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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
 Akron Thermal, Limited Partnership )  
 for Authorization of an Operating )  
 Lease Agreement with the City of )  
 Akron, Ohio and Approval of a Senior )  
 Term and Revolving Line of Credit )  
 Financing Arrangement. )

Case No. 97-<sup>1059</sup> - HT-AIS

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APPLICATION

Now comes Akron Thermal, Limited Partnership ("Akron Thermal"), a Delaware limited partnership, and a public utility heating and cooling company subject to the regulation of this Commission, which respectfully requests that the Public Utilities Commission of Ohio (the "Commission") authorize an August 15, 1997, Operating Lease Agreement with the City of Akron and approve a senior term and revolving line of credit financing arrangement with Banc One Capital Partners, L.L.C., pursuant to Sections 4905.40 through 4905.42, Revised Code. In support, Akron Thermal alleges the following:

1. Akron Thermal hereby incorporates by reference its October 10, 1995 Application for Authorization of an Operating Lease filed in Case No. 95-924-HT-AIS which was approved by Commission Finding and Order of October 25, 1995.
2. On August 15, 1997, Akron Thermal and the City of Akron (the "City") entered into a "permanent" Operating Lease Agreement which supersedes the interim Operating Lease Agreement previously approved by the Commission. That Operating Lease Agreement is attached as Exhibit A to this Application.

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3. The August 15, 1997 Operating Lease Agreement requires Akron Thermal to pay the City an annual rent equal to ninety thousand dollars (\$90,000.00) per year. Akron Thermal will be permitted to continue to operate the system and provide heating and cooling services to the existing and prospective customers in the Central Business District of Akron.

4. The term of the Operating Lease Agreement is ten (10) years and Akron Thermal has the right to renew and extend the initial term for one (1) additional term of ten (10) years.

5. Under the terms of the Operating Lease Agreement, Akron Thermal will use, operate, maintain and manage all of the lease property for the purpose of generating steam, hot water, and chilled water used to provide heating and cooling services and any other lawful use. Akron Thermal will have full responsibility for providing accounting, engineering, administrative and general personnel, and for making modifications, additions and improvements to the system; provided, however, that Akron Thermal will only make material improvements to the system with the prior approval of the City. Akron Thermal will be responsible for the costs of the routine day-to-day maintenance of the system and will maintain all risk insurance. Akron Thermal will collect and retain all revenues generated by the sale of steam, hot water, and chilled water.

6. Akron Thermal submits the August 15, 1997, Operating Lease Agreement is a long-term obligation of a public utility which is an evidence of indebtedness issued wholly for property. As such, Commission approval may be required pursuant to Sections 4905.40 through 4905.42, Revised Code.

7. Akron Thermal respectfully requests that the Commission expeditiously authorize the August 15, 1997, Permanent Operating Lease Agreement attached as Exhibit A.

8. In Case No. 95-924-HT-AIS, Akron Thermal made reference to the fact that the City of Akron and Akron Thermal were then drafting an "Asset Purchase Agreement" under which in four (4) years Akron Thermal may elect or the City may require Akron Thermal to purchase the system and substantially all the assets and properties of the City associated with the system.

9. The "Asset Purchase Agreement" has now been finalized and signed on August 15, 1997. Exhibit B is a copy of the signed "Asset Purchase Agreement". The Asset Purchase Agreement will not become operative unless and until the City exercises a "Put" Option to require Akron Thermal to purchase the system for a calculated price or Akron Thermal exercises a "Call" Option giving it the right to purchase the system from the City at a calculated price.

10. Akron Thermal also seeks approval of a senior term and a revolving line of credit financing arrangement with Banc One Capital Partners, L.L.C. Exhibit C is a commitment letter from Banc One Capital Partners, L.L.C. to the President of Thermal Ventures, Inc., the general partner of Akron Thermal. This commitment letter provides the terms and conditions of the financing arrangement.

11. The revolving line of credit involves a potential credit line of \$750,000 with a two (2) year maturity to be used for working capital. The interest rate, unused fee, and minimum advances/pay-downs are set forth in the commitment letter.

12. Akron Thermal also seeks approval of a senior secured term loan in the amount of \$4,250,000 at an interest rate of 12.0% per annum with a six (6) year maturity date.

13. According to the commitment letter, the proceeds from the revolving line of credit and the senior secured term loan will be used primarily for working capital, but also for other purposes specified in the letter.

14. The commitment letter also describes the right of the Lender to purchase detachable warrants and also sets forth other terms and conditions.

15. Akron Thermal is neither a telephone company nor in violation of Section 4905.23, Revised Code, nor in violation of any Order of this Commission made under Sections 4905.231 and .381, Revised Code.

16. Attached as Exhibit D is a balance sheet of Akron Thermal as of July 31, 1997 and an income statement for the seven (7) months ended July 31, 1997.

17. Attached as Exhibit E are unsigned verified statements of the Chairman of the Board and the President of Thermal Ventures, Inc., the sole general partner of Akron Thermal, Limited Partnership. These verified statements will subsequently be completed and filed as late filed exhibits.

WHEREFORE, Akron Thermal, Limited Partnership respectfully prays that the Commission expeditiously authorize the Operating Lease Agreement and the Senior Term and Revolving Line of Credit Financing with Banc One Capital Partners, L.L.C., pursuant to Sections 4905.40 through 4905.42, Revised Code.

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE

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Limited Partnership



### OPERATING LEASE AGREEMENT

THIS OPERATING LEASE AGREEMENT (this "Lease"), made as of the 15<sup>th</sup> 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 sublet the Leased Property to any

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.

THE CITY OF AKRON

By:

Donald L. Plusquellic,  
Mayor

And By:

Joseph Kidder,  
Director of Public  
Service

AKRON THERMAL, LIMITED  
PARTNERSHIP

By: THERMAL VENTURES, INC., its  
general partner

By:

Carl E. Averis  
Lewis A. Mahoney, President  
CARL E. AVERIS Chairman

Approved as to form and correctness:

Max Rothal  
Max Rothal, *abc*  
Director of Law

STATE OF OHIO

COUNTY OF Summit

} SS.

On this, the 14<sup>th</sup> 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 15<sup>th</sup> day of August, 1997, before me, a notary public, personally appeared Lewis A. Mahoning, 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.

Mary 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

### Schedule 3.1 - Lease Payments

Base Annual Lease Payment: \$90,000

Escalator: On the anniversary date beginning with January 1, 1999, the base annual lease payment shall be adjusted by the increase in the index described below. The monthly payments for each following year shall be made in accordance with the percentage of payment column applied to the adjusted Annual Lease Payment.

Anniversary Date: January 1, 1998

Index: Consumers Price Index for Urban Wage Earners & Clerical Workers, All items (1982-84 = 100), United States City Average, published by the United States Department of Labor, Bureau of Labor Statistics

First Payment: January 1, 1998

Schedule of Monthly Payments:

<u>Month:</u>	<u>% of Payment</u>	<u>Standard Schedule of Payments</u>	<u>Make-Up of 1997 Payments</u>	<u>1998 Payments (1st of Each Month)</u>
January	13%	\$11,700.00	\$ 8,775.00	\$ 20,475.00
February	13%	\$11,700.00	\$ 8,775.00	\$ 20,475.00
March	11%	\$ 9,900.00	\$ 8,775.00	\$ 18,675.00
April	8%	\$ 7,200.00	\$ 8,775.00	\$ 15,975.00
May	6%	\$ 5,400.00	\$ -	\$ 5,400.00
June	5%	\$ 4,500.00	\$ -	\$ 4,500.00
July	5%	\$ 4,500.00	\$ -	\$ 4,500.00
August	5%	\$ 4,500.00	\$ -	\$ 4,500.00
September	6%	\$ 5,400.00	\$ -	\$ 5,400.00
October	6%	\$ 5,400.00	\$ -	\$ 5,400.00
November	10%	\$ 9,000.00	\$ -	\$ 9,000.00
December	12%	<u>\$10,800.00</u>	<u>\$ -</u>	<u>\$ 10,800.00</u>
Total	100%	<u>\$90,000.00</u>	<u>\$35,100.00</u>	<u>\$125,100.00</u>

SCHEDULE 6.1

Assigned Contracts and Authorizations

See Asset Purchase Agreement by and between the City of Akron, Ohio and Akron Thermal, Limited Partnership dated as of the date hereof, Schedule 2.1(d) - Acquired Contracts, and Schedule 2.1(f) - Acquired Authorizations.

SCHEDULE 6.2

[Intentionally Omitted]

SCHEDULE 6.3

Heating/Cooling Contracts

See Asset Purchase Agreement by and between the City of Akron, Ohio and Akron Thermal, Limited Partnership dated as of the date hereof, Schedule 2.1(d) - Acquired Contracts (with the exception of the Easements for Pipelines).

SCHEDULE 6.4

Intellectual Property

See Asset Purchase Agreement by and between the City of Akron, Ohio and Akron Thermal, Limited Partnership dated as of the date hereof, Schedule 2.1(e) —  
Acquired Intellectual Property.

SCHEDULE 36.1

Electrical Contracts

1. Rogers Industries

EXHIBIT A

Franchise Ordinance



EXHIBIT B

Description of Buildings A and D



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ASSET PURCHASE AGREEMENT

by and between

THE CITY OF AKRON, OHIO, as Seller

and

AKRON THERMAL, LIMITED PARTNERSHIP, as Purchaser

Dated as of August 15, 1997

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of August \_\_, 1997 (this "Agreement"), is made by and between the CITY OF AKRON, OHIO, a municipal corporation organized and existing under and by virtue of the constitution and the laws of the State of Ohio ("Seller"), and AKRON THERMAL, LIMITED PARTNERSHIP, a Delaware limited partnership ("Purchaser").

### W I T N E S S E T H:

WHEREAS, Seller 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 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 systems located throughout the Seller's municipal area and associated underground piping, manholes, and related facilities, the "System") in Akron, Ohio;

WHEREAS, Seller and Purchaser 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) Seller granted to Purchaser a non-exclusive license to enter into, upon, and across, and to use and have access to the Annex, and (ii) Purchaser agreed to furnish all labor and related services pertaining to the operation and maintenance of the Annex;

WHEREAS, Seller and Purchaser 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) Seller granted to Purchaser a non-exclusive license to enter into, upon, and across, and to use and have access to the RES, and (ii) Purchaser agreed to furnish all labor and related services pertaining to the operation and maintenance of the RES;

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, the System as a going concern (the "Business"), including substantially all of the assets used in the operation of the System and the Business, as more fully described herein;

WHEREAS, Seller and Purchaser contemplate entering into a long term lease arrangement under which Purchaser shall lease the System and substantially all of the assets and properties of Seller relating to the System pursuant to an Operating Lease Agreement in the form of Exhibit A hereto (the "Lease") that will be executed simultaneously herewith, as more fully described herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and on the basis of and in reliance upon the representations, warranties, covenants, and agreements set forth herein, the parties hereto hereby agree as follows:

#### ARTICLE I DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth below:

"Acquired Authorizations" shall have the meaning set forth in Section 2.1(f).

"Acquired Contracts" shall have the meaning set forth in Section 2.1(d).

"Acquired Equipment" shall have the meaning set forth in Section 2.1(c).

"Acquired Intellectual Property" shall have the meaning set forth in Section 2.1(e).

"Acquired Inventory" shall have the meaning set forth in Section 2.1(b).

"Affiliate" shall mean any person which directly, or indirectly through one or more subsidiaries or intermediaries, controls, is controlled by or is under common control with such party or other person.

"Call Notice" shall have the meaning set forth in Section 4.1(b).

"Call Option" shall have the meaning set forth in Section 3.2.

"Call Price" shall have the meaning set forth in Section 3.2.

Section 2.2. "Excluded Assets" shall have the meaning set forth in

Section 3.1. "Fourth Anniversary" shall have the meaning set forth in

"GAAP" shall mean generally accepted accounting principles applied on a consistent basis.

Section 2.1(f). "Governmental Authorities" shall have the meaning set forth in

"Lease" means that certain Operating Lease Agreement of even date herewith, the form of which is attached as Exhibit A.

"Lease Closing" means the execution and delivery by Seller and Purchaser of the Lease pursuant to the terms of the Lease.

"Lease Closing Date" means the date on which the Lease Closing occurs pursuant to the terms of the Lease.

"Liens" shall have the meaning set forth in Section 7.4(b).

Section 7.4(b). "Permitted Encumbrances" shall have the meaning set forth in

Section 4.1. "Purchase Closing" shall have the meaning set forth in

Section 4.1. "Purchase Closing Date" shall have the meaning set forth in

"Purchase Price" means either the Put Price, as defined in Section 3.1, or the Call Price, as defined in Section 3.2, as the case may be.

Section 2.1. "Purchased Assets" shall have the meaning set forth in

Section 4.1(a). "Put Notice" shall have the meaning set forth in

"Put Option" shall have the meaning set forth in Section 3.1.

"Put Price" shall have the meaning set forth in Section 3.1.



Section 2.1(a). "Real Property" shall have the meaning set forth in

Section 3.5. "Retained Liabilities" shall have the meaning set forth in

Section 7.4(b). "Title Commitment" shall have the meaning set forth in

Section 7.4(b). "Title Company" shall have the meaning set forth in

Section 9.1(g). "Title Policy" shall have the meaning set forth in

## ARTICLE II SALE AND PURCHASE OF ASSETS

Section 2.1 Assets to be Purchased. On the terms and subject to the conditions herein set forth, Seller shall sell, assign, convey, transfer, and deliver (or cause to be sold, assigned, conveyed, transferred, and delivered) to Purchaser, and Purchaser shall purchase from Seller, at the Purchase Closing, for the consideration hereinafter set forth, all of Sellers' right, title, and interest in, to, and under the assets, properties, and rights constituting and comprising the System or used or useful in connection with the Business, whether real or personal, tangible or intangible, and wherever located, but excluding those assets described in Section 2.2 (the "Excluded Assets"). All such assets, properties, and rights (other than the Excluded Assets) are hereinafter referred to as the "Purchased Assets". The Purchased Assets shall include, without limitation:

(a) all of Seller's right, title, and interest in and to the real property described in Schedule 2.1(a) hereto, whether owned or leased by Seller, together with any improvements thereon and easements (including the easement described in Section 7.6) and other rights appurtenant thereto (the "Real Property");

(b) all of Seller's inventories, raw material, fuel oil, lubricants, spare parts, and supplies used in the System or the Business (together, "Inventory") including, without limitation, all Inventory located at the Annex and the RES, the Inventory described on Schedule 2.1(b) hereto and any Inventory marked by Seller and Purchaser prior to the Lease Closing (together, the "Acquired Inventory"), except such thereof as may be consumed or used by Purchaser between the date hereof and the Purchase

Closing Date in the ordinary course of business and in accordance with the terms of this Agreement and the Lease;

(c) all of Seller's machinery, equipment, furniture, fixtures, vehicles, underground pipes, and related equipment, and other tangible personal property used in the operation of the System or the Business including, without limitation, the personal property located at the Business Premises, the personal property described on Schedule 2.1(c) hereto and any personal property marked by Seller and Purchaser prior to the Lease Closing (the "Acquired Equipment"), except such thereof as may be consumed or used by Purchaser between the date hereof and the Purchase Closing Date in the ordinary course of business and in accordance with the terms of this Agreement and the Lease;

(d) subject to Section 2.3, all of Seller's right, title and interest in, to, and under the (i) heating and cooling service contracts with its customers listed on Schedule 2.1(d), (ii) supply and service contracts listed on Schedule 2.1(d), and (iii) other leases, contracts, easements, rights of way, and other agreements listed on Schedule 2.1(d) hereto (the "Acquired Contracts"), and any deposits or prepayments relating thereto;

(e) all of Seller's patents, trademarks, and copyrights, any applications therefor, trade names, brand names, licenses, inventions, discoveries, improvements, processes, know-how, formulae, drawings, specifications, trade secrets, plans, research and development files and records, production data and the like, and all computer programs and software of every kind used in the operation of the System or the Business including, without limitation, those described on Schedule 2.1(e) hereto, (the "Acquired Intellectual Property");

(f) subject to Section 2.3, all of Seller's right, title, and interest in, to, and under the certificates, registrations, licenses, permits, grants, franchises, variances, waivers, approvals, and consents relating to or used in connection with the operation or ownership of the System and the Business (the "Acquired Authorizations") issued or to be issued to Seller by any federal, state, or local governmental entity or municipality or subdivision thereof or any authority, department, commission, board, bureau, agency, court, or instrumentality (collectively, "Governmental Authority") including, without limitation, those listed or described on Schedule 2.1(f) hereto;

(g) the Business as a going concern and the goodwill thereof;

(h) all of Seller's books and records with respect to the System or the Business including, without limitation, all customer lists,

manuals, books, files, records, engineering data, procedures, systems, computer programs, models, instructions, patterns, drawings, blueprints, plans, designs, specifications, equipment lists, parts lists, descriptions, data, art work, and advertising material customarily kept and maintained at the Annex and the RES; except, however, the Retained Records as defined in the Lease; and

(i) all other property and assets of the Seller used in or related to the System or the Business, whether real or personal, tangible or intangible, including, without limitation, all the properties and assets shown or reflected on the financial statements of the System that were previously delivered to Purchaser.

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary in Section 2.1, the Purchased Assets shall not include and Seller shall retain (the following are collectively referred to herein as the "Excluded Assets"):

(a) all of Seller's cash and cash equivalents on deposit, in transit, or otherwise owned or held, and any marketable securities of Seller;

(b) all of Seller's notes receivable and accounts receivable related to the System or the Business as of November 4, 1995;

(c) Seller's prepaid expenses, deposits, prepaid taxes, prepaid insurance premiums, and other payments and similar assets, other than deposits and prepayments under any Acquired Contract;

(d) any current and future litigation or regulatory claims (and any amounts recoverable with respect thereto) of Seller with respect to the Business or the Purchased Assets which relate to events or circumstances arising or occurring prior to November 4, 1995;

(e) the land outside and surrounding the Annex (i.e., the Annex Easement Area); and

(f) any employee benefit, pension and welfare plans or arrangements, including without limitation, pension, profit-sharing or thrift plans, company contributions to medical benefit, death benefit and disability programs, and vacation and sick leave policies applicable to any employees of Seller who are employed in connection with the System or the Business (collectively, "Employee Plans").

Section 2.3 Nonassignable Assets or Rights. To the extent that any of the Acquired Contracts, Acquired Intellectual Property or Acquired

Authorizations which constitutes a Purchased Asset is not assignable or transferable without the consent of the issuer thereof or the other party thereto or any third party (including, without limitation, a Governmental Authority), this Agreement shall not constitute an assignment or transfer or an attempted assignment or transfer thereof if such assignment or transfer or attempted assignment or transfer would constitute a breach thereof or a violation of any law, decree, order, regulation, or other governmental edict. To the extent that such consents or waivers are not obtained by Seller, Seller agrees to cooperate with Purchaser and to take such action as Purchaser may request in order to secure any arrangement designed to provide for Purchaser the benefits of such Acquired Contract, Acquired Intellectual Property, or Acquired Authorization and in connection therewith to enforce, for the benefit of Purchaser, any and all rights of Seller against such issuer or such other party or parties.

### ARTICLE III CONSIDERATION

Section 3.1 Right of Seller to Require Purchaser to Purchase the Purchased Assets. Commencing on the fourth anniversary of the Lease Closing Date (the "Fourth Anniversary"), Seller shall have the right and option (the "Put Option") to require Purchaser to purchase, upon exercise of the Put Option, all of the Purchased Assets at a price equal to \$3,100,000.00.

Section 3.2 Right of Purchaser to Require Seller to Sell the Purchased Assets. At any time from and after the date of this Agreement, provided Purchaser is not in default of Section 5 of the Lease, Purchaser shall have the right and option (the "Call Option") to purchase from Seller, and Seller shall sell to the Purchaser upon exercise of the Call Option, all (but not less than all) of the Purchased Assets owned by the Seller at a purchase price equal to the greater of (a) five times the System's earnings before depreciation, amortization, interest, and taxes for the four successive fiscal quarters of the Purchaser immediately preceding the date the Call Notice is given, based on the System's audited financial statements, reduced by the net book value at the end of such year of any capital investments or improvements (including any Improvements as defined in the Lease), excluding inventory and any personal property, Purchaser has made in the System, or (b) \$5,000,000.00 (the "Call Price").

Section 3.3 Simultaneous Exercise of Put Option and Call Option. In the event the Put Option and the Call Option have been exercised simultaneously, the terms and provisions of Section 3.2 shall govern and shall determine the purchase price of the Purchased Assets.

Section 3.4 Assumption of Liabilities. As further consideration for this Agreement, Purchaser shall have assumed, effective as of November 4, 1995, all of the Assumed Liabilities (as defined in the Lease).

Section 3.5 Retained Liabilities and Obligations. The liabilities and obligations to be retained by Seller and not to be assumed by Purchaser (the "Retained Liabilities") shall consist of the following:

(a) except for the Assumed Liabilities and as otherwise set forth in this Agreement or the Lease, any liability or obligation caused by, related to or arising out of Seller's operation of the System or the Business prior to November 4, 1995;

(b) any liability or obligation caused by, related to or arising out of the use, storage, transportation, treatment, disposition, or handling of, or exposure to, in any way, the coal pile located outside of the Annex prior to November 4, 1995;

(c) any liability or obligation of Seller for any federal, state, or local taxes due or payable for periods prior to November 4, 1995 including, without limitation, all income, franchise, and property taxes, taxes attributable to the sale of inventory or assets or the Purchased Assets, and employee withholding taxes;

(d) any liability or obligation caused by, related to, or arising out of the matters described on Schedule 5.4 hereto; and

(e) any liability or obligation related to or arising out of the Employee Plans, if any.

#### ARTICLE IV PURCHASE CLOSING

Section 4.1 Closing. The closing of the sale and purchase of the Purchased Assets (the "Purchase Closing") shall, subject to Article IX, take place at the offices of the Service Director of the City of Akron, in Akron, Ohio, or such other place as the parties shall mutually agree upon, at 10:00 a.m., Eastern Standard Time, on the first of the following dates to occur (the "Purchase Closing Date"):

(a) In the event that Seller elects to exercise the Put Option pursuant to Section 3.1, on a mutually acceptable business day following the Fourth Anniversary and within 180 days after delivery by Seller to Purchaser

of a written notice of intention to exercise the Put Option (the "Put Notice") or, if a mutually acceptable business day is not determined, on the 180th day after the Put Notice is given, and if such day is not a business day, the first business day thereafter; provided, however, in no event shall the Put Notice be delivered prior to 180 days before the Fourth Anniversary.

(b) In the event that Purchaser elects to exercise the Call Option pursuant to Section 3.2, on a mutually acceptable business day and within 30 days after delivery by Purchaser of a written notice of intention to exercise the Call Option (the "Call Notice") or, if a mutually acceptable business day is not determined, on the 30th day after the Call Notice is given, and if such day is not a business day, the first business day thereafter; provided, however, in no event shall the Call Notice be delivered prior to 30 days before the Fourth Anniversary.

(c) In the event that the Put Option and the Call Option have been exercised simultaneously, the terms and provisions of Section 4.1(b) shall govern the Purchase Closing.

Section 4.2 Seller's Delivery Obligations. At the Purchase Closing, Seller shall deliver or cause to be delivered to Purchaser the following, at the expense of Seller and in proper form for recording, where appropriate:

- (a) all Transfer Documents required by Section 9.1(f); and
- (b) all other documents and papers required by Section 9.1 hereof as conditions to Purchaser's obligations, including, without limitation, copies of all required consents.

Section 4.3 Purchaser's Obligations. At the Purchase Closing, Purchaser shall pay the Put Price or the Call Price, as the case may be, by federal same day wire transfer in the amount set forth in Section 3.1 or 3.2, as case may be, and shall deliver to Seller, at the expense of Purchaser:

- (a) an instrument of assumption executed by Purchaser with respect to the Assumed Obligations; and
- (b) all other documents and papers required by Section 9.1 or Section 9.2 hereof as conditions to Seller's obligations.

Section 4.4 Filing of Transfer Documents. As of the Purchase Closing or as soon as practicable thereafter, Purchaser shall file for record such of the Transfer Documents as are desired by Purchaser.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, Seller hereby makes the following representations and warranties to Purchaser:

Section 5.1 Organization and Qualification. Seller is a municipality duly organized, validly existing, and in good standing under the laws of the State of Ohio.

Section 5.2 Power and Authority; Binding Agreement. Seller has all requisite municipal power and authority to execute, deliver, and perform its obligations under this Agreement and the Lease. The execution, delivery, and performance of this Agreement by Seller has been duly authorized by all necessary municipal action of Seller. This Agreement has been duly executed and delivered by Seller and is the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by applicable bankruptcy laws and limitations with respect to equitable remedies generally. The Lease to be entered into by Seller pursuant to this Agreement will, upon its execution and delivery by Seller, be a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by applicable bankruptcy laws and limitations with respect to equitable remedies generally.

Section 5.3 Taxes. Except as set forth in Schedule 5.3 hereto, Seller has prepared in good faith and filed or caused to be filed all tax returns and reports relating to the Business and required to be filed by it with any Governmental Authority. Except as set forth in Schedule 5.3 hereto, all taxes owed to any Governmental Authority by Seller for a period covered by such returns and reports, and all claims, demands, assessments, judgments, costs, and expenses connected therewith, have been paid in full. The Purchased Assets are not subject to any Lien, whether or not perfected, for any federal, state, county, or local taxes or assessments or similar governmental charges. Seller has or will withhold and deposit all withholding taxes due with respect to its employees and attributable to periods prior to the Lease Closing Date.

Section 5.4 Litigation and Claims. Except as disclosed in Schedule 5.4 hereto, (a) Seller, as a result of its ownership or cooperation of the System or the Business, is not subject to any order of, or agreement or understanding with any Governmental Authority applicable to any of the Purchased Assets or the Business, and (b) there is no action, suit, litigation, investigation, claim, arbitration or other proceeding pending or, to the best knowledge of Seller based upon inquiry of Ms. Linda Sowa, Ms. Cheri Cunningham, Mr. Joseph Kidder

and Mr. Ken Smith, threatened with respect to the System, the Business, any of the Purchased Assets, or the consummation of the transactions contemplated hereby.

Section 5.5 Labor Matters. There are no collective bargaining or other labor union contracts, Employee Plans or employment agreements of any kind, applicable to employees of Seller whom are employed in the System or the Business, if any. During the most recent two-year period, Seller has not received any written notice of any unfair labor practice complaints brought before the National Labor Relations Board or any other agency or Governmental Authority having jurisdiction thereof in connection with the Business or the System. During the most recent two-year period, Seller has not received any written notice of any activities or proceedings of any labor union to organize any employees of Seller, or of any strikes, slowdowns, work stoppages, lockouts, or threats thereof, by or with respect to any employees of Seller whom are employed in the System or the Business. There are currently no employees of Seller employed in the System or the Business.

Section 5.6 Intellectual Property. Schedule 2.1(e) hereto lists and describes all computer programs owned, applied for, used, or held for use by Seller in connection with the Business. Seller does not own or lease any patents, trademarks, tradenames or other intangible property required to operate the Business. Except as disclosed on Schedule 2.1(e) hereto, Seller is not required to pay any royalty, license fee, or similar compensation in connection with the use of the Acquired Intellectual Property, and there is no claim or demand of any person pertaining to, or any proceeding pending or, to the best knowledge of Seller based upon inquiry of Ms. Linda Sowa and Mr. Ken Smith, threatened, which challenges the exclusive right of Seller in respect of any of the Acquired Intellectual Property.

Section 5.7 Finders' Fees. Neither Seller nor any person acting on behalf of Seller has employed any broker, agent, or finder or incurred any brokerage fees, agents commission or finder's fee in connection with the transactions contemplated hereby.

Section 5.8 Acquired Contracts and Acquired Authorizations. To the best of Seller's knowledge, based upon inquiry of Mr. Joseph Kidder, Ms. Linda Sowa and Ms. Cheri Cunningham, (a) the Acquired Contracts constitute all of the contracts and agreements entered into by Seller with respect to the System and/or the Business, and Seller is not in default under any of the Acquired Contracts as of November 4, 1995; and (b) the Acquired Authorizations constitute all of the certificates, registrations, licenses, permits, grants, franchises, variances, waivers, approvals, and consents relating to or used in connection with the operation or ownership of the System and the Business issued or to be issued to Seller by any Governmental Authority as of November 4, 1995.



Section 5.9 Zoning. The Real Property lies in the Opportunity Park Urban Renewal Area, R-89, under Akron City Ordinances, and the ordinances governing such district permit operation of the Business.

Section 5.10 Absence of Certain Changes. Since November 4, 1995, Seller has not sold any assets which would materially adversely affect the operation of the Business and/or the System.

Section 5.11 No Violation. Neither the execution nor the delivery of this Agreement or the Lease, nor the consummation of the transactions contemplated hereby and thereby, will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under (a) the Charter of Seller, (b) any contract or instrument to which Seller is a party or by which Seller, the Business or any of the Purchased Assets is bound, except as specifically referenced in Schedule 2.1(d), or (c) any law, rule, regulation, judgment, or decree applicable to Seller as it relates to the System, the Business or any of the Purchased Assets.

Section 5.12 No Indebtedness. The Purchased Assets do not constitute collateral or security for any indebtedness of Seller, and are not subject to any mortgage, pledge or other lien or encumbrance.

Section 5.13 Disclosure. No representation or warranty made by Seller in this Agreement or the Lease and no statement made in any Schedule hereto or certificate furnished in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact, and neither this Agreement or the Lease nor any such Schedule or certificate omits to state a material fact that is necessary in order to make the representations and warranties contained herein or the statements contained therein not misleading.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASER

In order to induce Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser makes the following representations and warranties to Seller:

Section 6.1 Organization. Purchaser is a limited partnership validly existing and in good standing under the laws of the State of Delaware.

Section 6.2 Power and Authority; Binding Agreement. Purchaser has all requisite power and authority to execute, deliver, and perform its

obligations under this Agreement and the Lease. The execution, delivery, and performance of this Agreement and the Lease have been duly authorized by all necessary partnership action by Purchaser. This Agreement and the Lease are or upon their execution and delivery by Purchaser will be, the valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as limited by applicable bankruptcy laws and limitations with respect to equitable remedies generally.

Section 6.3 No Violation. Neither the execution nor the delivery of this Agreement or the Lease, nor the consummation of the transactions contemplated hereby and thereby will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under (a) the certificate of limited partnership or the agreement instrument to which Purchaser is a party or (c) any law, rule, regulation, judgment, or decree by which Purchaser or any of its assets may be bound or applicable to Purchaser.

Section 6.4 Finders' Fees. Neither Purchaser nor any person acting on behalf of Purchaser has employed any broker, agent, or finder or incurred any brokerage fees, agent's commission, or finder's fee in connection with the transactions contemplated hereby.

Section 6.5 Claims. There is no action, suit, litigation, investigation, claim, arbitration or other proceeding (collectively, "Claims") pending or, to the best knowledge of Purchaser based upon inquiry of Mr. Jeff Bees, threatened with respect to Purchaser's operation of the System or the Business, or otherwise with respect to any of the Purchased Assets, and Purchaser has no knowledge of any occurrences or events which could result in any such Claims against Seller.

## ARTICLE VII ADDITIONAL COVENANTS OF SELLER

Section 7.1 Books and Records. From and after the Lease Closing Date, Seller shall, whenever reasonably requested by Purchaser, permit Purchaser to have access to, and make copies of (at Purchaser's expense), all books and records relating to the System or the Business which are in Seller's possession. Seller, at its cost and expense, shall preserve and maintain the Retained Records relating to the Business as of the Purchase Closing for at least ten years after the Purchase Closing. Prior to the destruction of any such books and records, Seller shall offer such books and records to Purchaser.

Section 7.2 Non-Compete. From and after the date hereof, Seller covenants and agrees that Seller will not produce, sell, market or distribute steam, hot water or chilled water for heating and cooling services anywhere within the City of Akron, so long as Purchaser is not in default of any of the terms and provisions of this Agreement or the Lease. Seller further covenants and agrees that in the event Seller grants a franchise to any third party for the production, sale and/or distribution of steam, hot water or chilled water, the terms of such franchise shall require, as a condition to its effectiveness, that actual service be made available upon demand to at least all of the then-existing customers of Purchaser and that such third party install and maintain its own production and distribution equipment and pipelines separate from those of Purchaser.

Section 7.3 Further Assurances. From time to time after the Purchase Closing, upon request of Purchaser and without further consideration, Seller shall execute and deliver all such other instruments of sale, assignment, conveyance, and transfer and shall take all such other action as Purchaser may reasonably request to more effectively transfer to and vest in Purchaser, and to put Purchaser in possession and control of, the Purchased Assets, free and clear of any and all Liens other than Permitted Encumbrances.

Section 7.4 Title to Real Property. (a) Promptly after the date of a Put Notice or Call Notice, Seller shall make available to Purchaser all permits, certificates of occupancy, title commitments, title policies, deeds, legal descriptions, and surveys in the possession of or reasonably available to Seller which relate to the Real Property.

(b) As of the date of this Agreement, Seller shall have delivered to Purchaser, or Purchaser shall have obtained upon Seller's account, (i) from Lawyers' Title Insurance Corporation (the "Title Company"), a commitment for a leasehold policy of title insurance (ALTA 1992 Form or its equivalent), together with endorsements reasonably requested by Purchaser or its lenders (the "Title Commitment") which will commit the Title Company to insure in Purchaser, in an amount equal to the allocation value of the Real Property as determined by Purchaser, the Real Property, free and clear of all liens and encumbrances (the "Liens") other than the encumbrances listed in Schedule 7.4(b) hereto (the "Permitted Encumbrances"); and (ii) a survey of each parcel constituting the Real Property (the "Survey"), which shall be made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys", jointly established by the American Land Title Association and the American Congress on Surveying and Mapping in 1992. In addition to the foregoing, the survey shall certify to Purchaser, Seller, Title Company and any lender designated by Purchaser (A) that the Real Property does not lie within a flood prone area or flood hazard area, (B) the zoning classification applicable to the Real Property, and (C) such other matters which Purchaser, Purchaser's lender or the Title Company shall

reasonably request. Prior to the Purchase Closing Date, Seller will use all commercially reasonable efforts to cure any defects in title to the Real Property which prevent or interfere with Purchaser's use of the Real Property in the operation of the Business. At the Lease Closing, Purchaser may obtain a leasehold policy of title insurance together with endorsements reasonably requested by Purchaser or its lenders, insuring Purchaser's leasehold interest in the Real Property, in an amount equal to the allocation value of the Real Property, free and clear of all Liens other than Permitted Encumbrances. At the Purchase Closing, Purchaser may obtain an owners' policy of title insurance, together with endorsements reasonably requested by Purchaser or its lenders, insuring Purchaser's fee interest in the Real Property, in an amount equal to its allocation value, free and clear of all Liens other than Permitted Encumbrances. All costs and expenses of the Title Commitment, Survey and any leasehold and owners' policies of title insurance shall be divided equally between and shared by Seller and Purchaser.

Section 7.5 Continuance of Seller as Customer. Seller shall continue to purchase steam and chilled water from the System for its heating and cooling services, in accordance with the terms and provisions set forth in the Lease, for buildings Seller presently owns and which utilize the System.

Section 7.6 Lot Split and Easement. Seller shall at its own cost, within 180 days after the Lease Closing Date (subject to extension as hereinafter provided), cause a lot split and prepare and execute an easement for the benefit of the Real Property reasonably satisfactory to Purchaser which will effectively grant an easement for ingress, egress, and maintenance, at, on, or under the land outside the Annex (the "Annex Easement Area"), construction and/or installation at, on, or under the Annex Easement Area of additional components, lines, and distribution pipes in connection with the operation of the System and the Business and for other purposes not inconsistent with Seller's use of the same. In addition, if and to the extent necessary, Seller shall secure an easement reasonably satisfactory to Purchaser for purposes of providing ingress and egress between the Annex Easement Area and the nearest public right-of-way. Seller shall have the right to extend the 180-day period referred to above so long as Seller is using all reasonable efforts to diligently and continuously pursue all necessary approvals and otherwise obtain the lot split referred to above.

Section 7.7 Pre-Purchase Closing Conduct; Transferability. Seller covenants and agrees that from the date hereof to the Purchase Closing Date, Seller shall not mortgage, pledge or otherwise encumber, or sell or otherwise dispose of any of the Purchased Assets, without the prior written consent of Purchaser. Notwithstanding the foregoing, Purchaser shall have the right to assign or pledge the Purchased Assets 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 7.7, as well as the provisions of the Lease, as applicable, are fully complied with and the prior written consent of the Director of Public Service is obtained.

Section 7.8 No Solicitation of Offers. Seller shall not, and Seller shall not permit any official or representative of Seller, directly or indirectly, to solicit or initiate discussions, inquiries or proposals, or participate in any negotiations concerning any acquisition or purchase by an unrelated third party of all or any substantial portion of the Purchased Assets, the System or the Business.

#### ARTICLE VIII ADDITIONAL COVENANTS OF PURCHASER

Section 8.1 Access to Records. From and after the Purchase Closing, Purchaser shall, whenever reasonably requested by Seller for the purpose of preparing or filing any documents or resolving any claims or other issues, permit Seller to have access to, and make copies of, (at Seller's expense) all books and records relating to the System or the Business which are in Purchaser's possession or in the possession of one of its Affiliates. Purchaser, at its cost and expense, shall preserve and maintain the books and records relating to the Business of Seller for at least ten years after the Purchase Closing. Prior to the destruction of any such books and records, Purchaser shall give notice and offer such books and records to Seller.

Section 8.2 Right of First Refusal. (a) In the event that Purchaser shall at any time after the Purchase Closing Date propose to sell the System and the Business to an entity which is not an affiliate of Purchaser, Thermal Ventures, Inc. or North American Thermal Systems Limited Liability Company, Purchaser shall first deliver to Seller a copy of the offer to purchase the System and the Business (the "Bona Fide Offer"), if such sale is based on a proposed acceptance of such Bona Fide Offer, or if such sale is not based on a Bona Fide Offer, a description of all terms of such sale including, without limitation, the identity of the proposed transferee and the consideration to be paid by the proposed transferee for the System and the Business (the "Description"), whereupon Seller shall have the right to purchase from Purchaser the System and the Business on the same terms as set forth in the Bona Fide Offer or the Description, as the case may be (the "Offer"). Seller shall have a period of ninety (90) days after receipt of the Offer, to exercise Seller's right to purchase the System and the Business for a purchase price equal to the price set forth in the Bona Fide Offer or the Description, as the case may be, which exercise shall be evidenced by a writing or writings signed by or on

behalf of Seller and delivered or mailed by first-class mail, postage pre-paid, to Purchaser within ninety (90) days following Seller's receipt of the Offer. A closing of the purchase and sale of the System and the Business shall take place at the office of Seller in Akron, Ohio, at 10:00 a.m. Eastern Standard Time on the thirtieth (30th) business day after the expiration of such ninety (90) day period, or the date set forth in the Offer, whichever is later. The purchase price shall be paid by Seller to Purchaser in accordance with the terms of the Bona Fide Offer or the Description, as the case may be.

(b) In the event that Seller does not elect to purchase the System and the Business within such ninety (90)-day period, Purchaser shall be free to accept the Offer and convey the System and the Business, but only to the proposed transferee in the Offer or the Description, as the case may be and only upon terms and conditions no more favorable to proposed transferee than as set forth in the Offer or the Description. Upon conveyance of the System and the Business pursuant to the Offer, Seller's right to purchase set forth herein shall continue except as expressly provided herein. Notwithstanding the foregoing, in the event Seller does not elect to exercise its right to purchase the System and the Business and, for whatever reason, the System and the Business is not sold pursuant to the Offer within twelve (12) months from the date of Seller's receipt of the notice from Purchaser of the Offer, Seller's right to purchase shall continue in full force and effect. All of the above terms in this Section 8.2 shall be set forth in the Transfer documents and shall run with the land and survive the Lease Closing and Purchase Closing.

Section 8.3 Continuous Operation. Purchaser hereby covenants and agrees that, at all times from and after the Purchase Closing Date, Purchaser shall continuously operate the Purchased Assets as and for a steam, hot water and chilled water energy distribution system, consistent with the current operation of the System, and Purchaser shall not discontinue in whole or in part such operation or any of its product lines without the prior written consent of Seller. In the event Purchaser desires to discontinue any such operation or product line, Purchaser shall deliver to Seller a written request for same, stating with specificity the reasons for the proposed discontinuance, (a "Request for Discontinuance") not later than two (2) years prior to the desired date of such discontinuance. If a Request for Discontinuance is made in a timely manner as provided above, Seller covenants and agrees that Seller will not unreasonably withhold Seller's consent to such Request for Discontinuance if and only if: (a) Purchaser is successful in petitioning the PUCO to allow such discontinuance and obtains all required written approvals of same from the PUCO; (b) Seller is served notice of Purchaser's filing of such discontinuance petition and is afforded the opportunity to participate in that proceeding; and (c) the PUCO discontinuance approval expressly addresses the issue of alternative sources of heating and cooling services available to then-current customers of the System. In the event of any violation of the terms and provisions

of this Section 8.3, Seller shall be entitled to all of the remedies set forth in Section 10.4 below, including, without limitation, the liquidated damages agreed upon therein. All of the above terms in this Section 8.3 shall be set forth in the Transfer Documents and shall run with the land and survive the Lease Closing and Purchase Closing.

Section 8.4 Communications Tower. Purchaser hereby covenants and agrees that at any time prior to or after the Purchase Closing, Seller shall have and hereby reserves 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 Purchaser. Any and all revenue generated by such installation and placement, net of Seller's costs and expenses (including without limitation, Seller's attorney fees), shall be divided equally between Seller and Purchaser. On or prior to the Purchase Closing Date, Purchaser shall grant to Seller a permanent easement for such tower and equipment. Seller covenants and agrees that any such tower and equipment shall not result in any damage to the roof or structure of the RES, and Seller covenants to assume all responsibility for such damage. All of the above terms in this Section 8.4 shall run with the land and shall be set forth in the Transfer Documents, and survive the Lease Closing and Purchase Closing.

## ARTICLE IX CONDITIONS TO PURCHASE CLOSING

Section 9.1 Conditions to Purchaser's Obligations. The obligation of Purchaser to consummate the purchase of the Purchased Assets pursuant hereto is conditioned upon the happening of the following events and the satisfaction of the following conditions at or during the respective times referred to below:

(a) Seller's Representations and Covenants. At the Purchase Closing, all of the representations and warranties of Seller set forth in this Agreement shall be true and correct when made and as though made on and as of the Purchase Closing Date, and Seller shall have performed all of the covenants to be performed by it hereunder at or before the Purchase Closing.

(b) Closing Certificate. At the Purchase Closing, Seller shall deliver to Purchaser a certificate of its Director of Law in form attached hereto as Exhibit B, dated the Purchase Closing Date, certifying that all of the conditions specified in paragraphs (a) and (c) of this Section 9.1 have been fulfilled.

(c) No Adverse Litigation. No suit, action, proceeding, investigation, or claim shall have been instituted, threatened, taken, or presented which results or reasonably may be expected to result in (a) the transactions contemplated hereby being enjoined or declared unlawful, (b) Purchaser being deprived of its interest in, or the benefit and use of, any material part of the Purchased Assets, or (c) any material disruption of the System or the Business or its operations.

(d) Opinion of Seller's Counsel. At the Purchase Closing, Purchaser shall have received a written opinion of the Law Director of the City of Akron, dated the Purchase Closing date and in substantially the form attached hereto as Exhibit C.

(e) Action of Seller. At the Purchase Closing, Seller shall have delivered to Purchaser copies of the ordinance of the City Council of Seller, certified by its Clerk of Council, authorizing the execution and delivery of this Agreement and the Lease and the transactions contemplated hereby and thereby.

(f) Transfer Documents. There shall have been delivered by Seller to Purchaser, for review by Purchaser prior to the Purchase Closing, such quitclaim deeds and bills of sale and such other assignments and other instruments of transfer and conveyance as are deemed necessary, appropriate, or desirable, in Seller's and Purchaser's reasonable judgment, to transfer to Purchaser good title to the Purchased Assets as provided in this Agreement, in form and substance reasonably satisfactory to Seller, Purchaser and Title Company (the "Transfer Documents"). The quitclaim deed and bill of sale shall be substantially in the form attached hereto as Exhibit D-1 and Exhibit D-2, respectively.

(g) Title Insurance. At the Purchase Closing, Purchaser may obtain, at Purchaser's expense, a title policy (the "Title Policy") issued by Title Company in accordance with the Title Commitment in an insured amount equal to the allocation value of the Real Property. Seller shall execute and deliver to Title Company such affidavits and other documents as Title Company shall reasonable require to issue the Title Policy.

(h) Survey. At the Purchase Closing, Seller shall deliver to Purchaser a downdate of the Survey in compliance with Section 7.4(b).

(i) Easement Defense Letter. At or before the Purchase Closing, Seller shall have delivered to Purchaser an Easement Defense Letter in the form attached hereto as Exhibit E.

Section 9.2 Conditions to Seller's Obligations. The obligation of Seller to consummate the sale of the Purchased Assets pursuant hereto is



conditioned upon the happening of the following events or the satisfaction of the following conditions at or during the respective times referred to below:

(a) Purchaser's Representations and Covenants. At the Purchase Closing, all of the representations and warranties of Purchaser set forth in this Agreement shall be true and correct as though made on and as of such date, and Purchaser shall have performed all of the covenants to be performed by it hereunder at or before the Purchase Closing.

(b) Closing Certificate. At the Purchase Closing, Purchaser shall deliver to Seller a certificate of its General Partner, dated the Purchase Closing Date, certifying that all of the conditions specified in paragraphs (a), (c) and (d) of this Section 9.2 have been fulfilled.

(c) Instruments of Assumption. There shall have been delivered by Purchaser to Seller, for review by Seller prior to the Purchase Closing, an instrument of assumption with respect to the Assumed Obligations.

(d) Payment of Consideration. Purchaser shall have paid the Purchase Price in accordance with Section 3.1 or 3.2, as the case may be.

(e) PUCO Approvals. Purchaser shall have obtained from the PUCO any and all certificates, approvals, and/or permits as may be required by the PUCO for or relating to the operation of the System by Purchaser.

## ARTICLE X AMENDMENT, WAIVER, TERMINATION AND REMEDIES

Section 10.1 Amendment. This Agreement may be amended only by an agreement or instrument in writing which refers to this Agreement and is duly executed by the parties to this Agreement.

Section 10.2 Waivers. Either Seller or Purchaser may waive in writing compliance by the other with any of the covenants or conditions contained in this Agreement (except such as may be imposed by law which cannot be waived). Any waiver by Seller or Purchaser of any breach of or failure to comply with any provision of this Agreement by the other party or parties shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement.

Section 10.3 Termination. This Agreement may be terminated at any time prior to the Purchase Closing:

- (a) by mutual written agreement of Seller and Purchaser;
- (b) automatically in the event the Lease terminates pursuant to its terms;
- (c) by Seller in the event of a default by Purchaser as provided below; and
- (d) by Purchaser in accordance with the terms and provisions of Section 10.4(b) below.

Section 10.4 Default; Remedies. (a) If Purchaser shall fail to perform or observe or if Purchaser otherwise breaches or defaults under any of the agreements, terms, covenants, provisions or conditions of this Agreement and such failure to perform or observe or such breach or default shall continue for a period of 30 days after notice thereof by Seller to Purchaser or, if the failure, breach or default is of such nature that it cannot be cured within the 30-day period, then only if Purchaser fails to commence the cure promptly and within the 30-day period or thereafter fails to diligently continue in good faith until the failure, breach or default is fully cured, then Seller shall have the following rights and remedies, at Seller's sole option:

(i) If the failure, breach or default by Purchaser occurs prior to the Purchase Closing, to elect one of the following:

(A) if such failure, breach or default relates to or arises out of any of the terms or provisions of Section 8.2 or Section 8.3 above, to terminate this Agreement and the Lease and to recover from Purchaser the Liquidated Damages (as defined in the Lease); or

(B) if such failure, breach or default relates to or arises out of any of the terms or provisions of this Agreement other than those set forth in Section 8.2 or Section 8.3 above, to terminate this Agreement and the Lease and/or to recover from Purchaser any and all amounts permitted under applicable law; or

(C) to sue Purchaser for specific performance of its obligations under this Agreement, and in such action Seller shall have the right to recover interest at the then applicable legal rate along with any other damages

suffered by Seller by reason of Purchaser's delay in consummating the purchase of the Purchased Assets.

(ii) If the failure, breach or default by Purchaser occurs after the Purchase Closing, Purchaser shall pay to Seller the Liquidated Damages. All of the above terms in this Section 10.4(a) shall be set forth in the Transfer Documents and shall run with the land and survive the Lease Closing and Purchase Closing.

Seller and Purchaser hereby acknowledge that, in the event of any failure to perform, breach or default by Purchaser under this Agreement, Seller will suffer damages the exact amount of which are and will be difficult to ascertain with certainty, and accordingly, Seller and Purchaser agree that Liquidated Damages are reasonable and bear a relationship to the damages that Seller might sustain in the event of Purchaser's default under this Agreement. The parties further agree that the Liquidated Damages are 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. The parties further agree that the remedies set forth in this Section 10.4 shall constitute the sole and exclusive rights and remedies that Seller has, or may be entitled to exercise or pursue, against Purchaser, as to any such failure to perform, breach or default hereunder. The provisions of this Agreement 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 for purposes of enforcing the provisions of this Agreement.

(b) If Seller shall fail to perform or observe or if Seller otherwise breaches or defaults under any of the agreements, terms, covenants, provisions or conditions of this Agreement or of the Lease and such failure to perform or observe or such breach or default shall continue for a period of 30 days after notice thereof by Purchaser to Seller or, if the failure, breach or default is of such nature that it cannot be cured within the 30-day period, then only if Seller fails to commence the cure promptly and within the 30-day period or thereafter fails to diligently continue in good faith until the failure, breach or default is fully cured, then Seller and Purchaser hereby acknowledge and agree that, notwithstanding anything to the contrary in this Agreement or the Lease, Purchaser shall have no right to terminate this Agreement except as specifically provided below, but shall have all other rights and remedies available under applicable law, as well as the right to sue Seller for specific performance of its obligations under this Agreement, and in such action Purchaser shall have the right to recover damages suffered by Purchaser by reason of Seller's delay in consummating the sale of the Purchased Assets. Notwithstanding anything to the contrary in this Section 10.4(b), in the event of a material breach of or default by Seller under any of the terms, covenants,

provisions, or conditions of this Agreement which requires legislative action to cure or remedy, and (i) such legislative action is not obtained by Seller within 180 days after notice from Purchaser as to the existence of such breach or default, or (ii) if the breach or default is of such nature that legislative action and a cure cannot be obtained within the 180-day period and Seller fails to commence the legislative process within the 180-day period and/or to thereafter diligently continue in good faith until the legislative action is obtained and such breach or default is fully cured; then Purchaser shall have the right to terminate this Agreement and the Lease by written notice to Seller.

## ARTICLE XI MISCELLANEOUS PROVISIONS

Section 11.1 Entire Contract. This Agreement together with the Exhibits, Schedules, and Lease is the entire contract between the parties relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the parties.

Section 11.2 Nature and Survival of Representations. All statements contained in any certificate or other instrument delivered by or on behalf of Seller or Purchaser pursuant hereto or in connection with the transactions contemplated hereby shall be deemed representations and warranties of such party. All representations and warranties shall survive the Purchase Closing for a period of one (1) year unless otherwise indicated in this Agreement. Notwithstanding the foregoing, the statements and the representations and warranties in the Easement Defense Letter shall survive the Purchase Closing for an indefinite period.

Section 11.3 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the parties and their respective successors and assigns, nor is anything in this Agreement 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 Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 11.4 Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together shall constitute one agreement.

Section 11.5 Headings. The headings contained in this Agreement have been inserted for convenience only and shall not affect the meaning of any of the language contained herein.

Section 11.6 Notices. Any notice, demand, or request required or permitted to be given under the provisions of this Agreement 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 address set forth below or to such other addresses or persons as either Party may designate by subsequent notice to the other Party:

If to Purchaser, 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 Seller 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

Any and all such notices, demands or requests shall be deemed delivered on the third day after deposit into registered or certified mail, or, if delivered personally or by overnight courier, upon actual receipt.

Section 11.7 Fees and Expenses. Except as otherwise provided in this Agreement, each Party shall pay all fees and expenses incurred by it in connection with the preparation of this Agreement and the Exhibits and Schedules hereto and the consummation of the transactions contemplated hereby except as otherwise expressly provided herein.

Section 11.8 Assignment. Prior to the Purchase Closing, Purchaser shall have no right to assign this Agreement unless the Lease is assigned in accordance with its terms. Subsequent to the Purchase Closing, Purchaser may assign its rights under this Agreement subject to and in accordance with any and all terms, provisions and restrictions contained herein or in any Transfer Documents.

Section 11.9 Public Announcements. No press release or public announcement regarding this Agreement 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 made by the Mayor of the City of Akron in connection with obtaining City Council approval or as may be necessary, in the opinion of counsel for such party, to meet the requirements of any applicable law or regulation, 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 Agreement may be disclosed by either party in connection with obtaining any required Authorizations, and by Purchaser in connection with its securing financing for the transactions contemplated hereby.

Section 11.10 Severability of Agreement. Each Article, Section, subsection and lesser section of this Agreement constitutes a separate and distinct undertaking, covenants, and/or provision hereof. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. In the event that any provision of this Agreement shall be determined to be unlawful, such provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect, and in substitution of 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 11.11 Governing Law. This Agreement shall in all respects be interpreted, construed, and governed by and in accordance with the internal substantive law of the State of Ohio.

Section 11.12 Sales Taxes; Prorations. Seller and Purchaser shall share equally the cost of any and all sales taxes, transfer taxes, and other similar charges arising as a result of the sale and transfer of the Purchased Assets to Purchaser.

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

THE CITY OF AKRON

Narran L. Woodford  
Catherine G. Watson

By: Donald L. Plusquellic  
Donald L. Plusquellic, Mayor

Narran L. Woodford  
Catherine G. Watson

And By: Joseph Kidder  
Joseph Kidder,  
Director of Public Service

AKRON THERMAL, LIMITED  
PARTNERSHIP

By: Thermal Ventures, Inc., its  
sole general partner

Jerry P. Beer  
Margaret C. Woods

By: Carl E. Avers  
Lewis A. Mahoney, CEA  
President  
CARL E. Avers  
Chairman

Approved as to form and  
correctness:

Max Rothal  
Max Rothal  
Director of Law

STATE OF OHIO )  
 )  
COUNTY OF Summit ) SS.

On this, the 14<sup>th</sup> 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: May 4, 2000

STATE OF OHIO )  
 )  
COUNTY OF Mahoning ) SS

On this, the 15<sup>th</sup> day of August, 1997, before me, a notary public, personally appeared Carl Lewis, who acknowledged himself to be Chairman 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.

Mary C. 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



Banc One Capital Partners  
300 Crescent Court  
Suite 1600  
Dallas Texas 75201



August 11, 1997

Mr. Lewis A. Mahoney  
President  
Thermal Ventures, Inc.  
29 East Front Street  
Youngstown, OH 44503

Dear Lew:

Banc One Capital Partners, L.L.C. ("BOCP") is pleased to submit for your consideration this proposal outlining the terms and conditions under which we propose to provide senior term and revolving line of credit financing to Akron Thermal, Limited Partnership and Akron Thermal Cooling, Limited Partnership (collectively, "ATLP" or the "Partnership"). We would like to emphasize that this letter is a proposal and does not, contingent or otherwise, constitute a formal commitment by BOCP. The proposed terms and conditions are subject to the completion of due diligence and the approval of the Investment Committee of BOCP.

Based on conversations with you, we understand that the Partnership has negotiated for the future purchase of the central business district steam and chilled water system (the "System") from City of Akron for total consideration not to exceed \$3,100,000. This proposal is contingent on completion of documentation of the System acquisition on terms satisfactory to BOCP. With this understanding, we propose the following.

Terms of the Revolving Line of Credit

<b>Co-Borrower:</b>	Akron Thermal, Limited Partnership and Akron Thermal Cooling, Limited Partnership (collectively, "ATLP" or the "Partnership").
<b>Lender:</b>	Banc One Capital Partners, L.L.C. ("BOCP").
<b>Issue:</b>	Revolving Line of Credit ("Revolver").
<b>Amount:</b>	\$750,000.
<b>Use of Proceeds:</b>	Working capital.
<b>Interest Rate:</b>	Base Rate plus 1.50% per annum, floating, with Base Rate defined as the prime rate of interest in effect at Bank One, Columbus, NA. Interest will be calculated on a 360-day basis and payable monthly.
<b>Maturity:</b>	Two years from closing.
<b>Amortization:</b>	Outstanding balance due at maturity.

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**Unused Fee:** An unused fee of 0.5% per annum will be charged against the unused balance under the Revolver, with the calculation based on the Partnership's average outstanding balance for the preceding quarter payable quarterly.

**Notices:** BOCP will require a minimum of two business days notice prior to making advances under the Revolver.

**Minimum Advances/Paydowns:** Advances and principal repayments under the Revolver must be no less than \$50,000.

**Terms of the Senior Secured Term Loan**

**Co-Borrower:** Akron Thermal, Limited Partnership and Akron Thermal Cooling, Limited Partnership (collectively, "ATLP" or the "Partnership").

**Lender:** Banc One Capital Partners, L.L.C. ("BOCP")

**Issue:** Senior Secured Term Note (the "Term Note")

**Amount:** \$4,250,000

**Use of Proceeds:** For (i) repayment of the Montenay note, (ii) working capital, (iii) capital expenditures for the System, and (iv) distribution to the existing limited partners. Pursuant to this (iv), distributions to current limited partners may be made each in the amount of \$500,000 upon the release of the March and June 1998 financial statements, provided such statements indicate the Partnership is meeting its revenue and profitability plan and will be in compliance proforma the distribution. The amounts under the term note required to make these distributions will be funded at the time of distribution.

**Interest Rate:** 12.0% per annum based on a 360-day basis and payable monthly.

**Maturity:** Six years from closing.

**Amortization:** \$250,000 per quarter beginning with the quarter ending December 31, 1999. Balance due at maturity.

**Optional Prepayment:** The Term Note may be prepaid in whole or in part, but only in increments of \$250,000, subject to the following penalty payments:

- No prepayment prior to the first anniversary of closing
- 3% fee on all prepayments made prior to second anniversary of closing
- 2% fee on all prepayments made prior to third anniversary of closing
- 1% fee on all prepayments made prior to fourth anniversary of closing
- 1% fee on all prepayments made prior to fifth anniversary of closing

Terms of the Detachable Warrants

- Detachable Warrants:** As additional consideration for Lender, BOCP will have the right to purchase for \$100 detachable warrants ("Warrants") representing 20% of ATLP's fully diluted ownership at closing. The Warrants will be exercisable by BOCP into limited partnership interests in the Partnership ("Warrant Interests") or, in the event of a change in the form of organization, voting common stock. The total exercise price of the Warrants will be \$1.00. Notwithstanding the above, in the event that the Partnership has not acquired the System from the City of Akron prior to the repayment of the Revolver and the Term Note, the Warrants will be reduced to 15% of ATLP's fully diluted ownership.
- Exercise Period:** The Warrants may be exercised in full at any time and will expire upon the earlier of September 30, 2007 or six years after the prepayment in full of the Note and Revolver.
- Anti-Dilution:** The Warrants/Warrant Interest will be subject to adjustment for customary events that would result in dilution to the warrant holder. This will include full protection against dilution from stock or partnership options, stock or partnership interest splits, stock or partnership dividends, and the issuance of stock or partnership interests below fair market value. This protection will be in force as long as the Warrants/Warrant Interest are outstanding; however, in the event of an IPO and if the Warrants/Warrant Interest have been exchanged for warrants for voting common stock of the Company (the "Warrant Shares") the Warrants/Warrant Shares shall have the same anti-dilution rights as the other registered common stock.
- Put Option:** If an IPO has not previously occurred, at any time after the earlier of (i) the fifth anniversary of the closing; (ii) the full repayment of the Revolver and Term Note; or (iii) an acceleration of the Revolver and/or Term Note, the holder of the Warrants/Warrant Interests will have the right to put its ownership interest to the Partnership at a pro-rata price equal to the greater of (a) 8.5 times ATLP's consolidated EBITDA for the preceding twelve month period, less outstanding indebtedness, plus average cash and marketable securities using the most current month end balances, or (b) the value of ATLP as determined by certain market events such as a merger or sale of the Partnership or a public offering.
- Right of First Refusal:** If a holder of ATLP's equity shall sell any or all of its interest in ATLP, BOCP shall have the right to acquire its pro rata share of such interest.
- Right of Co-Sale:** If a holder of ATLP's equity shall sell any or all of its interest in ATLP, BOCP will have the right of co-sale.
- Registration Rights:** The Warrants/Warrant Interests will provide for piggyback and demand registration rights for a public offering.

**Preemptive Rights:** Should ATLP issue any partnership interests, securities convertible into common stock or other equity securities, BOCP shall have the right to purchase an amount of the issue so as to maintain its fully-diluted ownership prior to such issue.

**Management Meetings:** ATLP will agree to conduct management meetings with representatives of BOCP on no less than a quarterly basis, with expenses of BOCP paid by the Partnership.

#### Other Terms and Provisions

**Seller Subordination:** In the event that ATLP acquires the System from the City of Akron during the term of the revolver and/or the Term Note, BOCP will require the execution of, or agreement to execute in the future on terms satisfactory to BOCP, a subordination agreement between BOCP and the City of Akron ("Seller Subordination Agreement") with the City of Akron fully subordinating to BOCP any seller note assumed by the City of Akron in the purchase of the System.

**Right of First Refusal on Subordinated Debt:** Should ATLP issue subordinated debt as part of the refinancing or repayment of the Seller Note, BOCP shall have the right to purchase, at its sole discretion, either the entire amount or some fraction of this issue.

**Collateral:** The Revolver and Term Note will be cross collateralized and secured by all assets of ATLP and any subsidiaries, whether now owned or hereafter acquired.

**Affirmative Covenants:** Including, but not limited to, the delivery of financial statements, budgets, reports, audits, accountant's letter, projections, and other information requested by BOCP; payment of obligations, compliance with all contractual obligations and laws, including, without limitations, ERISA and the applicable laws and regulations of the Environmental Protection Agency or other such regulatory body; maintenance of property and insurance; maintenance of books and records; right of BOCP to inspect property and books and records; and notices of defaults, litigation with material events and other typical covenants consistent with this type of financing.

**Financial Covenants:** Including, but not limited to borrowing base limitations, minimum operating cash flow requirements, working capital ratios, minimum net worth, fixed charge coverage ratios, maximum leverage and capital expenditure limitations, and other financial covenants consistent with this type of financing.

- Negative Covenants:** Limitations on: senior and subordinated indebtedness; payment of debt obligations subordinated to BOCF; liens; contingent obligations; asset sales not in the ordinary course of business; guarantees to other entities or persons; dividends and shareholder distributions; creation of subsidiaries; capital expenditures; investments; loans and advances; prepayment of other indebtedness; management compensation; management fees; transactions with and fees paid to affiliates; and other typical covenants consistent with this type of financing.
- Events of Default:** Including, but not limited to, default on any covenant or agreement set forth in the Revolver or Term Note financing; cross-defaults with any senior indebtedness; breach of representations and warranties; events of bankruptcy; the occurrence of one or more material judgments, of a material adverse change, or of a change in control.
- Financial Reporting:** As long as (a) any portion of the Term Note or Revolver remains outstanding, or (b) BOCF holds an equity ownership position in ATLP, the Partnership shall deliver monthly financial statements including balance sheets, income statements and cash flow statements certified by ATLP's chief financial officer, annual financial statements certified by a "Big Six" accounting firm or an independent certified public accounting firm satisfactory to BOCF, and an annual business and financial plan to be delivered no later than 30 days prior to the beginning of each fiscal year.
- Processing Fee:** A Processing Fee of \$125,000 shall be paid at closing to Banc One Capital Corporation for its time and effort in (i) conducting due diligence to evaluate ATLP, and (ii) submitting both the Revolver and Term Note for approval by the Investment Committee of BOCF.
- Break-up Fee:** In the event that BOCF issues a commitment letter in a form substantially similar to the Proposal Letter and the transaction does not close, then, in addition to the Transaction Costs as defined herein, a break-up fee equal to \$25,000 shall be immediately due and payable to BOCF by the Partnership.
- Transaction Costs:** Upon acceptance of the Proposal Letter, ATLP shall be responsible for the payment of legal fees and expenses and other expenses incurred by BOCF both prior to and after the closing of the transaction, including expenses related to due diligence and the preparation, negotiation and execution of the documentation necessary to consummate this proposed transaction and in connection with any amendments, waivers or enforcement of rights with respect to such transaction. ATLP agrees to reimburse BOCF upon demand for reasonable attorney fees and expenses and other expenses incurred in connection with the contemplated transaction regardless of whether or not the transaction occurs.

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**Exclusivity:**

ATLP hereby agrees that for a period of sixty (60) days from the date of the acceptance of this proposal (the "Exclusivity Period"), ATLP will not directly or indirectly, including through affiliates, investment bankers, brokers or other parties, (a) accept or otherwise enter into any proposal or commitment with any financial institution or other party with respect to providing financing which is comparable or would be in lieu of the financing proposed to be provided by BOCP as outlined herein (an "Alternative Financing Arrangement"), or (b) enter into negotiations with, solicit proposals or commitments from, or otherwise engage in discussions with any financial institution or other party with respect to such party providing an Alternative Financing Arrangement.

**Termination of  
Exclusivity:**

If, during the Exclusivity Period, BOCP determines that it cannot proceed with the transaction substantially on the basis outlined in this proposal, it agrees to promptly notify ATLP and terminate the Exclusivity Period.

Lew, we look forward to continuing a positive relationship with Thermal Ventures on this financing. The preceding summary of proposed terms is prepared solely to facilitate the discussion of a possible transaction and does not create or reflect any legal obligations, except the obligations set forth under Processing Fee, Transaction Costs, Exclusivity and Termination of Exclusivity. The transaction contemplated by this proposal is subject to the completion of due diligence, approval by the Investment Committee of BOCP, legal documentation acceptable to all parties and the absence of any material adverse change in the general terms of the financing and the ongoing business of ATLP. This letter is delivered to you with the understanding that neither it nor its substance shall be disclosed to any third party, except those in a confidential relationship with ATLP, such as investors, legal counsel, accountants or investment bankers, excluding however, disclosure to banks and other financial institutions without the prior written consent of BOCP.

If you concur with the above terms and conditions, please sign and return this original. This proposal will expire if it has not been signed by you and returned to BOCP by 5:00 p.m., August 16, 1997. If you have any questions or require clarification of any of the matters addressed in this proposal letter, please feel free to call.

Sincerely,

Banc One Capital Partners, L.L.C.

By: BOCP Corporation, General Partner

By: Earle J. Bensing  
Earle J. Bensing, Authorized Signer

Akron Thermal, Limited Partnership

By: [Signature]

Accepted as of 8/12/97

Akron Thermal Limited Partnership  
Balance Sheet

As of July 31, 1997



ASSETS

CURRENT ASSETS

Cash & Cash Equivalents

Cash-Operating	194.51
Cash-Operating Line of Credit	1,959.97
Cash-Payroll	1,774.98
Petty Cash - Office	548.95
Cash-Operating - Keybank	(56,231.18)
Cash-Payroll - Keybank	3,147.27
Cash-Petty Cash - Keybank	1,045.88

Cash & Cash Equivalents		(47,559.62)
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Trade Accounts Receivable

Trade A/R		520,642.26
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Total Trade Receivables

520,642.26

Miscellaneous Receivables	10,000.00
Refundable Deposits	9,300.00
Refundable Taxes	27.14
Interco. A/C - Pittsburgh	24,915.28
Interco. A/C - San Francisco	11,526.57
Interco. A/C - Thermal Venture	21,325.18
Inventory - Fuel	17,298.00
Inventory - WJ Chemicals	9,870.10
Inventory - Equipment	42,088.00

Prepaid Expenses

Prepaid Insurance	17,696.52
Prepaid Expenses	3,307.37
Organization - Start Up Costs	38,637.23
Accum Amort - Org Start Up Cst	(13,502.95)

182,488.44

Total Current Assets

665,571.08

PROPERTY, PLANT & EQUIPMENT

Yard Equipment	96,047.53
Light Vehicles	49,243.64
Computers & Office Equip.	36,247.94
Furniture & Fixtures	2,259.28
Communication Equipment	26,642.65

Total Cost-Prop., Plant & Equip

210,441.04

Accum. Dep'n - Yard Equipment	(10,285.47)
Accum. Dep'n - Light Vehicles	(16,544.94)
Accum. Dep'n - Comp. & Office Eq	(10,868.71)
Accum. Dep'n - Communication Eq	(6,438.16)

Total Property, Plant & Equip.

166,303.76

Akron Thermal Limited Partnership  
Balance Sheet

As of July 31, 1997

Total Assets	831,874.84
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LIABILITIES & EQUITY

CURRENT LIABILITIES

Notes Payable	790,000.00
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Accounts Payable

Accounts Payable	3,609,402.68
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Total Accounts Payable	3,609,402.68
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Accrued Expenses

Accrued Payroll Expense	19,239.92
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Accrued Workers Comp. Insur.	27,638.63
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Gross Receipts Tax Payable	295,690.77
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Total Accrued Expenses	342,569.32
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Total Current Liabilities	4,741,972.00
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Subordinated Long Term Debt	331,866.16
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Total Long Term Debt	331,866.16
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Total Liabilities	5,073,838.16
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SHAREHOLDERS EQUITY

Partners' Capital	1,913,500.00
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Retained Earnings -Prior Year	(4,263,825.16)
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Retained Earnings-Current Year	(1,891,638.16)
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Total Shareholders Equity	(4,241,963.32)
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Liab. & Shareholders Equity	831,874.84
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Income Statement  
Updated 6/28/97 - 4:10pm  
For the Seven Months Ended July 31, 1997

	YTD	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Revenue													
Steam	\$ 3,424,559	\$ 864,823	\$ 658,932	\$ 649,058	\$ 484,073	\$ 334,650	\$ 233,512	\$ 201,450					
Hot Water	97,185	21,466	17,779	18,565	11,735	10,455	10,040	9,145					
Chilled Water	175,081	20,782	17,966	20,102	22,309	18,116	29,205	46,601					
Electricity	140,852	18,456	18,659	21,651	14,911	21,197	19,605	28,473					
Accts Rec. Service Chgs	98,159	11,830	24,579	14,448	12,944	16,899	9,496	7,963					
Other	-	-	-	-	-	-	-	-					
Scrap	1,271	-	-	-	678	379	179	35					
Total Revenue	3,937,087	937,357	735,915	721,884	546,550	401,696	302,037	291,688	-	-	-	-	-
Expenses													
Fuel	2,120,787	553,926	350,776	382,325	273,226	218,029	161,792	180,713					
Utilities	666,365	126,737	101,880	90,375	63,108	62,660	88,802	132,303					
Labor	975,332	168,318	143,485	149,829	150,885	133,939	104,306	124,970					
Travel & Substantia	31,443	3,287	4,384	11,683	5,201	3,088	3,029	791					
Service & Subcontractors	211,298	58,853	32,416	(7,019)	85,161	15,837	36,941	(10,900)					
Supplies & Materials	275,392	62,932	(2,983)	70,377	58,024	31,589	20,345	34,588					
Lease & Rentals	58,436	7,308	14,986	22,866	8,167	8,544	3,128	(6,564)					
Other Operating Expenses	285,973	24,473	25,287	36,261	33,917	20,985	115,607	29,442					
Major Maint & Projects	199,880	59,038	29,675	(2,424)	2,768	8,676	60,049	42,198					
Total Facility Expenses	4,824,897	1,064,852	699,906	755,083	680,257	503,248	594,000	527,551	-	-	-	-	-
Total Other Income & Expenses	(1,892)	(10,836)	(10,794)	21,031	(67)	(460)	(363)	(559)					
Corporate State Tax	(100)	-	-	-	-	(100)	-	-					
Operating Income	(689,792)	(138,331)	25,215	(12,188)	(133,794)	(102,112)	(292,346)	(236,236)					
Adjustments													
Contract labor - Admin	42,000	7,000	7,000	7,000	7,000	7,000	7,000						
Disputed Sewer Charges	239,630	46,850	37,795	40,964	40,306	30,534	21,466	21,715					
Corporate Charge	145,831	20,833	20,833	20,833	20,833	20,833	20,833	20,833					
GBD Chilled Water Plant	534,660	19,754	20,055	75,131	171,700	87,333	80,835	79,852					
Total Adjustments	962,121	94,437	85,683	143,928	239,839	145,700	130,134	122,400					
Net Income	\$ (1,851,912)	\$ (232,768)	\$ (60,468)	\$ (158,116)	\$ (973,833)	\$ (247,812)	\$ (422,480)	\$ (358,635)	\$ -	\$ -	\$ -	\$ -	\$ -

**EXHIBIT E**

STATE OF OHIO :

COUNTY OF MAHONING :

I, Carl E. Avers, being first duly sworn, do hereby declare that I am Chairman of the Board of Thermal Ventures, Inc., the sole general partner of Akron Thermal, Limited Partnership, and have read the foregoing Application and Exhibits and hereby declare that they are true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Carl E. Avers

Sworn and subscribed to before me in my presence this \_\_\_\_ day of  
September, 1997.

\_\_\_\_\_  
Notary Public

**EXHIBIT E**

STATE OF OHIO :

COUNTY OF MAHONING :

I, Lewis A. Mahoney, being first duly sworn, do hereby declare that I am President of Thermal Ventures, Inc., the sole general partner of Akron Thermal, Limited Partnership, and have read the foregoing Application and Exhibits and hereby declare that they are true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Lewis A. Mahoney

Sworn and subscribed to before me in my presence this \_\_\_\_ day of  
October, 1995.

\_\_\_\_\_  
Notary Public