

**FILE**

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of  
Akron Thermal, Limited Partnership for  
Authority to Issue Three (3) Promissory  
Long-Term Notes.

Case No. 09-414-HT-AIS

In the Matter of the Application of  
Akron Thermal, Limited Partnership  
for an Emergency Increase in its Rates  
and Charges for Steam and Hot Water  
Service.

Case No. 09-453-HT-AEM

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**DIRECT TESTIMONY  
OF**

**JEFFREY P. BEES**

**ON BEHALF OF  
AKRON THERMAL, LIMITED PARTNERSHIP**

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**I. INTRODUCTION**

1   **Q.     Please state your name and business address.**

2   **A.     My name is Jeffrey P. Bees   My business address is 236 North Champion Street,**  
3         **Youngstown, Ohio 44503.**

4   **Q.     By whom are you employed and in what capacity?**

5   **A.     I am the president and chief executive officer of Opportunity Parkway, LLC, the general**  
6         **partner of Akron Thermal, Limited Partnership ("Akron Thermal"), the applicant in these**  
7         **proceedings.**

8   **Q.     What is the purpose of your testimony in these proceedings?**

1 A. The purpose of my testimony is to support the application for emergency rate relief filed  
2 by Akron Thermal in Case No. 09-453-HT-AEM on May 29, 2009. My testimony also  
3 addresses Akron Thermal's pending financing application in Case No. 09-414-HT-AIS  
4 for authority to issue certain promissory notes. The financing application was  
5 consolidated with emergency rate increase application and three other pending Akron  
6 Thermal applications (Case Nos. 09-315-HT-ATA, 09-441-HT-AEC, and 09-442-HC-  
7 AEC) by the Commission's entry of June 17, 2009.

8  
9 In my testimony, after providing my own background information, I provide a history of  
10 Akron Thermal and its rates, describe the extraordinary situation Akron Thermal now  
11 faces, and explain why immediate emergency rate relief is necessary to prevent Akron  
12 Thermal from being financially imperiled and to prevent its ability to render service from  
13 being impaired. I also provide information on Akron Thermal's recent bankruptcy  
14 proceeding and explain that the bankruptcy proceeding is unrelated to Akron Thermal's  
15 emergency rate request. I discuss the purpose of the promissory notes that are the subject  
16 of the financing application and explain how these instruments fit into Akron Thermal's  
17 long-term financial planning. Finally, I describe the impact the failure of the  
18 Commission to authorize the requested relief would have on Akron Thermal's customers.  
19 My testimony on these subjects is intended to assist the Commission in evaluating Akron  
20 Thermal's emergency rate increase request and financing application.

21 **II. PERSONAL BACKGROUND**

22 Q. How long have you been associated with Akron Thermal?

1 A. My experience with Akron Thermal dates back to its formation in 1995. I was a part of  
2 the original development team and served as the general manager of Akron Thermal from  
3 1995 to 1997. My involvement continued from 1997 to mid-2002 as a staff member of  
4 Thermal Ventures, Inc., the former general partner of Akron Thermal. I had no  
5 involvement with Akron Thermal from mid-2002 to through most of 2004, but resumed  
6 my association in December of 2004, when Opportunity Parkway LLC became Akron  
7 Thermal's general partner.

8 **Q. Are you employed as an officer of any other companies?**

9 A. Yes. I am also the president and chief executive officer of the general partner of the  
10 limited partnership that is the sole member of the following companies: Akron Thermal  
11 Cooling, LLC, Youngstown Thermal, LLC, Youngstown Thermal Cooling, LLC, Detroit  
12 Thermal, LLC, Hohenwald Thermal, LLC, Hamtramck Energy Services, LLC, Allstate  
13 Public Warehouse, LLC and Martinsville Thermal, LLC.

14 **Q. Please briefly summarize your professional experience.**

15 A. I have been involved in the operation of steam and chilled water utilities since 1985,  
16 when I became the general manager of the district steam business in Youngstown, Ohio.  
17 In addition to my association with Akron Thermal, I headed the effort that led to the  
18 acquisition of the city of Detroit's steam system by Detroit Thermal, LLC in January  
19 2003, and I have been involved in that company's operations since that time.

20 **Q. Have you previously presented testimony before this Commission?**

21 A. Yes. I presented testimony in Akron Thermal's 2005 general rate increase application in  
22 Case No. 05-05-HT-AIR.

### **III. HISTORY OF AKRON THERMAL**

**Q. Please describe Akron Thermal and its structure.**

A. Akron Thermal is a Delaware limited partnership engaged in the business of supplying steam and hot water service to customers within the central business district in downtown Akron, Ohio. Opportunity Parkway, LLC, the general partner of Akron Thermal is an Ohio limited liability company. Akron Thermal's limited partner is Thermal Ventures II, L.P., a Delaware limited partnership.

**Q. When did Akron Thermal commence operations?**

A. Akron Thermal commenced operations in 1995, when it began operating the steam system originally developed by the city of Akron ("City") as a combination trash-burning and steam production system. The City operated the system from 1974 to 1995. Initially, Akron Thermal operated the system under an interim agreement with the City while negotiating a long-term lease. The lease arrangement was ultimately executed in 1997. Under the terms of the lease, Akron Thermal was obligated to charge the City's existing rates until November 1998.

**Q. Were the City's rates sufficient to cover the costs of operating the system?**

A. No.

**Q. Did Akron Thermal subsequently seek Commission approval of tariffed rates?**

A. Yes. On September 28, 1998, Akron Thermal filed an application in Case No. 98-1360-HT-ATA to establish its own tariffed rates for steam, hot water, and chilled water service. The Commission granted Akron Thermal's application as a first filing by its order in that case of April 1, 1999. Although the new tariff rates were higher than the City rates Akron Thermal had previously been obligated to charge, Akron Thermal continued to

1 sustain annual operating losses under these rates, in part because the rates were based on  
2 calendar 1997 data and, in part, because the new rates were set at a level that recognized  
3 gradualism concerns in terms of the impact on customers. Consequently, on November  
4 17, 2000, Akron Thermal filed an application in Case No. 00-2260-HT-AEM for an  
5 emergency increase in its rates for steam and hot water service. The rates for chilled  
6 water service were not affected by this application. The Commission granted Akron  
7 Thermal's application, in substantial part, by its order in that case of January 2001. The  
8 order also directed Akron Thermal to file an application for permanent rate relief within a  
9 reasonable time. Thereafter, the chilled water business was transferred to a newly created  
10 company, Akron Thermal Cooling, LLC. The transfer was approved by this  
11 Commission's order of September 3, 2003 in Case No. 03-1379-CC-ATA.

12 **Q. Did Akron Thermal subsequently file a general rate increase application with the**  
13 **Commission?**

14 **A** Akron Thermal filed a notice of intent to submit a permanent rate increase application on  
15 July 8, 2003 in Case No. 03-1497-HT-AIR. However, Akron Thermal later requested  
16 dismissal of that case, and in lieu of pursuing a permanent rate increase in that docket,  
17 submitted a new notice of intent on January 3, 2005 initiating its general rate increase  
18 application in Case No. 05-05-HT-AIR. The application in Case No. 05-05-HT-AIR was  
19 filed on March 4, 2005. The Commission granted the application by its order of  
20 September 28, 2005, and the rates for steam and hot water service approved in that case  
21 are still in effect.

#### 22 **IV. THE BANKRUPTCY PROCEEDING**

23 **Q. Please provide details regarding Akron Thermal's recent bankruptcy proceeding.**

1 A. On June 18, 2007, Akron Thermal filed a Chapter 11 petition in the United States  
2 Bankruptcy Court for the Northern District of Ohio (Case No. 07-51884). The  
3 bankruptcy court ultimately approved a Plan of Reorganization, and Akron Thermal  
4 emerged from bankruptcy in February 2009. A copy of Akron Thermal's Plan of  
5 Reorganization is attached to my testimony as Exhibit JPB-1.

6 **Q. Why did Akron Thermal find it necessary to file a Chapter 11 petition, particularly**  
7 **in view of the fact that the Commission had granted Akron Thermal's rate increase**  
8 **application in Case No. 05-05-HT-AIR less than two years before the petition was**  
9 **filed?**

10 A. Although the Commission granted the full amount of the increase in tariff rates requested  
11 by Akron Thermal in Case No. 05-05-HT-AIR, at the time, revenues associated with  
12 sales to tariff customers represented something less than 40 percent of Akron Thermal's  
13 total revenues. The new tariff rates approved in that proceeding were not intended to  
14 recover the total-company revenue requirement. Rather, the stipulation adopted by the  
15 Commission in Case No. 05-05-HT-AIR contemplated that Akron Thermal would  
16 attempt to renegotiate its contracts with its special contact customers so as to make up, to  
17 the extent possible, the remainder of the total company revenue requirement. As  
18 described in the testimony of Akron Thermal witness Pucak, Akron Thermal was, in fact,  
19 able to renegotiate a number of its special contracts. However, even with these increases  
20 in revenue, Akron Thermal's accumulated outstanding obligations to its creditors could  
21 no longer be absorbed, and, for the company were to continue to provide service to its  
22 customers, it had no alternative but to file for reorganization under Chapter 11.

1   **Q.   Did Akron Thermal's Plan of Reorganization contemplate seeking additional rate**  
2       **relief from the Commission as a means to address its financial situation?**

3   **A.**   No. When Akron Thermal emerged from bankruptcy, it was well positioned to operate  
4       successfully under its current tariff rates and the modifications to its special contracts that  
5       had been achieved. Although Akron Thermal recognized that, at some point, it would  
6       have to file a general rate increase application in order recover increases in operating  
7       costs subsequent to its 2005 rate case, it had no immediate plans to do so. Moreover,  
8       Akron Thermal was comfortable with its special contract situation, having previously  
9       negotiated a new contract with Children's Hospital Medical Center of Akron, having  
10      achieving a modification of its special contract with Canal Place, Ltd., in the context of  
11      the bankruptcy proceeding, and having moved another large customer, Akron General  
12      Medical Center to tariff upon the expiration of the existing contract. When Akron  
13      Thermal emerged from bankruptcy, it was essentially starting with a clean slate, which,  
14      after all, is the purpose of a Chapter 11 reorganization.

15   **Q.   Did Akron Thermal and its owner accept certain financial obligations for funding**  
16       **the Plan of Reorganization?**

17   **A.**   Yes. Akron Thermal's limited partner, Thermal Ventures II, L.P., was required to  
18       contribute \$3 million dollars as an equity infusion on February 20, 2009, the effective  
19       date of the plan, and was also required to provide a \$250,000 unsecured line of credit to  
20       Akron Thermal. The line of credit of \$250,000 was advanced to Akron Thermal on  
21       March 4, 2009. These dollars from the equity infusion were used primarily to make plan  
22       payments to the city of Akron (\$2,541,103.09), the State of Ohio (\$150,000.00), and the  
23       Class 3.1 creditors (\$18,539.34). In addition, Akron Thermal was required to enter into



1 three long-term promissory notes to restructure its indebtedness. These are the notes that  
2 are the subject of the application in Case No. 09-414-HT-AIS.

3 **V. LOSS OF THE UNIVERSITY OF AKRON LOAD**

4 **Q. If, as you indicated, Akron Thermal was well positioned to operate successfully after**  
5 **it emerged from bankruptcy in February 2009, why was it necessary to file an**  
6 **application with the Commission for emergency rate relief two months later?**

7 **A.** On April 30, 2009, Akron Thermal's contract with its largest customer, the University of  
8 Akron ("UA"), expired. UA, which also the capability to use natural gas for its heating  
9 requirements, declined to renew its contract with Akron Thermal. As discussed in the  
10 testimony of Akron Thermal witness Pucak, UA represented approximately 30 percent of  
11 Akron Thermal's annual steam sales volumes, and, in 2008, sales to UA accounted for  
12 some 26 percent of Akron Thermal's total revenues. Thus, the loss of the UA revenue  
13 stream imperiled Akron Thermal from a financial standpoint and left Akron Thermal with  
14 no choice but to seek emergency rate relief in order to continue to meet its obligation to  
15 provide service to its remaining customers.

16 **Q. Did Akron Thermal attempt to negotiate a new contract with UA so as to avert this**  
17 **financial emergency?**

18 **A.** Yes. Akron Thermal put together what it believed to be an attractive, mutually-beneficial  
19 proposal in an effort to retain the UA load. However, the parties were unable to come to  
20 an agreement.

21 **Q. You previously indicated that Akron Thermal was comfortable with its special**  
22 **contract situation when it emerged from bankruptcy. Did that include the UA**  
23 **contract?**

1 A. Akron Thermal was, of course, well aware that the UA contract was set to expire at the  
2 end of April 2009, and was also aware that the price of natural gas had fallen  
3 significantly since it first began to discuss a new contract with UA. However, in view of  
4 the volatility of natural gas prices and the attractive nature of its contract offer, Akron  
5 Thermal did not believe that there was a significant risk that UA would leave the system  
6 and go to natural gas to meet its heating requirements.

7 **Q. Did the bankruptcy, the associate financial obligations you previously described, or**  
8 **any other terms of the approved Plan of Reorganization contribute in any way to**  
9 **the filing of the Akron Thermal's application for emergency rate relief in Case No.**  
10 **09-4543-HT-AIR?**

11 A. No, absolutely not. As explained in the testimony of Mr. Pucak and documented by the  
12 cash flow analysis presented by Akron Thermal witness Stott, the emergency rate  
13 application was driven solely by the loss of the UA revenue stream. If UA had not left  
14 the system, the emergency application would not have been filed. Indeed, if UA were to  
15 return as a customer, Akron Thermal would immediately withdraw the temporary  
16 surcharge it is asking the Commission to approve in its application.

17 **Q. Is the amount of emergency relief requested the minimum amount of relief**  
18 **necessary to preserve Akron Thermal's financial integrity and its ability to render**  
19 **service to its remaining customers?**

20 A. Yes. Ms. Stott's analysis shows that this is a bare-bones request and contains no profit  
21 component.

## 22 VI. THE FINANCING APPLICATION

23 **Q. What is the purpose of the application in Case No. 09-414-HT-AIS?**

1 A. As I previously indicated, the financing application seeks Commission approval of three  
2 promissory notes to restructure Akron Thermal's indebtedness in accordance with the  
3 Plan of Reorganization approved in the bankruptcy proceeding.

4 **Q. Does Ms. Stott's cash flow analysis take the into account the payment obligations**  
5 **associated with these promissory notes?**

6 A. No, not specifically. The semi-annual payment obligations under the two largest notes,  
7 the Creditor's Trust note and the Treasurer of the State of Ohio note, do not begin until  
8 18 months from the effective date of the Plan of Reorganization, which is well beyond  
9 the horizon of Ms. Stott's cash flow analysis.

10 **Q. Does that mean that the request for emergency relief is understated?**

11 A. No. To infer this, one would have to assume that Akron Thermal would have no  
12 opportunity to restructure the existing notes or to roll them into other forms of long-term  
13 debt, but I do not believe that will be the case if the Commission approves the emergency  
14 application. Prior to the time the first payments become due, assuming the Commission  
15 grants Akron Thermal the relief necessary to avert the financial emergency created by the  
16 loss of the UA load, Akron Thermal, like any prudent company, will look to restructure  
17 its indebtedness as necessary to permit it to meet its debt service obligations on a timely  
18 basis. Although Ms. Stott's analysis of cash flow assuming emergency rate relief  
19 extends only through year-end 2009, assuming no further surprises, Akron Thermal  
20 believes that its cash position will have stabilized by the latter part of 2010 when the first  
21 payments associated with the two largest notes become due. In addition, the results of  
22 the permanent rate increase application that Akron Thermal will file in the near future  
23 will begin to impact revenues in that time frame.

1 **Q. Will the permanent rate increase application will support a revenue increase that**  
2 **exceeds the increase in annual revenues sought in the emergency application?**

3 A. There is no way to know this with certainty at this time. However, the projected income  
4 statement presented by Ms. Stott reflects the same operating expense levels that will be  
5 considered in setting rates in the permanent case. Thus, while the purpose of the  
6 emergency request is to avert the impending cash flow crisis caused by the loss of the UA  
7 load, whereas the permanent case will involve broader considerations, I would expect that  
8 the permanent rate increase application will support a revenue increase in this same  
9 range.

## 10 **VII. CUSTOMER IMPACT**

11 **Q. Is Akron Thermal concerned about the impact granting its request for emergency**  
12 **relief will have on its customers?**

13 A. Yes, of course. Akron Thermal recognizes that the amount of emergency relief requested  
14 is substantial and that granting its application will impose a significant burden on its  
15 remaining customers, which is particularly unfortunate in view of the current economic  
16 climate. However, failure to authorize the emergency rate relief necessary to preserve  
17 Akron Thermal's ability to provide service would have even worse consequences for  
18 Akron Thermal's customers.

19 **Q. Please explain.**

20 A. In the absence of emergency relief, Akron Thermal will be unable to continue to operate.  
21 In the short run, such an outcome would obviously cause severe disruption for our  
22 customers. In the long run, the measures that customers would be required to undertake

1 to address their heating requirements on an individual basis would be extremely costly  
2 and, in some instances, could have negative environmental implications.

3 **Q. But, if Akron Thermal is no longer able to remain in business because of its**  
4 **financial condition, could not some other operator take over the system?**

5 A. The City has made no secret of its displeasure with Akron Thermal's past performance  
6 and its desire for a different operator. As a result, Akron Thermal has indicated its  
7 willingness to transfer its service obligation to a new operator if an appropriate buyer can  
8 be found and an appropriate transaction can be negotiated. However, there is no prospect  
9 that such a transaction can be consummated if the system is not economically viable.  
10 Indeed, any other operator would face the precise situation Akron Thermal is now in.  
11 Thus, the failure of the Commission to grant emergency relief would close the door on  
12 this option.

13 **Q. You previously indicated that the return of UA as a customer would permit Akron**  
14 **Thermal to avert the emergency. Does the possibility that UA might find a new**  
15 **operator more to its liking affect your previous answer?**

16 A. Obviously, the interests of Akron Thermal's other customers would be best served if UA  
17 were to return to the system. Moreover, in view of the roller coaster ride that natural gas  
18 prices have taken over the last several years, it is certainly possible that UA will, at some  
19 point, conclude that the economics again favor steam as the preferred choice for meeting  
20 its heating requirements. However, to avail itself of that option, there has to be a steam  
21 system to which it can return. So, whether or not the identity of the operator would play

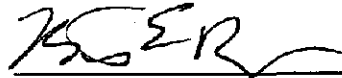
1 a role in UA's decision, immediate emergency rate relief is still essential to preserving  
2 that option.

3 **Q. Does this conclude your testimony?**

4 **A. Yes. However, I reserve the right to file rebuttal testimony if the Commission Staff or**  
5 **any intervenor files testimony in this case.**

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon the following parties by first class U.S. mail, postage prepaid, and by electronic mail this 2nd day of July 2009.



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## **EXHIBIT JPB-1**

### **Approved Plan of Reorganization**

The Akron Thermal, Limited Partnership Approved Plan of Reorganization is comprised of the of the following documents:

1. Second Amended Plan of Reorganization dated July 14, 2008.
2. Debtor's Modifications to Second Amended Plan of Reorganization (September 10, 2008).
3. Debtor's Supplemental Modifications to Second Amended Plan of Reorganization (September 26, 2008).
4. Agreed Order Resolving Objection to Confirmation filed by the United States of America on Behalf of the United States Environmental Protection Agency (October 9, 2008).
5. Agreed Order Resolving Limited Objection to Confirmation filed by the University of Akron (November 13, 2008). (Although this Agreed Order does not modify the Plan of Reorganization, it relates to Item No. 2 above.)



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

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

**SECOND AMENDED PLAN OF REORGANIZATION  
FOR AKRON THERMAL, LIMITED PARTNERSHIP  
DATED JULY 14, 2008**

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## **EXHIBITS**

Exhibit 5.1	Letter Agreement dated November 22, 2006
Exhibit 5.5	\$1,350,000 Note to the State of Ohio
Exhibit 5.8	\$2,000,000 Note to Creditors' Trust
Exhibit 7.1	Loan Agreement and Promissory Note
Exhibit 7.4	Second Amended Partnership Agreement
Exhibit 7.7	Schedule of Retained Actions
Exhibit 8.1	Schedule of Assumed Contracts
Exhibit 8.2	Schedule of Rejected Contracts
Exhibit 10.2	Creditors' Trust Agreement

## **INTRODUCTION**

Akron Thermal, Limited Partnership ("Debtor") hereby proposes the following Second Amended Plan of Reorganization (the "Plan") for Akron Thermal, Limited Partnership pursuant to Bankruptcy Code section 1101, et seq.

The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code. The distributions to be made to holders of Claims and Interests are set forth herein.

Under section 1125(b) of the Bankruptcy Code, a vote to accept or reject this Plan cannot be solicited from a holder of a Claim or Interest until the Disclosure Statement has been approved by the Bankruptcy Court and distributed to holders of Claims and Interests. The Disclosure Statement relating to this Plan was approved by the Bankruptcy Court by an Order entered on July 28, 2008, and has been distributed simultaneously with this Plan to all parties whose votes are being solicited. The Disclosure Statement contains, among other things, a discussion of the Debtor's history, business, properties and operations, projections for those operations, risk factors associated with the business and Plan, a summary and analysis of this Plan, and certain related matters including, among other things, the securities to be issued under this Plan. **ALL HOLDERS OF CLAIMS AND INTERESTS WHO ARE ENTITLED TO VOTE ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.**

Subject to the restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article XVI of this Plan, Debtor expressly reserves its right to alter, amend, modify, revoke, or withdraw this Plan one or more times, prior to this Plan's substantial consummation.

## **ARTICLE I**

### **A. Scope of Definitions.**

For purposes of this Plan, except as expressly provided otherwise or unless the context requires otherwise, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I.B. of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

### **B. Definitions.**

1.1. **"Administrative Claim"** means an actual, necessary cost or expense of preserving the Debtor's Estate incurred after the Petition Date, which cost or expense is entitled to priority in this Case pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code, including fees and expenses of Professionals pursuant to sections 330 and 331 of the Bankruptcy Code and fees, if any, due to the United States Trustee under 28 U.S.C. § 1930(a)(6).

1.2. **"Administrative Claims Bar Date"** means the deadline for filing proofs or request for payment of Administrative Claims, which shall be 45 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court, and except with respect to Professional Claims and Ordinary Course Liability Claims, which shall be subject to the provisions of Article II hereof.

1.3. **"Affiliates"** has the meaning given such term by section 101(2) of the Bankruptcy Code.

1.4. **"Allowed . . . Claim"** shall mean any Claim, or any portion thereof, against the Debtor's Estate to the extent that:

- (i) proof of the Claim was timely filed with the Court if no objection is interposed to the Claim within any permissible or extended period of time, but only to the extent and in the amount set forth in the proof of Claim, or
- (ii) if no proof of the Claim was filed, the Claim is deemed filed pursuant to section 1111(a) of the Bankruptcy Code (if the Claim is listed in the Schedules filed pursuant to section 521(1) of the Bankruptcy Code and is not listed as disputed, contingent or unliquidated), and no objection is interposed to the Claim within any permissible or extended period of time, but only to the extent and in the amount set forth in the Schedules, or
- (iii) a proof of Claim was timely filed or deemed filed with the Court and, if an objection to allowance of the Claim was interposed within any permissible or extended period of time, the Claim is or has been allowed by the Plan, Final Order of the Court, or written agreement or stipulation between the Debtor, the Claimant, and any other objecting party.

1.5. **"Allowed Class . . . Claim" or "Allowed Class . . . Interest"** means an Allowed Claim or Allowed Interest in the specified class.

1.6. **"Allowed Interest"** means an Interest in the Debtor, which has been or hereafter is listed by the Debtor in its books and records as liquidated in an amount and not disputed or contingent; provided, however, that to the extent an Interest is a Disputed Interest, the determination of whether such Interest shall be allowed and/or the amount of any such Interest shall be determined, resolved, or adjudicated, as the case may be, in the manner in which such Interest would have been determined, resolved, or adjudicated if the Case had not been commenced; and provided further, however, that proofs of Interest need not and should not be filed in the Bankruptcy Court with respect to any Interests; and provided further, however, that the Reorganized Debtor, in its discretion, may bring an objection or motion with respect to a Disputed Interest before the Bankruptcy Court for resolution.

1.7. **"ATC"** means Akron Thermal Cooling, LLC, its member, officers, agents and representatives.

1.8. **Assumption Order**" shall mean, collectively, any and all Final Orders entered by the Court authorizing the Debtor's assumption of unexpired leases and/or executory contracts.

1.9. **"Avoidance"** means Causes of Action arising under any of sections 502, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code, or under similar or related state or federal statutes or common law, including fraudulent transfer laws, whether or not litigation has been commenced as of the Confirmation Date to prosecute such Causes of Action.

1.10. **"Ballot"** means each of the ballot forms that is distributed with the Disclosure Statement to holders of claims and Interests included in Classes that are Impaired under the Plan and entitled to vote under Article VI of the Plan.

1.11. **"Bankruptcy Code"** shall mean Title 11 of the United States Code and sections 157, 158, 1334, 1408 through 1412, and 1452 of Title 28 of the United States Code, as in effect on the Petition Date.

1.12. **"Bankruptcy Court"** means the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division, or in the event such Court ceases to exercise jurisdiction over the Case, such court or adjunct thereof that thereafter exercises jurisdiction over the Case, such other court as may have jurisdiction over this Case.

1.13. **"Bankruptcy Rules"** shall mean the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure and the Local Rules of the Court as applicable to the Case.

1.14. **"Bar Date"** means the deadlines set by the Bankruptcy Court pursuant to the Bar Date Order or other Final Order for filing proofs of claim in the Case, as the context may require. Except as explicitly provided in the Bar Date Order, the Bar Date for claims arising prior to the Petition Date was October 31, 2007. The Bar Date for Administrative Claims is described in Article II hereof. The Bar Date for claims arising out of time rejection of an executory contract or unexpired lease is described in Article VIII hereof.

1.15. **"Bar Date Order"** means the order entered by the Bankruptcy Court on September 18, 2007 [Docket No. 182], which established the Bar Date, and any subsequent order supplementing such initial order or relating thereto.

1.16. **"Budget vs. Actual Variance"** means for any of the customer contracts in effect at the Petition Date (including without limitation, Children's Hospital; Akron General Medical Center and The University of Akron), or otherwise consistent with current practices for tariff customer relationships (including without limitation, Ladalow, Owner's Management and Summit County, Ohio) pursuant to which customers pay an estimated monthly amount, the liability or asset created by the amount by which actual usage falls short of or exceeds the budgeted payment for a given contract year.

1.17. **"Business Day"** means any day other than a Saturday, Sunday or legal holiday.

1.18. **"Case"** shall mean Case Number 07-51884 commenced by a Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code filed with the Court on June 18, 2007.

1.19. **"Cash"** shall mean cash, cash equivalents, and other readily marketable securities and instruments.

1.20. **"Causes of Action"** means any and all actions, proceedings, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, including Avoidance Claims, unless otherwise waived or released by the Debtor or the Reorganized Debtor to the extent such Causes of Action is a Cause of Action held by the Debtor or the Reorganized Debtor.

1.21. **"City of Akron"** means the City of Akron, Ohio and its divisions, departments (including without limitation, the Department of Public Service and the Bureau of Public Utilities), and their respective agents, elected officers, employees and other representatives, including without limitation, the Akron City Council and all executive offices.

1.22. **"Claim"** shall have the meaning ascribed to it in section 101(5) of the Bankruptcy Code.

1.23. **"Claimholder"** means the holder of a Claim.

1.24. **"Claims/Interests Objection Deadline"** means for Claims filed prior to the Confirmation Date, that day which is 90 days after the Effective Date (unless such day is not a Business Day, in which case such deadline shall be the next Business Day thereafter), and for Claims or amendments to existing Claims or Interests which are Filed after the Confirmation Date, the later of that day which is 90 days after the Effective Date (unless such day is not a Business Day, in which case such deadline shall be the next Business Day thereafter) or that day which is 60 days after the filing of such Claim, Interest or post-Confirmation Date amendment (unless such day is not a Business Day, in which case such deadline shall be the next Business Day thereafter), as the same may be from time to time extended by the Court, upon Motion of Debtor without further notice to parties in interest or hearing.

1.25. **"Class"** means a category of Claimholders or Intersthoders described in Article III of this Plan.

1.26. **"Confirmation Date"** shall mean the date on which the Court enters the Confirmation Order.

1.27. **"Confirmation Hearing"** means the hearing before the Bankruptcy Court held under section 1128 of the Bankruptcy Code to consider confirmation of this Plan and related matters, as such hearing may be adjourned or continued from time to time.

1.28. **"Confirmation Order"** shall mean the Final Order entered by the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.29. **"Court"** shall mean the Bankruptcy Court and any court having jurisdiction to hear appeals from any such court.

1.30. **"Creditor"** shall have the meaning ascribed to it in section 101(10) of the Bankruptcy Code.

1.31. **"Creditors' Committee"** means the Official Committee of Unsecured Creditors in this Case.

1.32. **"Creditors' Trust"** means a trust to be created by the Creditors' Committee for the purpose of (a) receiving payments to be made under Section 5.8 hereof, and then disbursing such payments, Pro Rata, to appropriate persons under this Plan; and (b) commencing and pursuing Objections to Unsecured Claims after the Effective Date. The Creditors' Trust itself will be substantially in the form described in Exhibit 10.2 hereto.

1.33. **"Creditors' Trust Note"** means the \$2.0 Million Note to the Creditors' Trust as more fully described in section 5.8 hereof.

1.34. **"Cure"** means the payment or other honor of all obligations required to be paid or honored in connection with assumption of an executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, including (a) the cure of any non-monetary defaults to the extent required, if at all, pursuant to section 365 of the Bankruptcy Code, and (b) with respect to monetary defaults, the distribution within a reasonable period of time following the Effective Date of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption (or assumption and assignment) of an executory contract or unexpired lease, pursuant to section 365(b) of the Bankruptcy Code, in an amount equal to the unpaid monetary obligations or such other amount as may be ordered by the Court or agreed upon by the parties, under such executory contract or unexpired lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law.

1.35. **"Cure Amount Claim"** has the meaning ascribed to it in Article 8.3 of this Plan.

1.36. **"Cure Amount Notice"** has the meaning ascribed to it in Article 8.3 of this Plan and the Solicitation Procedures Order.

1.37. **"Cure Claim Submission Deadline"** has the meaning ascribed to it in Article 8.3 of this Plan.

1.38. **"Debtor"** shall mean Akron Thermal, Limited Partnership in its corporate capacity and as a debtor and debtor-in-possession in the Case.

1.39. **"Disallowed Claim"** means (a) a Claim, or any portion thereof, that has been disallowed by a Final Order or a settlement, (b) a Claim or any portion thereof that is Scheduled at zero or as contingent, disputed, or unliquidated and as to which a proof of claim bar date has

been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law, or (c) a Claim or any portion thereof that is not Scheduled and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

**1.40. "Disallowed Interest"** means an Interest or any portion thereof that has been disallowed by a Final Order or a settlement.

**1.41. "Disbursing Agent"** means the Creditors' Trust, or a Person designated by it, in its sole discretion, to serve as a disbursing agent under this Plan.

**1.42. "Disclosure Statement"** shall mean the First Amended Disclosure Statement for Second Amended Plan of Reorganization of Akron Thermal, Limited Partnership Dated July 14, 2008, as may hereafter be amended or modified from time to time, all as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017.

**1.43. "Disputed Claim" or "Disputed Interest"** means a Claim (or any portion thereof) or an Interest (or any portion thereof) that is not an Allowed Claim or Interest and an objection to the Claim or Interest has been filed by a party in interest.

**1.44. "Distribution Date"** shall mean, individually and collectively, the date or dates upon which distributions under this Plan shall be made.

**1.45. "EBITDA"** means Earnings Before Interest, Taxes, Depreciation, and Amortization, pursuant to generally accepted accounting principles.

**1.46. "Effective Date"** shall mean, unless waived or advanced by the Debtor, a day selected by Debtor in Debtor's sole discretion, which shall not be later than sixty (60) days after the Confirmation Order becomes a final, non-appealable order.

**1.47. "Estate"** shall mean the bankruptcy estate of Debtor created upon commencement of the Case pursuant to section 541 of the Bankruptcy Code.

**1.48. "Exhibit"** means an exhibit annexed either to this Plan or to the Disclosure Statement.

**1.49. "Exhibit Filing Date"** means the date on which Exhibits to this Plan or the Disclosure Statement shall be filed with the Bankruptcy Court, which date shall be at least twenty (20) days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice.

**1.50. "Face Amount"** means, (a) when used in reference to a Disputed or Disallowed Claim, the full stated liquidated amount claimed by the holder of a Claim in any proof of claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of

the Bankruptcy Court or other applicable bankruptcy law and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

1.51. **"Final Order"** means an order or judgment, the operation or effect of which has not been stayed, reversed or amended and as to which order or judgment (or any revision, modification or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending.

1.52. **"General Governmental Entity Bar Date"** means the deadline as may be fixed in the Case for the filing of a proof of claim by a governmental unit pursuant to section 502(b)(9) of the Bankruptcy Code. For governmental claims arising prior to the Petition Date, the General Governmental Entity Bar Date was December 17, 2007.

1.53. **"Holdback Amount"** means the amounts withheld by the Debtors as of the Confirmation Date as a holdback on payment of Professional Claims pursuant to the Professional Fee Orders.

1.54. **"Impaired"** refers to any Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.55. **"Intercompany Claim"** means a Claim by Debtor against an Affiliate of Debtor or a claim by an Affiliate of Debtor against the Debtor.

1.56. **"Intercompany Executory Contract"** means an executory contract solely between Debtor and one or more non-Debtor Affiliates.

1.57. **"Intercompany Unexpired Lease"** means an unexpired lease solely between Debtor and one or more non-Debtor Affiliates.

1.58. **"Interest"** means the legal, equitable, contractual and other rights of any person with respect any partnership interest, or any other ownership interest in the Debtor, or any warrants, options or other rights granted or otherwise agreed to by the Debtor providing for its issuance of any such partnership interest or ownership interests.

1.59. **"Interestholder"** means a holder of an Interest.

1.60. **"Lease"** means the Operating Lease Agreement between the Debtor and the City of Akron dated August 15, 1997, as amended from time to time.

1.61. **"Lease Cure"** means the amount which is required to cure all defaults under the Lease.

1.62. **"Opportunity Parkway"** means Opportunity Parkway, LLC, the general partner of Debtor.



**1.63. "Ordinary Course Liabilities"** shall mean any Administrative Claim incurred under section 503(b) of the Bankruptcy Code by the Debtor in the ordinary course of its business, exclusive of any post-petition tax claims.

**1.64. "Person"** means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental unit (as defined in section 101(27) of the Bankruptcy Code), the Creditors' Committee or other entity.

**1.65. "Petition Date"** shall mean June 18, 2007, the date Debtor filed the Case.

**1.66. "Plan"** shall mean this Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership Dated July 14, 2008, as may hereafter be amended or modified from time to time.

**1.67. "Postpetition Tax Claim"** means any Claim for a tax incurred by the Estate.

**1.68. "Priority Tax Claim"** means any claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

**1.69. "Priority Unsecured Claim"** shall mean any Claim, other than a Claim for Administrative Expense or Priority Tax Claim, entitled to priority under section 507(a) of the Bankruptcy Code.

**1.70. "Professional"** shall mean any and all attorneys, accountants, appraisers, consultants, and other persons retained by or on behalf of Debtor and/or the Estate pursuant to Final Order of the Court.

**1.71. "Professional Claim"** means an Administrative Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses or other charges and disbursements incurred relating to services rendered or expenses incurred after the Petition Date and prior to and including the Effective Date.

**1.72. "Professional Fee Orders"** means the Orders entered by the Bankruptcy Court authorizing the interim payment of Professional Claims subject to the Holdback Amount.

**1.73. "Pro Rata"** means, (a) with respect to Claims, at any time, the proportion that the Face Amount of a Claim in a particular Class or Classes bears to the aggregate Face Amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) in such Class or Classes, unless this Plan provides otherwise and (b) with respect to Interests, at any time, the proportion that the number of Interests held by a certain Interest holder in a particular Class or Classes bears to the aggregate number of all Interests (including Disputed Interests, but excluding Disallowed Interests) in such Class or Classes.

**1.74. "Reinstated" or "Reinstatement"** means (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the holder of a Claim so as to leave such Claim unimpaired in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the holder of a

Claim to demand or receive accelerated payment of such Claim after the occurrence of a default (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code; (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the holder of a Claim for any damages incurred as a result of any reasonable reliance by such holder of a Claim on such contractual provision or such applicable law; and (iv) not otherwise altering the legal, equitable or contractual rights to which such Claim entitles the holder of a Claim; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation; and affirmative covenants regarding corporate existence prohibiting certain transactions or actions contemplated by this Plan, or conditioning such transactions or actions on certain factors, shall not be required to be cured or reinstated to achieve Reinstatement.

**1.75. "Released Parties"** means, collectively, (a) all officers of the Debtor, all partners of Debtor (including Opportunity Parkway and TVII), and all employees of the Debtor, in each case in their respective capacities as of the date of the commencement of the hearing on the Disclosure Statement, (b) the Creditors' Committee and all current and former members of the Creditors' Committee in their respective capacities as such (but not in their individual capacities), (c) ATC, (d) all Professionals, and (e) with respect to each of the above-named Persons, such Person's affiliates, advisors, principals, employees, agents, officers, directors, representatives, financial advisors, attorneys, accountants, investment bankers, consultants, agents and other representatives and professionals.

**1.76. "Reorganized Debtor"** means the Debtor following the Effective Date. Debtor will not be deemed to have terminated as a result of the Case, the Plan or any other matter in the Case, but will continue on as the Reorganized Debtor.

**1.77. "Retained Actions"** means all Claims, Causes of Action, rights of action, suits, and proceedings, whether in law or in equity, whether known or unknown, which the Debtor or the Debtor's Estate may hold against any Person, including, without limitation, Claims and Causes of Action brought prior to the Effective Date or identified in the Schedules, other than Claims explicitly released under this Plan or by Final Order of the Bankruptcy Court prior to the date hereof. A non-exclusive list of Retained Actions is attached hereto as Exhibit 7.7.

**1.78. "Scheduled"** refers to a Claim or Interest that is listed on the Debtor's Schedules.

**1.79. "Schedules"** shall mean the schedules filed by Debtor with the Court pursuant to Bankruptcy Rule 1007, as may be modified or amended.

**1.80. "Secured Claim"** means a Claim that is secured by a security interest in or lien on property in which the Estate has an interest or that is subject to setoff or recoupment under section 553 of the Bankruptcy Code, to the extent of the value, as of the Effective Date or such other date as is established by the Court or this Plan, of the interest of the holder of such Claim in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined by a Final Order of the Court pursuant to section 506(a) of the Bankruptcy Code or in the case of setoff, pursuant to section 553 of the Bankruptcy Code, or as

otherwise agreed in writing by the Debtor or the Reorganized Debtor and the holder of such Claim.

**1.81. "State of Ohio"** means the State of Ohio and all of its departments, divisions and agencies except the University of Akron.

**1.82. "State of Ohio Note"** means the \$1.35 million promissory note to the State of Ohio described in section 5.6 herein.

**1.83. "Substantial Consummation"** shall have the meaning ascribed to it in section 1101(2) of the Bankruptcy Code.

**1.84. "Summit County"** means Summit County, Ohio, and its divisions, agencies, elected officials, officers, employees and agents.

**1.85. "Thermal Ventures, Inc."** means Thermal Ventures, Inc., its employees, officers, directors and agents.

**1.86. "TVII"** means Thermal Ventures II, L.P., the majority limited partner of Debtor and the sole owner of Opportunity Parkway and ATC, and its partners, employees, officers, directors and agents.

**1.87. "Trust Assets"** means all of the Debtor's right, title and interest in an to the following assets to be transferred, assigned, conveyed and delivered to the Trust pursuant to the Plan: (i) the Creditors' Trust Note; and (ii) all assets that holders of Allowed Class 3.2 Claims are entitled to receive under the Plan.

**1.88. "Trust Funding Payments"** means the periodic payments to be made by the Reorganized Debtor, established pursuant to a budget agreed upon by the Trustee and the Reorganized Debtor, to fund the administration of the Trust pursuant to the terms of the Plan.

**1.89. "Unclassified Claims"** shall mean those Claims described in Article II of the Plan.

**1.90. "Unimpaired"** refers to any Claim or Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

**1.91. "United States Trustee"** means the Office of the United States Trustee for Region IX.

**1.92. "University of Akron"** means The University of Akron, and its employees, agents and representatives.

**1.93. "Unsecured Claim"** shall mean any Claim that is neither secured by property of the Estate nor entitled to priority under section 507 or any other applicable provision of the Bankruptcy Code.

**1.94. "Voting Deadline"** means August 22, 2008.

**C. Rules of Interpretation.**

For purpose of this Plan, unless otherwise provided herein, (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) each pronoun stated in the masculine, feminine, and neuter includes the masculine, feminine and neuter; (c) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified, or supplemented pursuant to this Plan; (d) any reference to an entity as a holder of a Claim or Interest includes that entity's successors and assigns; (e) all references in this Plan to Sections, Articles, and Exhibits are references to Sections, Articles, and Exhibits of or to this Plan; (f) the words "herein," "hereunder," and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (h) subject to the provisions of any contract, certificates of incorporation, by-laws, instrument, release, or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; and (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

This Plan is the product of extensive discussions and negotiations between and among the Debtor, the Creditors' Committee, and certain other creditors and constituencies. Each of the foregoing was represented by counsel, who either (a) participated in the formulation and documentation of, or (b) was afforded the opportunity to review and provide comments on, this Plan and the documents ancillary thereto. Accordingly, the general rule of contract construction known as "contra preferentem" (construction of terms against the author of a document) shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, or any contract, instrument, release, indenture, exhibit, or other agreement or document generated in connection herewith.

**D. Computation of Time.**

In computing any period of time prescribed or allowed by this Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

**E. References to Monetary Figures.**

All references in this Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

**F. Exhibits.**

All Exhibits are incorporated into and are a part of this Plan as if set forth in full herein and, to the extent not annexed hereto, such Exhibits shall be filed with the Bankruptcy Court on or before the Exhibit Filing Date. After the Exhibit Filing Date, copies of Exhibits may be obtained upon written request to Schottenstein, Zox & Dunn Co., LPA, Attn: Daniel R. Swetnam, 250 West Street, Suite 700, Columbus, Ohio 43215, counsel to the Debtor, or by access to the Court's ECF filing system. To the extent any Exhibit is inconsistent with the terms of this Plan and unless otherwise provided for in the Confirmation Order, the terms of the

Exhibit shall control as to the transactions contemplated thereby and the terms of this Plan shall control as to any Plan provision that may be required under the Exhibit.

## **ARTICLE II**

### **UNCLASSIFIED CLAIMS – ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS**

#### **2.1. Administrative Claims.**

**2.1.1. Treatment Generally.** Subject to the Bar Date provisions described herein, each holder of an Allowed Administrative Claim will receive Cash equal to the amount of such Allowed Administrative Claim (unless otherwise agreed to by the holders of any such Claims) on the later of (i) thirty (30) days after the Effective Date, (ii) the date on which such Administrative Claim becomes due and payable pursuant to the agreement on which such Claim is based, and (iii) thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order.

**2.1.2. Professional Claims.** All holders of Professional Claims must File and serve on the Debtor, the Reorganized Debtor, the Creditors' Committee and the United States Trustee an application for final allowance of such Professional Claim no later than sixty (60) days after the Effective Date (the "Administrative Expense Bar Date") for services rendered through the Effective Date. Any Professional or other party asserting a Professional Claim must file and serve an application within the time set forth in this paragraph or be forever barred from asserting a Professional Claim against the Debtor, Reorganized Debtor or their respective property.

**2.1.3. Ordinary Course Liability Claims.** Holders of Ordinary Course Liability Claims are not required to file any request for payment of such Claims. Ordinary Course Liability Claims shall be paid by the Reorganized Debtor in accordance with the terms and conditions of the particular transactions and any agreements relating thereto.

**2.1.4. Postpetition Tax Claims.** Holders of Postpetition Tax Claims must serve on the Reorganized Debtor a request for payment of such Claims on or before the later of (i) sixty (60) days after the Effective Date and (ii) one hundred-twenty (120) days after the filing of the tax return for the taxes which form the basis of the applicable Postpetition Tax Claims with the applicable governmental agency. Objections to requests for payment of Postpetition Tax Claims must be filed and served on the applicant, no later than sixty (60) days after the date such request for payment is filed; provided, however, that the Court may extend the deadline set forth above upon motion of the Reorganized Debtor without notice or hearing.

**2.1.5. Other Administrative Claims.** All other requests for payment of an Administrative Claim (other than as set forth in Sections 2.1.2, 2.1.3 and 2.1.4 herein), including any request under 11 U.S.C. § 503(b)(9), must be filed with the Court and served upon the Reorganized Debtor and the Committee no later than 45 days after the Effective Date. Any request for payment of an Administrative Claim pursuant to this Section 2.1.5 that is not timely filed and served shall be disallowed automatically without the need for any objection from the

Debtor or the Reorganized Debtor. The Reorganized Debtor may settle an Administrative Claim without further Bankruptcy Court approval. Unless the Debtor or the Reorganized Debtor objects to an Administrative Claim within 60 days after the Administrative Claims Bar Date (unless such objection period is extended by the Bankruptcy Court), such Administrative Claim shall be deemed allowed in the amount requested. In the event that the Debtor or the Reorganized Debtor objects to an Administrative Claim, the Bankruptcy Court shall determine the allowed amount of such Administrative Claim. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Ordinary Course Liability Claim.

**2.1.6. Priority Tax Claims Other Than the State of Ohio.** Except as set forth in Article III below with respect to the State of Ohio, unless otherwise agreed in writing with the Reorganized Debtor, each holder of an Allowed Priority Tax Claim (other than the State of Ohio) shall receive full payment on account of such Priority Tax Claim, plus post-Effective Date interest at the applicable federal rate as prescribed pursuant to 28 U.S.C. § 1961 and in effect on the Effective Date, in accordance with Bankruptcy Code section 1129(a)(9)(C); provided, however, that no holder of a Priority Tax Claim shall be entitled to interest on account of any delay in payment caused by a timely, good faith objection to such Priority Tax Claim or any litigation, settlement or other resolution of such Disputed Priority Tax Claim. Interest on a Disputed Priority Tax Claim may only accrue from the date on which such Claim becomes an Allowed Claim pursuant to a Final Order of the Bankruptcy Court. Except as set forth in Article III below with respect to the State of Ohio, Debtor shall pay 100% of Allowed Priority Tax Claims, with applicable interest, in four equal annual installments of principal, plus simple interest at the applicable federal rate as prescribed pursuant to 28 U.S.C. § 1961 accruing from the Effective Date at the above-stated rate on the unpaid portion of the applicable Priority Tax Claim. The first such payment shall be payable on the later of (i) June 18, 2009; (ii) thirty (30) days after the date on which an order allowing the applicable Priority Tax Claim becomes a Final Order; or (iii) such other time as may be agreed upon by the holder of the applicable Priority Tax Claim and the Debtor or Reorganized Debtor, as appropriate. The three remaining payments will be no later than the later of (i) thirty (30) days after the date on which an order allowing the applicable Priority Tax Claim becomes a final order; (ii) June 18, 2010, June 18, 2011 and June 18, 2012; or (iii) such other time as may be agreed upon by the holder of the applicable Priority Tax Claim and the Reorganized Debtor. The Debtor or the Reorganized Debtor shall have the right to pay, in part or in full, any portion of an Allowed Priority Tax Claim at any time on or after the Effective Date without premium or penalty.

### **ARTICLE III**

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

All allowed Claims and Interests are placed in the classes set forth below, or, where applicable, are Unclassified Claims as discussed in Article II of this Plan. Unless expressly provided otherwise, an Allowed Claim that is properly included in more than one class is in a class to the extent it meets the description of such class and is in a different class to the extent it meets the description of such different class.

3.1. **Class 1.1:** The Allowed Secured Claim of Summit County for Public Utilities Personal Property Tax.

3.2. **Class 1.2:** The Allowed Secured Claim of the University of Akron.

3.3. **Class 1.3:** The Allowed Secured Claim of TVII.

3.4. **Class 1.4:** Any other Allowed Secured Claim.

3.5. **Class 2.1:** The Allowed Priority Tax Claims of the State of Ohio with respect to all taxes and assessments including, but not limited to Gross Receipts Tax, Use Tax, Ohio Consumer's Counsel, Bureau of Workers Compensation tax and Ohio Department of Transportation.

3.6. **Class 2.2:** The Allowed Priority Unsecured Claims (other than Priority Tax Claims).

3.7. **Class 3.1:** The Allowed Claims of Creditors holding general unsecured, non-priority claims against Debtor (including any deficiency claim) not included in any other class which claims do not exceed Five Thousand dollars (\$5,000.00).

3.8. **Class 3.2:** The Allowed Claims of Creditors holding general, unsecured, non-priority claims against Debtor (including any deficiency claim) not included in any other class which claims are equal to or greater than Five Thousand and 01/100 dollars (\$5,000.01).

3.9. **Class 3.3:** The Allowed Claims of Creditors for any fine, penalty or forfeiture, or for multiple, exemplary or punitive damages to the extent that such are not compensation for actual pecuniary loss, as defined in section 726(a)(4) of the Bankruptcy Code.

3.10. **Class 4:** The Interests in Debtor.

#### ARTICLE IV

#### **IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS IMPAIRED AND UNIMPAIRED UNDER THE PLAN**

4.1. **Classes of Claims That Are Unimpaired.** The following Classes of Claims are unimpaired by the Plan:

Classes 1.4 and 2.2.

4.2. **Impaired Classes of Claims and Interests.** The following Classes of Claims are impaired by the Plan:

Classes 1.1, 1.2, 1.3, 2.1, 3.1, 3.2, 3.3 and 4.

## ARTICLE V

### TREATMENT OF CLAIMS AND INTERESTS

Allowed Claims in the following classes shall receive the treatment set forth in this Article V in complete satisfaction of all such Allowed Claims. The treatment of Claims and Interests in this Article V represents a compromise and full and final settlement of the various Claims and Interests of parties in interest in the Case pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

**5.1. Class 1.1:** For amounts due before September 28, 2006, Debtor and Reorganized Debtor will pay the claim in accordance with a letter agreement dated November 22, 2006, without interest. A copy of the letter agreement is attached hereto as Exhibit 5.1. For amounts due from September 28, 2006 through the Petition Date (that are not otherwise paid as Priority Tax Claims under class 2.2), Debtor will pay the amount due for that period in four annual installments beginning June 18, 2009.

**5.2. Class 1.2:** Debtor objects to the Secured Claim of the University of Akron, and does not believe it has a valid Secured Claim. If it is ultimately determined that the University of Akron has an Allowed Secured Claim, such Secured Claim will be paid by issuance of a credit for the amount of the Secured Claim which will be applied in twelve equal monthly amounts to the monthly bills to the University of Akron for the contract year next succeeding the Effective Date or as otherwise mutually agreed.

**5.3. Class 1.3:** TVII will waive its Pre-Petition Claims against the Debtor, except TVII will retain a Secured Claim of Seventy Five Thousand and 00/100 dollars (\$75,000) which will be subordinate to the claims set forth in Classes 2.1 and 3.2 herein. The Seventy Five Thousand and 00/100 dollars (\$75,000) Secured Claim will be secured by the same collateral described in the financing statement filed June 18, 2007 in favor of TVII, but will be junior to the lien granted to secure the Creditors' Trust Note.

**5.4. Class 1.4:** Debtor does not believe there are any other valid Secured Claims. If there are any such Claims, then each holder of an Allowed Secured Claim in Class 1.4 shall be treated as though it compromised a separate Class hereunder. In complete satisfaction of such Claims, at the option of the Debtor, each holder of an Allowed Secured Claim in Class 1.4 on the later to occur of: (i) the Effective Date or (ii) 30 days after the date upon which the such Secured Claim is Allowed or as soon thereafter as it is practicable, shall be entitled to receive one of the following treatments: (a) the payment to such holder of sale or disposition proceeds of the property securing such holder's Allowed Secured Claim to the extent of the value of its interest in such property, less the costs and expenses of disposing of such property; (b) the surrender and delivery to such holder of the property that secures such holder's Allowed Secured Claim; or (c) such other treatment as may be agreed by Reorganized Debtor and the holder of such Secured Claim. Each holder of an Allowed Secured Claim in Class 1.4 shall retain the Liens securing such claim as of the Confirmation Date until all Distributions have been made to such holder as provided in the



**5.5. Class 2.1:** The State of Ohio will be paid a total sum of \$1,500,000 on its Priority Claim, with respect to all taxes and assessments including, but not limited to matters related to Gross Receipts Tax, Use Tax, Ohio Consumer's Counsel, Bureau of Workers' Compensation and Ohio Department of Transportation. The State of Ohio will be paid \$150,000 on the Effective Date and the remainder will be pursuant to a Note in the amount of \$1,350,000. The Note will be substantially in the form attached hereto as Exhibit 5.5, and will bear interest at the rate of 5% per annum. The Note will be paid in eight (8) equal installments with the first payment due eighteen months after the Effective Date and the remaining payments due every six months thereafter until paid in full. All remaining Claims of the State of Ohio will be included as general unsecured claims under Class 3.2 herein.

**5.6. Class 2.2:** Allowed Priority Unsecured Claims will be paid in four annual installments beginning June 18, 2009, with interest at the rate prescribed in 28 U.S.C. § 1961 from and after the Effective Date. Each annual payment thereafter (June 18, 2010, June 18, 2011 and June 18, 2012) will be one-fourth of the principal of any Allowed Priority Unsecured Claim plus accrued interest through that date, with interest commencing at the Effective Date.

**5.7. Class 3.1:** Debtor will distribute such sum as shall constitute a total of ten percent (10%), without interest, on each Class 3.1 Allowed Claim. The payment will be a single payment to be made on the later of (i) 90 days after the Effective Date, or, (ii) if an objection to a Claim has been filed, within 30 days after a Final Order allowing such Claim. The maximum amount payable on any Class 3.1 Allowed Claim shall be Five Hundred dollars (\$500.00).

**5.8. Class 3.2:** Payments to the holders of Claims in Class 3.2 will be as follows:

**5.8.1. Promissory Note.** Debtor will execute a Creditors' Trust Note in favor of the Creditors' Trust in the principal amount of Two Million and 00/100 Dollars (\$2,000,000), less the amount actually paid to holders of Claims in Class 3.1 above. The Creditors' Trust Note will be substantially in the form attached hereto as Exhibit 5.8. The Creditors' Trust Note will be secured by a first priority lien upon all of Reorganized Debtor's assets (subject only to any purchase money security interest incurred in connection with any equipment installed in connection with any resolution with the United States Environmental Protection Agency). The Creditors' Trust Note will bear interest at the rate of 5% per annum and will be paid in eight (8) equal installments with the first payment to be made eighteen (18) months after the Effective Date. Reorganized Debtor will have the right to defer the first scheduled payment for six months, but if it does so, interest on the second year will be at the rate of 7% per annum, as more fully described in the Creditors' Trust Note. The lien securing the Creditors' Trust Note will be subordinate to any purchase money security interest issued in connection with a resolution of the Notice of Violation for Boiler 32. The Creditors' Trust will pay to holders of Class 3.2 Claims a Pro Rata Share of the payments on this Creditors' Trust Note, within thirty (30) days after the payments by Reorganized Debtor on such Creditors' Trust Note. The Creditors' Trust will be responsible for disbursing funds to Allowed Class 3.2 Claims. A Class 3.2 Creditor may elect to be treated under Class 3.1, but will receive no more than Five Hundred and 00/100 Dollars (\$500.00).

**5.8.2. Earnings Enhancement Payments.** In addition to the payments under section 5.8.1 above, if Reorganized Debtor earns over \$2.5 million in EBITDA for any six consecutive trailing twelve month periods, with the first such twelve month period commencing any time on or after the first day of the calendar month following the Effective Date, then, commencing on the close of such sixth twelve month period and annually thereafter, for so long as the then trailing twelve month EBITDA continues to exceed \$2.5 million, and until the Creditors' Trust Note is paid in full, Reorganized Debtor will pay the Creditors' Trust an amount equal to 25% of the amount of the EBITDA in excess of \$2.5 million for each such twelve month period.

In addition, in the event that payments were no longer to be made pursuant to the terms of the preceding paragraph because in a particular trailing twelve month period EBITDA failed to exceed \$2.5 million, then as soon thereafter as EBITDA for any subsequent trailing twelve month period (calculated at the end of each month after such failure) exceeds \$2.5 million, such payments would recommence and continue in accordance with the provisions of the preceding paragraph. At any time thereafter that payments were no longer to be made because in a particular trailing twelve month period EBITDA failed to exceed \$2.5 million, then until the Creditors' Trust Note is paid in full, the procedure of subsequent retesting set forth in this paragraph would continue.

**5.8.3. Coal Gasification.** In addition to the payments under sections 5.8.1 and 5.8.2, if Reorganized Debtor successfully implements a coal gasification project at any time prior to final payment on the Creditors' Trust Note, then Reorganized Debtor will pay the Creditors' Trust the sum of \$250,000 per year on each anniversary of the final completion of such project (or Pro Rata for any part of any such year) that ends on or prior to the final payment of the Creditors' Trust Note.

**5.9. Class 3.3:** Class 3.3 is impaired. Holders of Allowed Claims in Class 3.3 will not receive any distribution under the Plan. Further, and to the extent needed, Debtor, Reorganized Debtor and the Creditors' Trust may seek to subordinate claims which would otherwise be included in Class 3.3 to the claims in Class 3.2.

**5.10. Class 4:** Class 4 is impaired. The Interests in Debtor of Mr. Bees and Mr. Mullen will be extinguished. The Interests in Debtor of Opportunity Parkway and TVII remain intact, with Opportunity Parkway remaining the general partner and 1% owner, and TVII the limited partner and 99% owner of the Reorganized Debtor. As consideration for their Interests as sole partners of the Reorganized Debtor, TVII will contribute the items described in Section 7.1 below to the Reorganized Debtor.

## ARTICLE VI

### **ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE IMPAIRED CLASSES OF CLAIMS OR INTERESTS**

6.1. **Impaired Class of Claims Entitled to Vote.** Except as otherwise provided in order(s) of the Bankruptcy Court pertaining to solicitation of votes on this Plan and Article 6.2 and Article 6.4 of this Plan, holders of Allowed Claims and Interests in each Impaired Class are entitled to vote in their respective classes as a class to accept or reject this Plan.

6.2. **Classes Deemed to Accept The Plan.** Classes 1.4 and 2.2 are Unimpaired by this Plan. Pursuant to section 1126(f) of the Bankruptcy Code, such Classes are conclusively presumed to have accepted this Plan, and the votes of holders of Claims and Interest in such Classes therefore shall not be solicited.

6.3. **Acceptance by Impaired Classes.** Classes 1.1, 1.2, 1.3, 2.1, 3.1 and 3.2 are Impaired under this Plan. Pursuant to section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the Plan is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan. Pursuant to section 1126(d) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Interests has accepted the Plan if the Plan is accepted by at least two-thirds of the Allowed Interests of such Class that have timely and properly voted to accept or reject the Plan.

6.4. **Classes Deemed to Reject the Plan.** Holders of Claims in Class 3.3 and Interests in Class 4 are not entitled to receive any distribution under the Plan on account of their Claims or Interests. Pursuant to Section 1126(g) of the Bankruptcy Code, each holder of such Class is presumed to have rejected the Plan, and the votes of holders of Claims in Class 3.3 and Interests in Class 4 therefore shall not be solicited.

6.5. **Confirmation Pursuant to Section 1129(b) of The Bankruptcy Code.** The Debtor shall request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code.

## ARTICLE VII

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

7.1. **Funding of the Plan.** The Plan will be funded in the following manner.

7.1.1. **Equity Infusion.** On the Effective Date, TVII will contribute the sum of Two Million Dollars (\$2,000,000) to the Reorganized Debtor as an equity infusion.

7.1.2. **Line of Credit.** On the Effective Date, TVII will provide an unsecured line of credit to the Reorganized Debtor in the amount of One Million Dollars (\$1,000,000.00).

The parties will execute a Loan Agreement and Promissory Note substantially in the form attached hereto as Exhibit 7.1. This line of credit will expire on the earlier of (i) the date upon which the Creditors' Trust Note and State of Ohio Note are paid in full; (ii) an Event of Default as defined in Article V of the Loan Agreement attached hereto as Exhibit 7.1; (iii) the first day following a period of 30 consecutive days in each of which the Reorganized Debtor had a cash balance equal to or greater than \$1,000,000; or (iv) the date upon which Reorganized Debtor obtains a replacement line of credit from another source in an amount equal to the aggregate amount of the then existing line of credit. The amount of the credit facility will be reduced if, and to the extent, (x) ATLP receives cash as a result of prevailing in three collection actions pending before the Court (and listed in Exhibit 7.7 hereto) and (y) ATLP receives cash or credit for post-petition overpayments, as a result of prevailing in the pending action before the Court relating to the amount of the sewer credit.

**7.1.3. Tax Distributions.** TVII and its partners will apply operating losses they hold on their books unrelated to Debtor to offset any cancellation of indebtedness income which may arise as a result of the Plan (subject to applicable limitations under the Internal Revenue Code and Treasury Regulations). In addition, TVII and its partners will apply up to Ten Million Dollars (\$10,000,000) of net operating loss carryforwards they hold from sources other than ATLP to offset future taxable income generated by ATLP (subject to applicable limitations under the Internal Revenue Code and Treasury Regulations) until the earlier to occur of (i) December 31, 2013; or (ii) the date on which all debt issued under the Plan has been repaid in full. TVII and Opportunity Parkway will forego the receipt of two-thirds (2/3) (but will receive the other one-third (1/3)) of the tax distributions otherwise payable to TVII and its partners pursuant to the ATLP Partnership Agreement in respect of future taxable income generated by the Reorganized Debtor. In the event that, and to the extent that, fixed charge coverage as described in section XIV(A)(2) of the Disclosure Statement were to fall below 1.0 in any given year, TVII has agreed to permit ATLP to defer payment of any tax distribution.

**7.1.4. Waiver of Claim.** TVII will waive its pre-petition claims against the Debtor, except that TVII will retain a claim for \$75,000 as more fully described in section 5.3 herein.

**7.1.5. Income from ATC.** TVII will contribute the earnings and income from ATC (subject to ATC's indebtedness to Sky Bank n/k/a Huntington Bank) to the Reorganized Debtor.

This funding will be used to satisfy the obligations of the Debtor in connection with the Cure of any pre-petition default under the Lease (more fully described in section 7.2 below); pay other expenses associated with the implementation of the Plan; and otherwise carry out the terms of this Plan. All remaining Cash necessary for the Reorganized Debtor to make payments pursuant to the Plan shall be obtained from the Reorganized Debtor's Cash balances, and the operation of the Reorganized Debtor.

**7.2. Payments to the City of Akron.** In a Partial Opinion on Motion of Debtor and Debtor-in-Possession for Approval of Assumption of the Unexpired Operating Lease Agreement With the City of Akron dated April 25, 2008 (the "Partial Opinion"), the Court determined, inter

alia, items which must be cured in connection with the assumption of the Lease. The payment of those items will be in the following manner.

**7.2.1. Payment Schedule.** Within ten (10) days after the Effective Date, from the funding described in section 7.1 above, the Reorganized Debtor will pay the following items to the City of Akron:

1.	Pre-Petition Lease Payments	\$986,891.25
2.	Pre-Petition Franchise Fees	93,035.37
3.	Real Estate Taxes	73,339.10
4.	1998 Amendatory Agreement	357,716.04
5.	1998 Steam Discount	24,683.86
6.	Pre-Petition Interest	<u>545,341.76</u>
<b>TOTAL</b>		<b>\$2,081,007.38</b>

**7.2.2. Other Immediate Items.** In addition to the items listed in section 7.2.1, within ten (10) days after the Effective Date, from the funding described in section 7.1 above, the Reorganized Debtor will pay the following items to the City of Akron:

1. Any real estate taxes paid by the City of Akron for tax year 2007 (which payments are due in 2008) on the real property subject to the Lease, and which were not previously paid by the Debtor to the City or directly to the taxing authority.
2. Interest at the rate specified under Ohio Rev. Code section 1343.03 from the Petition Date until the date of payment of items 1 through 5 set forth in section 7.1.1 above.
3. Interest at the rate specified under Ohio Rev. Code section 1343.03 from the date of any payment of real estate taxes described in item (1) above from the date of such payment by the City of Akron.

**7.2.3. Payments For 2005 Amendatory Agreement.** On or before the later of (a) ten (10) days after the Effective Date or (b) November 1, 2008, Reorganized Debtor will pay the following items to the City of Akron:

1.	2005 Amendatory Agreement	\$200,000.00
2.	2005 Steam Discount	<u>10,526.31</u>
<b>TOTAL</b>		<b>\$210,526.31</b>

**7.3. Continued Corporate Existence and Vesting of Assets in the Reorganized Debtor.** Debtor will not be dissolved, but will instead continue on as Reorganized Debtor. Opportunity Parkway will be the sole general partner, owning 1% of Reorganized Debtor. TVII will be the sole limited partner, owning 99% of Reorganized Debtor. Except as otherwise provided in the Plan, on and after the Effective Date, all property of the Debtor's estate, whether acquired before or after the Petition Date, shall vest in the Reorganized Debtor free and clear of

all Claims, liens, encumbrances, charges and Interests. On and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property and compromise or settle any Claims or Interests without supervision or approval of the Court and free of any restriction imposed by the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Confirmation Order. Without limiting the foregoing, the Debtor may pay the charges that it incurs on or after the Effective Date for professionals' fees and expenses, without application to the Court.

**7.4. Owners of the Debtor.** The general partner of the Reorganized Debtor will be Opportunity Parkway, which is solely owned by TVII. TVII will be the sole limited partner of the Reorganized Debtor. The general partner of TVII is Yorktown Thermal GP, Inc. On or immediately following the Effective Date, the Reorganized Debtor shall amend its Partnership Agreement to reflect the changes in ownership and other matters concerning the operations of the Reorganized Debtor. A current draft of a Second Amended Partnership Agreement is attached hereto as Exhibit 7.4.

**7.5. Employment-Related Agreements with Officers and Directors.** As of the Effective Date, the Reorganized Debtor shall have the authority to (a) enter into employment, retirement, indemnification, incentive and other agreements with its officers and employees, and (b) implement retirement income plans and welfare benefit plans for active employees. Further, Reorganized Debtor will have the right to hire or fire employees as deemed appropriate as part of its business.

**7.6. Corporate Action.** All corporate action to be taken by the Reorganized Debtor as provided by the Plan, including (i) action to implement any Distributions to be made by the Reorganized Debtor, (ii) execution of amendments to, or an amendment and restatement of, the Debtor's Third Amended Partnership Agreement, (iii) approval of employee-related agreements, (iv) approval of employee benefit plans, (v) assumption and rejection of contracts, and (vi) the designation of new officers and directors, shall be deemed to have occurred and shall be effective, authorized and approved upon entry of the Confirmation Order and without further action by the officers, directors or shareholders of the Debtor or the Reorganized Debtor.

**7.7. Avoidance Claims and Other Claims.** Subject to section 7.8 hereof, the Reorganized Debtor may prosecute any and all Avoidance Claims against any and all Persons. Any Avoidance Claim must be commenced by June 18, 2009 or will be forever barred. The Reorganized Debtor also retains all other claims and Causes of Action including, but not limited to, the claims listed on Exhibit 7.7 hereto.

**7.8. Waiver of All Claims and Causes of Action Against Directors and Officers and TVII, ATC and Opportunity Parkway.** In exchange for the contribution described in section 7.1 herein, the Debtor, the Reorganized Debtor and any representative of the Estate are hereby deemed to have waived and released any and all claims or Causes of Action (including without limitation, Avoidance Claims), against the Debtor's and the Reorganized Debtor's directors, officers, partners (including TVII and Opportunity Parkway), employees, agents, counsel, advisors and representatives (and their respective successors and assigns), as well as all claims and Causes of Action against ATC, Yorktown

**Thermal G.P., Inc., Yorktown Energy Partners IV, L.P., Yorktown Energy Partners VII, L.P., Yorktown Energy Partners, LLC, Yorktown Thermal, Inc., and their respective officers, directors, partners, employees, agents, counsel, advisors and representatives (and their assigns). All Intercompany Claims between Debtor and ATC are waived.**

**7.8.1. Transfer Taxes.** In accordance with section 1146(c) of the Bankruptcy Code, neither the Estate, the Debtor, the Reorganized Debtor nor Claimholders shall be liable for any stamp tax or similar tax on the issuance, transfer or exchange of a security, or the making or delivery of an instrument of transfer under the Plan, by or to the Estate or the Debtor or by or to the Reorganized Debtor.

**7.9. Utility Deposits.** In connection with the provision of adequate of assurance of payment under 11 U.S.C. § 366, Debtor provided deposits of \$50,000 to each of the City of Akron and Ohio Edison. Unless otherwise agreed by the parties, upon the Effective Date, those deposits may be retained by the City of Akron and Ohio Edison as security for post-Effective Date payment of utility bills by the Reorganized Debtor, provided they are placed in interest bearing accounts. As of the Effective Date, the Orders for adequate assurance of payment to the City of Akron [Docket No. 67], Ohio Edison [Docket No. 65] and the other utilities [Docket No. 64] shall terminate and all such utilities will resume normal monthly billing to the Reorganized Debtor.

## **ARTICLE VIII**

### **TREATMENT OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS**

**8.1. Executory Contracts and Unexpired Leases to be Assumed or Assumed and Assigned.** Subject to final agreement of terms and cure amounts with respect thereto, on the Effective Date, pursuant to section 365 of the Bankruptcy Code, the Debtor or the Reorganized Debtor, as appropriate, will have assumed, or will assume pursuant to the Plan, each of the executory contracts and unexpired leases listed on Exhibit 8.1 to the Plan, provided, however, that the Debtor or the Reorganized Debtor shall retain the right to amend or modify Exhibit 8.1 to the Plan, including the right to add or delete executory contracts and unexpired leases to or from Exhibit 8.1 to the Plan, through and including the Exhibit Filing Date. The Confirmation Order will constitute an order of the Bankruptcy Court approving the assumptions described herein, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date.

**8.2. Executory Contracts and Unexpired Leases to be Rejected.** With the exception of (i) those executory contracts and unexpired leases which either have been assumed or assumed and assigned by the Debtor prior to the Confirmation Date, (ii) those executory contracts and unexpired leases which are to be assumed by operation of the Plan, or (iii) those executory contracts and unexpired leases which have already been rejected pursuant to section 365 of the Bankruptcy Code, each executory contract and unexpired lease entered into by the Debtor prior to the Petition Date which has not previously expired or terminated pursuant to its own terms shall be deemed rejected by operation of this Plan pursuant to section 365 of the Bankruptcy Code. The Confirmation Order will constitute an order of the Bankruptcy Court approving the rejections described herein, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. A list of certain executory contracts and unexpired leases which are

expressly rejected is attached hereto as Exhibit 8.2, provided that Debtor shall have the right to amend Exhibit 8.2 through and including the Exhibit Filing Date.

**8.3. Cure of Defaults on Assumed Executory Contracts and Unexpired Leases and Cure Claims Bar Date.** Pursuant to section 365(b)(1) of the Bankruptcy Code, except for the cure amount related to the Lease more fully described in Article VII, any amounts which the Debtor must pay in order to cure its monetary default(s) under those executory contracts and unexpired leases which it intends to assume or assume and assign pursuant to the Plan ("Cure Payments"), shall be made by Reorganized Debtor, in Cash, on or before the later of (i) sixty (60) days after the Effective Date, (ii) sixty (60) days after entry of a final Order fixing the Cure Payments, (iii) with respect to any Budget vs. Actual Variance, as set forth in the operative contract or otherwise consistent with current practice, or (iv) on such other terms as are agreed to in writing by the parties to such executory contracts or unexpired lease. **Claims for Cure Payments arising out of the Debtor's assumption and assignment of executory contracts or unexpired leases pursuant to the Plan ("Cure Claims") must be Filed and served on the Reorganized Debtor on or before thirty (30) days after the Effective Date (the "Cure Claims Bar Date"), or else such Claims shall be forever barred.** The Cure Claims Bar Date set forth in this section does not affect any bar dates otherwise previously established by the Court for claims arising out of the assumption of executory contracts and unexpired leases. In the event of any dispute as to the assumption of an executory contract or unexpired lease, the Debtor or Reorganized Debtor, as appropriate, shall make any Cure Payment after entry of a Final Order resolving all disputes related thereto. Failure to object to the assumption may result in the Court's approval of the assumption of the executory contracts and unexpired leases listed on Exhibit 8.1 to the Plan.

**8.4. Treatment of Rejection Damages Claims and Bar Date.** Pursuant to section 502(g) of the Bankruptcy Code, any Claim for damages arising out of the rejection of any executory contract or unexpired lease by the Debtor shall be treated under the Plan as a Class 3.1 or 3.2 General Unsecured Claim. **Claims for damages arising out of the rejection of an executory contract or unexpired lease pursuant to the Plan must be Filed and served on the Reorganized Debtor on or before thirty (30) days after the date such contract or lease is rejected, or else such Claim shall be forever barred.** The bar date in this section does not affect any bar dates otherwise previously established by the Court for claims arising out of the rejection of executory contracts and unexpired leases. Debtor, Reorganized Debtor and the Creditors' Committee may object to any Claim filed pursuant to this section, and such objection will proceed as if under Article X hereof.

**8.5. Post-Filing Executory Contracts and Unexpired Leases.** Each executory contract and unexpired lease entered into by the Debtor after the Petition Date will be performed by the Reorganized Debtor according to the terms and conditions of such executory contract or unexpired lease in the ordinary course of the Reorganized Debtor's business. Each such executory contract and unexpired lease shall survive and remain unaffected by this Plan or entry of the Confirmation Order.



## ARTICLE IX

### DISTRIBUTION PROVISIONS

9.1. **Reorganized Debtor as Distribution Agent.** The Reorganized Debtor shall be responsible for all distributions other than Class 3.2.

9.2. **Creditors' Trust as Distribution Agent for Class 3.2 Claims.** After the Effective Date, the Creditors' Trust shall have responsibility for administering, disputing, objecting to, compromising, or otherwise resolving and making all distributions respecting Class 3.2 Claims required under or permitted by the Plan. The Creditors' Trust may employ or contract with any Person, including professionals, to assist in or make efficient distributions required under the Plan. The Creditors' Trust will distribute the Pro Rata payment to holders of Class 3.2 Claims within thirty (30) days of each payment made by the Reorganized Debtor under section 5.8 herein (each of the foregoing being a Distribution Date).

9.3. **Distributions Deemed Made as of the Distribution Date.** All distributions of Cash required by the Plan to be made shall be made on the dates described herein; provided, however, that Distributions shall be deemed to have been made on the Distribution Date if such Distributions are made as soon as practicable after the Distribution Date but in no event later than thirty (30) days after the Distribution Date, or such later date when applicable conditions are satisfied (such as conditions related to undeliverable distributions, payment or satisfaction of tax obligations relating to distribution of Cash, or surrender of cancelled instruments or securities).

9.4. **Cash Distribution Currency.** All Cash payments made pursuant to the Plan by the Debtor or Reorganized Debtor will be in U.S. dollars, wire transfer or by checks drawn on any domestic bank selected by the Reorganized Debtor, at the Reorganized Debtor's election.

9.5. **Delivery of Distributions.** Distributions to holders of Allowed Claims to be made by the Debtor or Reorganized Debtor will be made at the addresses set forth on the most recent proof of Claim, application for Administrative Claim, pleading, notice of appearance, written change of address notice filed and served on the Debtor. If the holder of an Allowed Claim has not filed any of the foregoing documents or written notice indicating the holder's current address, Distributions shall be made to the most recent address of the holder reflected in the applicable Schedules or, if more recent, contained in the Debtor's records. In all cases where delivery or Distribution is effected by mail, the date of delivery or Distribution shall be the date of mailing. Property delivered or distributed in accordance with this section will be deemed delivered or distributed to the holder regardless of whether such property is actually received by such holder.

9.6. **Returned Distributions.** If any distribution to a Claimholder is returned as undeliverable, no further distributions will be made to such Claimholder, and such Claimholder will not be entitled to any further distributions, unless and until the Reorganized Debtor or Creditors' Trust (as to Class 3.2 Claims) is notified in writing of such holder's correct address. If any check issued to a Claimholder in respect of a distribution remains outstanding for more than ninety (90) days following the date of such check, no further distributions will be made to such Claimholder, and such Claimholder will not be entitled to any further distributions.

Nothing contained in this Plan shall require the Reorganized Debtor or Creditors' Trust to attempt to locate any holder of an Allowed Claim.

**9.7. Unclaimed Distributions.** Notwithstanding anything in this Plan to the contrary, any holder of an undeliverable distribution who does not assert an entitlement to such distribution before twelve (12) months after the later of (i) the Effective Date, and (ii) the date of mailing of the undelivered distribution, shall have its remaining unpaid Claim discharged and shall be forever barred from asserting any such Claim against the Debtor, the Reorganized Debtor or their respective property.

**9.8. Full and Final Satisfaction.** Except as otherwise provided by this Plan, all payments and distributions by the Reorganized Debtor under the Plan shall be in full and final satisfaction, settlement, release and discharge of all Claims and Interests against the Debtor, the Reorganized Debtor, Opportunity Parkway, TVII and others as more fully described herein.

**9.9. No Post-Petition Date Interest.** No portion of any Allowed Class 1.1, 1.2, 2.1, 3.1 or 3.2 Claim shall be for interest accrued on or after the Petition Date.

**9.10. Miscellaneous Distribution Provisions.**

**9.10.1. Compliance with Tax Requirements.** The Creditors' Trust will comply with all tax withholding and reporting requirements imposed by all governmental entities with respect to Class 3.2 Claims, and all distributions pursuant to the Plan will, to the extent applicable, be subject to such withholding and reporting requirements. The Creditors' Trust shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, each entity receiving a distribution of Cash pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such distribution. No distribution pursuant to the Plan shall be made to or on behalf of such entity unless and until such entity has made arrangements satisfactory to the Reorganized Debtor or Creditors' Trust for the satisfaction and payment of such obligations. Pending the implementation of satisfactory arrangements, any distribution pursuant to the Plan shall be treated as undeliverable pursuant to Section 9.5 hereof.

**9.10.2. Setoffs.** Pursuant to section 553 of the Bankruptcy Code and applicable non-bankruptcy law, the Reorganized Debtor and Creditors' Trust may set off against any Allowed Claim or Allowed Interest and the distributions to be made thereon pursuant to the Plan, the claims, rights and causes of action of any nature that the Reorganized Debtor may have against the holder of such Allowed Claim or Allowed Interest prior to any distribution on account of such Claim or Interest. The Reorganized Debtor or Creditors' Trust's election not to exercise such setoff rights, pursuant to this provision, shall not constitute a waiver of or in any way affect such claims, rights and causes of action which the Debtor or the Reorganized Debtor may possess against the holder of the Allowed Claim or Allowed Interest. To the extent that the amount of any claim, right or cause of action of the Debtor exceeds the amount of the Allowed Claim or Allowed Interest or distribution against which it is setoff, the Reorganized Debtor

reserves its right to recover the full amount of such excess from the holder of such Allowed Claim or Allowed Interest.

**9.10.3. De Minimis Distributions.** If the amount due any holder of an Allowed Claim would result in a Distribution in an amount less than \$1, the holder of such Allowed Claim shall not receive such distribution and shall be forever barred from asserting any claim for such Claim against the Debtor, the Reorganized Debtor or their respective property.

## **ARTICLE X**

### **THE CREDITORS' TRUST**

**10.1. Formation of the Trust.** On the Effective Date, the Creditors' Trust shall be established for the purpose of (i) collecting, liquidating and administering the Trust Assets, (ii) making and filing objections to Class 3.2 Claims after the Effective Date, (iii) compromising and settling or otherwise resolving all Disputed Class 3.2 Claims after the Effective Date, and (iv) making all distributions provided for under the Plan in respect of Allowed Class 3.2 Claims.

#### **10.2. The Trustee.**

(a) The Trustee shall be appointed by the Creditors' Committee prior to the Effective Date. The Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Trust Agreement, which will be substantially in the form attached hereto as Exhibit 10.2, except to the extent that such duties, responsibilities, rights, and obligations are inconsistent with this Plan and/or the Confirmation Order.

(b) The Trustee is authorized and empowered to perform any and all acts necessary or desirable to accomplish the purposes of the Trust, on the terms provided in the Trust Agreement. Without limitation, the Trustee:

- Shall protect and enforce the rights in and to the Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;
- Shall collect all Trust Assets, including, without limitation, payments on the Creditors' Trust Note and all assets that holders of Allowed General Class 3.2 Claims are entitled to receive under the Plan;
- Shall pay all fees, costs and expenses and make all other payments relating to the Trust Assets;
- May retain and reasonably compensate (including, on a nunc pro tunc basis prior to the Effective Date) professionals, including without limitation, attorneys (any such attorneys being referred to as the "Post-Effective Date Counsel"), accountants, advisors, experts, and other professionals necessary to assist the Trustee in carrying out his duties

hereunder; provided, however, that any such compensation shall be made solely from the Trust Assets;

- Shall keep and maintain appropriate deposit accounts in the name of the Trust into which the Trustee shall deposit all Trust Assets consisting of cash or cash equivalents;
- Shall prepare and file on behalf of the Trust any and all tax information and returns and pay taxes, if any, properly payable by the Trust exclusivity out of the Trust Assets;
- Shall prepare and file on behalf of the Trust any and all tax information and returns and pay taxes, if any, properly payable by the Trust exclusivity out of the Trust Assets;
- Shall prepare and file any statements, returns or disclosures relating to the distributions under the Plan that are required by any governmental unit or applicable law;
- Shall, after the Effective Date, determine, satisfy, object to, estimate, reconcile, compromise or otherwise resolve any and all Class 3.2 Claims or liabilities created, incurred or assumed by the Debtors, and the Trustee is authorized to fully compromise claims and provide full releases without further Court authority with respect to any such Class 3.2 Claim or liability in an amount less than or equal to \$100,000; provided, however, that the Trustee shall seek Court approval with respect to any proposed compromise or resolution of any such Claim or liability in an amount greater than \$100,000;
- Shall make distributions on Allowed Class 3.2 Claims in accordance with the Plan;
- Shall issue checks on account of Allowed Class 3.2 Claims; and
- Shall take or refrain from taking any and all acts necessary or desirable to effectuate the purposes of the Trust, provided that such action is not inconsistent in any way with the Plan or Confirmation Order.

(c) The Trust is authorized, but not required, to retain Baker & Hostetler LLP as Post-Effective Date Counsel.

(d) The Trustee shall be compensated in accordance with the Trust Agreement. The Trust is authorized to compensate the Trustee, Post-Effective Date Counsel and any other professionals retained by the Trust 100% of their fees and expenses on a monthly basis, in arrears for the prior month's service.

**10.3. Resignation of Trustee.** The Trustee may resign as Trustee at any time by filing a notice of such resignation in the Case. In the event of the Trustee's resignation, the Creditors' Committee shall be reconstituted of its original members for the sole purpose of appointing a Successor Trustee, who shall fulfill all of the Trustee's remaining duties and obligations under the Trust Agreement, Plan, and Confirmation Order.

**10.4. Death or Incapacity of Trustee.** In the event that the Trustee dies or becomes physically or mentally incapacitated, the Creditors' Committee shall be reconstituted of its original members for the sole purpose of appointing a Successor Trustee, who shall fulfill all of the Trustee's remaining duties and obligations under the Trust Agreement, Plan, and Confirmation Order.

**10.5. Effective Date of Successor Trustee's Service.** The appointment of the Successor Trustee shall be effective immediately on the date on which the Successor Trustee files a notice with the Court in the Case accepting such appointment (the "Successor Effective Date").

**10.6. Terms of Service of Successor Trustee.** The Successor Trustee shall serve and be subject to each and every provision of the Trust Agreement as though the Successor Trustee was appointed as the original Trustee and without the need for any further action of the Successor Trustee or otherwise; provided, however, that upon the written request of the Successor Trustee, the predecessor Trustee shall (a) execute, acknowledge and deliver such instruments of conveyance and further assurances and do such other things as may reasonably be required for more fully and certainly vesting and confirming unto the Successor Trustee all the right, title and interest of the predecessor Trustee in and to the Trust Assets; (b) duly assign, transfer, deliver, account for and pay over to the Successor Trustee any property or money then held by such predecessor Trustee upon the trust herein expressed; and (c) deliver to the Successor Trustee any and all records, or copies thereof, in respect of the Trust. On and as of the Successor Effective Date, the predecessor Trustee shall have no further rights, duties or obligations with respect to the Trust or any parties thereto; provided, however, that nothing shall relieve the Trust of any obligations it may have with respect to compensation and indemnification as provided in the Trust Agreement.

**10.7. Plan Funding.** On the Effective Date, the Trust Assets shall automatically vest in the Trust. Upon the transfer of the assets to the Trust, the Debtor and its Estate shall have no other or further rights or obligations with respect to the Trust except as specifically set forth in this Plan. The Reorganized Debtor shall make the periodic Trust Funding Payments to the Trust, to fund the administration of the Trust in accordance with a schedule to be agreed upon by the Trustee and the Reorganized Debtor.

**10.8. Rights and Powers of the Trust.** The Trust shall have all the rights and powers set forth in the Trust Agreement, including, without limitation, the right to (i) effect all actions and execute all agreements, instruments, and other documents necessary to implement the provisions of the Plan and the Trust Agreement; (ii) collect, liquidate and administer all Trust Assets; (iii) make distributions in respect of Allowed Class 3.2 Unsecured Claims in accordance with the Plan; (iv) make and file objections to Class 3.2 Claims; (v) compromise and settle or

otherwise resolve Disputed Claims; and (vi) employ and compensate professionals and other agents, provided, however, that any such compensation shall be made solely from the Trust Assets.

**10.9. Application of Trust Assets and Other Property.** The Trustee shall apply all Trust Assets and any proceeds therefrom as follows. The Trustee shall apply all Cash and the proceeds from the disposition of other Assets compromising the Trust Assets in the order and reflecting the priorities set forth below:

FIRST, to pay, fund and satisfy all of the actual, incurred, and assumed liabilities, costs and expenses of the Trust, including, without limitation, the compensation then due and payable to the Trustee as specified herein and the reimbursement of all costs, fees, expenses and liabilities incurred or assumed by the Trustee in connection with the performance of his duties under this Agreement, including, without limitation, for its retained professionals, all to be determined by the Trustee; and

SECOND, to make the payments to holders of Allowed Class 3.2 Unsecured Claims required under the Plan in accordance with the terms and provisions of the Plan.

**10.10. No Commingling of Property.** The Trustee shall not commingle any of the Trust Assets with its own property or the property of any other Person.

**10.11. Bond.** The Trustee shall serve without bond.

**10.12. Tax Treatment.** The Trustee may pay taxes from the Trust Assets if appropriate. The Trust is intended to be treated for federal income tax purposes as a liquidating trust for the benefit of Creditors or claimants within the meaning of Treasury Regulations section 301.7701-4(d) in accordance with IRS Revenue Procedure 94-45, and, as a grantor trust under Section 677 of the Internal Revenue Code of 1986, as amended. Accordingly, the distributions to the Trust in respect of holders of Allowed Class 3.2 Claims shall be treated for all purposes of the Internal Revenue Code as (i) a transfer of such distribution to such Creditors who are the beneficiaries of the Trust; and (ii) a transfer to the Trust by the beneficiary-Creditors, who will be treated as the grantors and deemed owners of the Trust Assets. The Trustee shall be responsible for filing all federal, state and local tax returns for the Trust as a grantor trust pursuant to applicable Treasury Regulations, and any income of the Trust will be treated as subject to tax on a current basis.

**10.13. Fees and Expenses of the Trust.** Except as otherwise ordered by the Court, the amount of any fees and expenses incurred by the Trust on or after the Effective Date shall be paid in accordance with the Trust Agreement.

**10.14. Term of Trust and Trust Agreement.** The Trust Agreement shall commence as of the Effective Date and shall continue until (1) all Class 3.2 Claims are administered or otherwise resolved; and (2) all Trust Assets have been distributed in accordance with the Plan,

the Confirmation Order and the Trust Agreement. In the event that the Plan, as modified, supplemented or amended, shall not be confirmed, the Trust Agreement shall be null and void nunc pro tunc as of the date first written above. Notwithstanding anything to the contrary set forth in this Section, the Trust Agreement shall terminate automatically on the fifth anniversary of the Effective Date, unless the terms of the Trust Agreement are extended by way of a Final Order entered by the Bankruptcy Court upon notice to all Creditors holding Allowed Class 3.2 Claims.

## **ARTICLE XI**

### **RESOLUTION OF DISPUTED CLAIMS**

**11.1. Objections.** All objections to Claims or Interests must be Filed and served on the Reorganized Debtor and the holders of such Claims or Interests on or before the Claims Objection Deadline. If an objection to a proof of Claim or Interest or a Scheduled Claim or Interest that related to a Disputed Claim has not been Filed by the Claims Objection Deadline, such Claim will be treated as an Allowed Claim. The Debtor, Reorganized Debtor, Creditors' Committee or other party in interest may object to any claim or interest. After the Effective Date, only the Creditors' Trust will have the authority to File, settle, compromise, withdraw or litigate objections to Claims of Class 3.2 or any post-Confirmation Date amendments to Claims that are part of Class 3.2. Debtor and/or Reorganized Debtor may also file, litigate, compromise or withdraw an objection to the claim of the United States Environmental Protection Agency (Claim No. 49).

**11.2. Determination of Claims and Interests.** Except as otherwise agreed by the Debtor, any Claim or Interest as to which a proof of claim or proof of interest was timely filed in the Case may be determined and liquidated via litigation to judgment in the Court upon such orders, if any, as the Court may enter respecting procedures for determining the validity, priority and/or amount of any Claims or Interests.

**11.3. No Distribution on Disputed Claims.** No Distribution will be made on account of a Disputed Claim unless and until such Claim becomes an Allowed Claim. No holder of a Disputed Claim shall be entitled to interest accruing after the Effective Date.

**11.4. Cash Distribution Reserves for Disputed Claims.** The Reorganized Debtor and Creditors' Trust may reserve any amount it deems appropriate for Disputed Claims.

**11.5. Distributions on Account of Disputed Claims After They Become Allowed Claims ("Resolved Claims").** Holders of Disputed Claims ultimately entitled to distribution on the basis of the amount ultimately Allowed, shall be entitled to any Cash Distributions theretofore made, but without additional interest on account of the mere passage of time occasioned by the objection to their Claims.

**11.6. Certain Pending Litigation.** The following pending litigation matters will be handled as set forth below.

**11.6.1. Ohio Edison v. Akron Thermal, Case Nos. CV-2007-03-1708 and 1709 (Summit Cy. Common Pleas).** These actions may proceed, but any judgment rendered against Debtor will be paid out of the applicable insurance proceeds, or treated as a claim under Class 3.2 herein.

**11.6.2. John Scotford v. Carl E. Avers, et al., Case No. 2006CV4901 (Mahoning Cy. Common Pleas).** All claims against Debtor, TVII and Opportunity Parkway will be dismissed.

## **ARTICLE XII**

### **EFFECT OF CONFIRMATION**

**12.1. Revesting of Assets.** Except as otherwise explicitly provided in this Plan, on the Effective Date, all property comprising the Estate (including Retained Actions), shall revert in the Debtor as of the Effective Date, free and clear of all Claims, liens, charges, encumbrances, rights and Interests of creditors and equity security holders. As of and following the Effective Date, the Reorganized Debtor may operate its business and use, acquire, and dispose of property and settle and compromise Claims or Interests without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by this Plan and the Confirmation Order.

**12.2. Discharge of Claims, Release of Liens and Termination of Interests.** Pursuant to section 1141(d) of the Bankruptcy Code, except as provided in the Plan or Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for and in complete satisfaction, discharge and release of all Claims, liens, security interests and encumbrances in and on any property of the Estate, and termination of all Interests, including any interest accrued on Claims from the Petition Date. **Except as provided in the Plan or Confirmation Order, Confirmation shall (a) discharge the Debtor, TVII, Opportunity Parkway and ATC from all Claims or other debts that arose before the Confirmation Date, whether or not: (i) a proof of Claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (iii) the holder of a Claim based on such debt has accepted the Plan; (b) cancel and automatically release all liens, security interests and encumbrances in and on any assets of the Estate; and (c) terminate all Interests and other rights of equity security holders in the Debtor (other than the interests of Opportunity Parkway and TVII).**

As of the Confirmation Date, except as provided in the Plan or Confirmation Order, all entities shall be precluded from asserting against the Debtor, Reorganized Debtor or their property, any other or further Claims, debts, rights, causes of action, liabilities or equity interests based upon any act, omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date. In accordance with the foregoing, except as provided in the Plan or Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against the Debtor, and termination of all such Interests and other rights of equity security holders in the Debtor, pursuant to sections 524 and



1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtor at any time, to the extent that such judgment relates to a discharged Claim.

**12.3. Injunction.** Except as provided in the Plan or Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan are permanently enjoined from taking any of the following actions on account of any such discharged Claims, debts or liabilities or terminated Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Reorganized Debtor, their respective partners, officers, employees, agents, counsel, advisors and representatives; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, the Reorganized Debtor and their respective partners, officers, employees, agents, counsel, advisors and representatives, or its respective property; (c) creating, perfecting or enforcing any lien or encumbrance against the Debtor, the Reorganized Debtor and their respective partners, officers, employees, agents, counsel, advisors and representatives, or their respective property; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability, or obligation due to the Debtor or the Reorganized Debtor and their respective partners, officers, employees, agents, counsel, advisors and representatives, or their respective property; and (e) commencing or continuing any action against the Debtor, the Reorganized Debtor and their respective partners, officers, employees, agents, counsel, advisors and representatives or their respective property, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

## **ARTICLE XIII**

### **CONDITIONS PRECEDENT**

**13.1. Conditions to Confirmation.** The following are conditions precedent confirmation of this Plan that may be satisfied or waived in accordance with section 13.3 below:

- (a) The Bankruptcy Court shall have approved by a Final Order a Disclosure Statement with respect to this Plan in form and substance acceptable to Debtor.
- (b) The Confirmation Order shall be in form and substance acceptable to the Debtor.
- (c) The Bankruptcy Court has entered an Order or Orders approving Debtor's assumption of the Lease, the Franchise Ordinance No. 670-1996 dated September 16, 1996 and the license agreements described in the Motion of Debtor and Debtor-in-Possession for Approval of Assumption of Any and All License Agreements With the City of Akron and the Franchise Ordinance Ancillary to the Unexpired Operating Lease Agreement [Docket No. 208].

- (d) The Reorganized Debtor is reasonably satisfied with respect to the litigation related to the sewer credit.

**13.2. Conditions to the Effective Date.** The following are conditions precedent to the Effective Date of the Plan, each of which may be satisfied or waived in accordance with section 13.3 below:

- (a) The Confirmation Order shall have become a Final Order and no request for revocation of the Confirmation Order under section 1144 of the Code shall have been made, or if made, shall remain pending.
- (b) Any and all approvals and consents appropriate under the public utility laws of Ohio or required by the PUCO shall have been obtained.

**13.3. Waiver of Conditions Precedent.** The conditions set forth in this Plan may be waived, in whole or in part, by the Debtor by filing a written notice of such waiver with the Court. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by the Debtor in its sole discretion regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

**13.4. Effect of Failure of Conditions.** In the event that each of the conditions specified herein have not occurred or been duly waived on or before 60 days after the Confirmation Date for such Plan, or by such later date as is proposed by the Debtor and approved by the Court, after notice and a hearing upon the motion of the Debtor, or the Reorganized Debtor, the Confirmation Order for such Plan may be vacated by the Bankruptcy Court. If such Confirmation Order is so vacated, such Plan shall be null and void in all respects, and nothing contained in such Plan shall constitute a compromise, settlement, waiver or release of any Claim against, or Interest in, the Debtor or its Estate.

## **ARTICLE XIV**

### **POST-CONFIRMATION MATTERS**

**14.1. Reports.** Reorganized Debtor shall file and serve any required reports setting forth the actions taken and progress made toward consummation of the Plan until the Case is closed in accordance with the provisions of this Plan.

**14.2. U.S. Trustee Fees.** The Reorganized Debtor shall be responsible for timely payment of post confirmation quarterly fees incurred pursuant to 28 USC § 1930(a)(6). Moreover, after confirmation, the Reorganized Debtor shall file with the United States Trustee any required quarterly post-confirmation reports in the format specified by the United States Trustee for each quarter that the case remains open.

**14.3. Notice of Effective Date and Deadline Related Thereto.** Within three (3) business days after the Effective Date, the Reorganized Debtor will file and serve a Notice on all

creditors and parties in interest which identifies the Effective Date and the deadlines tied to the Effective Date.

## **ARTICLE XV**

### **RETENTION OF JURISDICTION**

**15.1. Bankruptcy Court.** After Confirmation and until entry of a Final Order under section 350 of the Bankruptcy Code, the Court shall retain and have exclusive jurisdiction and authority for all purposes as allowed under the Bankruptcy Code and other applicable law including, without limitation, proceedings that relate to:

- (i) the allowance, disallowance, reconsideration, estimation, valuation, compromise, settlement, adjustment, classification, treatment or liquidation of Claims or Administrative Expenses against the Estate and objections thereto;
- (ii) the assumption, assignment or rejection of any executory contract or unexpired lease;
- (iii) applications for allowance of compensation and reimbursement of expenses arising out of or related to the Case or any Claim or Interest;
- (iv) applications, adversary proceedings, contested matters and litigated matters, including Avoidance Claims and the claims set forth on Exhibit 7.7 hereto;
- (v) the enforcement and administration of the provisions, purposes and intent of this Plan;
- (vi) requests for payment of Claims entitled to priority under section 507(a) of the Bankruptcy Code, including compensation and reimbursement of expenses for Professionals, to the extent Court approval therefor is required under this Plan or the Confirmation Order;
- (vii) the modification of this Plan pursuant to section 1127 of the Bankruptcy Code;
- (viii) matters related to the Creditors' Trust;
- (ix) such other matters as may be provided under the Bankruptcy Code, this Plan, the Confirmation Order, or other applicable law; and
- (x) entry of a Final Order closing the Case, including final allowance of Professional fees and expenses, and provisions for injunctive relief as may be equitable, consistent with Bankruptcy Rule 3022.

Whether or not a Final Order closing this Case has been entered pursuant to section 350 of the Bankruptcy Code, following Substantial Consummation the Court shall retain concurrent jurisdiction only to correct any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order, as may be necessary to carry out the purposes and intent thereof.

**15.2. PUCO.** The PUCO will retain jurisdiction over any rate change to be requested by Debtor, and all other matters otherwise within the jurisdiction of the Public Utilities Commission of Ohio ("PUCO").

## **ARTICLE XVI**

### **MISCELLANEOUS**

**16.1. Amendment of Claims.** Subject to section 502(j) of the Bankruptcy Code, and except as otherwise provided herein, a Claim may be amended (a) prior to the Confirmation Date, only as agreed upon by the Reorganized Debtor and the holder of such Claim or as otherwise permitted by the Court, the Bankruptcy Code, Bankruptcy Rules or applicable law; or (b) after the Confirmation Date, to decrease, but not increase, the amount thereof.

**16.2. Modification or Withdrawal of Plan.** The Plan may be modified at any time before the Confirmation Date; provided, however, that such Plan, as so modified, meets the requirements of section 1127 of the Bankruptcy Code. The Plan may be modified at any time after the Confirmation Date and before Substantial Consummation, provided that such Plan, as so modified, meets the requirements of section 1127 of the Bankruptcy Code and the Court, after notice and hearing, confirms such modified Plan under section 1129 of the Code. Before or after the Confirmation Date, or in the Confirmation Order, the Reorganized Debtor may, with the approval of the Court, so long as it does not materially and adversely affect the interest of Claimants, remedy any defect or omission or reconcile any inconsistencies in the Plan, or amend the Plan in such manner as may be necessary to carry out the purposes and effect of the Plan. The Debtor reserves the right to withdraw the Plan at any time on or before the Confirmation Date.

**16.3. Successors and Assigns.** The rights, duties and obligations of any Person named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person.

**16.4. Notice.** After the Confirmation Date, any notice to be given to the Debtor or Reorganized Debtor shall be as follows:

Akron Thermal, Limited Partnership  
c/o Opportunity Parkway, LLC, General Partner  
236 North Champion Street  
Youngstown, OH 44503  
Attn: Jeffrey Bees

with a copy to:

Daniel R. Swetnam, Esq.  
Schottenstein, Zox & Dunn Co., L.P.A.  
250 West Street, Suite 700  
Columbus, OH 43215

If to the Creditors' Committee or the Creditors' Trust:

Joseph Hutchinson, Esq.  
Baker & Hostetler, LLP  
3200 National City Center  
1900 E. 9th Street  
Cleveland, OH 44114-3485

**16.5. Committee.** Effective on the Effective Date, the Creditors' Committee shall dissolve automatically, whereupon its members, professionals, and agents shall be released from any further duties and responsibilities in the Case and under the Bankruptcy Code, provided that obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Case shall remain in full force and effect according to their terms; and the Creditors' Committees may make applications for Professional Claims. The Professionals retained by the Creditors' Committee shall not be entitled to compensation and reimbursement of expenses for services rendered after the Effective Date, except for services rendered in connection with challenges to any order confirming the Plan or any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed after the Effective Date and for the other duties and responsibilities of the Creditors' Committees set forth in this Section and other services and may be requested by Debtor, and the Reorganized Debtor shall pay the fees and expenses in respect of such services in the ordinary course of business without further order of the Bankruptcy Court. **The Creditors' Committee, its members, in their capacity as members but not in their individual capacities, counsel, and financial advisor are released from any claims of Debtor and the Estate in connection with this Case and arising before the Effective Date.**

**16.6. Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Ohio shall govern the construction and implementation of this Plan, any agreements, documents, and instruments executed in connection with this Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreements shall control). Corporate governance matters shall be governed by the laws of the state of organization of the Reorganized Debtor.

**16.7. No Waiver Or Estoppel.** Upon the Effective Date, each holder of a Claim or Interest shall be deemed to have waived any right to assert that its Claim or Interest should be Allowed in a certain amount, in a certain priority, be secured, or not be subordinated by virtue of an agreement made with the Debtors and/or their counsel, the Creditors' Committee and/or its

counsel, or any other party, if such agreement was not disclosed in this Plan, the Disclosure Statement, or papers filed with the Bankruptcy Court.

**16.8. Conflicts.** In the event that the provisions of the Disclosure Statement and the provisions of the Plan conflict, the terms of this Plan shall govern.

Date: July 28, 2008

AKRON THERMAL, LIMITED PARTNERSHIP

By: Opportunity Parkway, LLC  
Its General Partner

By: /s/ Jeffrey Bees

Its: President

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

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

**DEBTOR'S MODIFICATIONS TO SECOND AMENDED PLAN OF  
REORGANIZATION FOR AKRON THERMAL, LIMITED PARTNERSHIP  
DATED JULY 14, 2008**

Akron Thermal, Limited Partnership, debtor and debtor-in-possession ("Debtor") in the above-captioned Chapter 11 case, hereby modifies the Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership dated July 14, 2008 ("Plan") [Docket No. 472], filed on July 28, 2008, as follows:

1. Page viii of the Plan, which contains the list of Exhibits to the Plan, is modified to delete reference to the Loan Agreement that is being removed from Exhibit 7.1, per modifications to Section 7.1.2 of the Plan, as follows:

**Exhibit 7.1    ~~Loan Agreement and Promissory Note~~**

2. The equity infusion to be contributed by Thermal Ventures II, L.P. ("TVII"), under Section 7.1.1 of the Plan, is increased from Two Million Dollars (\$2,000,000.00) to Three Million Dollars (\$3,000,000.00) and the line of credit to be provided by TVII, under Section 7.1.2 of the Plan, is reduced from One Million Dollars (\$1,000,000.00) to Two Hundred Fifty Thousand Dollars (\$250,000.00) by modifying Sections 7.1.1 and 7.1.2 of the Plan as follows:

**7.1.1. Equity Infusion.**

On the Effective Date, TVII will contribute the sum of ~~Two~~Three Million Dollars (~~\$2,000,000~~3,000,000.00) to the Reorganized Debtor as an equity infusion.

**7.1.2. Line of Credit.**

On the Effective Date, TVII will provide an unsecured line of credit to the Reorganized Debtor inup to the amount of ~~One Million~~Two Hundred Fifty Thousand Dollars (~~\$1,000,000.00~~250,000.00). The parties will execute a ~~Loan Agreement and Promissory Note~~ substantially in the form attached hereto as Exhibit 7.1. This line of ~~credit~~Note will ~~expire~~be due and payable on the ~~earliest~~earliest of (i) the ~~date upon which the Creditors Trust Note and State of Ohio Note are paid in full~~April 30, 2010; (ii) an ~~Event of Default as defined in Article V of~~if ATLP fails to pay when due any amount payable under the ~~Loan Agreement attached hereto as Exhibit 7.1~~Note or any other indebtedness owed by ATLP to TVII; (iii) the ~~first day following a period of 30 consecutive days in each of which the Reorganized Debtor had a cash balance equal to~~proceedings are commenced by or ~~greater than \$1,000,000~~against ATLP under any bankruptcy, reorganization, liquidation or similar laws of any jurisdiction; or (iv) the ~~date upon which Reorganized Debtor obtains~~there is a replacement line of credit from another source in an amount equal to the aggregate amount of the then existing line of credit. The amount of the credit facility will be reduced if, and to the extent, (x) ATLP receives cash as a result of prevailing in three collection actions pending before the Court (and listed in Exhibit 7.7 hereto) and (y) ATLP receives cash or credit for post-petition overpayments, as a result of prevailing substantial change in the pending action before the Court relating to the amount existing or prospective financial condition of the sewer credit ATLP which TVII in good faith determines to be materially adverse.

As modified, Sections 7.1.1 and 7.1.2 of the Plan read:

**7.1.1. Equity Infusion.**

On the Effective Date, TVII will contribute the sum of Three Million Dollars (\$3,000,000.00) to the Reorganized Debtor as an equity infusion.

**7.1.2. Line of Credit.**

On the Effective Date, TVII will provide an unsecured line of credit to the Reorganized Debtor up to the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). The parties will execute a Promissory Note substantially in the form attached hereto as Exhibit 7.1. This Note will be due and payable on the earliest of (i) April 30, 2010; (ii) if ATLP fails to pay when due



any amount payable under the Note or any other indebtedness owed by ATLP to TVII; (iii) proceedings are commenced by or against ATLP under any bankruptcy, reorganization, liquidation or similar laws of any jurisdiction; or (iv) there is a substantial change in the existing or prospective financial condition of ATLP which TVII in good faith determines to be materially adverse.

3. Exhibit 7.1 to the Plan, which is referenced in the list of Exhibits to the Plan at page viii, and in Section 7.1.2 of the Plan, is hereby replaced with the attached version of Exhibit 7.1 to the Plan that documents the changes made in Section 7.1.2 of the Plan.

4. Finally, Section 13.1 of the Plan setting forth the conditions to confirmation is modified by deleting the condition in subsection (d), which stated as follows:

~~(d) The Reorganized Debtor is reasonably satisfied with respect to the litigation related to the sewer credit.~~

The modifications described above and in the attached Exhibit 7.1 to the Plan do not further impair any creditors or interest holders under the Plan and no additional disclosure is required.

Dated: September 10, 2008

AKRON THERMAL, LIMITED PARTNERSHIP

By: Opportunity Parkway, LLC  
Its General Partner

By: /s/ Jeffrey Bees  
Its: President

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 10th day of September 2008, the foregoing *Debtor's Modifications of Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership Dated July 14, 2008* was filed with the Court via the ECF system and was served by the ECF system, electronic mail or by first class U.S. mail, postage pre-paid, upon the parties set forth on the attached General Service List and 2002 Service List.

/s/ Daniel R. Swetnam  
Daniel R. Swetnam

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

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

**DEBTOR'S SUPPLEMENTAL MODIFICATIONS OF PROPOSED  
SECOND AMENDED PLAN OF REORGANIZATION FOR  
AKRON THERMAL, LIMITED PARTNERSHIP DATED JULY 14, 2008**

To clarify certain issues raised during the hearing to consider confirmation of Debtor's proposed Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership dated July 14, 2008 (the "Plan") [Docket No. 472], Debtor hereby modifies its Plan as follows. These are in addition to the amendments reflected in the Agreed Order Resolving Objection to Confirmation Filed by the United States of America on Behalf of the United States Environmental Protection Agency tendered on September 5, 2008 as well as the Debtor's Modifications to Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership Dated July 14, 2008, filed September 10, 2008 [Docket No. 523].

Below are both black-lined changes to the relevant Plan provisions, and clean versions of these sections.

1. Section 5.2 of the Plan is modified, as follows:

**5.2. Class 1.2:** Debtor objects to the Secured Claim of the University of Akron, and does not believe it has a valid Secured Claim. If it is ultimately determined that the University of Akron has an Allowed Secured Claim, then (1) the University will retain its rights under, and be subject to all the terms and limitations of, the July 2007 Agreed Order in Adv. Pro. No. 07-5117 and the October 2007 Addendum between the Debtor and the University, including, without limitation, counterclaims and defenses by the Debtor specified therein; (2) the lien granted to the University under the July 2007 Agreed Order is a first

priority lien which comes ahead of the lien of the Creditors' Trust, and (3) such Secured Claim, to the extent, if any, remaining after a final adjudication with respect to the terms and limitations referenced in the foregoing clause (1), will be paid by either (a) issuance of a credit for the amount of the Secured Claim which will be applied in twelve equal monthly amounts to the monthly bills to the University of Akron for the contract year next succeeding the Effective Date or, (b) a lump sum payment to the University within 30 days after completion of the final accounting under the May 3, 2006 Agreement between the Debtor and the University; or (c) as otherwise mutually agreed.

2. Section 12.3 of the Plan is modified, as follows:

**12.3. Injunction.** Except as provided in the Plan or Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan are permanently enjoined from taking any of the following actions on account of any such discharged Claims, debts or liabilities or terminated Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Reorganized Debtor, the Creditors' Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, the Reorganized Debtor and, the Creditors' Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives, or its respective property; (c) creating, perfecting or enforcing any lien or encumbrance against the Debtor, the Reorganized Debtor and, the Creditors' Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives, or their respective property; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability, or obligation due to the Debtor or the Reorganized Debtor and, the Creditors' Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives, or their respective property; and (e) commencing or continuing any action against the Debtor, the Reorganized Debtor and, the Creditors' Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives or their respective property, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

As modified, sections 5.2 and 12.3 read as follows:

**5.2. Class 1.2:** Debtor objects to the Secured Claim of the University of Akron, and does not believe it has a valid Secured Claim. If it is ultimately determined that the University of Akron has an Allowed Secured Claim, then (1) the University will retain its rights under, and be subject to all the terms and limitations of, the July 2007 Agreed Order in Adv. Pro. No. 07-5117 and the October 2007 Addendum between the Debtor and the University, including, without limitation, counterclaims and defenses by the Debtor specified therein; (2) the lien granted to the University under the July 2007 Agreed Order is a first priority lien which comes ahead of the lien of the Creditors' Trust, and (3) such Secured Claim, to the extent, if any, remaining after a final adjudication with respect to the terms and limitations referenced in the foregoing clause (1), will be paid by either (a) issuance of a credit for the amount of the Secured Claim which will be applied in twelve equal monthly amounts to the monthly bills to the University of Akron for the contract year next succeeding the Effective Date; (b) a lump sum payment to the University within 30 days after completion of the final accounting under the May 3, 2006 Agreement between the Debtor and the University; or (c) as otherwise mutually agreed.

**12.3. Injunction.** Except as provided in the Plan or Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan are permanently enjoined from taking any of the following actions on account of any such discharged Claims, debts or liabilities or terminated Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Reorganized Debtor, the Creditors' Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, the Reorganized Debtor, the Creditors' Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives, or its respective property; (c) creating, perfecting or enforcing any lien or encumbrance against the Debtor, the Reorganized Debtor, the Creditors'

**Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives, or their respective property; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability, or obligation due to the Debtor or the Reorganized Debtor, the Creditors' Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives, or their respective property; and (e) commencing or continuing any action against the Debtor, the Reorganized Debtor, the Creditors' Committee, its members in their capacity as members but not in their individual capacities, and all of their respective partners, officers, employees, agents, counsel, advisors and representatives or their respective property, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.**

The modifications described above do not further impair any creditors or interest holders under the Plan and no additional disclosure is required.

Dated: September 26, 2008

**AKRON THERMAL, LIMITED PARTNERSHIP**

By: Opportunity Parkway, LLC  
Its General Partner

By: /s/ Jeffrey Bees  
Its: President


**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 26th day of September 2008, the foregoing *Debtor's Supplemental Modifications of Proposed Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership Dated July 14, 2008* was filed with the Court via the ECF system and was served by the ECF system, electronic mail or by first class U.S. mail, postage pre-paid, upon the parties set forth on the attached General Service List and 2002 Service List.

/s/ Daniel R. Swetnam  
Daniel R. Swetnam

**IT IS SO ORDERED.**

**Dated: 12:07 PM October 09 2008**

  
**MARILYN SHEA-STONUM**  
**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	:	Case No. 07-51884
PARTNERSHIP,	:	
	:	
Debtor.	:	Chief Judge Marilyn Shea-Stonum

**AGREED ORDER RESOLVING OBJECTION TO CONFIRMATION  
FILED BY THE UNITED STATES OF AMERICA ON BEHALF OF  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

On August 21, 2008, the United States, on behalf of the Environmental Protection Agency ("EPA"), filed an Objection to the Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership [Docket No. 497] (the "Objection"). The Debtor, the United States, and the Committee of Unsecured Creditors agree that the Objection shall be resolved by this Agreed Order.<sup>1</sup>

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Second Amended Plan of Reorganization dated July 14, 2008 (the "Plan").



1. Claim No. 49 filed by the United States on behalf of EPA shall be allowed as a general unsecured claim in Class 3.2 under the Plan in the amount of \$1,100,000, and shall be satisfied in accordance with the terms of the Plan. The United States shall be deemed to have withdrawn any portion of EPA's unsecured prepetition claim for any amount in excess of \$1,100,000. EPA shall assert no additional prepetition claim.

2. In no event shall the Claim allowed pursuant to the preceding paragraph be subordinated to any other Claim in Class 3.2 pursuant to any law that may be contended to authorize or provide for the subordination of Claims, including without limitation Sections 105, 510, 726(a)(4), and 1129 of the Bankruptcy Code.

3. The Reorganized Debtor will increase the amount of the Creditors' Trust Note to \$2,060,000 (subject to reduction for payments to Class 3.1 Claims as described in the Note).

4. The following will be included in the Plan as a modification thereof:

12.4 With respect to the United States of America ("USA") only, and except as otherwise provided in the Agreed Order Resolving Objection to Confirmation Filed By The United States of America on Behalf of the Environmental Protection Agency, the terms of which shall remain in full force and effect, nothing in the Confirmation Order or the Plan: (i) discharges, releases, or precludes any environmental liability that is not a Claim; (ii) discharges, releases, or precludes any environmental Claim of the USA that arises on or after the Effective Date; (iii) releases the Debtor or Reorganized Debtor from any liability under environmental law as the owner or operator of property that the Debtor or Reorganized Debtor owns or operates after the Effective Date; (iv) releases or precludes any liability under environmental law on the part of any Person other than the Debtor and Reorganized Debtor; or (v) enjoins the USA from commencing or continuing against the Debtor or Reorganized Debtor any action or other proceeding that was or would have been authorized before the Effective Date pursuant to the police and regulatory exception to the automatic stay.

5. The EPA shall be allowed an Administrative Claim in the amount of \$25,000 for postpetition penalties from June 18, 2007 through the Effective Date ("EPA's Administrative

Claim") which shall be satisfied within 180 days after the Effective Date. This stipulation as to the amount of postpetition penalties is contingent upon the Effective Date being no later than December 31, 2008. EPA shall assert no additional administrative claim.

6. In no event shall EPA's Administrative Claim be subordinated to any other Administrative Claim pursuant to any law that may be contended to authorize or provide for the subordination of Administrative Claims, including without limitation Sections 105, 510, 726(a)(4), and 1129 of the Bankruptcy Code.

7. The approval of this Agreed Order by the Bankruptcy Court, together with Claim No. 49 and EPA's Administrative Claim, shall be deemed to satisfy the requirement for filing by the United States of a proof of claim, application for payment of an administrative expense, or any other request, demand, or filing for the disbursement to the United States of funds pursuant to this Agreed Order. No further proof of claim, application for administrative expense, or any other request, demand, or filing by the United States shall be required.

8. This Agreed Order resolves Claim No. 49 and EPA's Administrative Claim as they relate to civil penalties for any days of violation by the Debtor occurring through the Effective Date. Nothing in this Agreed Order is intended, or shall be construed, to operate in any way to resolve any other civil liability, or any criminal liability, of the Debtor, Reorganized Debtor, or any other Person, including without limitation any liability of the Reorganized Debtor for injunctive relief or civil penalties under the Clean Air Act ("CAA") for any days of violation occurring after the Effective Date.

9. The Parties agree that the settlement reflected in this Agreed Order is based on considerations unique to confirmation of the Plan and is not indicative of the amount of civil penalties that may be appropriate for any days of violation of the CAA by the Reorganized

Debtor occurring after the Effective Date. Likewise, the parties agree that this Order is not an admission by the Debtor that it has violated the CAA (or any other environmental law). This Order is simply an agreed resolution of certain issues as described herein, and the Debtor expressly reserves its right to challenge any claim by the EPA with respect to matters not resolved herein, including any claim that Debtor violated the CAA.

10. This Agreed Order is contingent upon its approval by the Bankruptcy Court and upon confirmation of the Plan. If this Agreed Order is not approved or the Plan is not confirmed, the settlement reflected herein shall be of no force and effect, shall have no residual probative value, and shall not be deemed to be a waiver of any right by any of the Parties with respect to the matters contained herein.

**IT IS SO ORDERED.**

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APPROVED:

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*Counsel for the Committee of  
Unsecured Creditors*

IT IS SO ORDERED.

Dated: 03:28 PM November 13 2008

  
MARILYN SHEA-STONUM  
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	:	Case No. 07-51884
PARTNERSHIP,	:	
	:	
Debtor.	:	Chief Judge Marilyn Shea-Stonum

**AGREED ORDER RESOLVING LIMITED OBJECTION TO  
CONFIRMATION FILED BY THE UNIVERSITY OF AKRON**

On August 22, 2008, the University of Akron (the "University"), filed a Limited Objection to the Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership [Docket No. 505] (the "Objection"). Akron Thermal, Limited Partnership, Debtor and Debtor-in-Possession (the "Debtor"), the University, and the Committee of Unsecured Creditors agree that the Objection shall be resolved by this Agreed Order.<sup>1</sup>

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Second Amended Plan of Reorganization dated July 14, 2008, as amended (the "Plan").

1. The Agreement for Thermal Energy Service between Debtor and the University dated May 3, 2006, as amended by the Addendum to Agreement for Thermal Energy Services dated October 11, 2007 (collectively, the "Agreement") expires on April 30, 2009. However, section 1 of the Agreement contains renewal options, by which the Agreement could be extended by up to two additional one year terms, through April 30, 2011.

2. By virtue of this Agreed Order, the University is not presently agreeing to an extension of the Agreement. The University will make that decision in early 2009 in accordance with the terms of the Agreement. This Agreed Order resolves the Objection, by setting forth certain terms that will be applicable if the University decides to extend the Agreement or enter into a new service agreement with Debtor in early 2009. Those terms are set forth in paragraphs 3 through 7 below.

3. If at the end of the current Agreement it is determined that Debtor owes money to the University as a result of the final true-up (budget payments exceed amount owed based on actual usage), the parties agree that:

- A. If the parties agree to a one year extension of the current Agreement or a new one-year agreement between University and Debtor, Debtor will credit up to Fifty Thousand Dollars (\$50,000.00) to the first subsequent invoice ("May 2009 Invoice") and credit any remaining balance over the remaining eleven months of the contract year. To the extent that the credit exceeds the May 2009 Invoice, the balance of the Fifty Thousand Dollars (\$50,000) will be credited to the next invoice ("June 2009 Invoice") in addition to the June portion of the remaining balance that is pro-rated over the remaining eleven months of the contract year.
- B. If the parties agree to a two year extension of the current Agreement or a new two-year agreement between University and Debtor, Debtor will credit up to One Hundred Thousand Dollars (\$100,000.00) to the May 2009 Invoice and credit any remaining balance over the remaining twenty three months of the contract. To the extent that the credit exceeds the May 2009 Invoice, the balance of the One Hundred Thousand Dollars (\$100,000) will be credited to the June 2009 Invoice in addition to June portion of the remaining balance that is pro-rated over the remaining twenty three months of the contract.

4. If at the end of the current Agreement it is determined that the University owes money to Debtor as a result of the final true-up (amount owed based on actual usage exceeds budget payments), the parties agree that:

- A. If the parties agree to a one year extension of the current Agreement or a new one-year agreement between University and Debtor, Debtor will waive up to Seventy Five Thousand Dollars (\$75,000.00) of the balance owed. Any remaining monies owed from the University will be paid at the annual reconciliation with the May 2009 Invoice according to the terms of the Agreement.
- B. If the parties agree to a two year extension of the current Agreement or a new two-year agreement between University and Debtor, Debtor will waive up to One Hundred Fifty Thousand Dollars (\$150,000.00) of the balance owed. Any remaining monies owed from the University will be paid at the annual reconciliation with the May 2009 Invoice according to the terms of the Agreement.

5. In the event that the University elects to extend the Agreement for one or two years commencing May 1, 2009 or enters into a new one or two agreement with Debtor, all rights of Debtor under the October 11, 2007 Addendum, Section 4 to argue that the University's pre-petition claim should be reduced as a result of the problems or defects with the Old Meter (as defined in the October 11, 2007 Addendum) shall be deemed fully satisfied and Debtor agrees to waive the same.

6. If the University does not extend the Agreement or enter into a new one or two year Agreement with Debtor, then the parties' rights remain as set forth in the Agreement and Plan (as modified by the Supplemental Modifications of Proposed Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership Dated July 14, 2008 filed September 26, 2008 [Docket No. 528] concerning the treatment of the University's alleged secured claim).

7. All other terms of the Agreement, as modified by the October 11, 2007 Addendum, remain in effect, except that if the University does extend the Agreement for one or

two years or enters into a new one or two agreement with Debtor, then the changes described in this Agreed Order, including but not limited to those in paragraph 5 above, also will be made.

8. The University retains its general unsecured claim for \$505,923 which will be paid as a general unsecured claim pursuant to the Plan (estimated 10% payment expected as set forth in the Plan). Upon satisfaction of paragraphs 3 or 4 above, the University will release its security interest, and all rights granted under the Agreed Order Resolving Adversary Proceeding entered in the adversary proceeding captioned *Akron Thermal, Limited Partnership v. The University of Akron*, Adv. Pro. No. 07-5117, entered July 9, 2007, will be deemed satisfied.

9. The University hereby withdraws its Objection to Plan confirmation.

10. This Agreed Order is contingent upon its approval by the Bankruptcy Court and upon confirmation of the Plan. If this Agreed Order is not approved or the Plan is not confirmed, the settlement reflected herein shall be of no force and effect, shall have no residual probative value, and shall not be deemed to be a waiver of any right by any of the parties with respect to the matters contained herein.

**IT IS SO ORDERED.**

###

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