BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Cleveland Thermal Steam Distribution, LLC, and Cleveland Thermal Chilled Water Distribution, LLC	)))	Case No. 15-1451-HC-UNC

JOINT MOTION FOR PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT
(EXPEDITED RULING REQUESTED)

Cleveland Thermal Steam Distribution, LLC, Cleveland Thermal Chilled Water Distribution, LLC, and Corix Infrastructure (US) Inc. (Joint Applicants) respectfully request issuance of a protective order under Rule 4901-1-24, O.A.C. to prohibit the disclosure of confidential, trade secret information redacted from pages 2, 38, 50, 52 and 58 of the attached Membership Interest Purchase Agreement (MIPA). An expedited ruling is requested under Rule 4901-1-12(C), O.A.C. This motion should be granted for the reasons set forth below.

MEMORANDUM IN SUPPORT

On August 17, 2015, the Joint Applicants filed a Notice of Transaction, or, Alternatively, Joint Motion for Approval of Transaction. Exhibit A to this motion is the agreement referenced in the August 17 filing, with certain confidential, trade secret information redacted. Two unredacted copies of the MIPA have been provided to the Docketing Division under seal, as required by Rule 4901-1-24(D)(2), O.A.C.

Because the Commission is a state agency, documents filed with the Commission are ordinarily considered public records, and therefore subject to disclosure under the Ohio Public Records Act. Rule 4901-1-24(D), O.A.C., provides for the issuance of an order necessary to protect the confidentiality of information contained in documents filed at the Commission, to the

extent that state and federal law prohibit the release of such information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

Trade secrets protected by state law are not considered "public records" and are therefore exempt from public disclosure. R.C. 149.43(A)(1)(v). R.C. 1333.61(D) defines a "trade secret" as follows:

> "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any *business information or plans, financial information*, or listing of names, addresses, or telephone numbers, that satisfies both of the following:
>
> (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. 333.61(D)(emphasis added).

The MIPA contains financial information and agreements that meet the statutory definition of trade secrets. Details such as the purchase price and related financial terms are competitively sensitive and highly proprietary. Public disclosure of the information would jeopardize the Joint Applicants' business position and ability to compete. The information they seek to protect derives independent economic value from not being generally known and not being readily ascertainable by proper means by competitors. The Commission found that good cause was shown to protect similar purchase price information in a case approving the transfer of stock from Dominion Energy to CT Acquisition I Inc. *In Re: Joint Application of Dominion Energy, et. al.,* Case No. 04-1179-HT-UNC, Finding and Order at 2.

The non-disclosure of the confidential information will not impair the purposes of Title

49 of the Revised Code, as the Commission and its Staff will have full access to the confidential information in order to complete its review. Because the Joint Applicants' information constitutes a trade secret, it should be accorded protected status.

The August 17 application requests expedited review. As the only parties to this proceeding, the Joint Applicants request that this motion for protective order be given expedited consideration as well.

Dated: August 27, 2015

Respectfully submitted,

/s/ Samuel C. Randazzo____
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Attorneys for Corix Infrastructure (US) Inc.

Exhibit A

Execution Version

MEMBERSHIP INTEREST PURCHASE AGREEMENT

AMONG

CORIX INFRASTRUCTURE (US) INC.

("Buyer")

AND

CLEVELAND THERMAL HOLDINGS, LLC

("Seller")

AND

CLEVELAND THERMAL, LLC

(the "Company")

August 25, 2015

PUBLIC VERSION

MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "Agreement") is entered into as of the 25th day of August, 2015, between Corix Infrastructure (US) Inc., a Delaware corporation ("Buyer"), Cleveland Thermal Holdings, LLC, a Delaware limited liability company ("Seller"), and Cleveland Thermal, LLC, an Ohio limited liability company (the "Company").

RECITALS:

A. Seller owns all of the issued and outstanding membership interests (the "Interests") of the Company, and the Company owns all of the issued and outstanding membership interests of each of (i) Cleveland Thermal Generation, LLC, an Ohio limited liability company ("CTG"), (ii) Cleveland Thermal Steam Distribution, LLC, an Ohio limited liability company ("CTSD"), and (iii) Cleveland Thermal Chilled Water Distribution, LLC, an Ohio limited liability company ("CTCWD," and together with the Company, CTG and CTSD, the "Acquired Companies").

B. Buyer shall purchase from Seller, and Seller shall sell to Buyer, the Interests, upon and subject to the terms and conditions set forth in this Agreement.

C. Concurrently with the execution and delivery of this Agreement, Seller has provided Buyer with an executed and delivered Amendment to Supplemental Indenture and Redemption Agreement, dated as of August 25th, 2015 (attached hereto as Exhibit C, the "Indenture Amendment"), among the Company, Rosemawr Management, LLC ("Rosemawr") and the Trustee, contemplating the redemption of the Bonds held indirectly or beneficially by Rosemawr (as such term is defined in the Indenture Amendment).

D. Upon payment of the Repaid Closing Indebtedness at Closing pursuant to this Agreement, the Company shall direct the Trustee to (and it is a premise hereof that the Trustee shall) distribute the funds in the Project Fund (as such term is defined in the Bond Indenture, dated as of November 1, 2012, as amended and supplemented to date) between the Trustee and the Company (the "Bond Indenture"), including the Series 2015 Improvement Account (as such term is defined in the Supplemental Bond Indenture No. 3, dated as of January 1, 2015, as amended and supplemented to date) to the Company pursuant to the Closing Trustee Instructions.

Now, therefore, in consideration of the mutual representations, warranties, covenants and agreements set forth in this Agreement, Buyer, Seller and the Company hereby agree as follows:

ARTICLE 1

Definitions

1.1 Definitions. Certain terms used in this Agreement shall have the meanings set forth in Article 10, or elsewhere herein as indicated in Article 10.

1.2 Accounting Terms. Accounting terms used in this Agreement and not otherwise defined herein shall have the meanings attributed to them under GAAP, except as may otherwise be specified herein.

ARTICLE 2

Purchase and Sale

2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, assign, transfer and deliver to Buyer, free and clear of all Liens, and Buyer shall purchase from Seller, all right, title and interest in and to the Interests.

2.2 Purchase Price. The aggregate purchase price (the "Purchase Price") for all of the Interests shall be an amount equal to:

2.2.1 [redacted];

2.2.2 plus an amount equal to the Closing Cash;

2.2.3 plus the amount if any, by which the Closing Working Capital exceeds the Working Capital Target, or minus the amount, if any, by which the Working Capital Target exceeds the Closing Working Capital; and

2.2.4 minus the amount of any Closing Indebtedness (if any), which, for the avoidance of doubt, shall not include any Repaid Closing Indebtedness.

2.3 Estimated Purchase Price; Payment of Indebtedness. On the third Business Day prior to the Closing Date, Seller shall estimate in good faith the amount of the Closing Cash, the Closing Indebtedness, the Repaid Closing Indebtedness, the Closing Working Capital and the Selling Expenses, respectively, as of 12:01 a.m. on the Closing Date and shall deliver to Buyer a certificate (the "Closing Certificate") setting forth such estimates and the calculation of the Estimated Purchase Price and the Estimated Seller Cash Payment, which Closing Certificate may be updated by Seller no later than one Business Day prior to the Closing Date. Prior to the Closing Date, Buyer shall review and approve the Closing Certificate, provided that if Buyer does not approve the Closing Certificate and Buyer and Seller are unable to agree on the amounts set forth therein prior to the Closing Date, then the Closing Certificate provided by Seller (with such modifications as Buyer and Seller have agreed to, if any) shall be used for purposes of the Closing. At the Closing, Buyer and Seller shall deliver joint written instructions to the Trustee instructing the Trustee to make the Closing payments described in this Section 2.3 based on the Closing Certificate (the "Closing Trustee Instructions"). As used herein, (a) "Estimated Closing Cash," "Estimated Closing Indebtedness," "Estimated Closing Working Capital" and "Estimated Selling Expenses" mean the estimates of the Closing Cash, the Closing Indebtedness, the Closing Working Capital and the Selling Expenses, respectively, set forth in the Closing Certificate, (b) "Estimated Purchase Price" means an amount equal to the Purchase Price calculated as set forth in Section 2.2, assuming for purposes of such calculation that the Closing Cash is equal to the Estimated Closing Cash, that the Closing Working Capital is equal to the Estimated Closing Working Capital and that the Closing Indebtedness is equal to the Estimated Closing Indebtedness, and (c) "Estimated Seller Cash Payment" means an amount equal to the Seller

Cash Payment based on the Closing Certificate, assuming for purposes of such determination that the Selling Expenses are equal to the Estimated Selling Expenses. Subject to the terms and conditions of this Agreement, at the Closing, Buyer shall pay and deliver the Estimated Purchase Price (as calculated based upon the Closing Certificate) to the Trustee by means of a wire transfer of immediately available cash funds to an account as directed by the Trustee prior to the Closing (the "Trustee's Account"). The Closing Trustee Instructions provided to the Trustee by Buyer and Seller shall instruct the Trustee to: (i) deliver an amount equal to the Estimated Seller Cash Payment to Seller by means of a wire transfer of immediately available cash funds to an account as directed by Seller prior to the Closing; (ii) deliver the Escrow Amount to separate accounts to be held by the Trustee pursuant to the terms of this Agreement and the Escrow Agreement; (iii) retain an amount equal to the Repaid Closing Indebtedness to satisfy the Repaid Closing Indebtedness of the Acquired Companies; and (iv) on behalf of the Acquired Companies, pay the Estimated Selling Expenses identified on the Closing Certificate. The purchase and sale of the Interests shall be effected upon Buyer's payment to the Trustee's Account as described in this Section 2.3, and, immediately upon such payment and without any further action by any Person including the Trustee, all right, title and interest in and to the Interests shall be deemed to irrevocably pass to Buyer free and clear of all Liens, and Buyer's obligation to pay the Estimated Purchase Price shall be deemed satisfied in full.

2.4 Post-Closing Adjustment.

2.4.1 Adjustment Statement Preparation. Within 60 days after the Closing Date, Buyer shall prepare in good faith and deliver to Seller an adjustment statement setting forth the amount of the Closing Cash, the Closing Working Capital and the Closing Indebtedness, respectively, as of the Closing (the "Preliminary Adjustment Statement"), and, based on the Closing Cash, the Closing Working Capital and the Closing Indebtedness as derived therefrom, Buyer's written calculation of the Purchase Price, and the adjustment necessary to reconcile the Estimated Purchase Price to the Purchase Price, if any (the "Preliminary Post-Closing Adjustment"). The Preliminary Adjustment Statement and the Final Adjustment Statement shall be prepared in a manner consistent with, and using the same accounting methods, policies, practices and procedures as used in the preparation of, the Interim Financial Statements (including the policies and procedures described on Schedule 2.4.1), except that the Preliminary Adjustment Statement and the Final Adjustment Statement shall only reflect those items necessary to calculate the Closing Cash, the Closing Working Capital and the Closing Indebtedness. In preparing the Preliminary Adjustment Statement: (a) any and all effects on the assets or liabilities of any of the Acquired Companies of any financing or refinancing arrangements entered into by Buyer or the Acquired Companies at the direction of Buyer at any time on or after the Closing Date shall be entirely disregarded; (b) it shall be assumed that the Acquired Companies and their respective lines of businesses shall be continued as a going concern; and (c) there shall not be taken into account any of the plans, transactions or changes that Buyer intends to initiate or make or cause to be initiated or made on or after the Closing Date with respect to the Acquired Companies or their respective business or assets, or any assets or liabilities of Buyer, or any obligation for the payment of the Purchase Price hereunder.

2.4.2 Adjustment Statement Review. Seller shall review the Preliminary Adjustment Statement and the Preliminary Post-Closing Adjustment and, if Seller believes that either was not prepared in accordance with Section 2.4.1, Seller shall so notify Buyer in writing

no later than 30 days after Seller's receipt thereof, setting forth in such notice Seller's objection or objections to the Preliminary Adjustment Statement or the Preliminary Post-Closing Adjustment with reasonable particularity of the adjustments which Seller claims are required to be made thereto in order to conform the same to the terms of Section 2.4.1. Buyer shall cause the Acquired Companies and their respective relevant officers, employees, agents and representatives to reasonably cooperate with all representatives of Seller in the review of the Preliminary Adjustment Statement and, without limiting the generality of the foregoing, shall cause the books and records of the Acquired Companies to be made reasonably available during normal business hours to such representatives to the extent pertaining to or used in connection with the preparation of the Preliminary Adjustment Statement or the Preliminary Post-Closing Adjustment, and shall cause the necessary relevant personnel of the Acquired Companies to reasonably assist such representatives in their review of the Preliminary Adjustment Statement, including granting such persons reasonable access to the facilities, books, records and other assets of the Acquired Companies, in each case, upon reasonable advance notice and to the extent directly relevant to Seller's reasonable review of the Preliminary Adjustment Statement or the Preliminary Post-Closing Adjustment.

2.4.3 Adjustment Statement Dispute Resolution. If Seller timely notifies Buyer in accordance with Section 2.4.2 of an objection to the Preliminary Adjustment Statement or the Preliminary Post-Closing Adjustment, and if Buyer and Seller are unable to resolve such disputed items through good faith negotiations within 15 days after Seller's delivery of such written notice of objection, then the parties shall mutually engage and submit only such disputed items to, and the same shall be finally resolved in accordance with the provisions of this Agreement by, the Cleveland, Ohio office of PricewaterhouseCoopers LLP (the "Independent Accountants"). Buyer and Seller shall have the opportunity to present their positions with respect to such disputed matters to the Independent Accountants in accordance with the requirements of Section 2.4. The Independent Accountants shall determine and report in writing to Buyer and Seller as to the resolution of all disputed matters submitted to the Independent Accountants and the effect of such determinations on the Preliminary Adjustment Statement and the Preliminary Post-Closing Adjustment as soon as practicable after such submission, and such determinations shall be final, binding and conclusive as to Buyer, Seller and their respective Affiliates. In resolving any disputed item, the Independent Accountants shall: (a) be bound by the provisions of this Article 2 and the definitions pertaining hereto; and (b) restrict its decision to such items which are then in dispute and have been properly submitted to the Independent Accountants in accordance with this Section 2.4.3. The fees and disbursements of the Independent Accountants shall be borne one-half by each party (i.e., Seller, on the one hand, and Buyer, on the other hand).

2.4.4 Final Adjustment Statement and Post-Closing Adjustment. The Preliminary Adjustment Statement and the Preliminary Post-Closing Adjustment shall become the "Final Adjustment Statement" and the "Final Post-Closing Adjustment," respectively, and as such shall become final, binding and conclusive upon Buyer, Seller and their respective Affiliates for all purposes of this Agreement, upon the earliest to occur of the following:

(a) the mutual acceptance by Buyer and Seller of the Preliminary Adjustment Statement and the Preliminary Post-Closing Adjustment, respectively, with such changes or adjustments thereto, if any, as may be agreed upon by Seller and Buyer;

(b) the expiration of 30 days after Seller's receipt of the Preliminary Adjustment Statement and the Preliminary Post-Closing Adjustment, respectively, without timely written objection thereto by Seller in accordance with Section 2.4.2; or

(c) the delivery to Buyer and Seller by the Independent Accountants of the report of their determination of all disputed matters submitted to them pursuant to Section 2.4.3.

2.4.5 Adjustment of Purchase Price. If the Purchase Price, as finally determined in accordance with Section 2.4.4, is greater than the Estimated Purchase Price, then Buyer shall pay the amount of the Final Post-Closing Adjustment to Seller by means of a wire transfer of immediately available funds to an account designated by Seller. If the Purchase Price, as finally determined in accordance with Section 2.4.4, is less than the Estimated Purchase Price, then Seller shall pay the amount of the Final Post-Closing Adjustment to Buyer by means of a wire transfer of immediately available funds to an account designated by Buyer. The Final Post-Closing Adjustment, if any, shall be due and payable pursuant to this Section 2.4.5 no later than two Business Days after the Preliminary Adjustment Statement and the Preliminary Post-Closing Adjustment become the Final Adjustment Statement and the Final Post-Closing Adjustment, respectively, pursuant to Section 2.4.4. For Tax purposes, any payment by Buyer or Seller under this Agreement, including pursuant to Article 8, shall be treated as an adjustment to the Purchase Price unless a contrary treatment is required by Law.

ARTICLE 3

Representations and Warranties of Seller

Except as disclosed in the Disclosure Schedules hereto as contemplated by Section 11.11, Seller represents and warrants to Buyer as follows:

3.1 Organization and Good Standing; Authority; Enforceability.

3.1.1 Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each of the Acquired Companies is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Ohio. The Acquired Companies have all requisite power and authority to own and lease their respective assets and to operate their respective businesses as the same are now being owned, leased and operated. Each Acquired Company is duly qualified or licensed to do business as a foreign entity in, and is in good standing in, each jurisdiction in which the nature of its business or its ownership of its properties requires it to be so qualified or licensed. Each Acquired Company has made available to Buyer a true, complete and correct copy of its Charter Documents, as currently in effect. Schedule 5.1.6(b) sets forth a true and complete list of the managers and officers of each Acquired Company.

3.1.2 Seller and the Company possess all requisite legal and applicable business entity right, power and authority to execute, deliver and perform this Agreement, and each other agreement, instrument and document to be executed and delivered by Seller or the Company, or by both of them, pursuant hereto (collectively, the "Ancillary Agreements"), and to consummate

the transactions contemplated herein and therein. The execution, delivery and performance by Seller and the Company of this Agreement and the Ancillary Agreements and the consummation by Seller and the Company of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by all requisite limited liability company action on the part of Seller and the Company, and no other act or proceeding on the part of the Company, Seller, the managers of the Company or Seller, or the equityholders of the Company or Seller is necessary to authorize or approve the execution, delivery or performance by the Company or Seller of this Agreement and the Ancillary Agreements or the performance of their respective obligations hereunder and thereunder or the consummation of the transactions contemplated hereby or thereby.

3.1.3 This Agreement has been, and each Ancillary Agreement will upon delivery be, duly executed and delivered by Seller or the Company, as applicable, and constitutes, or will upon such delivery constitute, the legal, valid and binding obligation of Seller or the Company, as applicable, enforceable against Seller or the Company, as applicable, in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application affecting enforcement of creditors' rights or by principles of equity (the "Enforceability Exceptions").

3.2 Interests.

3.2.1 Interests of the Company. All of the Interests are owned beneficially and of record by Seller, free and clear of all Liens. All of the Interests have been duly authorized and validly issued, are fully paid and nonassessable, and were issued in compliance with all applicable federal and state securities Laws and any preemptive rights, rights of first refusal, purchase or call option, subscription right or any similar rights of any Person. The Interests constitute all of the outstanding equity interests of the Company. Except as set forth in the Charter Documents of the Company: (a) there are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any of the Interests; (b) there does not exist nor is there outstanding, any right or security granted to, issued to, or entered into with, any Person to cause the Company to issue, grant or sell any membership or other equity interests to any Person (including any warrant, option, call, preemptive right, convertible or exchangeable obligation, subscription for membership interests or securities convertible into or exchangeable for membership or other equity interests of the Company at any time, or any other similar right, security, instrument or Contract), and there is no commitment or agreement to grant or issue any such right or security; (c) there is no obligation, contingent or otherwise, of the Company to: (i) repurchase, redeem or otherwise acquire any membership or other equity interests of the Company; or (ii) provide funds to, or make any investment in (in the form of a loan, capital contribution or otherwise), or provide any guarantee with respect to the obligations of any other Person; and (d) there are no bonds, debentures, notes or other indebtedness which have the right to vote (or which are at any time convertible into, or exchangeable for, securities having the right to vote) on any matters on which members of the Company are entitled to vote.

3.2.2 Membership Interests of the Subsidiaries. Schedule 3.2.2 sets forth the name, owner, and percentages of equity securities owned, directly or indirectly, of and by each Subsidiary. There are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any membership interests of any Subsidiary. There does not exist nor is

there outstanding any right or security granted to, issued to, or entered into with, any Person to cause any Subsidiary to issue, grant or sell any membership or other equity interests of such Subsidiary to any Person (including any warrant, equity option, call, preemptive right, convertible or exchangeable obligation, subscription for equity or securities convertible into or exchangeable for equity of such Subsidiary at any time, or any other similar right, security, instrument or Contract), and there is no commitment or agreement to grant or issue any such right or security. There is no obligation, contingent or otherwise, of any Subsidiary to: (a) repurchase, redeem or otherwise acquire any membership interest or other equity interests of such Subsidiary; or (b) provide funds to, or make any investment in (in the form of a loan, capital contribution or otherwise), or provide any guarantee with respect to the obligations of, any other Person (other than the other Acquired Companies). There are no bonds, debentures, notes or other indebtedness which have the right to vote (or which are at any time convertible into, or exchangeable for, securities having the right to vote) on any matters on which members of such Subsidiary are entitled to vote. All of the outstanding membership interests of each Subsidiary are owned by the Company beneficially and of record, free and clear of any Liens.

3.3 Other Ventures. None of the Acquired Companies owns of record or beneficially, or otherwise directly or indirectly, any equity or similar interest in any other Person, or any interest convertible into or exchangeable or exercisable for, at any time, any equity or similar interest in any Person, nor is it a partner or member of any partnership, limited liability company or joint venture (other than with respect to the ownership of the membership interests of the Subsidiaries by the Company).

3.4 Noncontravention.

3.4.1 Except as set forth on Schedule 3.4.1, neither the execution and delivery of this Agreement or any of the Ancillary Agreements, nor the consummation by the Company or Seller of the transactions contemplated hereby or thereby, nor the compliance by the Company or Seller with any provisions hereof or thereof, will: (i) conflict with or result in a breach of any provisions of the Charter Documents of Seller or any Acquired Company; (ii) constitute or result in the violation or breach of any term, condition or provision of, or constitute a default under (with or without notice or lapse of time, or both), or give rise to any right of termination, consent, amendment, cancellation, modification or acceleration with respect to, or give rise to any Liability of any Acquired Company or any of their respective Affiliates under, any Contract, License or Lease, or otherwise result in the creation or imposition of a Lien upon any property or assets of any Acquired Company; or (iii) contravene, conflict with or result in a violation of, or constitute a failure to comply with any Law or Order applicable to Seller or any Acquired Company or by which any properties or assets owned or used by any Acquired Company are bound or affected.

3.4.2 Except as set forth on Schedule 3.4.2, no consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority is required to be obtained or made by Seller or any Acquired Company in connection with (a) the execution and delivery of this Agreement or any Ancillary Agreement or (b) the compliance by Seller or the Company with any of the provisions hereof or thereof or the consummation of the transactions contemplated hereby or thereby.

3.5 Financial Statements.

3.5.1 Copies of the audited, consolidated financial statements of the Acquired Companies as of and for the fiscal years ended December 31, 2013 and December 31, 2014 (the "Audited Financial Statements"), and the unaudited, internally prepared consolidated financial statements of the Acquired Companies for the six month period ended June 30, 2015 (the "Interim Financial Statements," and together with the Audited Financial Statements, the "Financial Statements") are set forth on Schedule 3.5.1. The Financial Statements (a) have been prepared in accordance with GAAP, consistently applied and without modification of the accounting principles used in the preparation thereof throughout the periods presented, except, with respect to the Interim Financial Statements, for (i) normal year-end adjustments consistent in all material respects with the year-end adjustments applied to the Audited Financial Statements and (ii) the absence of disclosures normally made in footnotes, none of which footnote disclosures would be materially different from the footnote disclosures contained in the Audited Financial Statements (applied *mutatis mutandis*); and (b) present fairly, in all material respects, the consolidated financial position of the Acquired Companies as of the dates indicated and the results of operations and cash flows for the periods then ended. The balance sheet as of June 30, 2015, which is included in the Interim Financial Statements, is referred to herein as the "Acquisition Balance Sheet."

3.5.2 None of the Acquired Companies has any Liabilities required to be reflected on a balance sheet prepared in accordance with GAAP, except for (a) Liabilities disclosed, reflected or reserved against, in each case specifically, on the Acquisition Balance Sheet, (b) Liabilities incurred since the date of the Acquisition Balance Sheet in the Ordinary Course of Business and (c) Liabilities that are, taken as a whole, immaterial to the Acquired Companies.

3.5.3 The accounts receivable reflected on the Acquisition Balance Sheet and accounts receivable arising after the date of the Acquisition Balance Sheet and reflected on the books and records of the Acquired Companies represent valid obligations arising from sales actually made or services actually provided as to which full performance has been rendered by the applicable Acquired Company. To Seller's Knowledge, there are no disputes with respect to any of the accounts receivable reflected on the Acquisition Balance Sheet. The reserve on the Acquisition Balance Sheet against the accounts receivable for return-equivalents and bad debts is adequate and has been calculated in accordance with GAAP and in a manner consistent with past practice. No counter claims, defenses or offsetting claims with respect to the accounts receivable of the Acquired Companies are pending or, to the Seller's Knowledge, threatened. All of the accounts receivable of the Acquired Companies reflected on the Acquisition Balance Sheet relate solely to sales or services to customers of the Acquired Companies, none of which are direct or indirect equityholders or Affiliates of any Acquired Company.

3.5.4 Subject to reserves set forth in the Interim Financial Statements, the inventories of the Acquired Companies are stated thereon in accordance with GAAP, on a lower of cost or market basis, consistently applied and are otherwise of a quality and quantity useable in the Ordinary Course of Business.

3.5.5 All of the Acquired Companies' Indebtedness is disclosed on the Financial Statements.

3.6 Absence of Certain Changes or Events. Except as set forth on Schedule 3.6, since January 1, 2015:

3.6.1 there has not occurred any event, change or circumstance that, individually or in the aggregate constitutes or would reasonably be expected to constitute a Material Adverse Effect;

3.6.2 each Acquired Company has conducted its business in the Ordinary Course of Business; and

3.6.3 no Acquired Company has taken any action, or omitted to take any action, which if taken or omitted after the date hereof would require the consent of Buyer under Section 7.1.1.

3.7 Taxes. Except as set forth on Schedule 3.7:

3.7.1 All Tax Returns required to be filed by or with respect to the Acquired Companies have been timely filed (taking into account applicable extensions of time to file) with the appropriate Taxing Authority in accordance with all applicable Laws, and all such Tax Returns (including information provided therewith or with respect thereto) are accurate and complete in all material respects. All Taxes due and payable by the Acquired Companies, whether or not shown as due and payable on any Tax Return, have been timely paid to the appropriate Taxing Authority, other than Taxes which, if due and payable, are not delinquent or are being contested in good faith by appropriate proceedings or have not been finally determined, and for which, in each case, adequate reserves have been established on the Acquisition Balance Sheet in accordance with GAAP. There are no Liens for unpaid Taxes on any of the assets of any Acquired Company. No Acquired Company is currently the beneficiary of any extension of time within which to file any Tax Return.

3.7.2 There are no Tax claims, audits or Proceedings by any Taxing Authority pending or, to Seller's Knowledge, threatened in writing in connection with any Taxes due from or with respect to the Acquired Companies. No Tax Return of any of the Acquired Companies has been audited by any Taxing Authority in the past five years.

3.7.3 There are not currently in force any waivers or agreements binding upon any Acquired Company for the extension of the statute of limitations for the assessment, collection or payment of any Tax for any taxable period, and no request for any such waiver or extension is currently pending.

3.7.4 The Acquired Companies have properly withheld and timely paid to the appropriate Taxing Authority all Taxes required to have been withheld and paid in connection with amounts paid or owing to any Person.

3.7.5 Each of the Acquired Companies has timely filed or provided all information, returns or reports, including Forms 1099 and W-2 (and foreign state and local

equivalents) that are required to have been filed or provided and has accurately reported all information required to be included on such returns or reports.

3.7.6 None of the Acquired Companies is a party to or bound by any Tax allocation, Tax indemnity or Tax sharing agreement, arrangement, or any similar contract. No Acquired Company is, and no Acquired Company has ever been, a member of an affiliated group filing or required to file an affiliated, consolidated, combined, or unitary Tax Return, nor does any Acquired Company have any liability for the Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, by Contract, or otherwise.

3.7.7 No Acquired Company has had, and no Acquired Company currently has, a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country and no Acquired Company has engaged in a trade or business in any foreign country other than the country in which such Acquired Company is organized.

3.7.8 No Acquired Company has executed or entered into any written agreement with, or obtained or applied for any written consents or written clearances or any other Tax rulings from, nor has there been any written agreement executed or entered into on its behalf with, any Taxing Authority, relating to Taxes, including any IRS private letter rulings or comparable rulings of any Taxing Authority and closing agreements pursuant to Section 7121 of the Code or any predecessor provision thereof or any similar provision of any applicable Law.

3.7.9 No Acquired Company has received notice of any claim by a Governmental Authority in a jurisdiction where any Acquired Company does not file Tax Returns that it is or may be subject to taxation by that Governmental Authority.

3.7.10 No Acquired Company will be required to include any item of income in, or exclude any item of deduction from, taxable income for any period or portion thereof ending after the Closing Date (a) under Section 481 of the Code (or any similar provision of state, local or foreign Law) as a result of change in method of accounting for a Pre-Closing Tax Period, (b) as a result of any intercompany transactions or any excess loss account described in Section 1.1502-19 of the Treasury Regulations (or any similar provision of state, local or foreign Law), (c) as a result of the installment method of accounting, the completed contract method of accounting or the cash method of accounting with respect to a transaction that occurred prior to the Closing Date, (d) as a result of any prepaid amount received on or prior to the Closing Date, (e) as a result of any election under Section 108(i) of the Code with respect to the discharge of any indebtedness on or prior to the Closing Date (or any similar provision of state, local or foreign Law), (f) as a result of amounts earned on or before the Closing Date pursuant to Section 951 of the Code, or (g) as a result of any debt instrument held prior to the Closing that was acquired with "original issue discount" as defined in Section 1273(a) of the Code or subject to the rules set forth in Section 1276 of the Code.

3.7.11 Within the last five years, no Acquired Company has distributed the stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

3.7.12 No Acquired Company has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

3.7.13 Each Acquired Company has disclosed on its federal income Tax Returns all positions taken in such Tax Returns that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code.

3.7.14 No Acquired Company has participated in any "listed transaction" as defined in Section 6707A(c)(2) of the Code or Treasury Regulation Section 1.6011-4(b)(2) (or any predecessor provision).

3.7.15 No Acquired Company is the beneficiary of any Tax incentive, Tax rebate, Tax holiday or similar arrangement or agreement with any Governmental Authority.

3.7.16 Each of the Acquired Companies is an entity disregarded as separate from its owner within the meaning of the provisions of Treasury Regulation Section 301.7701-3.

3.8 Employees.

3.8.1 Except as set forth on Schedule 3.8.1, there are no, and in the past three years there have been no, pending, or to Seller's Knowledge, threatened controversies, grievances or claims by any employee or former employee of any Acquired Company with respect to his or her employment, termination of employment or any employee benefits (other than routine claims for benefits under any Plan). None of the Acquired Companies is a party to any collective bargaining agreement or other similar type of labor contract nor, to the Seller's Knowledge, is there pending or underway any union organizational activities or proceedings with respect to employees of any of the Acquired Companies.

3.8.2 Schedule 3.8.2 sets forth a complete list of all current employees of the Acquired Companies and includes the following information for each such employee: (a) name, (b) employer, (c) title, (d) location, (e) date of hire, (f) active or inactive status (and expected date of return to work, if applicable), (g) current annual base salary or hourly wage rate, and (h) bonus, commission and other incentive compensation. The Acquired Companies have classified all individuals who perform services for them correctly, in accordance with the terms of each Plan and ERISA, the Code, the Fair Labor Standards Act and all other applicable Laws, as employees, independent contractors or leased employees, and no Acquired Company has received notice to the contrary from any Person or Governmental Authority.

3.8.3 Except as set forth on Schedule 3.8.3, the employment of each officer, employee, consultant or independent contractor of any of the Acquired Companies is terminable without notice or cause and without further liability to the Acquired Companies.

3.8.4 None of the Acquired Companies has experienced any labor strike, dispute, slowdown or stoppage or any other material labor difficulty nor, to Seller's Knowledge, is any such labor dispute threatened against any of the Acquired Companies.

3.8.5 With respect to the employees of the Acquired Companies, during the last 12 months, there has been no mass layoff, plant closing, or shutdown that could implicate the Worker Adjustment Retraining & Notification Act of 1988, as amended, or any similar Law and no such action will be implemented without advance notification to the Buyer.

3.8.6 All current employees of the Acquired Companies who work in the United States of America are, and all former employees of the Acquired Companies who worked in the United States of America whose employment terminated, voluntarily or involuntarily, within the past five years, were legally authorized to work in the United States of America. Further, at all times during the five year period prior to the Closing, the Acquired Companies were in compliance with both the employment verification provisions (including the paperwork and documentation requirements) and the anti discrimination provisions of the Immigration Reform and Control Act of 1986.

3.9 Employee Benefit Plans and Other Compensation Arrangements.

3.9.1 Set forth on Schedule 3.9.1 is a correct and complete list of (a) all employee benefit plans (as defined in Section 3(3) of ERISA), (b) all other severance pay, salary continuation, bonus, incentive, stock option, welfare, retirement, pension, profit sharing or deferred compensation plans, contracts, programs, funds or arrangements of any kind and (c) all other employee benefit plans, contracts, programs, funds or arrangements (including those which are maintained outside of the United States) and any trust, escrow, or similar agreement related thereto, in each case (i) with respect to which any of the Acquired Companies currently is the sponsor or is obligated to make contributions or (ii) with respect to which an Acquired Company has or could have any liability (collectively, the "Plans").

3.9.2 Except as set forth in the applicable subsection of Schedule 3.9.2:

(a) none of the Acquired Companies nor any member of the Controlled Group has at any time been the sponsor of or been obligated to make contributions to (i) a "multiemployer plan" (as defined in Title I or Title IV of ERISA), (ii) a "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code or (iii) a "defined benefit plan" (as defined in Section 3(35) of ERISA) or a plan subject to Title IV of ERISA;

(b) each of the Plans that is intended to be tax-qualified under Section 401(a) of the Code has received a favorable determination letter or opinion letter from the Internal Revenue Service as to its qualification and is so qualified, and nothing has occurred since the date of any such determination that could reasonably be expected to give the Internal Revenue Service grounds to revoke such determination, except that no representation is made with respect to any formal qualification requirement with respect to which the remedial amendment period under Section 401(b) of the Code has not yet expired;

(c) all of the Plans have been operated in compliance in all material respects with their respective terms and all applicable Laws, and all contributions required under the terms of the Plans or applicable Laws have been timely made;

(d) all (i) insurance premiums required to be paid with respect to, (ii) benefits, expenses, and other amounts due and payable under, and (iii) contributions, transfers, or payments required to be made to, any Plan prior to the Closing Date will have been paid, made or accrued on or before the Closing Date;

(e) there have been no prohibited transactions or breaches of any of the duties imposed on "fiduciaries" (within the meaning of Section 3(21) of ERISA) by ERISA with respect to the Plans that could result in any liability or excise tax under ERISA or the Code being imposed on any Acquired Company;

(f) no amounts that could be received (whether in cash or property or the vesting of property) as a result of any of the transactions contemplated by this Agreement by any employee, officer or manager of the Acquired Companies or any of their affiliates who is a "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G-1) under any employment, severance or termination agreement, other compensation arrangement or Plans will fail to be deductible for federal income tax purposes by virtue of Section 280G of the Code;

(g) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, disregarding any termination of employment which may occur on or after the Closing, will (i) result in any payment (including severance, unemployment compensation, golden parachute or otherwise) becoming due to any manager, officer or any employee of any Acquired Company (or dependents of such Persons) from such Acquired Company under any Plan or otherwise, (ii) increase any benefits or compensation otherwise payable to any manager, officer or any employee of any Acquired Company (or dependents of such Persons), under any Plan or otherwise, or (iii) result in any acceleration of the timing of payment or vesting of any such benefits to any extent;

(h) none of the Plans provides welfare benefits to any retired Person, or any current or former employee of the Acquired Companies following such employee's retirement or other termination of employment, except as required by applicable Law (including Section 4980B of the Code);

(i) none of the Acquired Companies maintains any Plan under which it would be obligated to pay benefits solely because of the consummation of the transactions contemplated by this Agreement, disregarding any termination of employment which may occur on or after the Closing;

(j) with respect to each group health plan benefiting any current or former employee of an Acquired Company or any member of the Controlled Group that is subject to Section 4980B of the Code, the Acquired Companies and each member of the Controlled Group has complied with the continuation coverage requirements of Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA;

(k) no Plan is or at any time was funded through a "welfare benefit fund" (as defined in Section 419(e) of the Code), and no benefits under any Plan are or at any time

have been provided through a voluntary employees' beneficiary association (within the meaning of subsection 501(c)(9) of the Code) or a supplemental unemployment benefit plan (within the meaning of Section 501(c)(17) of the Code);

(l) an Acquired Company has reserved all rights necessary to amend or terminate each of the Plans without the consent of any other person;

(m) no Acquired Company has agreed or committed to institute any plan, program, arrangement or agreement for the benefit of employees or former employees of the Acquired Companies other than the Plans, or to make any amendments to any of the Plans;

(n) with respect to any insurance policy providing funding for benefits under any Plan, (i) there is no liability of any Acquired Company in the nature of a retroactive rate adjustment, loss sharing arrangement, or other actual or contingent liability, nor would there be any such liability if such insurance policy was terminated on the date hereof, and (ii) to Seller's knowledge, no insurance company issuing any such policy is in receivership, conservatorship, liquidation or similar Proceeding and no such Proceedings with respect to any such insurer are imminent; and

(o) each Plan and any other payment or arrangement for which any Acquired Company has liability that is subject to Section 409A of the Code is in documentary compliance with and has been operated in compliance with Section 409A of the Code, and no individual has a right to any gross up or indemnification from any Acquired Company with respect to any such Plan, payment or arrangement subject to Section 409A of the Code.

3.9.3 With respect to each Plan, Seller has delivered or made available to Buyer correct and complete copies of: (a) all plan documents or, in the case of an unwritten Plan, a written description thereof, (b) the most recent determination letter from the Internal Revenue Service, (c) all summary plan descriptions, summaries of material modifications, annual reports, and summary annual reports, (d) all trust agreements, insurance contracts, and other documents relating to the funding or payment of benefits under any Plan, and (e) any other documents, forms or other instruments relating to any Plan reasonably requested by Buyer.

3.10 Permits; Compliance with Laws. Except for Environmental Laws and Environmental Permits (the representations and warranties with respect to which are exclusively provided for in Section 3.18), each Acquired Company is in compliance in all material respects with all applicable Laws, and possesses all material licenses, permits, registrations, permanent certificates of occupancy, authorizations, and certificates from any Governmental Authority required under applicable Law (collectively and not including the Environmental Permits, "Permits") with respect to the operation of its business as currently conducted. Except as set forth on Schedule 3.10, in the past three years, neither any Acquired Company nor Seller has received any written notice regarding any actual, alleged, possible or potential material violation of, or material failure to comply with, any Law or Order, and to the Seller's Knowledge neither any Acquired Company nor Seller has received any oral notice to such effect. Neither any Acquired Company, Seller, nor any of their respective managers, officers, executives,

representatives, agents or employees (a) has made any illegal contributions, gifts, entertainment or other unlawful expenses relating to (i) political activity, (ii) obtaining favorable treatment in securing business for Seller or any Acquired Company or (iii) obtaining special concessions for or in respect of Seller or any Acquired Company, (b) has made any direct or indirect unlawful payments to any foreign or domestic government officials or employees applicable to Seller or any Acquired Company, (c) has violated or is violating any provision of the United States Foreign Corrupt Practices Act of 1977, as amended or any similar Law under any jurisdiction, (d) has established or maintained, or is maintaining, any unlawful fund of company monies or other properties, (e) has made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment (whether in money, property or services) of any nature or (f) has violated any anti-boycott provisions of any applicable Law or other applicable Laws relating to exports and embargos.

3.11 Real and Personal Properties.

3.11.1 Schedule 3.11.1 sets forth a list of all of the real property owned by any of the Acquired Companies (the "Owned Real Property"), together with a list of easements held by any of the Acquired Companies (the "Easements"). With respect to the Owned Real Property and the Easements where expressly noted, (a) the applicable Acquired Company has fee simple title (and insured title with respect to any Easements), free and clear of any Lien, except for Permitted Liens, (b) except as set forth on Schedule 3.11.1, there are no leases, subleases, licenses, concessions, or other agreements granting to any party or parties the right to use or occupy any portion thereof (except, with respect to any Easements, any rights contained or referenced in the respective easement agreement), and (c) including with respect to the Easements, there are no outstanding options, rights of first offer, rights of first refusal or purchase or sale contracts to purchase any parcels or portions thereof or interest therein. The Owned Real Property is, and the Easements are, sufficient for the operation of the business of the Acquired Companies as it is currently conducted.

3.11.2 Schedule 3.11.2 identifies all of the real property devised by leases or subleases (collectively, the "Leases") to any of the Acquired Companies (collectively, the "Leased Real Property"; and together with the Owned Real Property, the "Real Property"). A true and correct copy of each Lease and Easement has been made available to the Buyer and there have been no amendments or modifications to the Leases or the Easements since they were made available. The applicable Acquired Company holds a valid and existing leasehold interest under each of the Leases to which it is a party for the terms set forth therein. All of the Leases and Easements are in full force and effect and enforceable by the applicable Acquired Company which is a party thereto, and to Seller's Knowledge, the other party thereto, in accordance with their terms, subject to the Enforceability Exceptions. No Acquired Company and, to Seller's Knowledge, no other party, is in material breach of or in material default under any Lease or any Easement. The Leased Real Property is sufficient for the operation of the business of the Acquired Companies as it is currently conducted.

3.11.3 No Acquired Company has received written notice of any pending or contemplated condemnation, expropriation or other Proceeding in eminent domain affecting the Real Property or any portion thereof or interest therein, and to Seller's Knowledge, no such Proceeding has been threatened against the Real Property. No Acquired Company has received

any written notice that the current use and occupancy of the Real Property violates any Law in any material respect.

3.11.4 An Acquired Company owns and has good and marketable title to the tangible personal property reflected on the Acquisition Balance Sheet or acquired thereafter (except for assets reflected thereon or acquired thereafter that have been disposed of in the Ordinary Course of Business since the date of the Acquisition Balance Sheet) or otherwise materially used in the conduct of its respective business, free and clear of all Liens, except for Permitted Liens and Liens identified or described in Schedule 3.11.4. The material tangible personal property of the Acquired Companies are, individually and in the aggregate, in working order, operating condition and repair for their age and intended use, normal wear and tear excepted. Without limiting the foregoing, at the Closing, either (a) the 150,000 PPH Babcock and Wilcox Package Boiler, Model 120-97 (the "Boiler"), will have been properly installed pursuant to the specifications agreed to by the Company and NBW, Inc. and be in working order, operating condition and repair for its age and intended use, or (b) the Company will have available to it an amount of non-Closing Cash cash in the Series 2015 Improvement Account (as such term is defined in the Bond Indenture) necessary to properly install the Boiler pursuant to the specifications agreed to by the Company and NBW, Inc. to render the Boiler into working order, operating condition and repair for its age and intended use (any shortfall of such non-Closing Cash cash, the "First Boiler Shortfall").

3.12 Intellectual Properties.

3.12.1 Schedule 3.12.1 sets forth a listing of all registered Acquired Company Intellectual Property and all pending applications therefor and any material unregistered trademarks.

3.12.2 Schedule 3.12.2 sets forth a listing of all written licenses (excluding Off-the-Shelf Software and end user licenses for mass market Software) pursuant to which an Acquired Company is a party either as a licensee or licensor and any other Contract under which an Acquired Company grants or receives any rights to Intellectual Property (the "Licenses").

3.12.3 Except as set forth on Schedule 3.12.3, the Acquired Companies own all right, title and interest in and to the Acquired Company Intellectual Property. The Acquired Company Intellectual Property is valid, subsisting, in full force and effect, and has not been cancelled, expired or abandoned.

3.12.4 The Acquired Companies have a valid and enforceable right or license to use (as currently being used) the Intellectual Property used in their respective businesses that is owned by a third party, subject to the Enforceability Exceptions. The Intellectual Property licensed by the Acquired Companies together with the Acquired Intellectual Property constitutes all of the Intellectual Property necessary to operate the business as currently conducted. Immediately after the Closing, the Buyer will own or have a valid right to use all of the Intellectual Property necessary to operate the business as currently conducted.

3.12.5 No Acquired Company nor Seller has received in the past six years any written notice regarding the infringement or misappropriation by any Acquired Company of any

Intellectual Property of any third party. In the past six years neither the Seller nor any Acquired Company has received written notice that it may require a license to a another Person's Intellectual Property. No Person has challenged or threatened in writing to challenge the validity or enforceability of any of the Acquired Company Intellectual Property.

3.12.6 The conduct of the Acquired Companies' respective businesses does not infringe upon or misappropriate any Intellectual Property of any third party. To Seller's Knowledge, no third party is infringing or has infringed, misappropriated or otherwise violated any of the material Acquired Company Intellectual Property.

3.12.7 All Information Systems used by the Acquired Companies are sufficient for the conduct of their business as currently conducted. The Acquired Companies use means that are both reasonable and at least consistent with industry practices of companies offering similar goods and services as the Acquired Companies, to protect the security and integrity of all Information Systems used by the Acquired Companies, and all personally identifiable information in possession of the Acquired Companies. To the Seller's Knowledge, no Person has gained unauthorized access to the Acquired Companies' Information Systems or personally identifiable information in possession of the Acquired Companies.

3.13 Contracts. Schedule 3.13 sets forth a listing as of the date hereof of all of the Contracts of the following types to which any of the Acquired Companies is a party or by which any material assets of the Acquired Companies are bound or are subject:

3.13.1 Contracts or group of related Contracts which involve commitments to make capital expenditures or which provide for the purchase of assets, goods or services by any Acquired Company under which such Acquired Company expended, or will expend, more than $250,000 in the 12-month period immediately prior to the date hereof, or in any consecutive 12-month period after the date hereof;

3.13.2 Contracts or group of related Contracts that provide for the sale of assets, good or services by any Acquired Company under which such Acquired Company received, or will receive, more than $1,000,000 in the 12-month period immediately prior to the date hereof, or in any consecutive 12-month period after the date hereof;

3.13.3 Contracts that are joint venture agreements, partnership agreements, or limited liability company agreements or any similar type of Contract (however named) involving a sharing of profits or losses with any other Person or any similar strategic alliance, venture or teaming Contract;

3.13.4 employment, confidentiality and non-competition agreements with any employee who receives salary and bonus in excess of $125,000 per annum;

3.13.5 Contracts that limit the freedom of any Acquired Company to engage in any business or compete with any Person or in any geographic area, or from soliciting or hiring any Person with respect to employment;

3.13.6 Contracts that purport to limit the freedom of any Affiliate of any Acquired Company to engage in any business or compete with any Person or in any geographic area, or from soliciting or hiring any Person with respect to employment;

3.13.7 Contracts pursuant to which any Acquired Company is a lessor or a lessee or holder or operator of any personal property or the lessor or lessee of any real property, except for any such leases under which the aggregate annual rent or lease payments do not exceed $50,000 and which are not terminable by such Acquired Company, without Liability to such Acquired Company, upon 90 days' or less advance notice;

3.13.8 other than Contracts for the sale of steam or chilled water in the Ordinary Course of Business, Contracts for the sale, assignment, transfer or other disposition, or any acquisition, of assets involving a purchase price (in a single transaction or a series of related transactions) in excess of $50,000 and under which any Acquired Company has any continuing Liability;

3.13.9 Contracts that relate to any merger, stock acquisition, asset acquisition or other business combination involving Seller or any Acquired Company;

3.13.10 Contracts not included in Section 3.13.4 providing for severance, retention, change in control or other similar payments;

3.13.11 Contracts with Seller, or any officer or manager of any Acquired Company, or any Affiliate of any of the foregoing, or in the case of any individual, any immediate family member of any of the foregoing;

3.13.12 Contracts relating to collective bargaining or otherwise relating to any labor union, works council or similar employee organization;

3.13.13 Contracts with any sales representative or similar agent;

3.13.14 Contracts relating to Indebtedness of any Acquired Company; and

3.13.15 Contracts under which any Acquired Company has made advances or loans to any other Person, other than employee loans in the ordinary course of business.

Correct and complete copies of each written Contract and summaries of each oral Contract, in each case, required to be identified on Schedule 3.13, including all amendments and supplements thereto (collectively, the "Material Contracts") have been made available to Buyer. As of the date of this Agreement, (a) all of the Material Contracts are in full force and effect and are enforceable against the Acquired Company that is a party thereto, and to Seller's Knowledge, the other parties thereto, in accordance with their respective terms, subject in each case to the Enforceability Exceptions, (b) the Acquired Company that is a party thereto has performed in all material respects all obligations required to be performed by it pursuant to such Material Contracts, and (c) during the past two years, no Acquired Company has received written threats or notices of default, breaches or violations of any of such Material Contracts.

3.14 Litigation. Except as set forth on Schedule 3.14, there are no, and in the past two years there have been no, Proceedings of any kind whatsoever, at law or in equity, pending, or to Seller's Knowledge, threatened in writing against Seller or any of the Acquired Companies. Neither Seller nor any Acquired Company is subject to any Order or is in breach or violation of any Order.

3.15 Brokerage. No Person is or will become entitled, by reason of any Contract entered into or made by or on behalf of Seller or any Acquired Company, to receive any commission, brokerage, finder's fee, financial advisor or investment banker fee or other similar compensation payable by any Person in connection with the consummation of the transactions contemplated by this Agreement, other than fees payable to Craig-Hallum Capital Group, LLC.

3.16 Material Suppliers and Customers. Schedule 3.16 contains a true and complete list of (a) the 10 largest customers of the Acquired Companies (on a consolidated basis) for the 12-month period ended June 30, 2015, by gross (the "Material Customers"), showing the total sales of the Acquired Companies to each such customer during such period, and (b) the 10 largest suppliers or vendors of the Acquired Companies (on a consolidated basis) for the 12-month period ended June 30, 2015, by consolidated spending (the "Material Suppliers"), showing the total purchases by the Acquired Companies from each such supplier during such period. Except as set forth on Schedule 3.16, since January 1, 2015, none of the Material Customers or Material Suppliers has cancelled, materially modified, or otherwise terminated its relationship with such Acquired Company or materially decreased its services, supplies or materials to any Acquired Company or its usage or purchase of the services or products of such Acquired Company, or, to Seller's Knowledge, has threatened or intends to do so.

3.17 Insurance. Schedule 3.17 sets forth a listing of all insurance policies or binders currently owned, held by or applicable to the Acquired Companies (or their respective assets or businesses). All such policies are in full force and effect and all premiums that are due and payable with respect thereto have been paid. No Acquired Company has received any written notice of cancellation or non-renewal of any such policy or arrangement nor has the termination of any such policy or arrangement been threatened in writing. Except as set forth on Schedule 3.17, there are no claims pending, and for the past two years there have been no claims made, by any Acquired Company under any of such insurance policies.

3.18 Environmental Matters. Except as disclosed in Schedule 3.18:

3.18.1 The Acquired Companies are and have been for the past five years in compliance in all material respects with applicable Environmental Laws and Environmental Permits.

3.18.2 The Acquired Companies possess all Environmental Permits which are required for the operation of their respective businesses. Schedule 3.18 contains a complete list of the Environmental Permits. No Environmental Permit of any Acquired Company has failed to be renewed (if applicable) or has been cancelled in the past two years.

3.18.3 No Acquired Company has received any written communication during the past five years (or prior to such time if not fully resolved with no further Liability) alleging

that any Acquired Company is liable for: (a) any actual or alleged noncompliance with applicable Environmental Laws or Environmental Permits; (b) any actual or alleged obligation to undertake or bear the cost of any liabilities under any Environmental Law with respect to the Real Property or any other location; or (c) any personal injury or property damage related to any the presence of, or exposure to, any Hazardous Material.

3.18.4 There is no Environmental Claim pending or, to Sellers' Knowledge, threatened, against any Acquired Company, nor is any Acquired Company subject to any ongoing or future obligation, cost or Liability in connection with any resolved Environmental Claim.

3.18.5 None of the Real Property is currently listed on the National Priorities List ("NPL") or the Comprehensive Environmental Response, Compensation and Liability Information System, both promulgated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") or any comparable state list. To Sellers' Knowledge, no Acquired Company has transported or disposed of or arranged (directly or indirectly) for the transportation, treatment or disposal of any Hazardous Material to or at a site that, pursuant to any Environmental Law: (a) has been placed or proposed for placement on the NPL or any similar state list; or (b) is subject to or the source of any order, demand or request from any Governmental Authority or any other Person to take any response, removal, remedial, corrective or investigative action, or to pay for the cost of such action at any such site.

3.18.6 There are presently no, and, to Sellers' Knowledge, there have not been any, Hazardous Materials used, generated, treated, stored, transported, disposed of, handled or otherwise existing on, under or about the Real Property or any other facility, structure or equipment owned, leased, operated or used by any Acquired Company at any time, in material violation of, or in any manner that would give rise to any material Liability under, any Environmental Law or any Contract.

3.18.7 There are no above-ground storage tanks or septic systems or, to Sellers' Knowledge, underground storage tanks, located on any of the Real Property.

3.18.8 There are no asbestos-containing materials or polychlorinated biphenyls used in, applied to or in any way incorporated in any building, structure or equipment owned, leased or operated by any Acquired Company in a condition that violates any Environmental Law or any Contract.

3.18.9 No Acquired Company has assumed, undertaken or agreed to indemnify any other Person relating to or arising from any Environmental Law or any Release or presence of any Hazardous Material.

3.18.10 Each Acquired Company has made available to the Buyer copies of all material documents, records and information in its possession or control prepared within the past 7 years concerning actual or potential Liability of any Acquired Company under any Environmental Law, including previously conducted environmental site assessments, compliance audits, asbestos surveys, sampling or testing results for Hazardous Materials and documents

regarding any Hazardous Materials present at, upon, in, under or from the Real Property or any property, building or structure owned, leased or operated by any Acquired Company at any time.

3.19 Related Party Transactions. Except as set forth on Schedule 3.19, no officer, employee, manager or member of any Acquired Company or any member of his or her immediate family or any Affiliate of Seller or any Acquired Company (all of the foregoing collectively, each a "Related Person"): (a) owes any amount to any Acquired Company, nor does any Acquired Company owe any amount to, or has any Acquired Company committed to make any loan or extend or guarantee credit to or for the benefit of, any Related Person (other than any salary payments to, and reimbursement of business fees and expenses of, employees, managers and officers of the Acquired Companies in the ordinary course of employment and in the Ordinary Course of Business), (b) owns any property or right, tangible or intangible, that is used by any Acquired Company or is otherwise party to any Contract in respect of any such property or right, (c) has any claim or cause of action against any Acquired Company, other than claims for accrued compensation, benefits or expense reimbursement arising in the ordinary course of employment and in the Ordinary Course of Business or (d) possesses, directly or indirectly, any financial interest in, or is a director, manager, officer or employee of, any Person (other than any Acquired Company) which is a client, supplier, customer, lessor, lessee, or competitor of any Acquired Company.

3.20 Bank Accounts. Schedule 3.20 sets forth a true and complete list of the names and locations of all banks and the numbers of all of the bank accounts of each Acquired Company, together with the names of all Persons authorized to draw thereon or to have access thereto and the authorized signatories for such accounts. Except as set forth on Schedule 3.20, no Person holds a power of attorney to act on behalf of any Acquired Company.

3.21 No Additional Representations. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS ARTICLE 3 (AS MODIFIED BY THE DISCLOSURE SCHEDULES), SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE INTERESTS OR THE CONDITION, VALUE OR QUALITY OF ANY OF THE ACQUIRED COMPANIES OR ANY OF THE ACQUIRED COMPANIES' ASSETS, AND THE COMPANY SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO ANY OF THE ACQUIRED COMPANIES' ASSETS, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, IT BEING UNDERSTOOD THAT SUCH SUBJECT ASSETS ARE BEING ACQUIRED "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION, AND BUYER SHALL RELY ON ITS OWN EXAMINATION AND INVESTIGATION THEREOF. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 3 (AS MODIFIED BY THE DISCLOSURE SCHEDULES), SELLER HEREBY DISCLAIMS, FOR ITSELF, ITS AFFILIATES AND EACH OF THE ACQUIRED COMPANIES, ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY

HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY DIRECTOR, MANAGER, MEMBER, OFFICER, EMPLOYEE, AGENT, CONSULTANT, OR REPRESENTATIVE OF SELLER, ANY AFFILIATES OF SELLER OR ANY OF THE ACQUIRED COMPANIES), EXCEPT THAT SUCH DISCLAIMER SHALL NOT APPLY TO FRAUD. WITHOUT LIMITING THE EXPRESS LANGUAGE OF ANY REPRESENTATION AND WARRANTY CONTAINED IN THIS ARTICLE 3, NEITHER THE COMPANY NOR ANY OF THE OTHER ACQUIRED COMPANIES NOR SELLER OR ITS AFFILIATES MAKES OR HAVE MADE ANY REPRESENTATIONS OR WARRANTIES TO BUYER REGARDING ANY PROJECTION OR FORECAST REGARDING FUTURE RESULTS OR ACTIVITIES OR THE PROBABLE SUCCESS OR PROFITABILITY OF ANY OF THE ACQUIRED COMPANIES.

ARTICLE 4

Representations and Warranties of Buyer

Buyer represents and warrants to the Company and Seller as follows:

4.1 Organization; Authorization. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Buyer has all requisite legal and corporate power and authority to execute, deliver and perform this Agreement and each other agreement, instrument and document executed and delivered by Buyer pursuant hereto (collectively, the "Buyer Ancillary Agreements"), and to consummate the transactions contemplated herein and therein. The execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized and approved (by all requisite corporate action or otherwise) on the part of Buyer, and no other act or proceeding on the part of Buyer is necessary to authorize or approve the execution, delivery or performance by Buyer of this Agreement and the Buyer Ancillary Agreements or the performance of its obligations hereunder and thereunder or the consummation of the transactions contemplated hereby or thereby.

4.2 Execution and Delivery; Enforceability. This Agreement has been, and each Buyer Ancillary Agreement will upon such delivery be, duly executed and delivered by Buyer and constitutes, or will upon such delivery constitute, the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforcement may be limited by the Enforceability Exceptions.

4.3 Governmental Authorities; Consents.

4.3.1 Neither the execution and delivery of this Agreement or any Buyer Ancillary Agreement, nor the consummation by Buyer of the transactions contemplated hereby or thereby, nor compliance by Buyer with any of the provisions hereof or thereof, will: (a) conflict with or result in a breach of any provisions of the Charter Documents of Buyer; (b) constitute or result in the breach of any term, condition or provision of, or constitute a default under (with or without notice or lapse of time, or both), or give rise to any right of termination, consent, amendment, cancellation, modification or acceleration with respect to, or give rise to

any obligation of Buyer to make any payments under, or result in the creation or imposition of a Lien upon any property or assets of Buyer pursuant to any material Contract to which Buyer is a party or by which any of its properties or assets may be subject; or (c) violate any Law or Order applicable to Buyer or by which any properties or assets owned or used by Buyer is bound or affected; except, in the case of clauses (b) and (c) of this Section 4.3.1, as would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Buyer to consummate the transactions contemplated by this Agreement, or as would not materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

4.3.2 No consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority is required to be obtained or made by Buyer in connection with: (a) the execution, delivery and performance by Buyer of this Agreement or any Buyer Ancillary Agreement in connection herewith; or (b) the compliance by Buyer with any of the provisions hereof or thereof or the consummation of the transactions contemplated hereby or thereby.

4.4 Brokerage. No Person is or will become entitled, by reason of any agreement or arrangement entered into or made by or on behalf of Buyer, to receive any commission, brokerage, finder's fee, financial advisor or investment banker fee or other similar compensation payable by any Person in connection with the consummation of the transactions contemplated by this Agreement.

4.5 Investment Intent; Restricted Securities. Buyer is acquiring the Interests solely for Buyer's own account, for investment purposes only, and not with a view to, or with any present intention of, reselling or otherwise distributing the Interests or dividing its participation herein with others. Buyer has sufficient experience in business, financial and investment matters to be able to evaluate the purchase of the Interests and to make an informed investment decision with respect to such purchase. Buyer is an "accredited investor" within the meaning of Rule 501 promulgated under the 1933 Act. Buyer understands and acknowledges that: (a) none of the Interests have been registered or qualified under the 1933 Act, or under any securities Laws of any state of the United States or other jurisdiction, in reliance upon specific exemptions thereunder for transactions not involving any public offering; (b) all of the Interests constitute "restricted securities" as defined in Rule 144 under the 1933 Act; (c) none of the Interests are traded or tradable on any securities exchange or over-the-counter; and (d) none of the Interests may be sold, transferred or otherwise disposed of unless a registration statement under the 1933 Act with respect to such Interests and qualification in accordance with any applicable state securities Laws becomes effective or unless such registration and qualification is inapplicable, or an exemption therefrom is available.

4.6 Financing. Assuming a Material Adverse Effect has not occurred, Buyer will on the Closing Date have readily available funds sufficient to consummate the transactions contemplated by this Agreement and each Buyer Ancillary Agreement.

4.7 Solvency. After giving effect to the transactions contemplated by this Agreement, and assuming the accuracy of the Seller's and the Company's representations and warranties contained herein and in the Ancillary Agreements, and assuming compliance by Seller and the

Company with their covenants contained herein and in the Ancillary Agreements, Buyer and each of the Acquired Companies immediately after the Closing: (a) will be solvent (in that both the fair value of its assets will not be less than the sum of its liabilities and that the present saleable value of its assets will not be less than the amount required to pay its probable liabilities as they become absolute and matured), (b) will have adequate capital with which to engage in its business, and (c) will not have incurred and will not plan to incur liabilities beyond its ability to pay as they become absolute and matured. In completing the transactions contemplated by this Agreement, Buyer does not intend to hinder, delay or defraud any present or future creditors of Buyer or the Acquired Companies.

4.8 Due Diligence Investigation. Buyer has conducted its own independent investigation of the Acquired Companies, and based thereon has formed an independent judgment concerning the business of the Acquired Companies. In making its decision to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement, Buyer has relied solely upon the representations and warranties of Seller set forth in Article 3 (and acknowledges that such representations and warranties are the only representations and warranties made by Seller) and in the Ancillary Agreements, and has not relied upon any other information provided by, for or on behalf of Seller or the Acquired Companies, or their respective agents or representatives, to Buyer in connection with the transactions contemplated by this Agreement. Buyer has entered into the transactions contemplated by this Agreement with the understanding, acknowledgement and agreement that no representations or warranties, express or implied, are made with respect to any projection or forecast regarding future results or the probable success or profitability of any of the Acquired Companies. Buyer acknowledges that no current or former member, manager, officer, employee, affiliate or advisor of any of the Acquired Companies has made or is making any representations, warranties or commitments whatsoever regarding the subject matter of this Agreement, express or implied, except as set forth in this Agreement and the Ancillary Agreements.

ARTICLE 5

Conditions Precedent

5.1 Conditions to Buyer's Obligation. The obligation of Buyer to consummate the closing of the transactions contemplated in this Agreement is subject to the satisfaction or waiver, at or before the Closing, of the following conditions set forth in this Section 5.1:

5.1.1 Marc Divis shall continue to be an employee of the Company;

5.1.2 all filings, authorizations, approvals and consents set forth in Schedule 5.1.2 shall have been made with or obtained from all applicable Persons;

5.1.3 no Law or Order preventing the consummation of the transactions contemplated by this Agreement shall be in effect;

5.1.4 (a) each of the representations and warranties set forth in Article 3 shall be true and correct in all respects (without giving effect to any materiality or "Material Adverse Effect" qualifications contained therein) as of the Closing Date as though made on and as of the

Closing Date (except, in each case, to the extent such representations and warranties are made as of a specified date, in which case the same shall continue on the Closing Date to be true and correct as of the specified date); provided, that the foregoing condition shall be satisfied if the failure of such representations and warranties (other than the Fundamental Representations) to be so true and correct as of such dates has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (b) Seller and the Company shall have performed or caused to have been performed and complied with or caused to have been complied with in all material respects all of the covenants and agreements required by this Agreement to be performed or complied with by Seller and the Company prior to the Closing; and (c) Buyer shall have received a certificate from an authorized officer of each of Seller and the Company stating that each of the conditions specified above in clauses (a) and (b) is satisfied;

5.1.5 no Material Adverse Effect shall have occurred, and no facts or circumstances shall exist that, individually or in the aggregate, would be reasonably expected to result in a Material Adverse Effect;

5.1.6 prior to or at the Closing, Buyer shall have received the following:

(a) an assignment and transfer instrument for the Interests, duly executed and delivered by Seller as of the Closing;

(b) the written resignation, effective as of the Closing, of the managers and officers (in their capacity as such and not in their capacity as employees) of the Acquired Companies set forth in Schedule 5.1.6(b);

(c) (1) duly executed and delivered payoff letters from the Trustee with respect to the Repaid Closing Indebtedness, drafts of which shall have been provided to Buyer no later than three Business Days prior to the Closing, which letters provide that all Liens relating to the Repaid Closing Indebtedness will be released at the Closing and the Repaid Closing Indebtedness shall be fully and finally satisfied at the Closing and (2) duly executed and delivered payoff letters from applicable Persons with respect to all other Closing Indebtedness, if any, drafts of which shall have been provided to Buyer no later than three Business Days prior to the Closing, which letters provide that all Liens relating to the Closing Indebtedness, if any, will be released at Closing and the Closing Indebtedness shall be fully and finally satisfied at the Closing;

(d) a certificate of good standing as of the most recent practicable date from the Secretary of State of Ohio for each of the Acquired Companies, attesting to the good standing of each Acquired Company;

(e) the certificate described in Section 5.1.4(c);

(f) the Closing Certificate;

(g) the Closing Trustee Instructions, duly executed by Seller;

(h) written evidence that all payments required to be made under, and all other Liabilities pursuant to, the Charon MSC and the Hoffman Consulting Contract have been

paid and satisfied in full, and that the Charon MSC and the Hoffman Consulting Contract have been terminated and the Acquired Companies released from further Liability thereunder as of the Closing;

(i) written evidence that all payments required to be made under, and all other Liabilities pursuant to, each Contract listed on Schedule 3.13.11 and Schedule 3.19 (and, in each case, marked with an asterisk thereon) have been paid and satisfied in full, and that such Contracts have been terminated and the Acquired Companies released from further Liability thereunder;

(j) certified copies of resolutions of the Company's and Seller's governing bodies authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby;

(k) a verification report provided by Causey, Demgen Moore P.C. (the "Verification Report") in respect of the Series 2012 Bonds stating that the amount in the defeasance escrow account, together with the interest earnings thereon, constitutes sufficient moneys and defeasance obligations as are required for the Series 2012 Bonds to be deemed paid and discharged; and

(l) counterparts to the Escrow Agreement, duly executed by Seller and the Trustee.

Any agreement or document to be delivered to Buyer pursuant to this Section 5.1, the form of which is not attached to this Agreement as an exhibit, shall be in form and substance reasonably satisfactory to Buyer.

5.1.7 Prior to the Closing, the Company shall have received written approval from the Ohio Environmental Protection Agency of a deadline extension for compliance with 40 C.F.R. Part 63, Subpart DDDDD to January 31, 2017 or later.

5.2 Conditions to Sellers' Obligation. The respective obligations of Seller to consummate the closing of the transactions contemplated in this Agreement are subject to the satisfaction, at or before the Closing, of the following conditions set forth in this Section 5.2:

5.2.1 [Reserved];

5.2.2 all filings, authorizations and approvals and consents set forth in Schedule 5.2.2 shall have been made with or obtained from all applicable Persons;

5.2.3 no Law or Order preventing the consummation of the transactions contemplated by this Agreement shall be in effect;

5.2.4 (a) each of the representations and warranties set forth in Article 4 shall be true and correct in all respects (without giving effect to any materiality or "Material Adverse Effect" qualifications contained therein) as of the Closing Date as though made on and as of the Closing Date (except, in each case, to the extent such representations and warranties are made as of a specified date, in which case the same shall continue on the Closing Date to be true and

correct as of the specified date); provided, that the foregoing condition shall be satisfied if the failure of such representations and warranties to be so true and correct as of such dates has not, and would not reasonably be expected to, have a material adverse effect on the ability of Buyer to consummate the transactions contemplated by this Agreement; (b) Buyer shall have performed or caused to have been performed and complied with or caused to have been complied with in all material respects all of the covenants and agreements required by this Agreement to be performed or complied with by Buyer prior to the Closing; and (c) Seller shall have received a certificate from an authorized officer of Buyer stating that each of the conditions specified above in clauses (a) and (b) is satisfied;

5.2.5 Buyer shall have delivered, as of the Closing, to the Trustee's Account the Estimated Purchase Price in accordance with Section 2.3.

5.2.6 Seller shall have received the following:

(a) a certificate of good standing as of the most recent practicable date from the Secretary of State where Buyer is incorporated, attesting to the good standing of Buyer;

(b) the certificate described in Section 5.2.4(c);

(c) the Closing Trustee Instructions, duly executed by Buyer; and

(d) a duly executed counterpart to the Escrow Agreement from Buyer and the Trustee.

Any agreement or document to be delivered to Sellers pursuant to this Section 5.2, the form of which is not attached to this Agreement as an exhibit, shall be in form and substance reasonably satisfactory to Seller.

ARTICLE 6

The Closing

The consummation of the transactions contemplated herein (the "Closing") will take place on the later of (a) August 31, 2015 and (b) the third Business Day following the satisfaction or waiver (to the extent permitted by applicable Law) of all of the conditions set forth in Article 5 hereof (other than those conditions that by their nature are to be first satisfied at the Closing, but subject to the satisfaction or waiver thereof), and shall take place electronically via the exchange of documents and counterpart signatures in accordance with Section 11.9. The date on which the Closing actually occurs is referred to herein as the "Closing Date." The transfers and deliveries described in Article 5 shall be mutually interdependent and shall be regarded as occurring simultaneously, and, any other provision of this Agreement notwithstanding, no such transfer or delivery shall become effective or shall be deemed to have occurred until all of the other transfers and deliveries provided for in Article 5 shall also have occurred or been waived in writing by the party entitled to waive the same. For purposes of allocation of expenses, adjustments, tax and other financial effects of the transactions contemplated hereby, the Closing shall be deemed to have occurred at 12:01 a.m. Eastern

Standard Time on the Closing Date. For all other purposes, including passage of title and risk of loss, the effective time shall be at the Closing.

ARTICLE 7

Covenants and Agreements

7.1 Pre-Closing Covenants and Agreements.

7.1.1 Conduct of Business.

(a) During the period between the date of this Agreement until the earlier to occur of the termination of this Agreement in accordance with Section 7.1.4 or the Closing Date (the "Pre-Closing Period"), except as otherwise expressly provided for in this Agreement or set forth on Schedule 7.1.1, or except to the extent Buyer otherwise consents in writing, the Company shall and shall cause each of the other Acquired Companies, and Seller shall cause each of the foregoing, to (i) be operated in the Ordinary Course of Business, (ii) use reasonable best efforts to preserve substantially intact its business organization and to preserve the present commercial relationships with Persons with whom it does business or otherwise engages.

(b) Without limiting the generality of the foregoing, except as expressly contemplated by this Agreement or set forth on Schedule 7.1.1, during the Pre-Closing Period, without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed, the Company shall not and shall not permit any of the other Acquired Companies to take, or agree (whether in writing or otherwise) to take, and Seller shall cause each of the foregoing not to take, or agree (whether in writing or otherwise) to:

(i) other than as required by applicable Law or GAAP, effect any change in the Tax reporting or accounting policies or practices of any of the Acquired Companies;

(ii) (A) settle or compromise any Tax liability; (B) make, change or rescind any Tax election; (C) surrender any right in respect of Taxes; (4) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes or (D) amend any Tax Return;

(iii)(A) make, or grant, (1) any bonus or any wage, severance or termination pay, salary or compensation increase to any manager or employee, (2) any increase of any compensation or benefit provided under any employee benefit plan, employment agreement or arrangement, including any fringe benefit plan or arrangement, or (3) any equity or equity-based compensation award; (B) amend or terminate any existing employee benefit plan or arrangement or adopt any new employee benefit plan or arrangement; or (C) hire, terminate (other than for cause), promote or demote any employee;

(iv) merge or consolidate with any Person or invest in, loan to, make an advance (except for advances to Seller or to its employees or officers, in each case for business expenses incurred in the Ordinary Course of Business) or capital contribution to, or otherwise acquire any capital stock or business or substantial portion of the assets of any Person, or consummate any business combination transaction, in each case, whether in a single transaction or series of related transactions;

(v) amend the Charter Documents of any Acquired Company or take, agree to take or authorize any action to wind up the affairs of Seller or any Acquired Company or dissolve or change Seller's or any such Acquired Company's corporate or other organizational form or amend any terms of its outstanding securities, or declare, set aside, make, pay or effect any recapitalization, reclassification dividend (or other distribution or payment), combination or like change to its capitalization;

(vi) sell, assign or transfer any tangible or intangible property or assets having a book value, in any individual case, in excess of $100,000, except for sales of steam or chilled water in the Ordinary Course of Business consistent with past practice and except for Permitted Liens;

(vii) purchase or lease, or commit to purchase or lease, any tangible or intangible property or assets for an amount in excess of $50,000 individually, except for purchases of inventory and supplies in the Ordinary Course of Business;

(viii) make, commit to make or authorize any capital expenditure or research and development expenditure, other than capital expenditures and research and development expenditures contemplated by the Acquired Companies' existing capital budget, a true and correct copy of which is attached to Schedule 7.1.1;

(ix) sell, assign, transfer, lease, license or otherwise dispose of, or agree to sell, assign, transfer, lease, license or otherwise dispose of, any of the material properties or assets (or any portion thereof) of, or used by, any Acquired Company other than sales of inventory or obsolete assets or assets with no book value;

(x) amend, modify, restate, supplement or waive any rights, in any material respect, or terminate, any Material Contract (other than a termination of a Material Contract as a result of the expiration of the term of such Material Contract);

(xi) enter into any Contract that if entered into as of the date hereof would be a Material Contract;

(xii) authorize for issuance, issue or sell (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase

or otherwise) any membership interests of any class or any other securities or equity equivalents of any Acquired Company;

(xiii) purchase or redeem any outstanding securities of any Acquired Company;

(xiv) incur any Indebtedness or assume, guarantee, endorse or otherwise incur Liability in respect of the indebtedness of any other Person (whether directly, contingently or otherwise), in each case other than Indebtedness specifically reflected in the Financial Statements;

(xv) cancel or waive any debt or Liability owed to any of the Acquired Companies or release any claim possessed by any of the Acquired Companies, other than in the Ordinary Course of Business;

(xvi) except in the Ordinary Course of Business and except for Permitted Liens, subject to any Lien any of the respective properties or assets of the Acquired Companies;

(xvii) institute, settle or compromise any Proceeding (other than matters involving the payment with respect to such matter of $50,000 or less by the Acquired Companies, and involving no restrictions on the conduct of any Acquired Company), or waive or release any right or claim against any third Person;

(xviii) take any action which would or would reasonably be expected to adversely affect the ability of the parties to consummate the transactions contemplated hereby; and

(xix) enter into any written agreement to do any of the foregoing (other than in respect of actions explicitly contemplated by this Agreement).

7.1.2 Access. During the Pre-Closing Period, Buyer and its representatives (including any financing sources and their respective representatives) shall continue to have reasonable access during normal business hours to the personnel, facilities, counsel, accountants, consultants, representatives and books and records (consistent with applicable privacy Laws and subject to the Confidentiality Agreement) of the Acquired Companies to conduct such inspections as Buyer may reasonably request, and otherwise reasonably cooperate with Buyer in Buyer's investigation of the Acquired Companies' businesses and properties; provided, however, that such access shall not permit any representatives of Buyer to conduct any subsurface environmental testing or sampling on or with respect to the Real Property. Any inspection pursuant to this Section 7.1.2 will be conducted in such a manner so as not to interfere unreasonably with the conduct of the businesses of the Acquired Companies, and in no event will any provision hereof be interpreted to require the Acquired Companies to permit any inspection, or to disclose any information, that the Acquired Companies determine in good faith the disclosure of which to Buyer would violate any Law, any of the Acquired Company's confidentiality obligations under a Material Contract, or that would result in the loss of an attorney-client or other privilege. Buyer and its representatives will not contact any of the

employees, landlords, customers or suppliers of the Acquired Companies without the prior consent of Seller, it being acknowledged that any and all such contacts will be arranged by Seller and that Buyer and Seller will mutually agree on the timing and manner of contact with all employees, landlords, customers, suppliers and other third parties.

7.1.3 Satisfaction of Closing Conditions. During the Pre-Closing Period and subject to the terms and conditions of this Agreement, Seller, the Company and Buyer will use commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary under the terms of this Agreement or under applicable Laws to cause the satisfaction of the conditions set forth in Article 5 and to consummate the transactions contemplated by this Agreement, including using their respective commercially reasonable efforts to obtain all authorizations, consents, Permits, Environmental Permits, waivers or other approvals of all Governmental Authorities that may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement, and the parties shall cooperate with each other with respect to each of the foregoing.

7.1.4 Termination. This Agreement may be terminated:

(a) by mutual written consent of Buyer and Seller (on behalf of itself and the Company) at any time prior to the Closing;

(b) by Buyer or Seller (on behalf of itself and the Company), upon notice to the other party, if a Governmental Authority of competent jurisdiction has issued an Order permanently enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, and such Order has become final and non-appealable; provided, however, that the right to terminate this Agreement pursuant to this Section 7.1.4(b) shall not be available to any party whose breach of any provision of this Agreement results in or causes such Order or who is not in compliance with its obligations under Section 7.1.3;

(c) by (i) Buyer if it is not then in material breach of its obligations under this Agreement and if (A) any of the representations and warranties of Seller in this Agreement are or become untrue or inaccurate such that the condition set forth in Section 5.1.4(a) or 5.1.4(b) would not be satisfied or (B) there has been a breach on the part of Seller or the Company of any of their covenants or obligations in this Agreement such that the condition set forth in Section 5.1.4(c) would not be satisfied and, in either case, such breach or inaccuracy is not waived or cured within 10 days after being notified of the same or is incapable of being cured; or (ii) Seller if neither Seller nor the Company are then in material breach of their respective obligations under this Agreement and if (A) any of the representations and warranties of Buyer in this Agreement are or become untrue or inaccurate such that the condition set forth in Section 5.2.4(a) or 5.2.4(b) would not be satisfied or (B) there has been a breach on the part of Buyer of any of its covenants or obligations in this Agreement such that the condition set forth in Section 5.2.4(c) would not be satisfied and, in either case, such breach or inaccuracy is not waived or cured within 10 days after being notified of the same or is incapable of being cured;

(d) by (i) Buyer if any of the conditions in Section 5.1 has not been satisfied as of September 30, 2015 or if satisfaction of such a condition is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not waived such condition; or (ii) Seller if any of the conditions in Section 5.2 has not been satisfied as of September 30, 2015 or if satisfaction of such a condition is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement) and Seller has not waived such condition; or

(e) by Buyer or Seller, if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before September 30, 2015.

If this Agreement is terminated pursuant to this Section 7.1.4, then all provisions of this Agreement shall thereupon become void without any liability on the part of any party hereto to any other party hereto except that (x) this Section 7.1.4, Section 7.2.2, Section 7.2.4, the second-to-last sentence of Section 7.6, Article 10 and Article 11 shall survive any such termination and (y) nothing herein shall relieve any party from any liability for any willful or intentional breach hereof occurring prior to such termination.

7.1.5 Pre-Closing Publicity. During the Pre-Closing Period, any public disclosures or announcements relating to this Agreement or the transactions contemplated hereby will be made only as may be agreed upon in writing by Seller and Buyer, except as may be required by Law or by any Governmental Authority or the rules of any stock exchange or trading system.

7.2 Miscellaneous Covenants.

7.2.1 Post Closing Publicity. Following the Closing, no party shall issue any press releases or public announcements setting forth the specific terms of this Agreement or the transactions contemplated herein without the prior approval of Buyer or Seller, as the case may be, which approval shall not be unreasonably withheld, except as may be required by Law or by any Governmental Authority or the rules of any stock exchange or trading system or as may be reasonably necessary to enforce any rights under this Agreement. Each party shall be entitled to disclose or comment to any Person that the transactions contemplated hereby have been consummated. In addition, nothing herein shall preclude communications or disclosures necessary to implement the provisions of this Agreement, and Buyer, Seller and their respective Affiliates may make such disclosures as they may consider necessary in order to satisfy their legal or contractual obligations to their lenders, shareholders, investors or other required parties, without the prior written consent of Seller or Buyer, as the case may be.

7.2.2 Expenses. Buyer shall pay all fees and expenses incident to the transactions contemplated by this Agreement which are incurred by Buyer or its representatives or are otherwise expressly allocated to Buyer hereunder, and Seller or the Acquired Companies shall pay all fees and expenses incident to the transactions contemplated by this Agreement which are incurred by Seller or the Acquired Companies or their respective representatives or are otherwise expressly allocated to Seller hereunder, provided that Seller shall be responsible for all

such fees and expenses incurred or paid by the Acquired Companies or otherwise not paid by Seller (as Selling Expenses, accruals taken into account in the Final Adjustment Statement, or otherwise, in each case without duplication).

7.2.3 No Assignments. No assignment or transfer (including by way of operation of Law or a change in ownership of fifty percent (50%) or more of the voting power of Buyer) of all or any part of this Agreement or any right or obligation hereunder may be made by any party hereto without the prior written consent of all other parties hereto, and any attempted assignment or transfer without such consent shall be void and of no force or effect; provided, that (a) Buyer may assign any of its rights or delegate any of its duties under this Agreement to any controlled Affiliate of Buyer provided, further, that no such assignment shall relieve Buyer of its obligations hereunder; and (b) Buyer may assign its rights, but not its obligations, under this Agreement to any of its financing sources.

7.2.4 Confidentiality Agreement. Notwithstanding the execution of this Agreement, the parties acknowledge that the Confidentiality and Nondisclosure Agreement executed by Corix Infrastructure (US) Inc., dated March 13, 2015 (the "Confidentiality Agreement"), remains in full force and effect pursuant to the terms thereof, except to the extent reasonably necessary for Buyer to enforce any of its rights under this Agreement or any Ancillary Agreement.

7.2.5 Access by Seller. In connection with any Proceeding, Buyer shall, and shall cause the Acquired Companies to, for a period of five years after the Closing Date, during normal business hours and upon reasonable advance notice, provide Seller and its designees and representatives with such access to the books and records of the Acquired Companies as may be reasonably requested by Seller, who shall be entitled to make extracts and copies of such books and records. Buyer agrees that it shall not, during such five year period, destroy or cause or permit to be destroyed any material books or records without first obtaining the consent of Seller (or providing notice to Seller of such intent and a reasonable opportunity to copy such books or records at least thirty (30) days prior to such destruction).

7.2.6 Continuation of Indemnification. Following the Closing, Buyer agrees to cause the Acquired Companies to, in accordance with Law and with their respective Charter Documents, indemnify and hold harmless each of the present and former directors, officers, managers, partners, employees and agents of the Acquired Companies, in their capacities as such, from and against all damages, costs and expenses actually incurred or suffered in connection with any threatened or pending Proceeding relating to the businesses of the Acquired Companies or the status of such individual as a director, officer, manager, partner, employee or agent prior to the Closing. Buyer agrees not to amend or modify the Charter Documents of any of the Acquired Companies with respect to any indemnification provision or provisions, including provisions respecting the advancement of expenses, in effect on the Closing Date for the benefit of the (current or former) directors, officers, managers, partners, employees and agents (except to the extent that such amendment preserves or broadens the indemnification or other rights theretofore available to such directors, officers, managers, partners, employees and agents). Prior to the Closing, the Company shall purchase a "tail" policy with respect to the existing directors', managers' and officers' liability insurance policies of the Acquired Companies covering all current managers and officers of the Acquired Companies for a period of

six years following the Closing Date, the full cost of which tail policy shall be a Selling Expense. Buyer hereby covenants and agrees not to knowingly take or fail to take, and to cause the Acquired Companies not to take or fail to take, any action which would reasonably be expected to result in the termination, cancellation, rescission or other adverse consequence with respect to the coverage provided by such tail policy(ies). Buyer further covenants and agrees to cause the Acquired Companies to submit claims (or assist the officers, managers and directors covered under such policy in submitting claims) and to take all other actions reasonably necessary to provide to the Acquired Companies and the directors, managers and officers thereof the full benefits to which they are entitled under such tail policy. This Section 7.2.6 shall continue for a period of six years following the Closing and is intended to benefit each director, officer, manager, partner, agent or employee who has held such capacity on or prior to the Closing Date and is now or at any time during such six year period entitled to indemnification or advancement of expenses pursuant to any provisions contained in the Charter Documents as of the date hereof.

7.2.7 Further Assurances. From time to time after the Closing, at the request of any party hereto, each other party hereto shall execute and deliver any further instruments and take such other action as such party may reasonably request to carry out the transactions contemplated hereby.

7.3 No Shop. Seller and the Company shall not, and shall not permit the other Acquired Companies, or any of the Affiliates, directors, managers, officers, employees, representatives or agents of any Acquired Company or Seller (collectively, the "Representatives") to, directly or indirectly, (a) discuss, encourage, negotiate, undertake, initiate, authorize, recommend, propose or enter into, whether as the proposed surviving, merged, acquiring or acquired entity or otherwise, any transaction involving a merger, consolidation, business combination, purchase or disposition of any material amount of the assets of any Acquired Company or any capital stock or other ownership interest in any Acquired Company, other than the transactions contemplated by this Agreement (an "Acquisition Transaction"), (b) facilitate, encourage, solicit or initiate discussions, negotiations or submissions of proposals or offers in respect of an Acquisition Transaction, (c) furnish or cause to be furnished to any Person, any information concerning the business, operations, properties or assets of any Acquired Company in connection with an Acquisition Transaction, or (d) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person to do or seek any of the foregoing. Seller and the Company shall further, and shall cause the Representatives to, immediately cease any ongoing facilitation, solicitation, discussion, encouragement or negotiation with any Persons that may be ongoing with respect to an Acquisition Transaction, and promptly instruct (to the extent any of them have contractual authority to do so and has not already done so prior to the date of this Agreement) or otherwise request, any person that has executed a confidentiality or non-disclosure agreement within the 24-month period prior to the date of this Agreement in connection with any actual or potential Acquisition Transaction to return or destroy all such information or documents or material incorporating confidential information in the possession of such Person and its representatives.

7.4 Seller Release. Effective upon the Closing, Seller, on behalf of itself and its Affiliates, and each of their respective successors and assigns (each, a "Seller Releasor"), including in its capacity as the sole member of the Company, hereby absolutely, unconditionally and irrevocably releases, acquits and discharges, fully, finally and forever, to the fullest extent

permitted by Law, each of the Acquired Companies and each of their respective officers, managers, partners, members, Affiliates and employees (each, a "Company Releasee") of, from and against any and all actions, causes of action, claims, demands, damages, judgments, debts, dues and suits of every kind, nature and description whatsoever, and other Liabilities, in each case which Seller Releasor ever had, now has or may have on or by reason of any matter, cause or thing whatsoever arising prior to the Closing Date; provided, however, that this release does not extend to any claim to enforce Seller's rights under this Agreement or any Ancillary Agreement. Seller agrees not to, and agrees to cause its respective officers, managers, partners, members, Affiliates and employees, and each of their respective successors and assigns, not to, assert any such claims against the Company Releasees. Seller expressly acknowledges that the release provided under this Section 7.4 is intended to include in its effect all claims within the scope of this release that Seller does not know or suspect to exist in its favor, or in favor of the other Seller Releasors, at the time of execution hereof, and that this release contemplates the extinguishment of any such claim or claims. Seller is aware that statutes exist that render null and void or otherwise affect or may affect releases and discharges of any claims, rights, demands, Liabilities, Proceedings and causes of action that are unknown to the releasing or discharging party at the time of execution of the release and discharge. Seller, for itself and the other Seller Releasors, hereby expressly waives, surrenders and agrees to forego any and all protections, rights or benefits to which Seller otherwise would be entitled by virtue of the existence of any such statute or the common law of any state, province or jurisdiction with the same or similar effect. Further, it is understood and agreed that the facts in respect of which the release provided under this Section 7.4 is given may turn out to be other than or different from the facts in that respect now known or believed by Seller to be true; and with such understanding and agreement, Seller expressly accepts and assumes the risk of facts being other than or different from the assumptions and perceptions as of any date prior to and including the Closing Date, and agrees that this release shall be in all respects effective and shall not be subject to termination or rescission by reason of any such difference in facts.

7.5 Acquired Company Engagements; Privileged Information.

7.5.1 Acquired Company Engagements. Calfee, Halter & Griswold LLP ("Calfee") has acted as counsel for the Acquired Companies and Seller (collectively, the "Calfee Clients") in connection with this Agreement (the "Sale Engagement") and in that connection Calfee has not acted as counsel for any other Person. Upon the Closing, only the Calfee Clients shall be considered clients of Calfee in the Sale Engagement. All communications between the Calfee Clients and Calfee in the course of the Sale Engagement shall be deemed to be attorney-client confidences that belong solely to Seller and not the Acquired Companies. Accordingly, none of the Acquired Companies nor Buyer shall have access to any such communications, or to the files of Calfee relating to the Sale Engagement. Without limiting the generality of the foregoing, upon and after the Closing, (a), Seller and Calfee shall be the sole holders of the attorney-client privilege with respect to the Sale Engagement, and neither the Acquired Companies nor Buyer shall be a holder thereof, (b) to the extent that files of Calfee in respect of the Sale Engagement constitute property of a Calfee Client, only Seller shall hold such property rights, and (c) Calfee shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files to the Acquired Companies or Buyer by reason of any attorney-client relationship between Calfee and the Acquired Companies or otherwise.

7.5.2 Post-Closing Legal Representation of Sellers. Without the need for any consent or waiver by the Acquired Companies or Buyer, Calfee shall be permitted to represent Seller after the Closing in connection with any matter, including anything related to the transactions contemplated herein or any disagreement or dispute relating thereto. Without limiting the generality of the foregoing, after the Closing, Calfee shall be permitted to represent Seller, any of its agents and Affiliates, or any one or more of them, in connection with any negotiation, transaction or dispute (including litigation, arbitration or other adversary Proceeding) with Buyer, the Acquired Companies or any of their agents or Affiliates under or relating to this Agreement, any transaction contemplated by this Agreement, and any related matter, such as claims for indemnification and disputes involving employment or other agreements entered into in connection with this Agreement.

7.5.3 Cessation of Attorney-Client Relationship with the Acquired Companies. Upon and after the Closing, the Acquired Companies shall cease to have any attorney-client relationship with Calfee, unless Calfee is specifically engaged in writing by one or more of the Acquired Companies, to represent such Acquired Company or Companies after Closing and either such engagement involves no conflict of interest with respect to Seller, or Seller consents in writing at the time to such engagement. Any such representation of the Acquired Companies by Calfee after Closing shall not affect the foregoing provisions of this Section 7.5. For example, and not by way of limitation, even if Calfee is representing any of the Acquired Companies after Closing, Calfee shall be permitted simultaneously to represent Seller in any matter, including any disagreement or dispute relating thereto. Furthermore, Calfee shall be permitted to withdraw from the representation of any Acquired Company in order to be able to represent or continue so representing Seller, even if such withdrawal causes the Acquired Companies or Buyer additional legal expense (such as to bring new counsel "up to speed"), delay or other prejudice. To the extent permitted by applicable Law, Seller, the Company (for itself and on behalf of each of the other Acquired Companies) and Buyer consent to each of the arrangements specified in this Section 7.5 and waives and actual or potential conflict of interest that may be involved in connection with any representation by Calfee permitted by this Section 7.5.

7.6 Financing Cooperation. During the Pre-Closing Period, the Company shall, and shall cause the other Acquired Companies to, and Seller shall cause each of the foregoing to, use commercially reasonable efforts to provide Buyer such assistance and information to the extent (a) reasonably necessary to obtain financing to consummate the transactions contemplated hereby (the "Debt Financing"); (b) reasonably requested by Buyer in connection with the Debt Financing, including using its commercially reasonable efforts in (i) assisting in preparation for and participation in a reasonable number of meetings and presentations; (ii) assisting with the preparation of materials in connection with such meetings and presentations; (iii) obtaining customary appraisals, surveys, title insurance and other documentation and items with respect to the Real Property to the extent reasonably required by the Debt Financing as reasonably requested by Buyer and, if requested by Buyer, to cooperate with and assist Buyer in obtaining such documentation and items; (iv) facilitating the pledge and perfection of Liens and the providing of post-Closing guarantees supporting the Debt Financing; (v) taking such actions reasonably promptly as are reasonably requested by Buyer to facilitate the satisfaction on a timely basis of all conditions to obtaining the Debt Financing; and (vi) causing its independent auditors to cooperate with the Debt Financing; provided, however, that, irrespective of the above,

(w) whether or not the transactions contemplated by this Agreement or the Debt Financing are consummated, Buyer shall reimburse the Company for all out-of-pocket fees, costs and expenses incurred by the Acquired Companies and Seller in connection with the obligations under this Section 7.6, (x) no obligation of any Acquired Company under any certificate, document or instrument entered into in connection with this Section 7.6 shall be effective until the Closing and none of the Acquired Companies shall be required to take any action under any certificate, document or instrument entered into in connection with this Section 7.6 that is not contingent upon the Closing (including the entry into any agreement that is effective before the Closing) or that would be effective prior to the Closing, (y) nothing in this Section 7.6 shall require such cooperation to the extent it would interfere unreasonably with the business or operations of the Acquired Companies and (z) all financing documents and any certificates relating to the Debt Financing, whether or not in respect of Buyer, will be executed by representatives of Buyer. The Company hereby consents to the reasonable use of all of its and the other Acquired Companies' logos, names, and trademarks in connection with the Debt Financing in a manner customary for financing transactions of this kind. The Company shall, and shall cause the other Acquired Companies to, use commercially reasonable efforts to obtain, at Buyer's sole cost and expense, prior to the Closing, estoppel certificates, landlord waivers and collateral access agreements (if requested by Buyer's lender), non-disturbance agreements (for each parcel of Leased Real Property that is subleased by any Acquired Company), and subordination, non-disturbance and attornment agreements related to the Leased Real Property, as reasonably requested by Buyer and as reasonably necessary to obtain the Debt Financing, each in a form reasonably acceptable to Buyer. Buyer shall indemnify each Seller Indemnitee from, against and in respect of any Losses imposed on, sustained, incurred or suffered by, or asserted against, any of them, whether in respect of Third-Party Claims, direct claims or otherwise, relating to, arising out of or resulting from, in each case directly, the arrangement of the Debt Financing to the fullest extent permitted by applicable Law, provided, however, that no indemnification shall be available under this Section 7.6 for any matter for which Buyer is entitled to indemnification under Article 8. The foregoing indemnification obligations of Buyer in this Section 7.6 shall survive the Closing or, if earlier, the termination of this Agreement.

7.7 Indenture Amendment. The Company shall comply in all material respects with the terms of the Indenture Amendment, enforce in all material respects its rights under the Indenture Amendment, and not permit, without the prior written consent of Buyer, any material amendment or modification to be made to, or any termination, rescission or withdrawal of, or any material waiver of any provision or remedy under, the Indenture Amendment.

7.8 Non-Solicitation. For a period of three years from the Closing Date, Seller agrees that, without the prior written consent of the Company, it will not, and will cause its Affiliates and Related Persons not to, directly or indirectly hire or solicit any individual who is an employee of any Acquired Company as of the date hereof or as the Closing Date; provided, however, that the foregoing shall not apply to (a) generalized searches for employees by use of advertisement in the media that are not targeted at employees the Acquired Companies, (b) any employee of an Acquired Company that is terminated by such Acquired Company after the Closing, (c) any employee of an Acquired Company if such employee has not been employed by such Acquired Company for six months prior to such solicitation or hiring by Seller, or (d) the existing agreement between Marc Divis and AES Management Services LLC, an Affiliate of Seller, for part time consulting services in connection with the operation of the City of Akron's

district energy facilities, provided that in no event shall such agreement (or the performance thereof) impair Marc Divis' full time roles and responsibilities at the Company or otherwise affect the full time discharge of his duties in the Ordinary Course of Business for the Acquired Companies.

7.9 Bank Accounts. Prior to the Closing, the Company shall cause Charles Evans and Don Hoffman to be removed from all authorizations with respect to the bank accounts listed on Schedule 3.20.

ARTICLE 8

Indemnification

8.1 Indemnification of Buyer. From and after the Closing and subject to the limitations contained herein, Seller shall indemnify Buyer and its officers, directors, employees, stockholders, Affiliates, successors and assigns (collectively, the "Buyer Indemnitees"), from and against any Losses based upon, caused by, arising from or relating to: (a) any inaccuracy in or failure to be true, as of the date hereof or as of the Closing Date as though made at and as of the Closing Date, of any of the representations and warranties made by Seller or the Company herein; (b) any breach or nonperformance of any of the covenants made herein by Seller or, if such breach or nonperformance shall have occurred prior to or at the Closing, the Company; (c) (i) to the extent not reflected as a liability on the Final Adjustment Statement, any liability or obligation for Taxes of or with respect to the Acquired Companies for any, or apportioned under Section 9.1 to any, Pre-Closing Tax Period; (ii) all Taxes of any member of an affiliated, combined or unitary group of which any Acquired Company is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar state, local or foreign Law; (iii) any and all Taxes of any Person (other than any Acquired Company) imposed on such Acquired Company as a transferee or successor, by contract or pursuant to any Law, which Taxes relate to an event or transaction occurring on or before the Closing Date; provided, however, that the Buyer Indemnitees shall not be entitled to indemnification and there shall be no liability or other obligation for Taxes whenever arising or accruing attributable to (y) except to the extent required as part of any Tax Matter pursuant to Section 9.3, any election made by Buyer, any Acquired Company or any Affiliate thereof on or after the Closing that has a retroactive effect on any Pre-Closing Tax Period, or (z) any action enumerated in Section 9.2.2 that is not required by applicable Law or to which Seller does not give prior written consent; (d) any Closing Indebtedness or Selling Expenses not fully paid as of the Closing; (e) [redacted]

8.2 Indemnification of Seller. From and after the Closing and subject to the limitations contained herein, Buyer shall indemnify Seller and its officers, directors, employees,

stockholders, Affiliates, successors and assigns (collectively, the "Seller Indemnitees"), from and against any Losses based upon, caused by, arising from or relating to (a) any inaccuracy in or failure to be true, as of the date hereof or as of the Closing Date as though made at and as of the Closing Date, of any of the representations and warranties made by Buyer herein or (b) breach or nonperformance of any of the covenants made by Buyer herein.

8.3 Limitations on Indemnification. Notwithstanding any other provision of this Agreement, the indemnification obligations provided for in this Agreement shall be subject to the limitations and conditions set forth in this Section 8.3.

8.3.1 Any claim by a Buyer Indemnitee for indemnification pursuant to Section 8.1(a) shall be required to be made by delivering notice to Seller no later than the 18-month anniversary of the Closing Date (the "Survival Period Termination Date"), except that (a) claims for indemnification pursuant to Section 8.1(a) resulting from or arising out of any inaccuracy in or breach of any representation or warranty in Section 3.1, (Organization and Good Standing; Authority; Enforceability), Section 3.2 (Ownership of Interests) and Section 3.15 (Brokerage), (collectively, the "Seller Fundamental Representations") may be brought at any time; (b) claims for indemnification pursuant to Section 8.1(a) resulting from or arising out of any inaccuracy in or breach of any representation or warranty in Section 3.9 (Employee Benefit Plans and Other Compensation Arrangements) or Section 3.18 (Environmental Matters) may be made until the 36-month anniversary of the Closing Date; and (c) claims for indemnification pursuant to Section 8.1(a) resulting from or arising out of any inaccuracy in or breach of any representation or warranty in Section 3.7 (Taxes) may be made until the date of the expiration of the applicable statute of limitations, as extended, plus 60 days.

8.3.2 Any claim by a Buyer Indemnitee for indemnification pursuant to Section 8.1(b) in respect of covenants to be performed or complied with by the Company or Seller at or prior to the Closing shall be required to be made by delivering notice to Seller no later than the Survival Period Termination Date.

8.3.3 Any claim by a Buyer Indemnitee for indemnification pursuant to Section 8.1(c) shall be required to be made by delivering notice to Seller no later than the date of the expiration of the applicable statute of limitations, as extended, plus 60 days.

8.3.4 Any claim by a Buyer Indemnitee for indemnification pursuant to Section 8.1(e) shall be required to be made by delivering notice to Seller no later than the Environmental Escrow Release Date.

8.3.5 Any claim by a Seller Indemnitee for indemnification pursuant to Section 8.2(a) shall be required to be made by delivering notice to Buyer no later than the Survival Period Termination Date, except that claims for indemnification pursuant to Section 8.2(a) resulting from or arising out of any inaccuracy in or breach of any representation or warranty in Section 4.1, (Organization; Authorization), Section 4.2 (Execution and Delivery; Enforceability) and Section 4.4 (Brokerage) (the "Buyer Fundamental Representations") may be made at any time.

8.3.6 Any claim by a Seller Indemnitee for indemnification pursuant to Section 8.2(b) in respect of covenants to be performed or complied with by Buyer at or prior to the Closing shall be required to be made by delivering notice to Buyer no later than the Survival Period Termination Date.

8.3.7 The Buyer Indemnitees shall not be entitled to indemnification for any Losses arising under Section 8.1(a) until the aggregate amount of all of the Buyer Indemnitees' claims for indemnification exceeds the Indemnification Threshold and thereafter the Buyer Indemnitees shall be entitled to indemnification only for amounts in excess of the Indemnification Threshold. Notwithstanding the foregoing, the Indemnification Threshold shall not apply to any claims for indemnification with respect to any inaccuracy in or breach of any Seller Fundamental Representations. The Seller Indemnitees shall not be entitled to indemnification for any Losses arising under Section 8.2(a) until the aggregate amount of all of the Seller Indemnitees' claims for indemnification exceeds the Indemnification Threshold and thereafter the Seller Indemnitees shall be entitled to indemnification only for amounts in excess of the Indemnification Threshold. Notwithstanding the foregoing, the Indemnification Threshold shall not apply to any claims for indemnification with respect to any inaccuracy in or breach of any Buyer Fundamental Representations.

8.3.8 With respect to the indemnity covenants in Section 8.1(a) (as they relate to inaccuracy in or breach of any Seller Fundamental Representations) and the indemnity covenants in Section 8.1(b), Section 8.1(c) and Section 8.1(d), the maximum aggregate indemnification amount to which the Buyer Indemnitees may be entitled shall be an amount equal to the Seller Cash Payment plus any portion of the Escrow Amount actually distributed to Seller pursuant to this Agreement and the Escrow Agreement. With respect to the indemnity covenants in Section 8.1(a) (as they relate to inaccuracy in or breach of representations and warranties other than the Seller Fundamental Representations), the maximum aggregate indemnification amount to which the Buyer Indemnitees may be entitled under this Agreement (and the sole recourse for any Buyer Indemnitee under this Agreement) shall be the Indemnity Escrow Amount held by the Trustee pursuant to the Escrow Agreement. Notwithstanding the foregoing sentence, if the Buyer Indemnitees make a claim for indemnity under Section 8.1(a) in respect of Section 3.7 (Taxes), Section 3.9 (Employee Benefit Plans and Other Compensation Arrangements) or Section 3.18 (Environmental Matters) after the Survival Period Termination Date, the maximum aggregate indemnification amount to which the Buyer Indemnitees may be entitled shall be an amount equal to the Indemnity Cap. With respect to the indemnity covenants in Section 8.1(e), the maximum aggregate indemnification amount to which the Buyer Indemnitees may be entitled under this Agreement (and, pursuant to Section 8.3.9, the sole recourse for any Buyer Indemnitee under this Agreement) shall be the Escrow Amount held by the Trustee pursuant to the Escrow Agreement.

8.3.9 The Buyer Indemnitees' first source for satisfaction of any indemnification claims under Section 8.1(a) shall be the Indemnity Escrow Amount held by the Trustee pursuant to the Escrow Agreement. The Buyer Indemnitees' first source for satisfaction of any indemnification claims under Section 8.1(e) shall be the Environmental Escrow Amount held by the Trustee pursuant to the Escrow Agreement, and the Buyer Indemnitees' second source for satisfaction of any indemnification claims under Section 8.1(e) shall be the Indemnity Escrow Amount held by the Trustee pursuant to the Escrow Agreement.

8.3.10 The Buyer Indemnitees shall not be entitled to indemnification under this Agreement if, and to the extent that, the relevant Losses are reflected as liabilities on the Final Adjustment Statement and indemnification hereunder would have the effect of duplicating Seller's satisfied financial responsibility to Buyer therefor.

8.3.11 The Buyer Indemnitees shall not be entitled to indemnification under this Agreement for Losses relating to any matter to the extent that there is a reserve included in the Financial Statements and such reserve is specifically identified in the Financial Statements in connection with such matter.

8.3.12 Any claims for indemnification under Section 8.1 or Section 8.2 shall be reduced by any net reduction in cash Taxes payable (other than with respect to estimated Taxes) during the taxable year or period in which the Loss occurs and the next succeeding taxable year or period. Accordingly, in determining the amount of any indemnification payment for a Loss suffered or incurred by an indemnitee hereunder, the amount of such Loss shall be decreased to take into account any net reduction in cash Taxes payable (other than with respect to estimated Taxes) actually realized by any indemnitee (or any Affiliate of any indemnitee) in connection with the Losses that form the basis of the indemnitee's claim for indemnification hereunder (the "Tax Benefit Adjustment Amount"). In computing the Tax Benefit Adjustment Amount, the amount of net any reduction in cash Taxes paid by an indemnitee shall be calculated by measuring the difference between the amount of Taxes that would be payable by the indemnitee to a Taxing Authority without taking into account any deductions, credits, losses or other Tax attributes resulting from any Loss and the amount of Taxes that are payable by such indemnitee taking into account the deductions, credits, losses or other Tax attributes resulting from any Loss, assuming that such deductions, credits, losses or other Tax attributes resulting from such Loss are the last item of deduction, credit, losses or other Tax attributes on any Tax Return; provided, that, if a Tax Benefit Adjustment Amount is not realized in the taxable year or period during which an indemnifying party makes an indemnification payment or the indemnitee incurs or pays any Loss, the parties hereto shall in the next taxable period or year make payments to one another at the end of such taxable year or period to reflect the Tax Benefit Adjustment Amount realized by the parties hereto for the next subsequent taxable year or period.

8.3.13 The Buyer Indemnitees and the Seller Indemnitees shall take commercially reasonable steps to mitigate any Loss subject to Section 8.1 or Section 8.2, as the case may be, upon becoming aware of any event which would reasonably be expected to, or does, give rise thereto, including but not limited to, using commercially reasonable efforts to pursue claims under available insurance policies, "pass through" warranties or other indemnification or reimbursement Contracts from third parties to recover, reduce, mitigate or offset such Losses; provided, however, that this sentence shall not require any party hereto to initiate or pursue litigation against third parties in respect of such Loss. Any failure by an indemnitee to mitigate Losses shall not relieve any indemnitor of its obligations under this Article 8, except to the extent that such indemnitor was prejudiced by such failure to mitigate. For the avoidance of doubt and without limiting the definition of "Losses", any out-of-pocket expenses paid to a third party (other than a Buyer Indemnitee or a Seller Indemnitee) in the course of mitigating Losses shall be deemed Losses hereunder.

8.3.14 For the avoidance of doubt, the ability of any Person to receive indemnification under this Article 8, and the ability of the Buyer Indemnitees to receive proceeds from the Escrow Amount, shall terminate on the applicable deadlines set forth above, if any, except to the extent such Person or Buyer Indemnitee shall have made a claim for reimbursement from the Escrow Amount or indemnification prior to such applicable deadline. If a Person or a Buyer Indemnitee has made such a claim prior to such deadline, such claim, if then unresolved, shall not be extinguished by the passage of the deadlines set forth in this Article 8.

8.4 Procedures Relating to Indemnification.

8.4.1 Third-Party Claims.

(a) In order for a party (the "indemnitee") to be entitled to any indemnification provided for under this Agreement with respect to, arising out of, or involving a claim or demand made by any Person against the indemnitee (a "Third-Party Claim"), such indemnitee must notify the party from whom indemnification hereunder is sought (the "indemnitor") in writing of the Third-Party Claim no later than thirty (30) days after such claim or demand is first asserted. Such notice shall state in reasonable detail the amount or estimated amount of such claim, and shall identify the specific basis (or bases) for such claim, including the representations, warranties, covenants or obligations in this Agreement alleged to have been breached. Failure to give such notification shall not affect the indemnification provided hereunder, except and only to the extent the indemnitor shall have been actually prejudiced as a result of such failure. Thereafter, the indemnitee shall deliver to the indemnitor, without undue delay, copies of all notices and documents (including court papers received by the indemnitee) relating to the Third-Party Claim so long as any such disclosure could not reasonably be expected to have an adverse effect on the attorney-client or any other privilege that may be available to the indemnitee in connection therewith.

(b) If (i) the then-remaining Indemnity Escrow Amount is sufficient, in the reasonable judgment of the indemnitee, to satisfy the amount of any adverse monetary judgment or settlement that is reasonably likely to result, (ii) the Third-Party Claim solely seeks (and continues to solely seek) monetary damages, and (iii) the indemnitor expressly agrees in writing that as between the indemnitor and the indemnitee, the indemnitor shall be, subject to the limitations set forth in Article 8, solely obligated to satisfy and discharge its portion of the Third-Party Claim in accordance with the terms set forth in this Agreement (the conditions set forth in the foregoing clauses (i), (ii) and (iii), the "Litigation Conditions"), then, within 15 days of the receipt of the notice contemplated in the first sentence of Section 8.4.1, the indemnitor may elect to assume and control the defense of a Third-Party Claim with counsel selected by the indemnitor and reasonably acceptable to the indemnitee, at the indemnitor's expense, by providing written notice thereof to the indemnitee.

(c) If the indemnitor does not assume the defense of a Third-Party Claim in accordance with this Section 8.4.1, then the indemnitee may continue to defend the Third-Party Claim. If the indemnitor has assumed the defense of a Third-Party Claim as provided in this Section 8.4.1, then the indemnitor will not be liable for any legal

expenses subsequently incurred by the indemnitee in connection with the defense thereof; provided, however, that if (i)(A) any of the Litigation Conditions cease to be met or (B) the indemnitor fails to take reasonable steps necessary to defend diligently such Third-Party Claim, then the indemnitee may assume the defense of such Third-Party Claim, and the indemnitor will be liable for all reasonable costs or expenses paid or incurred by indemnitee in connection therewith or (ii) in the reasonable opinion of counsel to the indemnitee, a conflict or potential conflict exists between the indemnitor and the indemnitee that would make separate representation advisable, then the indemnitee may retain separate counsel at the expense of the indemnitor. The indemnitor or the indemnitee, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third-Party Claim which the other is defending as provided in this Agreement.

(d) The indemnitor, if it shall have assumed the defense of any Third-Party Claim as provided in this Agreement, shall not, without the written consent of the indemnitee (such consent not to be unreasonably withheld, delayed or conditioned), consent to a settlement of, or the entry of judgment arising from, any such Third-Party Claim which (i) does not include as an unconditional term thereof the giving by the claimant or plaintiff to the indemnitee of a complete release from all Losses in respect of such Third-Party Claim, (ii) grants injunctive or equitable relief or (iii) may adversely affect the business of the indemnitee. Subject to the written consent of the indemnitor (such consent not to be unreasonably withheld, delayed or conditioned), the indemnitee shall have the right to settle any Third-Party Claim the defense of which has not been assumed by the indemnitor.

(e) Subject to the foregoing provisions of this Section 8.4.1, all of the parties shall reasonably cooperate in the defense or prosecution of any Third-Party Claim in respect of which indemnity may be sought hereunder and each of Buyer and the Acquired Companies, on the one hand, or the Seller, on the other hand, shall (and shall cause their respective Affiliates to) furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

8.4.2 Other Claims. In the event any indemnitee should have a claim against any indemnitor under this Agreement that does not involve a Third-Party Claim, the indemnitee shall deliver notice of such claim to the indemnitor reasonably promptly following discovery of any indemnifiable Loss, but in any event, in the case of the Buyer Indemnitees, not later than the last date set forth in Section 8.3 for making such claim. Failure to give such notification shall not affect the indemnification provided hereunder except to the extent the indemnitor shall have been actually prejudiced as a result of such failure. Such notice shall state in reasonable detail the amount or an estimated amount of such claim, and shall specify the facts and circumstances which form the basis (or bases) for such claim, and shall further specify the representations, warranties or covenants alleged to have been breached.

8.4.3 Tax Matters. The provisions of Sections 8.4.1 and 8.4.2 shall not apply to Tax Matters, which shall be governed by Section 9.3.

8.5 Limitation of Remedies. Each party acknowledges and agrees that, should the Closing occur, the sole and exclusive remedy with respect to any and all claims relating to this Agreement or the transactions contemplated hereby (other than claims of, or causes of action arising from, fraud or claims of, or causes of action for which the sole remedy sought is equitable relief) shall be pursuant to the indemnification provisions set forth in this Article 8. In furtherance of the foregoing, each of Buyer and Seller hereby waives on behalf of itself and all other Persons who might claim by, through or under him, her or it, from and after the Closing, any and all rights, claims and causes of action (other than claims of, or causes of action arising from, fraud or claims of, or causes of action for which the sole remedy sought is equitable relief) Buyer or Seller may have against the other arising under or based upon any Law (including CERCLA and other Environmental Laws and any statute of limitations) and that relates to the transactions contemplated herein or to any pre-Closing aspect of the businesses of the Acquired Companies (except pursuant to the indemnification provisions set forth in this Article 8).

8.6 Subrogation. Upon making any indemnity payment pursuant to Section 8.1 or Section 8.2, as applicable, the indemnitor shall be subrogated to all rights of the indemnitee or reimbursed party, as applicable, against any insurance policy in respect of the Losses to which the payment related, except with respect to amounts not yet recovered by the indemnitee under any such insurance policy that have already been netted against such Loss for purpose of determining the indemnifiable amount of such loss. The parties hereto will execute upon request, all instruments reasonably necessary to evidence and perfect the above described subrogation rights.

8.7 Materiality. (A) For purposes of determining whether there has been a breach of any representation or warranty under this Agreement and (B) for purposes of determining any Losses related thereto, for purposes of this Article 8, in the case of each of clauses (A) and (B) such representations and warranties shall be interpreted without giving effect to any limitations or qualifications such as "materiality," "material," "in all material respects," or "Material Adverse Effect" set forth in any such representation or warranty; provided, however, Section 8.7(A) shall not apply to the representations and warranties in Section 3.5.1 (Financial Statements) or Section 3.6.1 (Absence of Certain Changes or Events), or any representations and warranties to the effect that a list of items is set forth in the Disclosure Schedules or that specified items have been made available.

8.8 Effect of Investigation. The representations, warranties and covenants of the applicable indemnitor, and the right of the indemnitee to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the indemnitee or any of its Affiliates or representatives or by reason of the fact that the indemnitee or any of its Affiliates or representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the waiver of any condition in Section 5.1 or Section 5.2.

8.9 Circular Recovery. From and after the Closing, no Affiliate or other Related Person of Seller shall make a claim for indemnification pursuant to Section 7.2.6 hereof, or pursuant to any Charter Documents, to defend or pay Losses obtained by any claim brought by any Buyer Indemnitee against Seller for breach of this Agreement or any Ancillary Agreement.

ARTICLE 9

Tax Matters

9.1 Apportionment of Taxes. All Taxes and Tax liabilities with respect to the Acquired Companies that relate to a Straddle Period shall be apportioned between the Pre-Closing Tax Period and the Post-Closing Tax Period as follows: (a) in the case of Taxes that are either (i) based upon or measured by reference to income, receipts, profits, capital or net worth (including sales and use Taxes), (ii) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), or (iii) required to be withheld, the Taxes allocated to the Pre-Closing Tax Period shall be deemed equal to the amount which would be payable if the Tax year ended on and included the Closing Date; and (b) in the case of Taxes imposed on a periodic basis with respect to the Acquired Companies other than those described in clause (a), the Taxes allocated to the Pre-Closing Tax Period shall be deemed to be the amount of such Taxes for the entire period, multiplied by a fraction, the numerator of which is the number of calendar days in the period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire period. In the case of a Tax that is (y) paid for the privilege of doing business during a period (a "Privilege Period") and (z) computed based on business activity occurring during an accounting period ending prior to such Privilege Period, any reference to a "Tax period," a "tax period," or a "taxable period" shall mean such accounting period and not such Privilege Period.

9.2 Tax Returns; Refunds.

9.2.1 Buyer shall cause the Acquired Companies to provide Seller with drafts of all Tax Returns of the Acquired Companies that relate to any Pre-Closing Tax Period, at the expense of Seller, or any Straddle Period for review and comment at least thirty (30) days prior to the due date for the filing of each such Tax Return, including extensions. Not later than ten (10) days after the Acquired Companies have provided such draft Tax Return to Seller, Seller shall notify in writing the Acquired Companies of the existence of any objection, specifying in reasonable detail the nature and basis of such objection that Seller may have, to any item set forth on such draft Tax Return and, if Seller does not provide to Buyer any written notification within ten (10) days, Seller shall be deemed to have accepted such Tax Return. Buyer (on behalf of itself, and following the Closing, the Acquired Companies) and Seller agree to consult and resolve in good faith any such objection. If Buyer (on behalf of itself, and following the Closing, the Acquired Companies) and Seller are unable to resolve any such objection at least ten (10) days prior to the due date for the filing of such Tax Return, including extensions, the dispute shall be referred to the Independent Accountants for resolution and the fees shall be shared one-half by Buyer and one-half by Seller. If the Independent Accountants are unable to resolve any such dispute prior to the due date for filing of such Tax Return, including extension, such Tax Return shall be filed as prepared by Buyer subject to amendment, if necessary, to reflect the resolution of the dispute by the Independent Accountants. To the extent not included as a liability on the Final Adjustment Statement, Seller shall be responsible for and shall pay to Buyer any and all Taxes with respect to any Acquired Company relating to all Pre-Closing Tax Periods and attributable to all Pre-Closing Tax periods under Section 9.1 no later than five (5) days before the date on which such Taxes are required to be paid to any Taxing Authority. Except as otherwise required by Law, all Tax Returns of the Acquired Companies that relate to any Pre-

Closing Tax Period or any Straddle Period shall be prepared consistent with past practices and, for the avoidance of doubt, will provide for a refund, in cash, whenever possible for the overpayment of Taxes or otherwise, rather than a credit for Taxes due for any Post-Closing Tax Period.

9.2.2 Except as otherwise required by Law, without the prior written consent of Seller, which consent shall not be unreasonably conditioned, withheld or delayed, none of Buyer, the Acquired Companies, or any Affiliate thereof shall, with respect to any Pre-Closing Tax Period (a) make any election with retroactive effect to any Pre-Closing Tax Period, or (b) file any amended Tax Return for any Pre-Closing Tax Period, if in any such case such action would have the effect of increasing the indemnification obligations set forth in Article 8 hereof.

9.2.3 If any Acquired Company receives a Tax refund, applies a credit against Taxes or is able to utilize a credit carryforward, which refund, credit or credit carryforward arises from or is attributable to a Pre-Closing Tax Period, such refund, the amount of such credit or credit carryforward, in each case, net of any reasonable costs or Taxes attributable to receiving such refund, credit or credit carryforward, shall be paid to Seller; provided, however, that Seller shall not be entitled to any such payment (a) to the extent reflected in the Final Adjustment Statement or (b) attributable to any carryback of an item from a Post-Closing Tax Period.

9.3 Controversies. Buyer shall cause the Acquired Companies to notify Seller in writing within ten (10) days of the receipt by any Acquired Company of any notice of any audits, inquiries, assessments, Proceedings or similar events received from any Taxing Authority with respect to Taxes of the Acquired Companies for which Seller may be required to indemnify any Buyer Indemnitee pursuant to this Agreement (any such audit, inquiry, assessment, Proceeding or similar event, a "Tax Matter"). Seller may, at its own expense, participate in any such Tax Matter and, upon written notice to Buyer, assume the defense of any such Tax Matter that relates solely to any Pre-Closing Tax Period. If Seller assumes such defense, Seller shall have the authority, with respect to any Tax Matter, to represent the interests of the Acquired Companies before the relevant Taxing Authority and have the right to control the defense, compromise or other resolution of any such Tax Matter subject to the limitations contained herein, including responding to inquiries, and contesting, defending against and resolving any assessment for additional Taxes or notice of Tax deficiency or other adjustment of Taxes of, or relating to, such Tax Matter. Buyer has the right (but not the duty) to participate in the defense of such Tax Matter and to employ counsel, at its own expense, separate from the counsel employed by Seller. Seller shall not enter into any settlement of, or otherwise compromise any such Tax Matter without the prior written consent of Buyer, which consent shall not be unreasonably conditioned, withheld or delayed. Seller shall keep Buyer informed with respect to the commencement, status, and nature of any such Tax Matter, and will, in good faith, allow Buyer to consult with it regarding the conduct of or positions taken in any such Proceeding. If Seller does not assume, or is not allowed pursuant to the fifth preceding sentence to assume, the defense of such Tax Matter, Buyer shall keep Seller informed of the progress of such Tax Matter from time to time and shall consult with Seller with respect to such Tax Matter. Seller shall have the right (but not the duty) to participate in the defense of such Tax Matter and to employ counsel, at its own expense, separate from counsel employed by the Acquired Companies. The Acquired Companies shall not enter into any settlement of, or otherwise compromise any such Tax Matter without the prior written consent of Seller, which consent shall not be unreasonably conditioned,

withheld or delayed, if such settlement or compromise would cause Seller to be liable for the payment of any part of such settlement.

9.4 Cooperation. In connection with the preparation of Tax Returns, audits, examinations, and any Proceedings relating to the Tax liabilities imposed on the Acquired Companies for all Tax periods, Buyer, on the one hand, and Seller, on the other hand, shall cooperate fully with each other, including the furnishing or making available during normal business hours of records, information, personnel (as reasonably required), books of account, powers of attorney or other materials reasonably relevant or helpful for the preparation of such Tax Returns, the conduct of audit examinations or the defense of claims by Taxing Authorities as to the imposition of Taxes. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by Taxing Authorities at the cost of the requesting party. Seller agrees to (a) retain all books and records with respect to all Tax matters pertinent to the Acquired Companies relating to any taxable period beginning before the Closing Date until the expiration of the applicable statute of limitations and any extension thereof for the respective taxable periods, and to abide by all record retention agreements entered into with any Taxing Authority, and (b) to give Buyer reasonable written notice prior to transferring, destroying or discarding any such books and records and, if Buyer so requests, Seller shall allow Buyer to take possession of such books and records. Buyer agrees to (y) retain all books and records with respect to all Tax matters pertinent to the Acquired Companies relating to any taxable period until the expiration of the applicable statute of limitations and any extension thereof for the respective taxable periods, and to abide by all record retention agreements entered into with any Taxing Authority, and (z) to give Seller reasonable written notice prior to transferring, destroying or discarding any such books and records for any Pre-Closing Tax Period and, if Seller so requests, Buyer shall allow Seller to take possession of such books and records for any Pre-Closing Tax Period. Buyer and Seller shall, upon request, use their commercially reasonable efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

9.5 Conflict. To the extent there is any conflict between the provisions of this Article 9 and Article 8, the provisions of this Article 9 shall control.

9.6 Successors. For purposes of this Article 9, references to any of the Acquired Companies, Seller, or Buyer shall include successor entities.

9.7 Tax Treatment. The consideration paid for the Interests hereunder, and any other amounts included in the amount realized for federal income Tax purposes, of the Acquired Companies shall be allocated among the assets of the Acquired Companies in accordance with their fair market values determined using the methodology set forth on Schedule 9.7 (the "Allocation Schedule") (which schedule shall be adjusted to reflect changes in the Closing Working Capital and the Purchase Price in accordance with Section 2.4.5 hereof) and Section 1060 of the Code. Buyer, Seller and each of their respective Affiliates shall file all Tax Returns in a manner consistent with this Section 9.7, and none of the parties will voluntarily take any

position inconsistent with this Section 9.7 in any applicable Proceeding relating to Taxes except as otherwise required by Law.

9.8 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) imposed on Buyer or any Acquired Company in connection with this Agreement ("Transfer Taxes") shall be borne and paid by Buyer when due, and Seller shall reasonably promptly reimburse Buyer for one-half of each such payment, and Buyer shall cause to be filed all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and all reasonable out-of-pocket expenses pertaining thereto shall be paid one-half by Buyer and one-half by Seller.

ARTICLE 10

Certain Definitions

When used in this Agreement, the following terms in all of their tenses, cases and correlative forms shall have the meanings assigned to them in this Article 10, or elsewhere in this Agreement as indicated in this Article 10:

"1933 Act" means the Securities Act of 1933, as amended, and the regulations thereunder.

"Acquired Company Intellectual Property" means the Intellectual Property owned in whole or in part by the Acquired Companies.

"Acquired Companies" is defined in the Recitals.

"Acquisition Balance Sheet" is defined in Section 3.5.1.

"Acquisition Transaction" is defined in Section 7.3.

"Affiliate" of a specified Person means any other Person which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such specified Person. For purposes of this definition, "control" of any Person means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting capital stock or equity interests, by Contract, or otherwise.

"Agreement" is defined in the preamble of this Agreement.

"Allocation Schedule" is defined in Section 9.7.

"Ancillary Agreements" is defined in Section 3.1.2.

"Audited Financial Statements" is defined in Section 3.5.1.

"Boiler" is defined in Section 3.11.4.

"Bond Indenture" is defined in the Recitals.

"Business Day" means any day other than a Saturday, Sunday or day on which banking institutions in Cleveland, Ohio are authorized or obligated pursuant to Law to be closed.

"Buyer" is defined in the preamble of this Agreement.

"Buyer Ancillary Agreements" is defined in Section 4.1.

"Buyer Fundamental Representations" is defined in Section 8.3.5.

"Buyer Indemnitees" is defined in Section 8.1.

"Calfee" is defined in Section 7.5.1.

"Calfee Clients" is defined in Section 7.5.1.

"CERCLA" is defined in Section 3.18.5.

"Charon MSC" is defined in the definition of "Selling Expenses".

"Charter Documents" means the articles of incorporation, articles of organization, certificate of incorporation, limited partnership agreement, limited liability company operating agreement, and by-laws (and, in each case, all equivalents thereof and instruments of similar effect) of any business entity.

"Closing" and "Closing Date" are defined in Article 6.

"Closing Cash" means the cash held in deposit accounts, including money market accounts, of the Acquired Companies and cash equivalents held by the Acquired Companies immediately prior to the Closing, plus checks presented by the Acquired Companies for deposit but not yet credited to deposit accounts, less checks issued by the Acquired Companies but uncleared in each case at (but immediately before giving effect to) the Closing. For the avoidance of doubt, "Closing Cash" shall not include the cash held by the Trustee in its capacity as such, or in other accounts not immediately accessible to the Company for disposition in the Company's discretion pursuant to the Bond Indenture as of the date hereof or as of the Closing.

"Closing Certificate" is defined in Section 2.3.1.

"Closing Indebtedness" means the Indebtedness of the Acquired Companies, on a consolidated basis, immediately prior to the Closing, excluding the Repaid Closing Indebtedness.

"Closing Trustee Instructions" are defined in Section 2.3.

"Closing Working Capital" means the Working Capital of the Acquired Companies, on a consolidated basis, immediately prior to the Closing.

"Code" means the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

"Company" is defined in the preamble of this Agreement.

"Company Releasee" is defined in Section 7.4.

"Confidentiality Agreement" is defined in Section 7.2.4.

"Contract" means any contract, agreement, deed, mortgage, lease, license, instrument, note, indenture, bond, loan, commitment, undertaking, guarantee or arrangement, whether oral or written.

"Controlled Group" means any trade or business (whether or not incorporated) (a) under common control within the meaning of Section 4001(b)(1) of ERISA with an Acquired Company or (b) which together with an Acquired Company is treated as a single employer under Section 414(t) of the Code.

"CTCWD" is defined in the Recitals.

"CTG" is defined in the Recitals.

"CTSD" is defined in the Recitals.

"Debt Financing" is defined in Section 7.6.

"Disclosure Schedules" are the confidential schedules, dated as of the date hereof, delivered to Buyer in connection with the execution and delivery of this Agreement.

"Disposal," "Storage," and "Treatment" shall have the meanings assigned them at 42 U.S.C. § 6903(3)(33) and (34), respectively.

"Draft Consent Decree" is defined in Section 8.1.

"Easements" is defined in Section 3.11.1.

"Enforceability Exceptions" is defined in Section 3.1.3.

"Environmental Claim" means any and all administrative, regulatory, judicial or other actions, suits, demands, proceedings, investigations or notices of noncompliance or violation by any Person alleging potential liability of any kind or nature arising out of or resulting from: (a) the presence or Release of any Hazardous Materials; (b) any actual or alleged violation of, or noncompliance with or Liability under, any Environmental Law; or (c) any and all claims by any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief under Environmental Law.

"Environmental Escrow Amount" means [redacted].

"Environmental Escrow Release Date" shall mean the date on which the Environmental Escrow Amount is released in full pursuant to the terms of the Escrow Agreement.

"Environmental Laws" means all applicable federal, state, regional, local or foreign statutes, Laws, regulations, codes, rules, ordinances, judgments and orders in effect on or prior to the Closing Date relating to protection of human health or the environment (including ambient or indoor air, soil, surface water, ground water, sediments, land surface or subsurface strata), natural resources or contamination, including those relating to Releases of Hazardous Materials, or otherwise relating to the generation, presence, manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, investigation, abatement, remediation of, or exposure to, Hazardous Materials.

"Environmental Permits" means all environmental, health and safety permits, licenses, registrations, and governmental approvals and authorizations.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"Escrow Agreement" means an escrow agreement among Buyer, Seller and the Trustee, in the form attached hereto as Exhibit B.

"Escrow Amount" means an amount equal to the Environmental Escrow Amount plus the Indemnity Escrow Amount.

"Estimated Closing Cash" is defined in Section 2.3.

"Estimated Closing Working Capital" is defined in Section 2.3.

"Estimated Closing Indebtedness" is defined in Section 2.3.

"Estimated Purchase Price" is defined in Section 2.3.

"Estimated Seller Cash Payment" is defined in Section 2.3.

"Estimated Selling Expenses" is defined in Section 2.3.

"Final Adjustment Statement" is defined in Section 2.4.4.

"Final Consent Decree" is defined in Section 8.1.

"Final Post-Closing Adjustment" is defined in Section 2.4.4.

"Financial Statements" is defined in Section 3.5.1.

"GAAP" means generally accepted accounting principles, as in effect in the United States either from time to time as applied to periods prior to the Closing Date or as applied on the Closing Date, as applicable.

"Governmental Authority" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of any such government or political subdivision, or any self-regulated organization or other non-governmental regulating authority (to the extent that the rules, regulations or orders of such authority have the force of

law), any arbitrator, tribunal or court of competent jurisdiction, or any body exercising, or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature, and in each case includes all branches, departments, commissions, boards, bureaus and officials acting on behalf thereof.

"Hazardous Material" means any chemical, substance, waste, material, pollutant, or contaminant, regardless of quantity or form, the exposure to, presence of, use, manufacture, generation, handling, labeling, importation, Storage, Disposal, Treatment or transportation of which is regulated under or defined by Law, including asbestos and asbestos-containing materials, petroleum and petroleum-containing materials, radiation and radioactive materials, polychlorinated biphenyls, toxic mold and any other harmful biological agents.

"Hoffman Consulting Contract" is defined in the definition of Selling Expenses.

"Indebtedness" means, as at any date of determination thereof (without duplication), all obligations (other than intercompany obligations) of any of the Acquired Companies in respect of: (a) any borrowed money or funded indebtedness or obligations issued in substitution for or exchange for borrowed money or funded indebtedness (including obligations with respect to principal, accrued interest, and any applicable prepayment charges or premiums), including indebtedness issued in substitution or exchange for borrowed money or for the deferred purchase price of property or services (other than trade payables reflected in the Final Adjustment Statement); (b) any indebtedness evidenced by any note, bond, debenture or other debt security; (c) capital lease obligations; (d) deferred purchase price obligations or earn-out obligations entered into in connection with any acquisition or similar transaction; (e) any obligations with respect to any interest rate hedging or swap agreements; (f) letters of credit, to the extent drawn; and (g) any liability of others of the kind described in the foregoing clauses that is guaranteed by the Acquired Companies (excluding intercompany debt and guarantees by the Acquired Companies to the extent such would have the effect of duplicating any of the foregoing). Notwithstanding the foregoing, the calculation of Indebtedness shall not include (y) any operating lease obligations (other than capital leases) or (z) any of the principal amount as of the Closing Date of any undrawn letters of credit.

"Indemnification Threshold" means [redacted].

"indemnitee" and "indemnitor" are defined in Section 8.4.1(a).

"Indemnity Cap" means [redacted] less any portion of the Indemnity Escrow Amount distributed to any Buyer Indemnitee pursuant to this Agreement or the Escrow Agreement resulting from the indemnity covenants in Section 8.1(a) hereof.

"Indemnity Escrow Amount" means [redacted].

"Indenture Amendment" is defined in the Recitals.

"Independent Accountants" is defined in Section 2.4.3.

"Information Systems" means all computer hardware, databases and data storage systems, computer, data, database and communications networks (other than the Internet),

architecture interfaces and firewalls (whether for data, voice, video or other media access, transmission or reception) and other apparatus used to create, store, transmit, exchange or receive information in any form.

"Intellectual Property" means any of the following in any jurisdiction throughout the world: (a) patents, patent applications, patent disclosures and inventions, including any continuations, divisionals, continuations-in-part, renewals and reissues for any of the foregoing; (b) Internet domain names, trademarks, service marks, trade dress, trade names, logos, slogans and corporate names and registrations and applications for registration thereof together with all of the goodwill associated therewith; (c) copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof; (d) mask works and registrations and applications for registration thereof; (e) computer Software (excluding all shrink wrap Software and Off-the-Shelf Software), data, data bases and documentation thereof; (f) trade secrets and other confidential information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information) (collectively, "Trade Secrets"); (g) copies and tangible embodiments thereof (in whatever form or medium) and, (h) the right to bring suit and collect damages for any past or future misappropriation, infringement, dilution or violation of rights in the foregoing.

"Interests" is defined in the Recitals.

"Interim Financial Statements" is defined in Section 3.5.1.

"Law" means any federal, state, regional, local or foreign law, statute, ordinance, code, treaty, rule, regulation, Order or other restriction of any Governmental Authority.

"Leased Real Property" is defined in Section 3.11.2.

"Leases" is defined in Section 3.11.2.

"Liability" means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), and including all costs and expenses relating thereto including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation.

"Licenses" is defined in Section 3.12.2.

"Lien" means any lien, charge, mortgage, pledge, easement, encumbrance, security interest, claim, restriction, option, preemptive right, hypothecation, assessment, servitude, easement, matrimonial or community interest, tenancy by the entirety claim, adverse claim, or any other title defect or restriction of any kind, other than restrictions on the offer and sale of securities under federal and state securities Laws of general applicability.

"Litigation Conditions" is defined in Section 8.4.1(b).

"Loss" or "Losses" means any and all losses, liabilities, damages, costs, Taxes, losses of Tax benefits, penalties, judgments, deficiencies, awards, fines, demands, judgments, suits, actions, causes of action, assessments, claims of any kind, interest, cost or reasonable expenses incurred, including costs of investigation; provided, however, that Losses relating to any claims for indemnification shall (a) specifically exclude punitive or exemplary damages, except to the extent actually paid to a third party; and (b) be net of the amount of any recoveries actually received by the party seeking indemnification, or any of its Affiliates, in connection with the circumstances that give rise to the claim for indemnification under: (i) any insurance policy covering such indemnifiable Losses of which the party seeking indemnification, or any of its Affiliates, is a beneficiary in connection with the circumstances that give rise to the claim for indemnification, net any future increase in premiums resulting from pursuing such claim; and (ii) "pass-through" warranty coverage from a manufacturer or other indemnification or reimbursement Contract from a third party.

"Material Adverse Effect" means (a) a material adverse effect on the business, condition (financial or otherwise), assets, liabilities, or results of operations of the Acquired Companies taken as a whole; provided, however, that none of the following will be deemed, either alone or in combination, to constitute, and none of the following will be taken into account in determining whether there has been or will be, a "Material Adverse Effect": (i) changes in business or economic conditions affecting the economy or the Acquired Companies' industry generally, (ii) changes in stock markets or credit markets, (iii) changes in Tax rates, Law or GAAP, or the enactment or implementation of any new Law or Tax, (iv) natural disasters, acts of war, sabotage, terrorism, hostilities, military action or any escalation or worsening thereof, (v) the execution, delivery or performance of this Agreement (including any announcement approved in writing by Buyer relating to this Agreement or the fact that Buyer is acquiring the Acquired Companies and any actions taken by any customer, supplier or employee of the Acquired Companies in response to such announcement), or (vi) the failure of the Acquired Companies to meet any internal projections or forecasts (it being understood that the underlying cause of such failure will not be excluded by reason of this clause (vi)), provided that any change, event or effect contemplated by the foregoing clauses (i), (ii), (iii) or (iv) may constitute or be taken into account in determining whether there has been or will be a "Material Adverse Effect" if such change, event or effect has a disproportionate impact on the Acquired Companies when compared to similar businesses; or (b) a change, event, or effect that prevents or materially impairs or delays the ability of any Acquired Company or the Seller to perform its or their obligations under this Agreement or to consummate the transactions contemplated herby, or would be reasonably expected to do so.

"Material Contracts" is defined in Section 3.13.

"Material Customers" is defined in Section 3.16.

"Material Suppliers" is defined in Section 3.16.

"NPL" is defined in Section 3.18.5.

"Off-the-Shelf Software" means off-the-shelf personal computer software, as such term is commonly understood, that is commercially available under non-discriminatory pricing terms on a retail basis.

"Order" means any judgment, injunction, award, decision, decree, ruling, verdict, writ or order of any nature of any Governmental Authority.

"Ordinary Course of Business" means the ordinary and usual course of day-to-day operations of the business of the relevant Person or Persons through the date hereof consistent with past practice.

"Owned Real Property" is defined in Section 3.11.1.

"Permits" is defined in Section 3.10.

"Permitted Liens" means: (a) mechanics', carriers', workmen's, repairmen's or other like Liens arising or incurred in the Ordinary Course of Business for amounts that are not yet delinquent or are being contested in good faith; (b) Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course of Business and under which the Acquired Company that is a party thereto is not in default; (c) Liens arising by operation of Law, including Liens arising by virtue of rights of customers, suppliers and subcontractors in the Ordinary Course of Business under general principles of commercial Law, but in each case except for Liens that arise as a result of any breach or default by any Acquired Company of any Contract or Law,; (d) Liens for current Taxes and utilities not yet due and payable or which are being contested in good faith and, in connection therewith, appropriate reserves have been set aside in accordance with GAAP; (e) imperfections of title or encumbrances, if any, that do not, individually or in the aggregate, materially impair the continued use and operation of any asset to which they relate in the conduct of the businesses of the Acquired Companies as presently conducted; (f) easements, covenants, rights-of-way and other similar restrictions or conditions of record or which would be shown by a current accurate survey of any of the Leased Real Property; (g) (i) zoning, building and other similar restrictions imposed by applicable Laws, (ii) Liens that have been placed by any developer, landlord or other third party on property over which any Acquired Company has easement rights or, on any Leased Real Property, under any lease or subordination or similar agreements relating thereto to the extent such do not materially impair the Acquired Companies' use and operation of the Easements, and (iii) unrecorded easements, covenants, rights-of-way and other similar restrictions on the Leased Real Property, none of which, individually or in the aggregate, materially impairs the continued use and operation of such Leased Real Property.

"Person" means an individual, a corporation, a limited liability company, a partnership, a trust, an unincorporated association, a government or any agency, instrumentality or political subdivision of a government, or any other entity or organization, whether or not a legal entity.

"Plans" is defined in Section 3.9.1.

"Post-Closing Tax Period" means any taxable period that begins after the Closing Date; in the case of a Straddle Period, the portion of the Straddle Period that begins immediately after the Closing Date shall constitute a Post-Closing Tax Period.

"Pre-Closing Period" is defined in Section 7.1.1(a).

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date; in the case of a Straddle Period, the portion of the Straddle Period that ends on and includes the Closing Date shall constitute a Pre-Closing Tax Period.

"Preliminary Adjustment Statement" is defined in Section 2.4.1.

"Preliminary Post-Closing Adjustment" is defined in Section 2.4.1.

"Privilege Period" is defined in Section 9.1.

"Proceeding" means any judicial, administrative or arbitral actions, suits, mediation, investigation, inquiry, audit, proceedings or claims (including counterclaims) by or before a Governmental Authority.

"Purchase Price" is defined in Section 2.2.

"Real Property" is defined in Section 3.11.2.

"Related Person" is defined in Section 3.19.

"Release" shall have the meaning assigned it at 42 U.S.C. Section 9601(22) without giving effect to any exception or exclusions clauses therein.

"Repaid Closing Indebtedness" means the Indebtedness of the Acquired Companies, on a consolidated basis, immediately prior to Closing as set forth on Schedule 2.3(c), which amount will be paid to and used by the Trustee pursuant to the Closing Trustee Instructions.

"Representatives" is defined in Section 7.3.

"Rosemawr" is defined in the Recitals.

"Sale Engagement" is defined in Section 7.5.1.

"Seller" is defined in the preamble of this Agreement.

"Seller Cash Payment" means an amount equal to the Purchase Price less the sum of the Escrow Amount, the Repaid Closing Indebtedness and the Selling Expenses.

"Seller Fundamental Representations" is defined in Section 8.3.1.

"Seller Indemnitees" is defined in Section 8.2.

"Seller Releasor" is defined in Section 7.4.

"Seller's Knowledge" means the actual knowledge of Donald J. Hoffman, Marc G. Divis, Linda S. Atkins, Stephen Losh, Scott Templeton, Charles Evans and Hugh Dougherty, and any information that any such individual would reasonably be expected to be aware of in the prudent

discharge of his or her duties in the Ordinary Course of Business on behalf of Seller or the Acquired Companies.

"Selling Expenses" means (a) all of the fees, expenses and commissions incurred by the Acquired Companies, the Sellers or any of their respective Affiliates in connection with the consummation of the transactions contemplated hereby for which any Acquired Company is liable at or after the Closing, (b) any change in control, transaction, stay bonus, retention bonus or similar compensatory obligations of the Acquired Companies to the extent not paid prior to the Closing (including the employer portion of any employment, payroll, social security or unemployment Taxes related to such amounts), (c) the First Boiler Shortfall, if any, and (d) any amounts due in connection with the termination of (1) the Management Services Contract between Cleveland Thermal, LLC and Charon Capital Management, LLC, dated September 1, 2013, as amended as of January 1, 2015 (the "Charon MSC") or (2) the Consulting & Services Contract between the Company and Donald J. Hoffman, dated December 8, 2004 (the "Hoffman Consulting Contract"), and any other fees, expenses or commissions payable by any Acquired Company to Seller or any Affiliate of Seller.

"Software" means, as they exist anywhere in the world, computer software programs, including all source code, object code, specifications, databases, designs and documentation related to such programs.

"Straddle Period" means a taxable period that begins on or before the Closing Date and ends after the Closing Date.

"Subsidiary" and "Subsidiaries" means any and all corporations, partnerships, limited liability companies, joint ventures, associations and other entities controlled by the Company directly or indirectly, of record or beneficially, through one or more intermediaries.

"Survival Period Termination Date" is defined in Section 8.3.1.

"Tax" or "Taxes" means: any and all (a) federal, state, provincial, local, foreign and other taxes, levies, fees, imposts, duties, assessments, and similar governmental charges (including any interest, fines, penalties or additions to tax imposed in connection therewith or with respect thereto), including taxes imposed on, or measured by income, gross receipts, franchise, or profits, and license, payroll, employment, withholding, excise, severance, stamp, occupation, premium, windfall profits, customs, duties, capital stock, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, ad valorem, capital gains, goods and services, branch, utility, production, environmental, escheat, unclaimed or abandoned property and compensation taxes, in each case, whether disputed or not, (b) any liability for the payment of any amounts of any of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of such amounts was determined or taken into account with reference to the liability of any other Person, (c) any liability for the payment of any amounts as a result of being a party to any tax sharing or allocation agreements or arrangements (whether or not written) or with respect to the payment of any amounts of any of the foregoing types as a

result of any obligation to indemnify any other Person, and (d) any liability for the payment of any of the foregoing types as a successor, transferee or otherwise.

"Taxing Authority" means any Governmental Authority responsible for the assessment, determination, collection, administration, enforcement, or other imposition of any Tax.

"Tax Benefit Adjustment Amount" is defined in Section 8.3.11.

"Tax Matter" defined in Section 9.3.

"Tax Return" means any return, declaration, report, statement, schedule, form, claim for refund, election, disclosure, estimate, or information return or statement relating to Taxes, including any schedule, supplement or attachment thereto, and including any amendment thereof required or permitted to be filed with any Taxing Authority with respect to Taxes.

"Third-Party Claim" is defined in Section 8.4.1(a).

"Trade Secrets" is defined in the definition of "Intellectual Property".

"Transfer Taxes" is defined in Section 9.8.

"Trustee" means Huntington National Bank, N.A.

"Trustee's Account" is defined in Section 2.3.

"Verification Report" is defined in Section 5.1.6(k).

"Working Capital" means, in each case on a consolidated basis, (a) the sum of the Acquired Companies' current assets, specifically, accounts receivable, inventory and prepaid assets and excluding (i) Closing Cash and (ii) any Tax assets (current, deferred or otherwise), minus (b) the sum of the Acquired Companies' current liabilities, specifically, accounts payable and accrued liabilities and excluding (i) Indebtedness and (ii) any current or deferred income or franchise Tax liabilities; in all cases, calculated in accordance with Section 2.4.1 hereof (including, the policies and procedures described in Schedule 2.4.1). A sample calculation of Working Capital, including each specific general ledger account, is set forth on Exhibit A hereto.

"Working Capital Target" means [redacted].

ARTICLE 11

Construction; Miscellaneous Provisions

11.1 Notices. Any notice to be given or delivered pursuant to this Agreement shall be ineffective unless given or delivered in writing, and shall be given or delivered in writing by delivery in person, E-mail (including attachments thereto), registered or certified mail (postage prepaid) or next-day delivery by a national overnight air courier service, as follows:

11.1.1 If to Buyer, to:

Corix Infrastructure (US) Inc.
Suite 1160, 1188 West Georgia Street
Vancouver, British Columbia
Canada V6E 4A2
Attention: David Liesch
Email: David.Liesch@corix.com

With a copy to:

Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Attention: James P. Dougherty
George M. Hunter
Email: jpdougherty@jonesday.com
gmhunter@jonesday.com

11.1.2 If to Seller, to:

Cleveland Thermal Holdings, LLC
c/o Charon Capital Management
521 Riversville Road, Greenwich, CT 06831
Attention: Charles Evans
Email: CE@charoncapitalmanagement.com

With a copy to:

Calfee, Halter & Griswold LLP
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114-1607
Attention: Michael F. Marhofer
Email: mmarhofer@calfee.com

or in any case, to such other address for a party as to which notice shall have been given to Buyer and Seller in accordance with this Section. Notices so addressed shall be deemed to have been duly given (a) on the third (3rd) Business Day after the day of registration, if sent by registered or certified mail, postage prepaid, (b) on the next Business Day following the documented acceptance thereof for next-day delivery by a national overnight air courier service, if so sent, (c) on the date sent by facsimile or E-mail transmission, if electronically or telephonically confirmed by the recipient or (d) when delivered, if delivered in person. Otherwise, notices shall be deemed to have been given when actually received at such address.

11.2 Entire Agreement. This Agreement, the Disclosure Schedules and Exhibits hereto constitute the exclusive statement of the agreement between Buyer and Seller concerning the subject matter hereof, and supersede all other prior agreements, oral or written, among or between any of the parties hereto concerning such subject matter. All negotiations among or between any of the parties hereto are superseded by this Agreement, and there are no representations, warranties, promises, understandings or agreements, oral or written, in relation to the subject matter hereof among or between any of the parties hereto other than the Confidentiality Agreement and those otherwise expressly set forth or expressly incorporated herein.

11.3 Modification. No amendment, modification, or waiver of this Agreement or any provision hereof, including the provisions of this sentence, shall be effective or enforceable as against a party hereto unless made in a written instrument that specifically references this Agreement and that is signed by the party waiving compliance.

11.4 Jurisdiction and Venue. Each party hereto agrees that any claim relating to this Agreement shall be brought solely in the state or federal courts located in Cuyahoga County, Ohio, and all objections to personal jurisdiction and venue in any Proceeding so commenced are hereby expressly waived by all parties hereto. The parties waive personal service of any and all process on each of them and consent that all such service of process shall be made in the manner, to the party and at the address set forth in Section 11.1 of this Agreement, and service so made shall be complete as stated in such section. Notwithstanding the foregoing, (a) nothing in this Section 11.4 shall affect the right of any party to serve legal process in any other manner permitted by Law, and each party agrees that a final, non-appealable judgment in any Proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by Law and (b) any disputes between the parties that (i) are submitted to the Independent Accountants for resolution pursuant to the terms of Section 2.4.3 shall be resolved as set forth in accordance with the terms of such section, and (ii) related to a Tax Matter shall be resolved as set forth in accordance with the terms of Section 9.3.

11.5 Specific Performance. Each party's obligations under this Agreement are unique. If any party should breach its covenants under this Agreement, the parties each acknowledge that it would be impracticable to measure the resulting damages; accordingly, the nonbreaching party or parties, in addition to any other available rights or remedies they may have under the terms of this Agreement, may sue in equity for specific performance, and each party expressly waives the defense that a remedy in damages will be adequate. Each party further agrees to waive any requirement to post any bond in connection with obtaining such relief. The equitable remedies described in this Section 11.5 shall be in addition to, and not in lieu of, any other remedies at law or in equity that the parties may elect to pursue.

11.6 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of Buyer, the Acquired Companies and Seller and their respective successors and permitted assigns.

11.7 Headings. The article and section headings used in this Agreement are intended solely for convenience of reference, do not themselves form a part of this Agreement, and may not be given effect in the interpretation or construction of this Agreement.

11.8 Construction; Interpretation. Whenever the context requires in this Agreement, the masculine gender includes the feminine or neuter, the neuter gender includes the masculine or feminine, the singular number includes the plural, and the plural number includes the singular. In every place where it is used in this Agreement, the word "including" is intended and shall be construed to mean "including, without limitation." References to a Person are also to its successors and permitted assigns. The word "extent" in the phrase of "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if". Any reference to any month or any day period shall mean the calendar month or the calendar day period unless expressly specified otherwise. References to "dollars" or "$" shall mean dollars in the lawful currency of the United States. References to the "transactions contemplated by this Agreement" and words of similar effect shall include the transactions contemplated by all Ancillary Agreements and all Buyer Ancillary Agreements. The term "made available" and words of similar effect shall mean made accessible to the applicable party and its representatives in the virtual data room maintained on Intralinks labeled Project Raven or as delivered separately by electronic mail to such party or its representatives at least two Business Days prior to the date hereof. No party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions hereof, and all provisions of this Agreement shall be construed according to their fair meaning and not strictly for or against any party and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of its authorship of any provision of this Agreement.

11.9 Counterparts. This Agreement and each document delivered pursuant to this Agreement may be executed by the parties in separate counterparts and by facsimile or by electronic mail with scan or attachment signature, each of which when so executed and delivered shall be deemed an original, and all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof or thereof each signed by less than all, but together signed by all, of the parties. A facsimile, electronic or other copy of a signature shall be deemed an original for purposes of this Agreement.

11.10 Third Parties. Except as may otherwise be expressly stated herein, no provision of this Agreement is intended or shall be construed to confer on any Person, other than the parties hereto, any rights hereunder. Buyer Indemnitees and Seller Indemnitees who are not otherwise parties to this Agreement shall be third-party beneficiaries of this Agreement for the purpose of receiving applicable indemnity hereunder.

11.11 Disclosure Schedules and Exhibits. The Disclosure Schedules and Exhibits, if any, referenced in this Agreement constitute an integral part of this Agreement as if fully rewritten herein. Notwithstanding anything to the contrary contained in this Agreement or in any of the sections of the Disclosure Schedules, any information disclosed in one section of the Disclosure Schedules shall be deemed to be disclosed in such other sections of the Disclosure Schedules and applicable to such other representations and warranties to the extent that the disclosure is reasonably apparent on the face of such disclosure item as presented in the Disclosure Schedules to be applicable to such other section of the Disclosure Schedules and such other representations and warranties. The Disclosure Schedules may include items and information that are not "material" relative to the entire business of the Acquired Companies, taken as a whole, and such inclusion shall not be deemed to be an acknowledgment or agreement that any such item or information (or any non-disclosed item or information of comparable or

greater significance) is "material" or to further define the meaning of such term for purposes of this Agreement or otherwise, except as otherwise expressly contemplated herein or therein. All references in this document to "this Agreement" and the terms "herein," "hereof," "hereunder" and the like shall be deemed to include all of such sections of the Disclosure Schedules and Exhibits.

11.12 Time Periods. Any action required hereunder to be taken within a certain number of days shall, except as may otherwise be expressly provided herein, be taken within that number of calendar days; provided, that if the last day for taking such action falls on a Saturday, a Sunday, or a legal holiday, the period during which such action may be taken shall automatically be extended to the next Business Day.

11.13 Construction. This Agreement and the other documents contemplated herein shall be deemed to have been drafted by the parties, and neither this Agreement nor any other document contemplated herein shall be construed against any party as the principal draftsperson hereof or thereof.

11.14 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Ohio, without regard to the choice-of-laws or conflicts-of-laws provisions thereof.

11.15 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (a) ARISING UNDER THIS AGREEMENT OR THE ANCILLARY AGREEMENTS OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. EACH PARTY HEREBY FURTHER AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, PROCEEDING, CROSS-CLAIM OR COUNTERCLAIM OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

11.16 Severability. Whenever possible, each provision of this Agreement and the Ancillary Agreements will be interpreted in such a manner as to be effective and valid under applicable Law, but if any term or other provision of this Agreement or any Ancillary Agreement is held to be invalid, illegal or unenforceable under applicable Law, all other provisions of this Agreement and each Ancillary Agreement shall remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision of this Agreement or any Ancillary Agreement is invalid, illegal or unenforceable under applicable Law, the parties shall negotiate in good faith to modify this Agreement and any applicable Ancillary Agreements so as to effect the original intent of the parties as closely as

possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company, Buyer and Seller have executed and delivered this Membership Interest Purchase Agreement, or have caused this Membership Interest Purchase Agreement to be executed and delivered by their duly authorized representatives, as of the date first written above.

BUYER:

CORIX INFRASTRUCTURE (US) INC.

By: _____

Name: Dietz Kellmann
Title: Executive Vice President, Corporate Development

SELLER:

CLEVELAND THERMAL HOLDINGS, LLC

By: CT Managing Member, LLC, its Managing Member

By: _____

Name: Charles Evans
Title: Managing Member

THE COMPANY:

CLEVELAND THERMAL, LLC

By: Cleveland Thermal Holdings, LLC, its Manager

By: CT Managing Member, LLC, its Managing Member

By: _____

Name: Charles Evans
Title: Managing Member

IN WITNESS WHEREOF, the Company, Buyer and Seller have executed and delivered this Membership Interest Purchase Agreement, or have caused this Membership Interest Purchase Agreement to be executed and delivered by their duly authorized representatives, as of the date first written above.

BUYER:

CORIX INFRASTRUCTURE (US) INC.

By: _____
Name:
Title:

SELLER:

CLEVELAND THERMAL HOLDINGS, LLC

By: CT Managing Member, LLC, its Managing Member

By: _____
Name: Charles Evans
Title: Managing Member

THE COMPANY:

CLEVELAND THERMAL, LLC

By: Cleveland Thermal Holdings, LLC, its Manager

By: CT Managing Member, LLC, its Managing Member

By: _____
Name: Charles Evans
Title: Managing Member

Summary: Motion for Protective Order and Memorandum in Support electronically filed by Ms. Rebekah J. Glover on behalf of Corix Infrastructure (US) Inc. and Cleveland Thermal Steam Distribution, LLC and Cleveland Thermal Chilled Water Distribution, LLC