditions for the delivery of the Series Bonds, and to take all steps necessary to effect due execution, authentication and delivery of the Series Bonds under the terms of the Bond Legislation, the Indenture and the Final Terms Certificate, to the extent not provided in the Placement Agreement.

The President, the Chairman, the Secretary, the Fiscal Officer and any other officer of the Board, alone or in conjunction with any of the others, are authorized to enter into, sign and deliver, in the name and on behalf of the Port Authority, the Placement Agreement and to sign and deliver the Final Terms Certificate, provided that the Placement Agreement and the Final Terms Certificate shall be approved by the President, shall not be inconsistent with this Bond Legislation and the Act, and shall not be substantially adverse to the Port Authority. The approval of those instruments shall be conclusively evidenced by their execution.

Section 7. Acquisition of Interest in Project Facility; Lease of Project Facility; Allocation of Proceeds of Series Bonds. The Port Authority is authorized to acquire an interest in the Project Facility pursuant to the terms of the Base Lease and the Cooperative Agreement. The proceeds of the Series Bonds shall be deposited with the Trustee under the Indenture and disbursed by the Trustee in accordance with the Indenture to pay the costs of acquiring an interest in the Project Facility, funding the Bond Reserve Deposit and issuing the Series Bonds.

Section 8. Documents and Transcripts. In order to secure the payment of the Bond Service Charges and to provide for the issuance and sale of the Series Bonds, the Board authorizes and directs the President, the Chairman, the Secretary, the Fiscal Officer and any other officer of the Board, alone or in conjunction with any of the others, to sign and deliver, in the name and on behalf of the Port Authority, the Supplemental Indenture, the Cooperative Agreement, the Base Lease, the Lease Agreement and such other documents, instruments and certificates as shall be required thereunder (collectively, the "Authority Documents"), provided that such Authority Documents shall be approved by the President, shall not be inconsistent with this Bond Legislation and the Act, and shall not be substantially adverse to the Port Authority. The approval of the Authority Documents shall be conclusively evidenced by their execution.

The Board further authorizes and directs the President, the Chairman, the Secretary, the Fiscal Officer and any other appropriate officer of the Board, as appropriate, alone or in conjunction with any of the others, to sign and deliver, such certifications, financing statements, assignments and instruments as are, the opinion of bond counsel to the Port Authority, necessary or appropriate to perfect the pledges set forth in the Bond Legislation and in the Indenture, and to consummate the transactions provided for in the Bond Legislation, the Authority Documents, the Final Terms Certificate and the Placement Agreement.

The use and distribution of a preliminary disclosure document, in form on file with the Secretary, and of a final disclosure document consistent with preliminary disclosure document, the Bond Legislation and the Indenture and approved by the President, are hereby authorized.

The Secretary or other appropriate officer of the Board will furnish to the Trustee a true transcript of proceedings, certified by the Secretary or other officer, of all proceedings had with reference to the issuance of the Series Bonds, together with such information for the records as is necessary to determine the regularity and validity of the issuance of the Series Bonds.

Section 9. Prevailing Wage Rates. As provided in Section 4582.37 of the Act, all wages paid to laborers and mechanics employed on the Project shall be paid at not less than the prevailing rates of wages for laborers and mechanics for each class of work called for by the Project, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

Section 10. Effective Date. This resolution shall take effect immediately upon its enactment.

RESOLUTION NO.: 2007-002

INTRODUCED: January 16, 2007

ADOPTED: January __, 2007

Board Secretary

Board Chairman

On roll call:

EXHIBIT 1B

**Commitment Letter/Term Sheet as to Term Loan
subject to revision**

Date: December 29, 2006

Mr. Jeffrey P. Bees
President
Akron Thermal, L.P.
Akron Thermal Cooling, LLC
226 Opportunity Parkway
Akron, OH 44307

Re: Financing Commitment

Dear Jeff:

I am pleased to advise you that FirstMerit Bank, N.A. ("FirstMerit") has approved the following credit facility to you subject to the following terms and conditions (the "Commitment"). This Commitment is based on your representation of intent to use the credit accommodation(s) as described herein.

FACILITY #1

Borrower(s):	Akron Thermal, Limited Partnership, and Akron Thermal Cooling, LLC. (to mirror Port Authority borrowers and guarantors)
Guarantor(s):	Thermal Ventures II, LP and City of Akron (Support Agreement)
Credit Facility:	\$1,500,000 Term Loan
Purpose:	To provide Working Capital
Term:	120 Months from date of closing (to be determined)
Amortization:	10 years
Rate:	10 year COF plus 250 bps

Repayment Terms: 120 Monthly principal and interest payments.

Collateral/Priority: First and best blanket lien position on all business assets including but not limited to accounts, inventory, equipment and intangibles.
Assignment of leasehold interest.
First and best security interest in \$150,000 in account at FirstMerit.

Fees: \$7,500 plus out of pocket expenses.

Other Terms/Conditions: A support agreement from the City of Akron will provide credit enhancement to this facility. As part of this agreement, the City of Akron will annually appropriate funds in the city budget to support this guarantee. The funds appropriated will cover the P&I payments to be made for the coming year for this facility. If the City fails to appropriate funds in any given year, the City of Akron must appropriately notify the bank of this decision. Failure to appropriate funds to support the City's guaranty will be viewed as an "event of default" subject to all remedies as specified in the loan agreement.

The funds from the term loan will be placed in FirstMerit bank to be drawn down as needed and FirstMerit will be the company's primary depository institution.

Subordination of debt by all affiliated entities. Includes subordination as to lien as well as to payment while subject loan is outstanding. This requirement does not include the anticipated funding and subsequent repayment of the Summit County Port Authority Bond including a \$1MM disbursement from this bond to TVII.

Receipt and satisfactory review of updated projections including balance sheets and income statements reflecting the proposed structure shall be received prior to loan closing.

TERMS AND CONDITIONS RELATING TO ALL FACILITIES

CONDITIONS PRECEDENT TO CLOSING:

The following conditions must be fulfilled to FirstMerit's satisfaction prior to closing:

- Financing documentation satisfactory to FirstMerit.
- Loan documentation to be prepared by Bank-approved outside legal counsel.

FirstMerit reserves the right to withdraw this Commitment prior to closing as follows:

- A. If FirstMerit determines that a material adverse change has occurred in the financial condition or assets of the Borrower
- B. If FirstMerit is advised prior to the closing of the loan of any law or regulation which prevents or prohibits FirstMerit from making loans in accordance with terms and conditions contained herein or other conditions, which, in the judgment of FirstMerit, have material adverse effect upon the Borrowers' profitability or FirstMerit's ability to make loans and/or this loan.
- C. This Commitment presumes the full disclosure and accuracy of all pertinent information submitted by the Borrower to FirstMerit and may be canceled by FirstMerit if any such information is false, incomplete or inaccurate in any material respect or if the conditions represented or indicated to exist shall change in any material respect.

ONGOING TERMS, CONDITIONS AND COVENANTS:

The following is a non-exclusive list of the ongoing terms, conditions and covenants relating to all facilities set forth above. :

- Borrower may not have new debt for borrowed money secured or unsecured or capitalized leases, liens, pledges, security interest on assets, they may not sell with recourse any of Borrower's accounts except to Lender without prior written consent of the lender.
- Borrower must not make capital expenditures without prior written consent of the lender.

Akron thermal Limited Partnership

Akron Thermal Cooling, LLC.

Date 12/27/2006

Page 4 of 5

- Borrower may not have any loans or advances to insiders, subsidiaries or affiliates, they may not purchase, create or acquire any interest in any other enterprise or entity, and they can have no guarantees, debt assumptions or endorsements, except in the normal course of business without prior written consent of the lender.
- Borrower is prohibited from payment of cash dividends, except for "S Corp" Tax Payments without prior written consent of the lender.
- Borrower is prohibited from the repurchase, redemption or retirement of Capital Stock.
- Borrower will furnish Annual CPA Audited Financial statements and internally prepared quarterly financial statements.
- Guarantors must provide financial statements of a level satisfactory to the bank.
- Satisfactory support agreement from the City of Akron as well as other documents to be negotiated between the parties.
- Fixed Charge Coverage Ratio of 1.0:1.0 measured on an annual basis at FYE 12/31/07 and then tested quarterly on a rolling four quarter basis thereafter.

[If the calculation of any ratios or financial covenants is or could be ambiguous, consider adding a sentence or two to clarify these terms.]

The above terms and conditions are intended to be a substantive outline of the transaction rather than a full and complete description of all terms of the loan documents, which shall contain such representations, warranties, covenants, events of default and other provisions, as FirstMerit deems necessary.

By signing this letter you are authorizing FirstMerit to begin documenting the transaction. Additionally, Borrower agrees to bear the cost of any and all legal fees, inspections, environmental audits and appraisals, and other expenses incurred by FirstMerit in connection with this transaction, whether or not the transaction ultimately closes. These fees will be payable at FirstMerit's request.

This written Commitment represents the final agreement and replaces any proposals between the Borrower and FirstMerit with respect to the transaction described herein and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.

There are no unwritten oral agreements between the parties. This Commitment may not be assigned to, or relied upon by any person or entity not a party to this Commitment.

This Commitment shall be governed by and construed in accordance with the laws of the State of Ohio and applicable federal laws.

Akron thermal Limited Partnership

Akron Thermal Cooling, LLC.

Date 12/27/2006

Page 5 of 5

This Commitment shall become effective upon your written acceptance below and our receipt of the accepted Commitment on or before January 15, 2007. Upon its effectiveness, this Commitment shall remain effective until February 28, 2007 (the "Expiration Date"). Unless FirstMerit otherwise agrees in writing, this Commitment shall expire on the Expiration Date to the extent the above-described transaction has not been consummated and funded by such date, in which event Bank shall have no further obligation hereunder.

If the foregoing correctly sets forth our agreement in connection with this Commitment, please so acknowledge by signing and returning this letter to FirstMerit.

This Commitment will expire if not accepted in writing on or before January 15, 2007.

Sincerely,

G. Robert Mohr
Vice President
FirstMerit Bank

Agreed and Accepted:

Borrower:

Borrower Name

By: _____

Name: _____

Its: _____

EXHIBIT 1C

**Current Lease
(Modified Lease to be filed when available)**

OPERATING LEASE AGREEMENT

THIS OPERATING LEASE AGREEMENT (this "Lease"), made as of the 15TH day of AUGUST, 1997 (the "Lease Closing Date"), by and between the CITY OF AKRON, OHIO, a municipal corporation organized and existing under and by virtue of the constitution and laws of the State of Ohio ("Landlord"), and AKRON THERMAL, LIMITED PARTNERSHIP, a Delaware limited partnership ("Tenant").

RECITALS

WHEREAS, Landlord owns and operates the district heating and cooling system that supplies to approximately 200 customers steam, hot water and chilled water for the heating and cooling of businesses and residences located in the Central Business District of the City of Akron, County of Summit, State of Ohio (the "EDS"), including, without limitation, a certain steam power plant formerly owned by BF Goodrich Company (the "Annex"), a certain solid waste to energy incinerator facility (the "RES", and together with the Annex, the EDS, and the steam and water main distribution system located throughout the Seller's municipal area and associated underground piping, manholes, and related facilities, the "System") in Akron, Ohio;

WHEREAS, Landlord and Tenant have entered into that certain Interim License and Operating Agreement (the "RES Interim Agreement"), dated as of August 4, 1995, pursuant to which, among other things, (i) Landlord granted to Tenant a non-exclusive license to enter into, upon, and across, and to use and have access to the Annex, and (ii) Tenant agreed to furnish all labor and related services pertaining to the operation and maintenance of the Annex;

WHEREAS, Landlord and Tenant have entered into that certain Addendum to Interim License and Operating Agreement (the "Addendum", and together with the RES Interim Agreement, the "Interim Agreement"), dated as of November 4, 1995, pursuant to which, among other things, (i) Landlord granted to Tenant a non-exclusive license to enter into, upon, and across, and to use and have access to the RES, and (ii) Tenant agreed to furnish all labor and related services pertaining to the operation and maintenance of the RES;

WHEREAS, Landlord and Tenant are parties to that certain Asset Purchase Agreement, dated as of the date hereof (the "Purchase Agreement"), pursuant to which Tenant may elect to purchase and Landlord may elect to sell the System and substantially all of the assets and properties of Landlord associated with the System;

WHEREAS, the Purchase Agreement and the Interim Agreement contemplate the lease of the System to Tenant pursuant to this Lease in order to permit Tenant to operate the System, pending the closing of the transactions described in the Purchase Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

Section 1. Premises. For the term set forth in Section 2 and otherwise upon the terms and conditions hereinafter set forth, Landlord does hereby lease to Tenant, and Tenant does hereby lease and take from Landlord, the System and all of the land, buildings, structures, systems, fixtures, improvements, equipment, manholes, and underground piping of any kind whatsoever and wherever located and all appurtenant rights, privileges, and easements in favor of Landlord relating to the System and the orderly operation thereof including, without limitation, all of the assets and properties contemplated by Section 2.1 of the Purchase Agreement (all of the foregoing sometimes hereinafter referred to collectively as the "Leased Property"). The Leased Property shall not include the land outside of the Annex; however, Landlord hereby grants to Tenant a non-exclusive license for and during the term of this Lease for purposes of ingress and egress to and from the Annex and the public right of way. Notwithstanding the foregoing, Landlord hereby reserves at all times during the Term the right to install or cause to be installed on the roof of the RES a radio and/or cellular communications tower, and to place any and all required transmission equipment inside of Building A. Such installation and placement shall be at no cost or expense to Tenant. Any and all revenues generated by such installation and placement, net of Landlord's costs and expenses (including without limitation, Landlord's attorney fees), shall be divided equally between Landlord and Tenant. Landlord agrees that any such tower and equipment shall not result in any damage to the roof or structure of the RES, and Landlord covenants to assume all responsibility for any such damage.

Section 2. Term. The term (the "Term") of this Lease shall commence on the date of this Agreement (the "Lease Closing Date"). The initial term of this Lease shall be for ten (10) years commencing on the Lease Closing Date and Tenant shall have the right to renew and extend the initial term for one additional period of ten (10) years. The Term shall end on the earlier to occur of (a) the Purchase Closing Date or (b) the tenth anniversary of the Lease Closing Date or in the event that the Tenant has elected to extend the term for an additional ten (10) years, on the twentieth anniversary of the Lease Closing Date, unless earlier terminated pursuant to the provisions of this Lease.

Section 3. Lease Payments.

3.1 For each year of the Term, Tenant shall pay to Landlord an annual rent equal to \$90,000 per year. Tenant shall pay such rent by paying monthly installments pursuant to the "Standard Schedule of Payments" set forth on Schedule 3.1 hereto. Such payments shall be made on the last day of each and every calendar month during the Term. In the event this Lease commences other than on the first day of a calendar year or is terminated other than on the last day of a calendar year, the lease payment for such year during which this Lease commences or is terminated shall be paid pursuant to the Standard Schedule of Payments, and the obligation to pay such rent shall survive the Lease termination.

3.2 Tenant shall pay to Landlord and/or assume all liability for, as the case may be, as additional rent during the Term all of the following:

(a) an annual sum equal to the franchise fee identified in that certain Franchise Ordinance passed by Akron City Council on September 30, 1996, a copy of which is attached hereto as Exhibit A and made a part hereof; Tenant shall make this payment within 30 days after the close of each calendar year;

(b) all property taxes and assessments attributable to the Leased Property during the Term; Landlord shall give notice of receipt of any tax assessments to Tenant within 10 days of Landlord's receipt of such assessment; Tenant shall not pay or be obligated with respect to taxes or other assessments payable with respect to the income of Landlord; Tenant may, at Tenant's expense and with written notice to Landlord, contest the validity or amount of any taxes or other assessments with respect to the Leased Property by appropriate proceedings duly instituted and diligently prosecuted, and in such event, Landlord will provide Tenant access to any books and records of the Landlord that may relate to such taxes or assessments; Landlord shall cooperate fully with Tenant, provided Landlord shall not incur any cost or expense in doing so, in connection with any such contest, and shall permit any such contest to be prosecuted in Landlord's name if the same shall be required for the proper resolution of the disputed matter; Despite any such contest pending, Tenant shall comply with the disputed assessment to the extent required by applicable law, and the Landlord will not be subjected to civil or criminal sanctions, penalties or fees, and that the Leased Property will not be subjected to imminent loss or forfeiture, as a result thereof; During the Term of this Lease the Tenant shall be

responsible for all governmental filings with respect to property taxes related to the Leased Property; and

(c) all of the following liabilities of Landlord (the "Assumed Liabilities") which are hereby expressly assumed and shall be satisfied and discharged by Tenant: (i) all obligations of Landlord to be performed on or after November 4, 1995 under all of the Acquired Contracts (as defined in the Asset Purchase Agreement of even date herewith); and (ii) any liability or obligation relating to or arising from any Environmental Condition as provided in Section 37 below, except to the extent limited by the terms of Section 37.

3.3 Tenant shall deliver to Landlord within 90 days after the end of each fiscal year throughout the Term of this Lease complete financial statements of Tenant, certified by the President of Tenant and an independent auditor reasonably acceptable to the City as being true and accurate in all respects. Landlord shall have the right, subject to Section 14 below, to audit the books and records of Tenant at any time during the Term of this Lease upon 15 days advance written notice to Tenant.

Section 4. Use of Premises; Compliance with Laws.

4.1 The System and all of the Leased Property shall be used and operated on a continuous basis and without interruption by Tenant for the purpose of generating steam, hot water and chilled water to provide heating and cooling services. Notwithstanding any provision of this Lease to the contrary, Tenant shall not be in default under this Lease for any temporary interruption of operations by Tenant, provided (i) in the event such interruption exceeds twelve (12) hours Tenant immediately delivers written notice to Landlord setting forth the date operations temporarily ceased and the cause of such temporary interruption, and (ii) Tenant resumes operations within ninety (90) days after the date operations temporarily ceased. In the event Tenant desires to discontinue its operation of the Leased Property, Tenant shall first make written request to Landlord stating with specificity the reasons for such desired discontinuance, which request shall be delivered to Landlord not later than two (2) years prior to the desired date of such discontinuance. Nothing in this Lease shall be deemed to require Landlord to consent to any discontinuance of Tenant's operations, and such consent shall be given or withheld at the sole and absolute discretion of Landlord; provided, however, that such discontinuance shall be subject at all times to the statutes, rules and regulations applicable to the Public Utilities Commission of Ohio (the "PUCO").

4.2 Tenant shall not commit or permit any waste to the Leased Property, and shall comply with all laws, rules, regulations, orders, and

other requirements applicable to the Leased Property imposed by any Governmental Authority having jurisdiction with respect thereto, including, without limitation, those pertaining to the condition of the environment (collectively, "Applicable Legal Requirements"). Notwithstanding any provision of this Lease to the contrary, Tenant may, but shall not be obligated to, contest any Applicable Legal Requirements by appropriate proceedings duly instituted and diligently prosecuted at Tenant's expense, and Tenant shall notify Landlord prior to the commencement of any such contest. So long as any such contest is pending, Tenant shall comply with the disputed Applicable Legal Requirement to the extent required by applicable law. The responsibility for any alterations, additions, improvements, repairs or replacements to the Lease Property required by Applicable Legal Requirements shall be as set forth in Sections 9 and 10.

Section 5. Operation of System; Authority.

5.1 Subject to Section 4.1 above, Tenant shall operate and manage the System on a continuous basis and without interruption during the Term and shall be entitled to any and all revenues and profits from the operation of the System. Tenant shall have full authority for the operation and management of the System and the Leased Property during the Term including, without limitation, full power and authority with respect to:

(a) all matters with respect to the operation of the System and the generation of steam, hot water and chilled water and the delivery of steam and chilled water to the present and future customers of the System;

(b) setting and modifying the billing rates for the provision of steam, hot water and chilled water to the System's customers (subject to any required Governmental Authority approvals) and preparing and presenting all information and data required by any Governmental Authority in connection with rate increases or modifications: provided, however, Tenant shall hold all steam, hot water and chilled water prices at current levels for all existing customers and end users of the System as of November 4, 1995 (but subject to imposition of any gross receipts tax or other tax on such prices imposed by the PUCO or other tax authority), and shall charge the Landlord at Landlord's current rate or less (subject to any of the aforementioned taxes), for a period of at least three years from November 4, 1995; Tenant shall not increase the rates charged to Landlord for or during the period from November 5, 1998 to December 31, 1998 unless Tenant shall have given at least ninety (90) days notice of such an increase to Landlord. Thereafter, Tenant shall

not increase the rates charged to Landlord unless Tenant shall have given notice to Landlord at least 180 days prior to the beginning of Landlord's fiscal year; provided, however, that in no event shall the rates charged to Landlord at any time exceed the most favorable rates charged by Tenant to the class of customers most similar to Landlord;

(c) employing personnel required for the operation and management of the System and planning and administering all matters pertaining to labor relations, salaries, wages, working conditions, hours of work, termination of employment, employee benefits, employee staffing, safety, and related matters pertaining to such employees;

(d) engaging and supervising such independent contractors as it may deem necessary;

(e) purchasing materials, supplies, fuel, light, power, transportation, and services necessary or desirable for the operation of the System;

(f) making or directing all maintenance and repairs to the System and the Leased Property;

(g) billing to and collecting from customers all charges in connection with the operation of the System and the delivery of steam and chilled water;

(h) making all disbursements in connection with the operation and management of the System;

(i) securing and maintaining adequate and reasonable insurance, as set forth in Section 10, with respect to the operation of the System and Tenant's possession of the Leased Property, including insurance covering the risk of personal injury to, or death of, the Tenant's personnel or others, the risk of fire, and other damage to the Leased Property;

(j) securing and maintaining all permits, certificates, licenses, approvals, evidences of authority, easements, and rights-of-way necessary or desirable for the operation of the System and filing all reports and notices and disbursing funds for all payments required in connection therewith; and

(k) maintaining books of account, including all ledgers and journals, and generally performing all accounting and disbursing services with respect to the operation of the System.

**Section 6. Assignment of Contracts and Authorizations;
License of Intellectual Property.**

6.1 Except as provided in Section 6.2 hereof, all contracts and authorizations listed on Schedule 6.1 hereto which would constitute an Acquired Contract or Acquired Authorization are assigned by Landlord to Tenant as of November 4, 1995, by execution of this Lease (the "Assigned Contracts and Authorizations") and Landlord shall, at Tenant's request, execute and deliver any and all agreements, certificates, and other documents reasonably requested by Tenant and in form acceptable to Landlord, which are necessary or desirable to effect the assignment of such Assigned Contracts and Authorizations to Tenant. Tenant hereby assumes and agrees to perform the obligations of Landlord under the Assigned Contracts and Authorizations except for those obligations which (a) are the result of Landlord's breach of an Assigned Contract or Authorization, (b) should have been performed by Landlord prior to November 4, 1995, under the terms of such Assigned Contract or Authorization, or (c) constitute an inaccuracy in or breach of Landlord's representations and warranties in this Lease or the Purchase Agreement. Except as provided in Section 6.3, and subject to the limitations set forth in this Lease, Tenant shall have the right to renegotiate, replace, modify, amend, or terminate such Assigned Contracts and Authorizations as it shall, in its sole discretion, determine.

6.2 All Acquired Contracts and Acquired Authorizations which cannot, by their terms or because consent is not granted by a customer, be assigned to Tenant ("Retained Contracts and Authorizations") shall be retained by Landlord until such time as such Retained Contracts and Authorizations can be assigned to Tenant; provided, however, that all monetary obligations thereunder shall be reimbursed by Tenant to Landlord and that all benefits of such Retained Contracts and Authorizations shall inure to Tenant. Until such time, Tenant shall serve as agent for Landlord under such Retained Contracts and Authorizations with respect to all matters covered thereby, and, except as provided in Section 6.3, and subject to the limitations set forth in this Lease, Tenant shall have the authority, as agent for Landlord, to renegotiate, replace, modify, amend, or terminate any such Retained Contract and Authorization. Landlord shall cooperate with Tenant, at no cost or expense to Landlord, in obtaining any consent required to assign the Retained Contracts and Authorizations to Tenant or provide to Tenant the benefits of such Contract or Authorization as promptly as possible after the Lease Closing Date.

6.3 Tenant shall maintain and perform during the Term all heating and cooling contracts listed on Schedule 6.3 attached hereto (the "Heating/Cooling Contracts") in their current form and shall not renegotiate, replace, modify, amend, or terminate such Heating/Cooling Contracts without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Landlord agrees not to take any action to cause any Heating/Cooling Contract to be terminated and Landlord shall not force the Tenant to terminate any Heating/Cooling Contract. Tenant hereby indemnifies and agrees to defend and hold harmless Landlord from and against any and all losses, costs, claims, liabilities, damages and expenses (including, without limitation, reasonably attorneys' and expert fees and expenses), fines, penalties, charges, remedial actions, and requirements, imposed upon, suffered, or incurred by Landlord by reason of claims arising from or related to acts or omissions of Tenant occurring on or after November 4, 1995, with respect to the Heating/Cooling Contracts.

6.4 Landlord hereby grants Tenant an exclusive, royalty free license to use the patents, trademarks, trade names, copyrights, licenses, inventions, processes, trade secrets, discoveries, and other intellectual property described on Schedule 6.4 hereto. The term of the license granted by Landlord to Tenant shall be equal to the Term of this Lease.

Section 7. Management; Employees. Tenant shall be responsible for providing the management, accounting, engineering, administrative, and general personnel required for the operation off the System during the Term, and for all matters relating to the employment and dismissal of such personnel. In order to obtain such personnel, Tenant may hire its own employees or contract for personnel with others.

Section 8. Expansion or Modification of Premises. Tenant shall be entitled to make such modifications, additions, and improvements, including capital improvements (collectively, "Improvements") to the Leased Property as Tenant deems necessary or desirable; provided, however, that Tenant shall only make material Improvements (i.e. those costing \$50,000 or more) to the Leased Property with the prior approval of the Director of Public Service of the City of Akron or her/his predetermined designee, such approval not to be unreasonably withheld; and, provided further, that Tenant shall not be entitled to make any Improvement if such Improvement would materially adversely impair the value of the System or the Leased Property for its current use.

Section 9. Maintenance of the Leased Property. Tenant shall be responsible for, and shall pay the cost of, all maintenance of the System and the Leased Property. Tenant shall not make any major repairs to the Leased Property without the prior consent of the Director of Public Service of the Landlord or his

authorized designee, which consent shall not be unreasonably withheld. Tenant shall be responsible for maintaining the exterior landscaping around the RES in a commercially reasonable manner and at an appearance level substantially equivalent to past practices.

Section 10. Insurance

10.1 Tenant shall at all times during the Term, at its own expense, maintain in full force and effect a comprehensive commercial general liability insurance policy, including products liability insurance, with a company or companies approved by the Landlord, which approval shall not be unreasonably withheld, having a combined single limit of at least \$5,000,000 per occurrence, with respect to bodily injury and property damage. All such policies shall name the Landlord as an additional insured and shall specify that the insurance evidenced thereby will not be cancelled unless the insurer has given the Landlord at least 30 days prior written notice. In no event shall Tenant do or omit to do any act which results or may result in cancellation of such insurance.

10.2 Tenant shall keep the RES and the Annex and all additions, alterations, modifications and improvements thereto, including all boilers and machinery, insured, with a company or companies approved by Landlord, which approval shall not be unreasonably withheld, against loss by fire and all other risks and hazards covered under a standard form All-Risk fire and extended coverage insurance policy and such policy shall insure the RES at a replacement value of \$5,150,000 and the Annex at a replacement value of \$4,120,000. Tenant covenants and agrees to promptly add such improvements and/or modifications to the foregoing policy or policies of insurance. Tenant hereby waives any and all claims for loss, damage, destruction, or theft to any personal property which it places or causes to be placed in, on or within the RES or the Annex, whether or not such personal property is owned by Tenant, and regardless of whether Tenant has maintained adequate insurance pertaining to such personal property. All such policies shall name Landlord as an additional insured. Tenant and Landlord agree that, except for loss or damage resulting from Tenant's negligent acts or omissions or those of its officers, employees and agents, Tenant shall not be responsible for the property stored by Landlord in Buildings A and D pursuant to Section 33 below and that Landlord shall bear the risk of loss with respect to such property. Landlord shall not recover any proceeds of Tenant's insurance policies to cover losses related to such property. Additionally with respect to Landlord's use of Buildings A and D, Landlord shall carry a comprehensive commercial general liability insurance policy having a combined single limit of at least \$1,000,000 per occurrence, with respect to bodily injury and property damage, or Landlord may self-insure the foregoing risks. All such policies shall name Tenant as an additional insured and shall specify that the insurance evidenced thereby will not be cancelled unless the insurer has given

the Tenant at least 30 days prior written notice. In no event shall Landlord do or omit to do any act which results or may results in cancellation of any such insurance.

10.3 Tenant shall carry at least the following minimum amounts of insurance throughout the remainder of the Term, with Landlord named as an additional insured thereunder and with companies approved by Landlord, which approval shall not be unreasonably withheld: (i) a policy or policies of automobile insurance covering all officers, partners, agents, and employees of Tenant in an amount not less than \$5,000,000; and (ii) workers' compensation insurance as required by the State of Ohio.

10.4 Each policy of insurance referred to in Sections 10.1, 10.2, 10.3 and 10.5 and any other fire or casualty insurance maintained by Tenant as to the Leased Property, or by Landlord as to Buildings A and D and the land area outside of the Annex, as the case may be, shall provide a waiver and release by the insurer of any and all claims, demands, actions, suits, and rights (including, without limitation, any and all rights of subrogation) which said insurer might otherwise have against either party hereto as a result of any acts or omissions of such party.

10.5 Tenant shall be responsible for maintaining casualty insurance covering Tenant's personal property and improvements located on the Leased Property, and Landlord shall have no liability with respect to any damage or loss to such personal property unless caused by the wilful misconduct or gross negligence of Landlord or its agents, employees, or representatives. Any insurance proceeds payable under this Section 10.5 shall be paid directly to Tenant, and Landlord shall have no right or interest whatsoever in any such proceeds.

10.6 Tenant shall deliver to Landlord true and accurate copies of all insurance policies required in this Section 10 on an annual basis. Upon request of Tenant, but not more often than once in any 12-month period, Landlord shall deliver to Tenant a copy of Landlord's liability insurance policy covering its use of Buildings A and D or, in the alternative, evidence of adequate self-insurance as to the foregoing risk.

Section 11. Damage and Destruction. In the event of any damage to or destruction of the Leased Property or any portion thereof during the Term by fire, explosion or other casualty ("Damage or Destruction"), Tenant shall remain in possession of the Leased Property and shall repair or restore the affected portions of the Leased Property. Notwithstanding the foregoing, Tenant shall only be required in the event of Damage or Destruction to provide a functional replacement for the RES and/or the Annex for purposes of continuing electric,

steam, hot water and chilled water services consistent with those currently provided by the System.

Section 12. Eminent Domain.

12.1 If the possession of, title to, or ownership of all of the Leased Property shall be permanently taken during the Term by any Governmental Authority under a statutory power of condemnation or eminent domain or by private sale in lieu thereof, this Lease shall terminate upon the transfer of title to such Governmental Authority.

12.2 If the possession of, title to, or ownership of any portion, but less than all, of the Leased Property shall be permanently taken during the Term by any Governmental Authority under a statutory power of condemnation or eminent domain or by private sale in lieu thereof, and the operation of the System is thereby materially impaired and cannot be restored, Tenant may, at its option, elect to terminate this Lease by the delivery of notice thereof to Landlord within 45 days after the date any judgment or order ordering such taking (or agreed settlement in lieu thereof) becomes final and no longer subject to appeal or the date upon which title transfers to such Governmental Authority, whichever is earlier. In the event Tenant elects to terminate this Lease pursuant to this Section 12.2, this Lease shall terminate on the earlier of (a) the date of the transfer of title to such Governmental Authority or (b) the date on which Tenant delivers notice of its election to terminate to Landlord. If Tenant does not elect to terminate this Lease, this Lease shall remain in full force and effect for the balance of the Term.

12.3 The provisions for termination of this Lease contained in Section 12.2 shall not be construed so as to adversely affect or prejudice the rights of either Landlord or Tenant to recover from any Governmental Authority the full and proper compensation, damages, and expense allowed by law for the taking or any partial taking or resulting from the taking or any partial taking of their respective interests. Without limiting the generality of the foregoing, Tenant shall be entitled to make a claim and recover an award for the value of Tenant's improvements and property of whatsoever nature located in on or about the Leased Property, and to the extent allowed by law, for any lost business, and Landlord shall be entitled to make a claim and recover an award for the value of Landlord's fee simple interest in the Leased Property.

Section 13. Default.

13.1 The occurrence of any of the following shall constitute an event of default (an "Event of Default") by Tenant under this Lease:

(a) the failure of Tenant to pay any lease payment or any other amounts payable by Tenant hereunder at the time provided herein and such failure shall continue for 30 days after the same becomes due and payable;

(b) the failure of Tenant to perform any other covenant or obligation or to comply with any other term or condition imposed upon Tenant under this Lease if such failure shall continue for a period of 30 days or more after Tenant receives written notice thereof from Landlord; provided that, if such failure is of such a nature that it cannot, using reasonable diligence, be cured within said period, such failure shall not constitute an Event of Default if Tenant promptly commences to cure such failure and diligently and continuously pursues the same to completion thereafter and, in fact, fully cures same within 90 days after such notice;

(c) the making by Tenant of any general assignment of all or a substantial portion of all of Tenant's assets for the benefit of creditors; or the filing by or against Tenant of a petition in bankruptcy, insolvency or for reorganization or arrangement or for the appointment of a receiver of all or any substantial portion of Tenant's assets pursuant to any statute of the United States or any state, and Tenant fails to secure a stay or discharge within 60 days, or the attachment, execution or other judicial seizure of substantially all of Tenant's assets where such seizure is not discharged in 60 days;

(d) the failure of Tenant to continuously operate the System as required under this Lease, unless such failure results from a Damage or Destruction or a taking pursuant to Section 12; or

(e) any default or breach of the terms of the Guaranty referred to in Section 39 below.

13.2 Upon the occurrence of an Event of Default, Landlord shall have the right, without further notice to Tenant, to terminate this Lease and re-enter and repossess the Leased Property by summary proceedings or otherwise. Tenant and Landlord acknowledge that, in the event that Landlord elects to terminate this Lease as a result of Tenant's default of any of its obligations under this Lease after expiration of the applicable notice and cure periods, including, without limitation, subsection 13.1(d) above, Landlord will suffer damages arising from the interruption and/or discontinuance of the operation of the System. The exact amount of such damages are and will be difficult to ascertain with certainty, and, accordingly, Tenant and Landlord agree that \$2,000,000.00 (the "Liquidated

Damages") shall constitute liquidated damages for Tenant's default of any of its obligations under this Lease after expiration of the applicable notice and cure periods. Notwithstanding that Landlord's actual damages would be uncertain and difficult to ascertain, Tenant and Landlord agree that the Liquidated Damages are reasonable and bear a relationship to the damages that Landlord might sustain in the event of Tenant's default under this Lease. Tenant and Landlord agree that the Liquidated Damages is not intended to be, and in no event should be construed to be, a penalty, but is intended as fixed damages agreed to by the parties as settlement of damages in advance. Landlord hereby agrees that, except as provided in Section 13.3 below, its receipt of the Liquidated Damages in the event of Tenant's default in any of its obligations under this Lease is the sole and exclusive right or remedy that Landlord has, or may be entitled to exercise or pursue, against Tenant, whether at law or in equity, as to such failure or default, except, however, that Landlord shall be entitled to take any and all necessary action against Tenant to obtain immediate delivery of all permits needed to operate the System. In addition, the parties agree that the provisions of this Lease shall be enforceable by injunction, specific performance, or other equitable relief (without reference to whether or not an adequate remedy at law may be available) in addition to any other remedy which may be available in law or in equity or by statute or otherwise pursuant to this Lease.

13.3 In addition to, but not in limitation of, any of the remedies set forth in this Lease or given to Landlord at law or in equity, Landlord shall also have the right and option, in the event of any default by Tenant under this Lease and the continuance of such default after the period of notice above provided, to elect to have this Lease continue and to proceed against Tenant for recovery of all loss or damage arising from or in any way related to such default as permitted under applicable law, and any such action by Landlord shall not be construed as an election to terminate this Lease unless Landlord expressly exercises its option hereinbefore provided to repossess the Leased Property and to declare the Term hereof ended. In such event, Tenant shall continue to be liable for the payment of the rents and the performance of the other covenants and conditions hereof and shall pay to Landlord all deficits as the amounts of such deficits from time to time are ascertained. Notwithstanding anything to the contrary in this Section 13.3, Landlord and Tenant hereby acknowledge and agree that in any legal proceeding based upon Tenant's default, except as to any proceeding involving or pertaining to Tenant's obligations with respect to Environmental Conditions, Landlord's total recovery against Tenant shall not exceed the Liquidated Damages.

13.4 Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other upon any matters pertaining to or affecting title to or occupancy and/or possession of the

Leased Property, including without limitation any proceeding for forcible entry and detainer or ejectment.

13.5 Every demand for rent due wherever and whenever made shall have the same effect as if made at the time it falls due and at the place of payment, and after the service of any notice or commencement of any suit, or final judgment therein, Landlord may receive and collect any rent due, and such collection or receipt shall not operate as a waiver of nor affect such notice, suit or judgement.

Section 14. Access to Premises. Landlord shall have the right, following reasonable advance notice to Tenant, to enter any portion of the Leased Property during Tenant's normal business hours for the purpose of exercising Landlord's right to cure pursuant to Sections 13 and 17 or examining and inspecting the Leased Property or for any other reasonable civic or business purpose as Landlord may deem necessary or appropriate. As a condition to such entry, Landlord shall keep strictly confidential all of Tenant's trade secrets, processes, and business information and practices which Landlord may observe or to which it may become privy during any such entry to the Leased Property, and shall use reasonable efforts not to interfere with the conduct of Tenant's business in connection with any such entry.

Section 15. Assignment and Subletting. Except as set forth herein, Tenant shall not assign this Lease, or sublet the Leased Property or any part thereof, without the prior consent of Landlord, which consent may be given or withheld in the sole and absolute discretion of Landlord. Landlord shall notify Tenant in writing within 30 days of any request by Tenant for such consent as to whether or not Landlord consents to such assignment. Notwithstanding the foregoing, Tenant shall have the right to assign or pledge Tenant's right, title, and interest in this Lease to a financial lending institution as collateral security in connection with any purchase money financing of the System or any financing in connection with improvements to the System; provided, however, that in the event such lending institution exercises any right under such assignment or pledge to realize upon such security or pledge, any attempted transfer by the lending institution to any third party shall be and is hereby prohibited unless the foregoing provisions of this Section 15 are fully complied with and the prior consent of the Director of Public Service is obtained. For purposes of this Section 15, an assignment requiring approval of Landlord shall include, without limiting the foregoing, (a) any change of the general partner of Tenant or in the majority ownership or control of the general partner of Tenant other than a transfer of the general partnership interest in Tenant to North American Thermal Systems Limited Liability Company ("NATS") so long as NATS is and remains at least owned 50% by TVI (as defined below) and TVI continues to control NATS and manage its day-

to-day operations, (b) any transfer of an interest or change in control of Tenant such that Carl E. Avers, Lewis A. Mahoney, or NATS would no longer directly control Tenant, (c) any transfer of a majority of the assets of Tenant whether in the aggregate or in a series of transactions, (d) any transfer of a majority of the stock or substantially all of the assets of Thermal Ventures, Inc. ("TVI"), whether in the aggregate or in a series of transactions (other than a transfer of general partnership interests to NATS), or any merger, consolidation, or liquidation of either Tenant or TVI. Notwithstanding anything contained in this Lease to the contrary, the assignment of Tenant's rights in this Lease or the subletting of all or part of the Leased Property to an entity whose sole general partner is either TVI or NATS and which is controlled by Lewis A. Mahoney and/or Carl E. Avers shall not be considered an assignment requiring approval of Landlord. Any attempted assignment in violation of this Section shall be void and shall constitute a material default of this Lease.

Section 16. Covenant of Quiet Enjoyment. Landlord, for itself and its successors and assigns, covenants with Tenant that, upon performing the covenants and obligations on Tenant's part to be kept and performed under this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Leased Property during the Term without any hindrance of Landlord, its successors and assigns, or any other person lawfully claiming the Leased Property or any portion thereof by, through or under Landlord.

Section 17. Right to Perform Covenants. If either party hereto shall at any time fail or refuse to perform any of its covenants or obligations hereunder, the other party may, upon 30 days' prior notice to the party so failing or refusing to perform, but shall not be obligated to, perform such covenant or obligation without waiving or releasing the party so failing or refusing to perform from any liability therefor. All sums paid, advanced or expended by the other party hereto pursuant to this Section 17 and all costs and expenses incurred by such other party in connection therewith (including, without limitation, attorneys' fees) shall be repaid to such other party by the party so failing to perform, on demand following delivery to the other party of reasonable documentation evidencing the expenditure, together with interest on any balance thereof from and after the date such sums, costs and expenses were so paid, advanced, expended or incurred by such other party at a rate equal to two percent (2%) per annum above the prime rate of interest of First Merit Bank of Akron, Ohio, from time to time in effect. Any and all sums due from Tenant to Landlord hereunder shall be deemed to be additional rent due Landlord under this Lease and, except as otherwise provided in this Lease, shall be paid by Tenant to Landlord within 30 days after notice from Landlord together with applicable invoices or other evidence of such expenditure.

Section 18. Surrender of Leased Property. Upon the expiration or termination of this Lease for any reason other than consummation of the sale of the Leased Property to Tenant pursuant to the Purchase Agreement, Tenant shall surrender (i) the Leased Property to Landlord broom-clean and in its current operating condition existing on the Lease Closing Date, subject to any Improvements made during the Term, normal wear and tear excepted, (ii) the Acquired Inventory, except such Acquired Inventory consumed or used by Tenant or Landlord between the date hereof and the date of such expiration or termination, in the ordinary course of business and in accordance with the terms of this Lease and the Purchase Agreement, and (iii) the Acquired Equipment in good order and repair, normal wear and tear and insured casualty excepted.

Section 19. Termination.

19.1 Notwithstanding anything to the contrary in this Lease but subject to obtaining any necessary governmental approvals, this Lease may be terminated prior to expiration of the Term as follows:

- (a) at any time upon the mutual agreement of Landlord and Tenant;
- (b) pursuant to the terms of Section 12.1;
- (c) by Tenant pursuant to Section 12.2;
- (d) by Landlord pursuant to Section 13.2; or
- (e) by Tenant pursuant to Section 10.4(b) of the Asset Purchase Agreement.

19.2 In the event of the termination of this Lease, Tenant shall take all reasonable action requested by Landlord, and shall execute any and all agreements, certificates, and other documents which may be reasonably required by Landlord, in order to transfer possession of the Leased Property and the rights and obligations of Tenant under the Assigned Contracts and Authorizations to Landlord or another party and to otherwise terminate the effect of this Lease, and Landlord will thereafter assume the full obligations under the Assigned Contracts.

Section 20. Waiver. No consent or waiver, express or implied, by either party hereto with respect to any breach or default by the other party hereto in the performance of any of the covenants or obligations of such other party hereto under this Lease shall be deemed or construed to be a consent to or waiver of any other such breach or default. Failure or delay on the part of either

party hereto to complain of any act (whether of commission or omission) of the other party hereto or to declare a breach of or default under this Lease, irrespective of how long such failure or delay continues, shall not constitute a waiver by such party hereto of its rights hereunder. No waiver by either party hereto of any default or breach by the other party hereto in the performance of any of the covenants or obligations of such other party hereto under this Lease shall be deemed to have been made by such party unless contained in a writing executed by such party hereto.

Section 21. Amendment. This Lease may be amended only by an agreement or instrument in writing which refers to this Lease and is duly executed by the parties to this Lease.

Section 22. Entire Contract. This Lease, together with the Schedules hereto, the Purchase Agreement and the other related agreements referred to herein or therein, is the entire contract between the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the parties and, specifically, the Interim Agreement is hereby terminated and superseded by this Lease and the Purchase Agreement.

Section 23. Third Parties. Nothing in this Lease, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Lease on any other persons other than the parties and their respective successors and assigns, nor is anything in this Lease intended to relieve or discharge the obligation or liability of any third persons to any party, nor shall any provision give any third parties any right of subrogation or action over or against any of the parties hereto. This Lease is not intended to and does not create any third party beneficiary rights whatsoever.

Section 24. Counterparts. Any number of counterparts of this Lease may be executed and delivered and each shall be considered an original and together such counterparts shall constitute one agreement.

Section 25. Headings. The headings contained in this Lease have been inserted for convenience only and shall not affect the meaning of any of the language contained herein.

Section 26. Notices. Any notice, demand, or request required or permitted to be given under the provisions of this Lease shall be in writing and delivered personally, or by registered or certified mail, postage prepaid, or by a nationally recognized overnight express courier service for next day delivery, in each case, addressed to the following persons at their respective addresses set forth

below, or to such other addresses or persons as either party may designate by subsequent notice to the other party:

If to Tenant, to:

Akron Thermal, Limited Partnership
c/o Thermal Ventures, Inc.
29 East Front Street
Youngstown, Ohio 44503
Attention: Lewis A. Mahoney, President

With a copy to:

Jones, Day, Reavis & Pogue
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Attention: Neil F. Luria, Esq.

If to Landlord, to:

City of Akron
Room 201
166 South High Street
Akron, Ohio 44308
Attention: Joseph Kidder,
Director of Public Service

With a copy to:

City of Akron
Room 201
161 South High Street
Akron, Ohio 44308
Attention: Max Rothal, Director of Law

and to:

Samuel R. Knezevic, Esq.
Thompson, Hine & Flory LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114

Section 27. Public Announcements. No press release or public announcement regarding this Lease or the contents hereof shall be made by either party without the prior written approval of the other party (which approval shall not be unreasonably withheld), except as may be necessary, in the opinion of counsel for such party, to meet the requirements or regulation of any applicable law, or to comply with any request of any stock exchange on which the securities of such party may be listed. It is expressly understood that this Lease may be disclosed by either party in connection with obtaining any privileges, permits, licenses, grants, franchises, variances, waivers, approval, consents, exemptions, and certifications, and by Tenant in connection with its securing financing for the transactions contemplated hereby.

Section 28. Severability. Each article, section, subsection, and lesser section of this Lease constitutes a separate and distinct undertaking, covenant, and/or provision hereof. Whenever possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law. In the event that any provision of this Lease shall be determined to be unlawful, such provision shall be deemed severed from this Lease, but every other provision of this Lease shall remain in full force and effect, and in substitution for any such provision held unlawful there shall be substituted a provision of similar import reflecting the original intent of the parties hereto to the extent permissible under law.

Section 29. Governing Law. This Lease shall in all respects be interpreted, construed, and governed by and in accordance with the internal substantive law of the State of Ohio.

Section 30. Definitions. Capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement unless otherwise defined herein.

Section 31. Signs/Advertising. Tenant shall not place, construct, or maintain any sign, advertisement or banner upon any building or part of the System without Landlord's prior consent; except, however, that Tenant shall be entitled to post a sign outside the RES and the Annex containing the name "Akron Thermal, Limited Partnership" and the address of the RES or the Annex, as the case may be, provided that Tenant obtains all normally required approvals from Landlord, if required by law, including but not limited to, approval of the City Planning Commission and the City Council, and that such sign complies at all times with all applicable ordinances of Landlord.

Section 32. Books and Records. Tenant agrees that it shall preserve and maintain any books and records belonging to the Landlord on the

premises of the RES, the Annex, or, with the permission of the Landlord, an offsite storage area. Tenant agrees not to destroy any such books and records without first obtaining the prior written approval of the Landlord. In addition, Tenant agrees to, whenever reasonably requested by the Landlord, permit the Landlord to have access to, and make copies of (at the Landlord's expense), during regular business hours, all books and records relating to the Akron Energy System which are in Tenant's possession.

Section 33. Buildings A and D. Tenant and Landlord hereby acknowledge and agree that Landlord shall be entitled to continue to use buildings A and D of the RES, which buildings are more fully described on Exhibit B attached hereto ("Buildings A and D"), for storage of certain books, records, and files to be retained by Landlord (the "Retained Records") and other file storage and any other purposes not interfering with Tenant's operations. Landlord shall at all times during which personal property is stored in Buildings A or D and at all times that Landlord's employees or agents are using Buildings A and D carry liability insurance, or self-insure such risk, in amounts and at levels required under this Lease.

Section 34. Electrical Substations. Tenant hereby acknowledges and agrees that the electrical substations located in and around the RES and the Annex (the "Substations") shall at all times remain the property of the Landlord; provided, however, Tenant shall serve as the agent of the Landlord and operate the Substations, collect payments from the businesses and other establishments that receive electricity through such Substations and then remit such funds to the Ohio Edison Company. The terms and provisions of this Section 34 shall survive any termination or merger of this Lease resulting from a purchase by Tenant of the System, until such time as the PUCO permits the transfer of ownership of the Substations from Landlord to Tenant.

Section 35. Retained Contract Agency Agreement.

35.1 Effective during the term specified below, Landlord hereby contracts with Tenant to provide the services which Landlord is required to deliver under, and appoints and employs Tenant as its agent for, the heating and cooling service contracts listed on Schedule 6.2 as modified from time to time (the "Retained Contracts"). The Retained Contracts cannot by their terms be assigned to Tenant without the consent of a third party, which consent has either not yet been obtained or is subject to further action or confirmation. Tenant hereby accepts such appointment upon the terms and conditions set forth below.

35.2 The term of this appointment shall become effective as of the date of the Interim Agreement and shall continue thereafter until the earlier of

(a) termination of all of the Retained Contracts, (b) assignment of all of the Retained Contracts to Tenant, or (c) expiration of the Term if the Leased Property is not purchased by Tenant pursuant to the Purchase Agreement. Upon receipt of all consents to assignment from Landlord to Tenant required from third parties under or in connection with a Retained Contract, such Retained Contract automatically shall be deemed to have been assigned to Tenant without further action by any person. Thereafter, such contract shall cease to be a Retained Contract under this Section 35.

35.3 Landlord hereby grants to Tenant all of its authority and powers under or with respect to the Retained Contracts including but not limited to the authority and power (all of which may be exercised in the name of Landlord):

(a) To enforce the terms and provisions of any such Retained Contract now in effect and to comply with the terms and provisions thereof as the same impose obligations on Landlord;

(b) To maintain and perform during the term of this appointment the Retained Contracts and in connection therewith to renegotiate, replace, modify, amend, or terminate any Retained Contract;

(c) To collect payment for services rendered and give receipts therefor;

(d) To institute and prosecute actions against customers for failure to comply with any term of any Retained Contract, sue and recover payment and when deemed necessary or advisable by Tenant, to compromise and release such actions or suits and reinstate such Retained Contracts; and

(e) To communicate in the ordinary course of business or otherwise with the other party of any such Retained Contracts.

35.4 (a) To the extent that Tenant is provided the benefits of the Retained Contracts pursuant to this Section 35, Tenant shall perform the benefit of the issuer thereof or the other party or parties thereto, the obligations of seller thereunder or in connection therewith, but only to the extent that (i) such action by Tenant would not result in any default thereunder or in connection therewith and (ii) such obligation would have been an Assumed Obligation but for the nonassignability or nontransferability thereof.

(b) Tenant shall, in cooperation with Landlord, use its best efforts to obtain the consent of any person required to assign the Retained Contracts to Tenant.

35.5 Landlord hereby agrees as follows:

(a) Landlord shall use all reasonable efforts, in cooperation with Tenant, to obtain the consent of any person required to assign the Retained Contracts to Tenant and to provide to Tenant all of the benefits of the Retained Contracts;

(b) Landlord shall direct the other party or parties to each Retained Contract to directly remit payments thereunder or in connection therewith directly to a lockbox designated by Tenant and to hold as trustee for, and promptly remit to, Tenant any payment Landlord receives under or in connection with any such Retained Contract;

(c) To grant Tenant and any lender of that Tenant so designates a security interest in all of Landlord's rights under the Retained Contracts including but not limited to Landlord's rights to receive payments thereunder and to execute, deliver, and file such documents and instruments as Tenant and Tenant's lenders may request to effect, perfect, evidence, or enforce such security interest;

(d) To enforce, at the request of Tenant, any and all rights of Landlord under the Retained Contracts against the other party or parties thereto;

(e) Not to renegotiate, replace, modify, amend, or terminate any Retained Contract; and

(f) To promptly notify Tenant of any correspondence or communications pertaining to the System or the Retained Contract with any other party to any Retained Contract.

Section 36. Electrical Contracts.

36.1 Effective during the term specified below, Landlord hereby contracts with Tenant to provide the services which Landlord is required to deliver under, and appoints and employs Tenant as its agent for, the electrical service contracts listed on Schedule 36.1 as modified from time to time (the "Electrical Contracts") The Electrical Contracts cannot by their terms be assigned to the Tenant without the consent of a third party, which consent has either not yet been obtained or is subject to further action or confirmation. Tenant hereby accepts such appointment upon the terms and conditions set forth below.

36.2 The term of this appointment (the "Substation Term") shall become effective as of the Interim Agreement and shall continue thereafter until termination of all of the Electrical Contracts.

36.3 Landlord hereby grants to Tenant all of its authority and powers under or with respect to the Electrical Contracts including but not limited to the authority and power (all of which may be exercised in the name of Landlord):

(a) To enforce the terms and provisions of any such Electrical Contract now in effect and to comply with the terms and provisions thereof as the same impose obligations on Landlord.

(b) To maintain and perform during the Substation Term the Electrical Contracts and in connection therewith to renegotiate, replace, modify, amend, or terminate any Electrical Contract.

(c) To collect payment for services rendered and give receipts therefor.

(d) To institute and prosecute actions against customers for failure to comply with any term of any Electrical Contract, sue and recover payment and when deemed necessary or advisable by Tenant, to compromise and release such actions or suits, and reinstate such Electrical Contracts.

(e) To communicate in the ordinary course or otherwise with the other party of any such Electrical Contracts.

36.4 (a) To the extent that Tenant is provided the benefits of the Electrical Contracts pursuant to this Section 36, Tenant shall perform for the benefit of the issuer thereof or the other party or parties thereto, the obligations of Landlord thereunder or in connection therewith, but only to the extent that such action by Tenant would not result in any default thereunder or in connection therewith.

36.5 Landlord hereby agrees as follows:

(a) To direct the other party or parties to each Electrical Contract to directly remit payments thereunder or in connection therewith directly to a lockbox designated by Tenant and to hold as trustee for, and promptly remit to, Tenant any payment Landlord receives under or in connection with any such Electrical Contract;

(b) Amend Schedule 36.1 hereto to include additional Electrical Contracts that Landlord enters into with electrical customers who receive their electricity through the electrical substations located on the Real Property and the land outside of the Annex;

(c) To enforce, at the request of Tenant, any and all rights of Landlord under the Electrical Contracts against the other party or parties thereto;

(d) Not to renegotiate, replace, modify, amend, or terminate any Electrical Contract; and

(e) To promptly notify Tenant of any and all correspondence or communication with any other party to any Electrical Contract.

36.6 All of the terms and provisions of this Section 36 shall survive any termination or merger of this Lease resulting from a purchase by Tenant of the System, until such time as the PUCO permits the transfer of the Substations from Landlord to Tenant or until termination of all of the Electrical Contracts as provided in Section 36.2 above.

Section 37. As Is Condition: Environmental Liability.

37.1 Tenant hereby acknowledges and agrees that Landlord has made no representation or warranty whatsoever, express or implied, as to the condition, quantity, or quality of the System, or any portion thereof. Except as and to the extent provided in Section 37.2 below, Tenant further agrees to accept the System and all portions thereof including, without limitation, all Leased Property, in their "As-Is" condition as of November 4, 1995, subject to all defects and conditions therein, and Tenant shall assert no claim, and Landlord shall have no liability or obligation whatsoever to Tenant, with respect to any and all foreseeable or unforeseeable damage, loss, cost, liability or expense, directly or indirectly arising from any condition existing on November 4, 1995, or which now exists or may hereafter be found to exist in, on, under or about the System, including, without limitation, the RES and the Annex, or from any determination that the System or any portion thereof, violates any applicable law, ordinance, regulation or ruling.

37.2 Tenant's acceptance of the Leased Property in the condition described in Section 37.1 above shall include, without limitation, Tenant's acceptance of all events, accidents, occurrences or conditions caused by, related to or resulting from the presence, use, generation, storage, transportation, treatment, recycling, reuse, reclamation, disposition, handling or release of any Contaminant

(collectively and individually, an "Environmental Condition"); except, however, Tenant shall not assume or accept responsibility for: (a) any Environmental Condition which may exist or arise outside of the Annex unless such Environmental Condition arises directly or indirectly from acts or omissions of Tenant, its employees, partners, agents, contractors or invitees; or (b) the trichloroethane found in certain groundwater samples under the RES and described in the Phase II Environmental Assessment prepared by GPD Associates, dated _____. Notwithstanding the foregoing, Landlord agrees that it will clean up all of the Polychlorinated Biphenyls located on top of the precipitators in the RES and more fully described in the Phase I Environmental Assessment of the Akron Recycled Energy System Plant prepared by Environmental Strategies Group, a copy of which has previously been delivered to Landlord, and Tenant agrees that it will reimburse Landlord for one-half of the Landlord's out-of-pocket expenses associated with such clean-up.

Section 38. Indemnification. Tenant shall indemnify, defend, and hold harmless Landlord from and against any and all losses, damages, expenses, judgments, claims, demands, suits, liabilities, actions, and causes of action (collectively, "Losses") arising from or in any way related to (a) Tenant's breach of or failure to comply with any of the terms, covenants, provisions, or conditions of this Lease, or (b) any and all events, accidents, occurrences, or conditions caused by or resulting from an Environmental Condition on the Leased Property (except those which may exist, due to no act or omission of Tenant, outside of the Annex, and the trichloroethane referred to in Section 37.2 above) including, without limitation, any injury or death to any person or damage to any property or the removal or treatment of any such hazardous or toxic substance or waste or any other remedial action or investigatory action involving the Leased Property or the operations conducted therein. In the event that this Lease terminates or expires and Tenant has not consummated the purchase of the Leased Property in accordance with the terms of the Purchase Agreement, then and thereafter (1) the foregoing indemnification obligation of Tenant shall not apply with respect to any Environmental Condition on the Leased Property which existed prior to November 4, 1995, and (2) Landlord shall indemnify, defend and hold harmless Tenant from and against any losses arising from any Environmental Condition on the Leased Property which existed prior to November 4, 1995, and which was not in any way enlarged, expanded, exacerbated or otherwise adversely affected by acts of Tenant, its employees, partners, agents, contractors or invitees. Landlord shall indemnify, defend and hold harmless Tenant from and against any Losses arising from any Environmental Condition existing outside of the Annex and not arising directly or indirectly from acts or omissions of Tenant, its employees, partners, agents, contractors or invitees, and from and against any Losses arising from the trichloroethane referred to in Section 37.2 above. The provisions of this Section 38 shall survive the termination or expiration of this Lease and the Purchase Agreement.

Section 39. Guaranty of Thermal Ventures, Inc. As further consideration for this Lease, and as a condition precedent to its effectiveness, Tenant covenants and agrees to deliver to Landlord on or before the Lease Closing Date, a guarantee by Thermal Ventures, Inc. of all obligations, liabilities, covenants, conditions, and agreements contained in this Lease and in the Purchase Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

William A. Woodford
Catherine G. Watson

THE CITY OF AKRON

By: [Signature]
Donald L. Plusquellic,
Mayor

William A. Woodford
Catherine G. Watson

And By: [Signature]
Joseph Kidder,
Director of Public
Service

AKRON THERMAL, LIMITED
PARTNERSHIP

By: THERMAL VENTURES, INC., its
general partner

[Signature]
[Signature]

By: [Signature]
Lewis A. Mahoney, President
CARL E. AVERS Chairman

Approved as to form and correctness:

[Signature]
Max Rothal, abc
Director of Law

STATE OF OHIO)
COUNTY OF Summit) SS.

On this, the 14th day of August, 1997, before me, a notary public, personally appeared Donald L. Plusquellic and Joseph Kidder, who acknowledged themselves to be the Mayor and Director of Public Service, respectively, of the City of Akron; and that they as such Mayor and Director of Public Service of the City of Akron, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the City of Akron by themselves as such Mayor and Director of Public Service of the City of Akron.

Cheri B. Cunningham
Notary Public

CHERI B. CUNNINGHAM
ATTORNEY AT LAW
STATE OF OHIO - NOTARY PUBLIC
NO EXPIRATION DATE

[SEAL]

My Commission expires:

STATE OF OHIO)
COUNTY OF Mahoning) SS.

On this, the 15th day of August, 1997, before me, a notary public, personally appeared Robert A. Wagner, who acknowledged himself to be President of Thermal Ventures, Inc., the general partner of AKRON THERMAL, LIMITED PARTNERSHIP, and that as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, on behalf of the corporation and the limited partnership.

May E. Wagner
Notary Public

[SEAL]

My Commission expires: May 4, 2000

This instrument prepared by:

Thompson Hine & Flory LLP
3900 Key Tower
127 Public Square
Cleveland, Ohio 44114-1216

Index of Schedules & Exhibits

Schedule 3.1	Lease Payments
Schedule 6.1	Contracts and Authorizations
Schedule 6.2	Retained Contracts and Authorizations
Schedule 6.3	Heating/Cooling Contracts
Schedule 6.4	Intellectual Property
Schedule 36.1	Electrical Contracts
Exhibit A	Franchise Ordinance
Exhibit B	Description of Buildings A & D

EXHIBIT 2

Estimated Proforma Balance Sheet and Estimated Proforma Income Statement before and after transaction

BALANCE SHEETS
AKRON THERMAL, LP
and AKRON THERMAL COOLING, LLC

	ASSETS	
	As of December 31, 2005	Projected as of December 31, 2006 *
Current Assets		
Cash	\$ 91,127	\$ 1,959,121
Accounts Receivable - Trade	897,394	1,955,536
Accounts Receivable - Other	559,972	2,839,495
Inventory	152,932	86,572
Other Current Assets	77,259	95,072
Total Current Assets	1,778,684	6,935,796
Property Plant & Equipment		
Property Plant & Equipment	2,971,406	3,184,646
Accumulated Depreciation	(726,836)	(850,863)
Net Property Plant & Equipment	2,244,570	2,333,783
Other Assets	1,356,452	1,130,753
Total Assets	\$ 5,379,706	\$ 10,400,332

LIABILITIES AND PARTNERS' CAPITAL

Liabilities

Current Liabilities

Accounts Payable-Trade	\$ 15,159,429	\$ 1,734,597
Accounts Payable-Other	12,371,974	4,422,937
Prepaid Revenue	1,939,144	1,745,225
Accrued Expenses	4,438,955	393,539
Note Payable	304,000	152,500
Other Current Liabilities	10,747	-
Total Current Liabilities	34,224,249	8,448,798

Long Term Liabilities

Bonds Payable	-	6,250,000
Notes Payable	-	1,500,000
Notes Payable - Subordinated	-	2,500,000
Other Long Term Liabilities	562,923	804,178
Total Long Term Liabilities	562,923	11,054,178

Total Liabilities	34,787,172	19,502,976
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Partners' Capital	(29,407,466)	(9,102,644)
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Total Liabilities and Partners' Capital	\$ 5,379,706	\$ 10,400,332
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* The projected December 31, 2006 Balance Sheet assumes a closing date for the new financing and restructuring of existing debt as of December 31, 2006

PROJECTED INCOME STATEMENTS
AKRON THERMAL, LP
and AKRON THERMAL COOLING, LLC

	<u>2006</u>	<u>2007</u>
REVENUE		
Steam Revenue	\$ 13,177,369	\$ 14,032,220
Chilled Water Revenue	1,130,304	1,134,781
Other Revenue	303,328	418,642
Total Revenue	<u>14,611,001</u>	<u>15,585,643</u>
OPERATING EXPENSES		
Fuel	5,343,668	5,672,636
Utilities	1,640,223	1,732,044
Labor	2,739,677	3,001,911
Supplies & Materials	551,535	695,849
Service & Subcontractors	398,738	575,463
Maintenance	399,756	450,000
Depreciation and Amortization	171,946	174,000
Gross Receipts Tax	664,041	673,640
Other Operating Expenses	1,787,352	1,138,629
Total Operating Expenses	<u>13,696,936</u>	<u>14,114,172</u>
NET OPERATING INCOME	<u>914,065</u>	<u>1,471,471</u>
OTHER INCOME AND EXPENSE		
Interest and Related Items	(1,510,565)	(821,917)
Extraordinary Items	10,783,528	-
Total Other Income/(Expense)	<u>9,272,963</u>	<u>(821,917)</u>
NET INCOME/LOSS	<u>\$ 10,187,028</u>	<u>\$ 649,554</u>

EXHIBIT 3

Verification of Officers

VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF _____)

I, _____, being first duly sworn, verify that I
am _____ of Opportunity Parkway, LLC, the general partner
of Akron Thermal, Limited Partnership, and have reviewed the foregoing Application
and Exhibits and verify that the allegations contained in the Application and Exhibits
are true and accurate to the best of my knowledge and belief.

Sworn to and subscribed before me, a Notary Public, this _____ day of
December, 2006.

Notary Public

VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF _____)

I, _____, being first duly sworn, verify that I
am _____ of Opportunity Parkway, LLC, the general partner
of Akron Thermal, Limited Partnership, and have reviewed the foregoing Application
and Exhibits and verify that the allegations contained in the Application and Exhibits
are true and accurate to the best of my knowledge and belief.

Sworn to and subscribed before me, a Notary Public, this _____ day of
December, 2006.

Notary Public

VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF _____)

I, _____, being first duly sworn, verify that I
am _____ of Akron Thermal Cooling, LLC, and have
reviewed the foregoing Application and Exhibits and verify that the allegations
contained in the Application and Exhibits are true and accurate to the best of my
knowledge and belief.

Sworn to and subscribed before me, a Notary Public, this _____ day of
December, 2006.

Notary Public

VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF _____)

I, _____, being first duly sworn, verify that I
am _____ of Akron Thermal Cooling, LLC, and have
reviewed the foregoing Application and Exhibits and verify that the allegations
contained in the Application and Exhibits are true and accurate to the best of my
knowledge and belief.

Sworn to and subscribed before me, a Notary Public, this _____ day of
December, 2006.

Notary Public