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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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IN THE MATTER OF THE
APPLICATION OF AKRON
THERMAL, LIMITED
PARTNERSHIP FOR APPROVAL OF
A MODIFICATION TO AN EXISTING
ARRANGEMENT

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CASE NO. 09-442-HC-AEC

APPLICATION FOR APPROVAL OF A MODIFICATION
TO AN EXISTING ARRANGEMENT

Pursuant to Section 4905.31, Revised Code, Akron Thermal, Limited Partnership ("Akron Thermal") submits and requests for approval as a reasonable arrangement the attached agreement for steam and chilled water service to Canal Place, Ltd. ("Exhibit B"). In support of this Application, the Applicant alleges the following:

1. Akron Thermal is a public utility and a heating and cooling company which has provided steam, hot water, and chilled water service to consumers in Akron, Ohio and is subject to the jurisdiction of this Commission.
2. Canal Place, Ltd., is a real estate development company which owns and operates Canal Place, a 1.5 million square foot redeveloped adaptive use complex in downtown Akron, Ohio.
3. Akron Thermal has provided steam and chilled water service to Canal Place. A contract between Akron Thermal and Canal Place was approved by the Commission in Case No. 01-3333-HC-AEC.
4. On June 18, 2007, Akron Thermal, Limited Partnership, filed a Chapter 11 petition in the United States Bankruptcy Court for the Northern District of Ohio denominated Case No. 07-51884.

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5. On August 24, 2007, Akron Thermal, Limited Partnership, filed a Motion of Debtor and Debtor-in-Possession, Pursuant to Bankruptcy Code Section 365, for an Order Authorizing the Rejection of an Executory Contract with Canal Place, Ltd.

6. Subsequently, Akron Thermal and Canal Place reached an interim agreement concerning services through July 31, 2008 as more fully described in an agreement dated September 27, 2007.

7. On October 1, 2007, the Bankruptcy Court approved a compromise agreement as set forth in Exhibit 1 to Exhibit A.

8. Subsequently, Akron Thermal and Canal Place entered into an agreement dated September 30, 2008 which addresses service during the period August 1, 2008 until the end of the contract period.

9. Akron Thermal submits that the September 30, 2008 agreement between it and Canal Place, Ltd. which is attached as Exhibit B to this Application is a reasonable arrangement which should be approved.

WHEREFORE, Akron Thermal, Limited Partnership, respectfully requests that the Commission approve Exhibit B to this Application.

Respectfully submitted,

By: Stephen M. Howard
Stephen M. Howard


VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
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Columbus, Ohio 43216-1008
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E-mail: smhoward@vorys.com

Attorneys for Akron Thermal, Limited
Partnership

EXHIBIT A

IT IS SO ORDERED.

Dated: 03:35 PM October 01 2007


MARILYN SHEA-STONUM 12
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	:	
	:	Chapter 11
AKRON THERMAL, LIMITED	:	
PARTNERSHIP,	:	Case No. 07-51884
	:	
Debtor and	:	Judge Marilyn Shea-Stonum
Debtor-in-Possession.	:	

AGREED ORDER CONCERNING DEBTOR'S MOTION
TO REJECT THE EXECUTORY CONTRACT WITH CANAL PLACE, LTD.
AND APPROVING INTERIM COMPROMISE

This matter is before the Court upon the motion ("Motion")¹ of Akron Thermal, Limited Partnership, debtor and debtor-in-possession ("Debtor") in the above-captioned Chapter 11 case, for the entry of an order, pursuant to Bankruptcy Code section 365, authorizing the rejection of an executory contract with Canal Place, Ltd. [Docket No. 149]. The only objection to the Motion was filed by Canal Place, Ltd. [Docket No. 180], to which the Debtor timely filed a Reply [Docket No. 189]. The Motion and Objection were set for hearing on September 28, 2007. Debtor and Canal Place appeared on September 28, 2007, and reported to the Court that

they have reached an interim solution, all as set forth in an Agreement dated September 27, 2007. A copy of the Agreement is attached hereto as Exhibit 1.

Based on the foregoing, and the Court having found and concluded that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding, (iii) notice of the Motion was sufficient under the circumstances, and (iv) the legal and factual bases set forth in the Motion, Objection and Reply, and the statements of counsel, establish just cause for the relief granted herein; and this Court having determined that the relief granted by this Order is in the best interests of the Debtor, its estate and its creditors; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is hereby withdrawn, without prejudice. Debtor retains the right to file another motion to reject the May 18, 2001 Contract with Canal Place, Ltd. at a later time in these proceedings.

2. The compromise set forth in the Agreement attached hereto as Exhibit 1 is hereby approved. Provided, however, that the Official Committee of Unsecured Creditors will have until October 3, 2007 at noon within which to file any objections.

3. The Debtor, or its counsel, shall serve a copy of this Order in accordance with Section VIII of General Order No. 1 Re: Establishment of (1) Status Conferences and Hearing Dates, (2) Certain Case Management Procedures and (3) General Background Information [Docket No. 120].

IT IS SO ORDERED.

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¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

APPROVED:

SCHOTTENSTEIN, ZOX & DUNN CO., LPA

/s/ Daniel R. Swetnam

Daniel R. Swetnam (0011022)

Tyson A. Crist (0071276)

250 West Street

Columbus, Ohio 43215

(614) 462-2700; Fax: (614) 224-3568

Email: dswetnam@szd.com

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and

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1350 Euclid Ave., Suite 1400

Cleveland, OH 44115

(216) 621-6501; Fax: (216) 621-6502

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Attorneys for Debtor and Debtor-in-Possession

BRICKER & ECKLER, LLP

/s/ Kenneth C. Johnson

Kenneth C. Johnson (0022021)

100 S. Third Street

Columbus, OH 43215

(614) 227-2322; Fax: (614) 227-2390

Email: kjohnson@bricker.com

Counsel for Canal Place, Ltd.

AGREEMENT

This Agreement is made as of the 27th day of September, 2007 by and between Akron Thermal, Limited Partnership, as Debtor and Debtor-in-Possession ("ATLP") and Canal Place, Ltd. ("Canal Place") (each individually a "Party" and collectively, the "Parties").

WHEREAS, ATLP filed a Chapter 11 petition on June 18, 2007 in the United States Bankruptcy Court for the Northern District of Ohio (the "Bankruptcy Court"), denominated Case No. 07-51884 (the "Bankruptcy Case"); and

WHEREAS, ATLP and Canal Place are parties to an Agreement for Steam and Chilled Water Service dated May 18, 2001 (the "Contract"); and

WHEREAS, on August 24, 2007, ATLP filed a Motion of Debtor and Debtor-in-Possession, Pursuant to Bankruptcy Code Section 365, for an Order Authorizing the Rejection of an Executory Contract With Canal Place, Ltd. (the "Motion to Reject"); and

WHEREAS, the parties have reached an interim agreement, all as more fully described herein;

NOW THEREFORE, in consideration of the promises and covenants contained herein, the undersigned agree as follows.

Section 1. Continued Service. ATLP will continue to provide steam and, to the extent set forth in the Contract and the orders of the Public Utilities Commission of Ohio, chilled water to Canal Place for the period August 1, 2007 through July 31, 2008 at the rate(s) and upon the other terms and conditions set forth in the Contract, to be invoiced and paid in the same manner as it is currently being invoiced.

Section 2. Surcharge. In addition to the normal monthly payment under the Contract set forth in section 1 above, Canal Place will pay a surcharge with respect to the provision of steam in the total amount of \$240,000 for service during the period August 1, 2007 through July 31, 2008. The surcharge will be paid as follows:

- 2.1. Canal Place will pay \$120,000 within three (3) business days after entry of the Court's Order approving this Agreement. This payment will be for the months of August, September and October, 2007. This initial \$120,000 payment will be amortized at the rate of \$40,000 per month for three months (and pro rata for any portion thereof), starting August 1, 2007.
- 2.2. The remaining \$120,000 will be paid in eight (8) equal monthly installments of \$13,333.33 due on the first of each month commencing November 1, 2007 through June 1, 2008, and one final installment of \$13,333.36 on July 1, 2008. Canal Place's obligation to make payments under this section 2.2 will cease in the event ATLP ceases to operate as a Debtor-in-Possession.



2.3 If service to Canal Place is interrupted or the Contract is rejected by order of the Court at any time prior to November 1, 2007, any remaining unamortized prepaid portion of the \$120,000 surcharge paid pursuant to Section 2.1 above, as prorated from the date of such interruption or rejection, shall be available to Canal Place as a set-off against payment for any resumed or additional service provided by the Debtor or its estate thereafter.

Section 3. Continued Discussions. ATLP and Canal Place will discuss and attempt to reach an agreement concerning service and rates after July 31, 2008.

Section 4. Withdrawal of Motion to Reject. ATLP will withdraw, without prejudice, its Motion to Reject. ATLP expressly reserves the right to file a new Motion to Reject, or to otherwise seek to reject the Contract, insofar as such action is needed for service after July 31, 2008. In the event ATLP shall seek to reject the Contract in the future, it agrees that it shall not seek payment from Canal Place of any additional amounts for the provision of steam service under the Contract from the Petition Date through July 31, 2008, provided that Canal Place shall have paid all amounts due under the Contract for such period of time in full, together with the entire Surcharge set forth in Section 2 above.

Section 5. Notices. In the event that notices must be sent, they shall be sent by regular U.S. mail, postage prepaid, as follows:

To ATLP:

Akron Thermal, Limited Partnership
c/o Opportunity Parkway, LLC
Attn: Therese Kechler
236 N. Champion Street
Youngstown, OH 44503

With a copy to:

Daniel R. Swetnam, Esq.
Schottenstein, Zox & Dunn Co., LPA
250 West Street, Suite 700
Columbus, OH 43215
Phone: (614) 462-2225
Fax: (614) 224-3568
Email: dsvetnam@szd.com

To Canal Place:

Canal Place, Ltd.
520 South Main Street
Akron, OH 44311
Attn: Steven Stoner

With a copy to:

Kenneth Johnson, Esq.
Bricker & Eckler, LLP
100 S. Third Street
Columbus, OH 43215
Phone: (614) 227-2322
Fax: (614) 227-2390
Email: kjohnson@bricker.com

Either Party may change their address by providing notice as set forth herein.

Section 6. Miscellaneous.

6.1. Entire Agreement. This Agreement sets forth the understanding among the Parties concerning the subject matter of this Agreement, and incorporates all prior negotiations and understandings. No covenants, promises, agreements, conditions or understandings, either oral or written, exists between the Parties relating to the subject matter of this Agreement other than those set forth herein. No alteration, amendment or change to this Agreement shall be binding upon any Party hereto unless in writing, and signed by both Parties.

6.2 Joint Preparation. This Agreement is deemed to have been prepared jointly by the Parties. Any uncertainty or ambiguity existing herein shall not be interpreted against any Party.

6.3. Authority to Execute. Each person executing this Agreement on behalf of the Parties specifically warrants that he or she has full power and authority to execute this Agreement on behalf of such Party.

6.4. No Admission. This Agreement is entered into by the Parties solely for the purpose of compromising and settling matters in dispute, as described herein, subject to the conditions specified herein. This Agreement does not constitute, nor shall it be construed as, an admission by any Party of the truth or validity of any claims or contentions asserted by any other Party, or as a ratification of any past conduct by any other Party.

6.5 Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and either Party hereto may execute this Agreement by signing one or more counterparts. A signature by facsimile or email shall be treated as an original signature.

6.6. Other Claims. Except as expressly provided herein, this Agreement does not alter or affect any claims the Parties may have against each other, each Party expressly reserving such claims.

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

AKRON THERMAL, LIMITED PARTNERSHIP

By: Opportunity Parkway, LLC
Its General Partner

By: Therese Kechler
Therese Kechler, Treasurer

CANAL PLACE, LTD.

By: Canal Place, Inc.
Its General Partner

By: Stephen R. Stone
Its: Stephen R. Stone, Authorized Representative

EXHIBIT B

AGREEMENT

This Agreement is made as of the 30th day of September 2008 by and between Akron Thermal, Limited Partnership, as Debtor and Debtor-in-Possession ("ATLP" or "Debtor") and Canal Place, Ltd. ("Canal Place") (each individually a "Party" and collectively, the "Parties").

WHEREAS, ATLP filed a Chapter 11 petition on June 18, 2007 in the United States Bankruptcy Court for the Northern District of Ohio (the "Bankruptcy Court"), denominated Case No. 07-51884 (the "Bankruptcy Case"); and

WHEREAS, ATLP and Canal Place are parties to an Agreement for Steam and Chilled Water Service dated May 18, 2001 (the "Contract"); and

WHEREAS, on August 24, 2007 ATLP filed a Motion of Debtor and Debtor-in-Possession, Pursuant to Bankruptcy Code Section 365, for an Order Authorizing the Rejection of an Executory Contract With Canal Place, Ltd. (the "Motion to Reject"); and

WHEREAS, the parties reached an interim agreement concerning services through July 31, 2008, all as more fully described in an Agreement dated September 27, 2007, a copy of which is attached to the Agreed Order Concerning Debtor's Motion to Reject the Executory Contract With Canal Place, Ltd. and Approving Interim Compromise [Docket. No. 192] (the "Interim Agreement"); and

WHEREAS, the parties have reached a further agreement with respect to payment for service from August 1, 2008 forward as more fully described herein;

NOW THEREFORE, in consideration of the promises and covenants contained herein, the undersigned agree as follows:

Section 1. Continued Service. ATLP will continue to provide steam and, to the extent set forth in the Contract and the orders of the Public Utilities Commission of Ohio, chilled water to Canal Place from the period August 1, 2008 forward at the rate(s) and upon the other terms and conditions set forth in the Contract, to be invoiced and paid in the same manner as it is currently being invoiced.

Section 2. Surcharge. In addition to the normal monthly payment under the Contract set forth in section 1 above, Canal Place will pay a surcharge with respect to the provision of steam during the period August 1, 2008 until the end of the Contract period, as follows:

- 2.1 From August 1, 2008, until the increase described in section 2.2 below, Canal Place will pay, upon each monthly invoice, an additional sum per steam Mlb purchased, during the period covered by the applicable invoice, calculated as follows: \$240,000 divided by the number of steam Mlbs purchased by Canal Place under the contract for the twelve month period ending July 31, 2008.

2.2 From the Effective Date of a plan of reorganization entered in the bankruptcy case of Akron Thermal, through the remainder of the contract term, Canal Place will pay, upon each monthly invoice, an additional sum per steam Mlb purchased (the "Surcharge"), during the period covered by the applicable invoice, calculated as follows: \$375,000 divided by the total number of steam Mlbs purchased by Canal Place under the contract for the twelve month period ending, on the last day of the full calendar month preceding such Effective Date, *provided that at the end of each successive twelve month period following the Effective Date (i) the amount of the total surcharge paid pursuant to this Section 2.2 for such twelve month period will be aggregated and to the extent of any amount paid in excess of or below the \$375,000 annual total, such amount of excess or shortfall will be credited against or added to the next succeeding invoice(s), with the exception that if any shortfall amount is more than \$10,000.00, that shortfall amount shall be divided evenly in thirds, with one-third added to each of the next succeeding three (3) invoices; and (ii) the annual number of Mlbs to be used in the calculation of the Surcharge shall be the total Mlbs purchased during the twelve month period ending with the last full calendar month preceding the applicable calculation date.*

Section 3. Court Approval of this Agreement. This Agreement is subject to approval by the Bankruptcy Court. To the extent needed apart from Section 4 below, Debtor agrees to take all necessary action to seek Bankruptcy Court approval of this Agreement following the execution hereof by the Parties. In the event the Bankruptcy Court shall deny approval of this Agreement, it shall be of no force or effect, and the Parties reserve and retain all rights, claims and interests which they may have under the Contract and applicable law.

Section 4. Assumption of Contract. Debtor agrees that, as part of its Plan of Reorganization, it will seek assumption of the Contract, as amended by this Agreement. If the assumption of the Contract is approved by the Bankruptcy Court pursuant to an order confirming the Plan of Reorganization, this Agreement will be deemed an amendment to the Contract, modifying its terms and provisions as provided herein, with all other terms of the Contract being ratified and remaining unchanged.

Section 5. Dismissal or Conversion of Bankruptcy Case. In the event the Debtor fails to confirm its Plan of Reorganization, and the Bankruptcy Case is either dismissed or converted to a case under Chapter 7, this Agreement shall terminate and be of no further force or effect, and the parties shall retain and be entitled to all rights, claims and interests which they may have under the Contract and applicable law.

Section 6. Notices. In the event that notices must be sent, they shall be sent by regular U.S., mail, postage-prepaid, as follows:

To ATLP:

Akron Thermal, Limited Partnership
c/o Opportunity Parkway, LLC

Attn: Therese Kechler
236 N. Champion Street
Youngtown, OH 44503

With a copy to:

Daniel R. Swetnam, Esq.
Schottenstein, Zox & Dunn Co., LPA
250 West Street, Suite 700
Columbus, OH 43215
Phone: (614)462-2225
Fax: (614)224-3568
Email: dswetnam@szd.com

To Canal Place:

Canal Place, Ltd.
520 South Main Street
Akron, OH 44311
Attn: Stephen Stoner

With a copy to:

Kenneth Johnson, Esq.
Bricker & Eckler, LLP
100 S. Third Street
Columbus, OH 43215
Phone: (614)227-2322
Fax: (614)227-2390

Either Party may change their address by providing notice as set forth herein.

Section 7. Miscellaneous

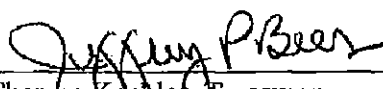
- 7.1 Entire Agreement.** This Agreement sets forth the understanding among the Parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings. No covenants, premises, agreements, conditions or understandings, either oral or written, exists between the Parties relating to the subject matter of this Agreement other than those set forth herein. No alteration, amendment or change to this Agreement shall be binding upon any Party hereto unless in writing, and signed by both Parties.
- 7.2 Joint Preparation.** This Agreement is deemed to have been prepared jointly by the Parties. Any uncertainty or ambiguity existing herein shall not be interpreted against any Party.

- 7.3 **Authority to Execute.** Subject, to section 3 above, each person executing this Agreement on behalf of the Parties specifically warrants that he or she has full power and authority to execute this Agreement, on behalf of such Party.
- 7.4 **No Admission.** This Agreement is entered into by the Parties solely for the purpose of compromising and settling matters in dispute, as described herein, subject to the conditions specified herein. This Agreement does not constitute, nor shall it be construed as an admission by any Party of the truth or validity of any claims or contentions asserted by any other Party, or as a ratification of any past conduct by any other Party.
- 7.5 **Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and either Party hereto may execute this Agreement by signing one or more counterparts. A signature by facsimile or email shall be treated as an original signature.
- 7.6 **Other Claims.** Except as expressly provided, herein, this Agreement does not alter or affect any claims the Parties may have against each other, each Party expressly reserving such claims.

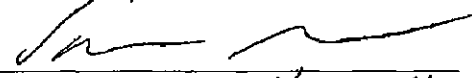
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last above written.

AKRON THERMAL, LIMITED PARTNERSHIP

By: Opportunity Parkway, LLC
Its General Partner

By: 
~~Therese Keenlor, Treasurer~~
JEFFREY P. BEES, PRESIDENT

CANAL PLACE, LTD.

By: 
Its: ASST JEC Kenneth Sheen