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April 13, 2020

VIA ELECTRONIC FILING

Hon. Robin L. Morrison, Chairman
c/o Ectory Lawless, Docket Room Manager
Tennessee Public Utilities Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

Re: ***Joint Petition of Tennessee-American Water Company and Thunder Air, Inc. D/B/A Jasper Highlands Development, Inc. for the Approval of an Asset Purchase Agreement and for the Issuance of a Certification of Convenience and Necessity; Docket No. 20-00011***

Dear Chairman Morrison:

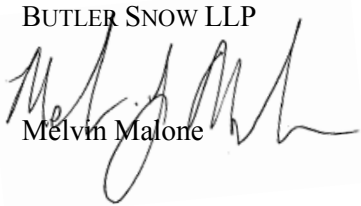
Attached for filing please find *Tennessee-American Water Company and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc.'s Response to the First Discovery Requests of the Consumer Protection and Advocate Division* for Discovery Request 1-15 in the above-captioned matter. Please note that the attachment to the response for DR 1-15 is being submitted **UNDER SEAL** as **CONFIDENTIAL and PROPRIETARY**. Both a public version and a nonpublic, **CONFIDENTIAL** version of the attachment to the response for DR 1-15 are enclosed.

Additionally, attached for filing are the supplemental responses to 1-1, 1-2, and 1-4. Please note that the attachment to the response for Supplemental DR 1-4 is being submitted **UNDER SEAL** as **CONFIDENTIAL and PROPRIETARY**. Both a public version and a nonpublic, **CONFIDENTIAL** version of the attachment to the response for Supplemental DR 1-4 are enclosed. Grady Stout's verification is also attached for filing.

As required, an original of this filing, along with hard copies, will follow. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Sincerely,

BUTLER SNOW LLP


Melvin Malone

MJM:mcB

cc: Daniel Whitaker, Consumer Protection and Advocate Division

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BUTLER SNOW LLP

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

**JOINT PETITION OF TENNESSEE-
AMERICAN WATER COMPANY, AND
THUNDER AIR, INC. D/B/A JASPER
HIGHLANDS DEVELOPMENT, INC.
FOR APPROVAL OF AN ASSET
PURCHASE AGREEMENT AND FOR
THE ISSUANCE OF A CERTIFICATE
OF CONVENIENCE AND NECESSITY**

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DOCKET NO. 20-00011

**TENNESSEE-AMERICAN WATER COMPANY’S RESPONSE
AND SUPPLEMENTAL RESPONSES TO
FIRST DISCOVERY REQUESTS OF THE CONSUMER ADVOCATE**

Tennessee-American Water Company (“TAWC”), by and through counsel, hereby submits its Response and Supplemental Responses to the First Discovery Requests propounded by the Consumer Advocate Unit in the Financial Division of the Attorney General’s Office (“Consumer Advocate”).

GENERAL OBJECTIONS

1. TAWC objects to all requests that seek information protected by the attorney-client privilege, the work-product doctrine and/or any other applicable privilege or restriction on disclosure.

2. TAWC objects to the definitions and instructions accompanying the requests to the extent the definitions and instructions contradict, are inconsistent with, or impose any obligations beyond those required by applicable provisions of the Tennessee Rules of Civil Procedure or the rules, regulations, or orders of the Tennessee Public Utility Commission (“TPUC” or “Authority”).

3. The specific responses set forth below are based on information now available to TAWC, and TAWC reserves the right at any time to revise, correct, add to or clarify the objections or responses and supplement the information produced.

4. TAWC objects to each request to the extent that it is unreasonably cumulative or duplicative, speculative, unduly burdensome, irrelevant or seeks information obtainable from some other source that is more convenient, less burdensome or less expensive.

5. TAWC objects to each request to the extent it seeks information outside TAWC's custody or control.

6. TAWC's decision, now or in the future, to provide information or documents notwithstanding the objectionable nature of any of the definitions or instructions, or the requests themselves, should not be construed as: (a) a stipulation that the material is relevant or admissible, (b) a waiver of TAWC's General Objections or the objections asserted in response to specific discovery requests, or (c) an agreement that requests for similar information will be treated in a similar manner.

7. TAWC objects to those requests that seek the identification of "any" or "all" documents or witnesses (or similar language) related to a particular subject matter on the grounds that they are overbroad and unduly burdensome, and exceed the scope of permissible discovery.

8. TAWC objects to those requests that constitute a "fishing expedition," seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence and is not limited to this matter.

9. TAWC does not waive any previously submitted objections to the Consumer Advocate's discovery requests.

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 20-00011
FIRST DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE AND PROTECTION DIVISION**

Responsible Witness: Grady Stout, TAWC

Question:

1-15. Refer to CA 3-8 in Docket No. 18-00099 regarding a side-by-side comparison of net plant per customer between TAWC and Thunder Air for 2017. Provide this same analysis for 2018 and 2019.

Response:

TAWC objects to this request on the grounds that the request overly broad, unduly burdensome and seeks information that is irrelevant and constitutes a fishing expedition seeking information that is not relevant and is not limited to this matter. Subject to and without waiving this objection, TAWC responds as follows: See attachment, which is being submitted **UNDER SEAL as CONFIDENTIAL and PROPRIETARY.**

PUBLIC VERSION

ATTACHMENT TO 1-15

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 20-00011
FIRST DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE AND PROTECTION DIVISION**

Responsible Witness: Grady Stout, TAWC

Question:

1-1. Refer to the Company's February 14, 2019 voluntary withdrawal of the *Joint Petition* in Docket No. 18-00099 and provide the following information:

- a. Provide a comprehensive explanation of the Company's voluntary withdrawal in Docket No. 18-00099; and
- b. Provide an explanation of how the reasons for the Company's voluntary withdrawal in Docket No. 18-00099 are no longer relevant in this Docket No. 20-00011.

Response:

TAWC objects to this request on the grounds that the request is irrelevant and overly broad and constitutes a fishing expedition seeking information that is not relevant and is not limited to this matter. Subject to and without waiving this objection, TAWC responds as follows:

- (a) The *Joint Petition* in TPUC Docket No. 18-00099 was voluntarily withdrawn for a number of reasons, such as the delay in the establishment of a joint procedural schedule, contentions raised by the Consumer Advocate's Office, and the ongoing growth of the development.
- (b) The *Joint Petition* in TPUC Docket No. 20-00011 is a new, separate and different petition than was submitted in Docket No. 18-00099. Moreover, the parties have agreed upon a joint procedural schedule in Docket No. 20-00011 and the ongoing growth of the development is reflected in the *Joint Petition* and supporting documentation. Further, the *Joint Petition* and the supporting documentation support Commission approval, and the Joint Petitioners are hopeful that any intervenors will agree.

Supplemental Response:

TAWC objects to this request on the grounds that the request is irrelevant and overly broad and constitutes a fishing expedition seeking information that is not relevant and is not limited to this matter. Subject to and without waiving this objection, TAWC supplements this response as follows:

- (a) Based upon the totality of the circumstances, TAWC voluntarily withdrew the Joint Petition.
- (b) TAWC voluntarily withdrew the Joint Petition in Docket No. 18-00099 based upon the totality of the circumstances. As the Thunder Air, Inc. development has continued its growth, both TAWC and Thunder Air, Inc. believe that the acquisition outlined in Docket No. 20-00011 is in the best interests of the customers served by Thunder Air, Inc. In Docket No. 20-00011, the Company has produced, in addition to the supporting documentation accompanying the Joint Petition, the information requested by the Consumer Advocate in CA DR 1-4. The Company's original response to CA DR 1-4 contains information actually employed by TAWC in relation to the acquisition that is the subject matter of the Joint Petition in Docket No. 20-00011. Further, in the spirit of cooperation with the Consumer Advocate, the information produced in the Company's supplemental response to CA DR 1-4 contains balance sheets requested by the Consumer Advocate. TAWC voluntarily produced such balance sheets although they did not exist prior to the CA's request for them and thus were not used by TAWC with respect to the acquisition and Joint Petition.

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 20-00011
FIRST DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE AND PROTECTION DIVISION**

Responsible Witness: Elaine K. Chambers, TAWC

Question:

1-2. Refer to the Asset Purchase Agreement included as Exhibit A to the Company's *Joint Petition*. Provide a side-by-side comparison of this Agreement with the Purchase Agreement included in Docket No. 18-00099 highlighting the differences between the two documents.

Response:

TAWC objects to this request on the grounds that the request seeks information that is irrelevant, constitutes a fishing expedition seeking information that is not relevant and is not limited to this matter, and seeks information that is obtainable from some other source that is more convenient, less burdensome or less expensive.

Supplemental Response:

TAWC objects to this request on the grounds that the request seeks information that is irrelevant, constitutes a fishing expedition seeking information that is not relevant and is not limited to this matter, and seeks information that is obtainable from some other source that is more convenient, less burdensome or less expensive. As the requested information did not exist and as the Consumer Advocate has possession of and/or access to the purchase agreement in Docket No. 18-00099 and the purchase agreement in Docket No. 20-00011, TAWC is under no obligation to develop this information for the Consumer Advocate as the Consumer Advocate could develop this information itself. Subject to and without waiving such objections, TAWC responds as follows: in the spirit of cooperation and good faith, please see the attached document TAWC Redline Supplemental Response to CA DR 1-2.

ASSET PURCHASE AGREEMENT

~~This Asset Purchase~~ THIS ASSET PURCHASE Agreement ("Agreement") ~~is made and entered into this~~), dated as of the _____ day of ~~August, 2018~~ August, 2020 ~~(the "Effective Date")~~) by and between ~~Tennessee American Water Company,~~ the THUNDER AIR, INC., a Tennessee ~~public utility~~ corporation ("Buyer"), and ~~Thunder Air, Inc., d/b/a Jasper Highlands Development, Inc.,~~ a Tennessee corporation, ("Seller"). Hereinafter, the ~~Buyer and Seller may be individually referred to as a "party" or jointly as the "parties";~~), and TENNESSEE-AMERICAN WATER COMPANY, a Tennessee public utility corporation ("TAWC").

RECITALS:

A. Seller owns, maintains and operates a water supply system which provides water services to customers located within ~~its service area (the "service Area")~~ (collectively referred to as that certain residential development known as Jasper Highlands Subdivision (the "Business").

~~B. Buyer desires to acquire and Seller desires to sell the Assets of Seller relating to the Business pursuant to the terms and conditions of this Agreement.~~

~~NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein and in exchange for other consideration the receipt and sufficiency of~~ Subdivision") and ~~which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:~~

ARTICLE 1

Definitions and Related Matters

~~For purposes of this Agreement and all documents executed in connection with this Agreement, the capitalized terms shall have the meanings assigned to them herein or in Schedule 1 and the rules of construction set forth in Schedule 1 shall govern.~~

ARTICLE 2

Purchase and Sale of Assets; Closing

~~2.1 Transfer and Description of Assets.~~ Subject to and upon all other terms and conditions of this Agreement, effective as of the Effective Time on the Closing Date, Seller shall sell, convey, transfer, assign and deliver to Buyer free and clear of an Encumbrances, and Buyer shall acquire from Seller, all of Seller's right, title and interest in and to all of Seller's assets, other than the Excluded Assets, regardless of where is primarily located, which are, could be, or in the future would be part of the transmission and distribution systems used to provide water service to Seller's water customers, including but not limited to the following: in Marion County, Tennessee (the "Water System").

~~(a) all Real Property including any easements, rights of way or rights granted to the Seller in furtherance of the operation of the Business including but not limited to that described in Schedule 3.4;~~

~~(b) — all Tangible Personal Property, as defined in Schedule 1 Definitions.~~

~~(c) — all data and Records related to Seller's operation of the Business, including, but not limited to, the customer list which shall include the service and billing address of all customers of the Seller and, subject to applicable Law, copies of all Records described in Section 2.2(b);~~

~~(d) — all Permits~~B. Seller has developed Phase 1, Phase 2 and Phase 3 of the Subdivision and there are currently One Hundred Thirty-nine (139) active customers served by the Water System.

C. TAWC is a regulated public utility that furnishes water services to the public in multiple counties throughout Tennessee.

D. Seller desires to sell, and TAWC desires to purchase the Water System, as well as substantially all assets, properties and rights of Seller owned and used in connection with the Water System, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the recitals and the covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1 THE TRANSACTION

1.1 Sale and Purchase of Assets. Subject to the terms, representations and conditions set forth in this Agreement, TAWC shall purchase from Seller, and Seller shall sell, assign, transfer, grant, convey and deliver to TAWC at Closing (hereinafter defined), the Assets. The term "Assets" means all of the assets, properties and rights of Seller (whether tangible, intangible, real, personal or mixed) that are held or used in connection with the Water System, except for the Excluded Assets. The Assets shall be sold free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances of any and all nature (collectively, the "Encumbrances").

1.2 Assets Further Defined.

The Assets shall, without limitation to the definition stated above, include the following, other than the Excluded Assets:

(a) the Assigned Contracts (as defined in **Section 5.1(c)**):

(b) all interests in real estate (excepting public streets and public right-of-ways), water sources, wells, mains, pipes, pipelines, manholes, pumps, facilities, meters, tanks, storage facilities, valves, hydrants, water treatment facilities, water system network and related appurtenances, structures, improvements, fixtures, rights-of-way, rights, uses, franchises, licenses and easements owned by Seller and relating to the Water System, or in which Seller has an interest, and all hereditaments, tenements and appurtenances belonging, appertaining or relating thereto;

(c) all machinery, equipment, tools, keys and locks, leasehold improvements, goods, and other tangible personal property relating to the System owned by Seller, or in which Seller has an interest;

(d) all lubricants, spare parts, fuel, chemicals, raw materials, and other supplies and inventories (“Supplies”) owned by the Seller, or in which the Seller has an interest, relating to the System;

(e) all rights to warranties received from the suppliers of any machinery, equipment, facilities or Supplies, and related claims, credits, and rights of recovery with respect thereto;

(f) all rights of Seller under any written or oral contract, easement, license, agreement, lease, plan, instrument, registration, permit, certificate, or other authorization or approval of any nature, or other document, commitment, arrangement, undertaking, practice or authorization, relating to the Water System;

(g) all Permits of or held by the Seller (to the extent transferable to TAWC under applicable law) and all pending applications therefore, renewals thereof or exemptions therefrom ~~which are necessary or advisable in the operation of Seller's Business~~, including but not limited to those listed in **Schedule 3.6**, ~~to the extent transferable; and~~ 4.1(q);

~~(e) — all of the Intangible~~ (h) all rights and choses in action of Seller arising out of occurrences before or after the Closing relating to the Assets, including any rights of Seller under any warranties or insurance claims related to the Assets;

(i) all of the intangible rights and property of Seller utilized by Seller ~~in~~ the operation of the ~~Business~~ System; and

~~All of the foregoing shall be hereinafter referred to collectively as the "Assets".~~

~~2.2~~ (j) all information, files, records, data, plans, contracts and recorded knowledge relating to the Assets, including customer and supplier lists and property records, related to the foregoing.

1.3 Retained Liabilities.

(a) Except as explicitly provided in Section 1.3(b) below, TAWC shall not assume and shall not be liable for any liabilities or obligations of Seller of any nature whatsoever (including any obligations related to the Assets or operation of the Water System), whether express or implied, fixed or contingent, known or unknown at the time of Closing. Except as explicitly provided in Section 1.3(b) below, all of Seller's liabilities and obligations, whether incurred in connection with the operation of the Water System, ownership of the Assets or otherwise, shall remain the sole responsibility of, and shall be retained, paid, performed and discharged solely by Seller. Without limiting the foregoing, Seller shall be and shall remain liable for all obligations and liabilities relating to (i) employees of Seller (including those who worked on the Water System) and any employee benefits related thereto (including any pension benefits), (ii) all taxes on the business of Seller, (iii) accounts payable of the Seller, and (iv) failure to comply with any Environmental Laws or any Permits for the Assets or operation of the

Water System on or before the Closing Date.

(b) Following the Closing, TAWC shall assume only those contractual liabilities arising after the Closing Date under the Assigned Contracts (specifically excluding any liability under the Assigned Contracts arising out of or relating to a breach or other circumstances that occurred on or prior to the Closing Date), including maintenance and repairs related to the Water System.

1.4 Excluded Assets. Notwithstanding anything to the contrary contained in ~~Section 2.1 or elsewhere in~~ this Agreement, the Assets shall not include any of the following ~~Assets of Seller are not part of the~~:

(a) The portion of the water pipes extending from each customer's water meter to the customer's residence (the "Customer Service Lines");

(b) Any and all piping and fixtures internal to each individual customer's structure (whether residential, commercial, industrial or other types);

(c) Seller's cash on hand on the date of Closing and Seller's account receivables related to the Water System for services rendered through the close of business on the Closing Date;

(d) All rights of Seller under this Agreement and related Bill of Sale and Assignment of Contracts Agreement as it pertains to the transfer and sale and purchase herein contemplated hereunder, are; and

(e) the specific assets, properties and rights of Seller set forth on Schedule 1.4.

1.5 Accounts Receivable. Accounts receivable for services related to the System rendered through the close of business on the Closing Date shall be ~~excluded from the Assets. and shall remain the property of Seller after the Closing;~~ assets as per Section 1.4, and accounts receivable for services related to the Water System rendered thereafter shall belong to TAWC.

~~(a) all insurance policies and rights thereunder;~~

~~(b) all personnel Records and other Records that Seller is required by Law to retain in its possession;~~

~~(c) all rights in connection with and assets of the employee benefit plans and employment or Independent contractor Contracts;~~

~~(d) all rights of Seller under the Transaction Documents;~~

~~(e) cash, cash equivalents and short term Investments;~~

~~(f) the assets listed on Schedule 2.2;~~

~~(g) accounts receivable arising prior to the Effective Time; and~~

~~(h) — Customer Service Connections, which shall remain the property of the customer.~~

~~All of the foregoing shall be hereinafter referred to collectively as the "Excluded Assets".~~

~~2.3 — **Consideration.** The consideration for the Assets (the "Purchase Price") will be the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) subject to the results of the Inspection of Seller's Assets by Buyer. The Assets shall be in substantially the same condition, absent normal wear and tear, and fully able to perform the functions they are Intended to at the time of Closing. If any of the Assets are not able to perform the function they are intended to, the Buyer, at its option, may request an adjustment to the purchase price to compensate for the deterioration or loss of said Asset. In the event the parties are not able to agree to the amount of the adjustment, the adjustment amount shall be the amount necessary to return the Asset to the condition it was in on the Effective Date of this Agreement.~~

~~2.4 — **Liabilities.** The Buyer shall not be responsible for any of the Liabilities of Seller, including any that may arise after Closing, and any such Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller.~~

~~2.5 — Closing. The purchase and sale provided for in this Agreement will~~ARTICLE 2
PURCHASE PRICE

2.1 Purchase Price for the Assets. Subject to the terms and conditions of this Agreement, the purchase price (the "**Purchase Price**") for the Assets shall be **Two Million Three Hundred Ninety-eight Thousand Two Hundred and 00/100 Dollars (\$2,398,200.00)**.. of which the sum of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) shall be payable directly to Seller on the Closing Date by wire transfer or by corporate check, at the Seller's discretion (the "**Closing Payment**"). Any payments made in advance by Seller's water customers for post-Closing service will be apportioned at Closing. TAWC shall receive a credit toward the Closing Payment (starting with credit toward any cash payment required from TAWC) at Closing for the prorated amount of such advance payments for the period of the payment that is intended to follow Closing.

2.2 Post-Closing Payments.

(a) Subject to the terms and conditions of this Agreement, One Thousand Eight Hundred and 00/100 Dollars (\$1,800.00) of the Purchase Price shall be made to the Seller post-Closing pursuant to this **Section 2.2(a)**. TAWC will pay Seller a one-time post-Closing payment of One Thousand Eight Hundred and 00/100 Dollars (\$1,800.00) for each new customer added to the Water System within ten (10) years of the Closing Date (defined below). Payments made by TAWC pursuant to this **Section 2.2(a)** will be made (a) only after each such respective new customer has been served by the Water System for twelve (12) consecutive months and (b) once annually to Seller on a date agreed to by Seller and TAWC. TAWC and Seller further agree that payments made by TAWC pursuant to this **Section 2.2(a)** shall not exceed the lesser of Eight Hundred Ninety-eight Thousand Two Hundred and 00/100 Dollars (\$898,200.00) or payment for Four Hundred Ninety-nine (499) new customers added to the Water System.

(b) TAWC and Seller further agree that Seller shall not be responsible for costs

associated with adding customers to the Water System after the Closing Date, and which such customers being added are located within Phases 1, 2 and 3 of the Subdivision.

ARTICLE 3 THE CLOSING

3.1 Closing. Subject to the terms and conditions of this Agreement, the closing of the sale and purchase of the Assets (“Closing”) shall take place at a location and time of day agreed upon by the parties ~~(the “Closing”). The date of the Closing shall be no~~, commencing, on or before the later ~~than~~ to occur of: (a) within thirty (30) days following the date ~~that~~ on which all of the conditions ~~precedent to Closing~~ set forth ~~In Article 5 are satisfied~~ in Articles 6, 7 and 8 of this Agreement have been met (or waived), or (b) or at such later date as is agreed upon by the parties. The date of the Closing shall be effective is referred to herein as of 5:00 pm local time (the “Effective Time”) on the actual date of Closing (the “Closing Date”).”

3.2.6 — Deliveries and Proceedings at Closing ~~Obligations~~.

~~(a) — At or prior to (a)~~ Subject to the terms and conditions of this Agreement, at the Closing, Seller shall deliver ~~to Buyer the following documents, duly executed~~ or cause to be delivered to TAWC:

~~(i) — a Bill of Sale for all of the Assets that are Tangible Personal Property in a form reasonably acceptable to Buyer;~~

~~(i)~~ (i) Bills of Sale and instruments of assignment duly executed by Seller as necessary to transfer all of the Assets comprising tangible personal property to TAWC in a form acceptable to TAWC, including an assignment of contracts agreement covering the assignment and assumption of the Assigned Contracts in substantially the form of Exhibit A (“Assignment of Contracts Agreement”);

(ii) A copy of each permit, license, easement, land-right and other necessary authority for the operation of the Water System and the Assets, in each case validly issued in the name of the Seller, and showing in full force and effect;

(iii) The consents to transfer all Assigned Contracts, leases, intellectual property, Permits and other Assets requiring such consents to be transferred to TAWC, with all such transfers on terms and conditions acceptable to TAWC;

(iv) All written consents (of third parties or otherwise) and governmental approvals necessary to ensure that TAWC will continue to have the same full rights with respect to the Assets that Seller had immediately prior to the Closing;

(v) an assignment of all of the Assets that are intangible personal property in a form reasonably acceptable to ~~Buyer~~ TAWC;

~~(iii) — for each Interest in Real Property Identified on Schedule 3.4, a recordable warranty deed or such other appropriate document or instrument of transfer of approval, as the case may require, each in form and substance satisfactory to Buyer and its legal counsel. Notwithstanding the fact that the same may not be listed on Schedule 3.4, Seller must provide easements or other transferable property rights to Buyer for all mains used in the Business, which are not located on or in public rights-of-way, and must provide assignments of public rights-of-way Permits with only those conditions acceptable to Buyer for all mains located in municipal, county or state-owned public rights-of-way;~~

~~(iv) —~~ such (vi) Evidence satisfactory to TAWC of the transfer of all utilities with respect to the Water System from Seller to TAWC in accordance with Section 6.1(c) below;

(vii) All such general warranty deeds, bills of sale, and other instruments of transfer and conveyance in order to sell, transfer, assign, convey and deliver title to the real estate and easements that are necessary for or used in connection with the operation of the Water System to TAWC, duly executed and acknowledged by Seller and in recordable form, each sufficient to convey the title and rights of access to the Assets;

(viii) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may ~~be~~ reasonably be requested by ~~Buyer~~ TAWC, each in form and substance reasonably satisfactory to ~~Buyer~~ TAWC;

~~(ix)~~ a certificate as to the accuracy of ~~Seller's~~ Seller's representations and warranties as of the Effective Date of this Agreement and as of Closing ~~In~~ in accordance with Section ~~58.1(a)~~ 58.1(a) and as to its compliance with and performance of ~~Its~~ its covenants and obligations to be performed or complied with at or before Closing in accordance with Section ~~56.1(b)~~ 56.1(b);

~~(ix)~~ a certificate of the Secretary of Seller, dated as of the Closing, certifying: (Aa) that attached are true copies of the duly adopted resolutions of the ~~Seller's~~ Seller's governing body authorizing the execution of this Agreement and the sale of all Assets; and (Bb) the incumbency, signatures and authority of the governing body members of Seller executing this Agreement or any agreement contemplated hereby on behalf of Seller;

~~(vii) — a general release in a tom, reasonably acceptable to Buyer;~~

~~(viii) — a legal opinion of Seller's legal counsel, affirmatively opining to such matters as Buyer or Its legal counsel may reasonably request, including but not limited to the due authorization and execution of this Agreement by Seller and the enforceability thereof; and the Seller's compliance with any applicable Tennessee statutes or regulations applicable to its sale of its water utility system;~~

~~(b) — At or prior to Closing, Buyer shall deliver to Seller, the following documents, duly executed, or funds:~~

~~(i) The Purchase Price, by wire transfer or other immediately available funds, to an account specified by the Seller;~~

~~(ii) a certificate as to the accuracy of Buyer's representations and warranties as of the Effective Date of this Agreement and as of Closing in accordance with Section 5.2(a) and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before Closing in accordance with Section 5.2(b);~~

~~(iii) a certificate of the company secretary of Buyer, dated as of the Closing, certifying: (A) that attached are true copies of the duly adopted resolutions of the Buyer's board of directors authorizing this Agreement and the purchase of all Assets; and (B) the incumbency, signatures and authority of the officer or officers of Buyer executing this Agreement or any agreement contemplated hereby on behalf of Buyer; and~~

~~(iv) a certificate of existence issued by the Secretary of State of Tennessee with respect to Buyer, dated not earlier than thirty (30) days prior to Closing.~~

(xi) As applicable, a payoff letter from each lender (whether institutional or otherwise) from which Seller has incurred indebtedness or borrowed money that is outstanding, and a release of all Encumbrances relating to the Assets (along with Form UCC3 Financing Statements effectuating a termination of all outstanding financing statements covering the Assets) executed, filed and/or recorded by the holder of or parties to each such Encumbrance, if any, in each case in substance and form reasonably satisfactory to TAWC and its counsel;

(xii) The certificates and other documents required to be delivered by Seller under this Agreement as set forth in Section 8.1 hereof;

(xiii) The Opinion of Seller's counsel as set forth in Section 8.1(g) hereof; and

(xiv) All such other agreements, documents and instruments of conveyance required by this Agreement or as shall, in the reasonable opinion of TAWC and its counsel, be necessary to transfer the Assets to TAWC in accordance with this Agreement, and where necessary, in recordable form.

(b) Subject to the terms and conditions of this Agreement, at the Closing, TAWC shall deliver or cause to be delivered to Seller:

(i) The Closing Payment;

(ii) Certified copies of the resolutions duly adopted by TAWC's Board of Directors authorizing the execution, delivery and performance of this Agreement; and

(iii) The certificates and other documents required to be delivered by TAWC under this Agreement as set forth in Section 8.2 hereof.

ARTICLE 3

4

REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 Seller's Representations and Warranties of Seller. Seller hereby represents and warrants to TAWC as follows:

~~Seller hereby makes the following representations and warranties to Buyer:~~

~~3.1(a) Organization; Legal Authority. The~~ Seller is a corporation duly organized ~~and~~, validly existing, and in good standing under the ~~Laws~~laws of the State of Tennessee, ~~with and~~ Seller has the full power and lawful authority to ~~conduct~~transfer to TAWC the ~~Business as it is now being conducted~~rights, title and to own interest in and ~~operate Its Assets.~~

~~3.2 — Enforcement; Authority; No Conflict.~~

~~(a) — This Agreement constitutes, and the Transaction Documents (when executed and delivered) will constitute, a legal, valid and binding obligation of Seller, enforceable against Seller In accordance with its terms. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to perform Its obligations hereunder and thereunder, and such action has been duly authorized by all necessary action by Seller's governing body;~~

~~(b) — Neither the execution and delivery of this Agreement nor the consummation of the Contemplated Transaction will, directly or indirectly (with or without notice or lapse of time):~~

~~(i) — contravene, conflict with, or result in a violation of: (A) any other agreements of Seller, or (B) any resolution adopted by the governing body of Seller;~~

~~(ii) — contravene, conflict with, or result In a violation of or give any Governmental Authority or other Person the right to challenge any of the Contemplated Transaction or to exercise any remedy or obtain any relief under any Laws or any Order to which Seller or any of the Assets may be subject;~~

~~(iii) — contravene, conflict with or result in a violation of any of the terms or requirements of or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify any Permit or other authorization by a Governmental Authority that Is held by Seller or that otherwise relates to the Business or any of the Assets;~~

~~(iv) — contravene, conflict with or result in a violation or breach of any provision of, require the Consent of any Person, or give any Person the right to declare a default or exercise any remedy under or to accelerate the maturity or performance of or to cancel, terminate or modify any Contract, indenture, mortgage, note, lease, bond, grant, or other instrument or document of which Seller is a party or by which any of the (b) Assets are bound; or~~

~~(v) — result In the imposition or creation of any Encumbrance upon or~~

with respect to any of the Assets, except as contemplated by this Agreement.

~~3.3 — Assets Ownership.~~ Seller has clear, good, and marketable right and title to, or a valid leasehold interest in, all of the assets, property and facilities comprising the Assets. ~~The Assets are,~~ free and clear of ~~any and all~~ Encumbrances ~~whatsoever, including any liens, loans, bonds or grants from any federal or state agency for the purchase or construction of the Assets.~~ Schedule 4.1(b) denotes all Assets that are subject to a leasehold interest (i.e., not owned by Seller). None of the Assets are leased or on loan by Seller to any third party. The Assets constitute all of the assets, property and facilities that, together with the rights granted or conveyed under the transaction documents, are necessary for the operation of the ~~Business in the manner Seller currently operates~~ Water System, the business thereof, and the Assets as conducted as of the date hereof. Upon the Closing, TAWC shall continue to be vested with good title or a valid leasehold interest in the Water System and all of the Assets.

~~3.4 — Real Property; Easements.~~ To Seller's best knowledge and belief, Seller has good and marketable title to, or a valid and binding leasehold interest in, those parcels and tracts of land and those leases, licenses, easements or rights of way used in the operation of the Business, together with all fixtures, fittings, buildings, structures and other improvements erected therein or thereon and all appurtenances thereto (the "Real Property"). The Real Property includes but is not necessarily limited to the property described in Schedule 3.4.

~~3.5 — Tangible Personal Property.~~ Tangible Personal Property is all such property as defined in Schedule 1, Definition of Tangible Personal Property.

~~3.6 — Contracts.~~ Set forth on Schedule 3.6 is a complete and correct list of all Contracts related to the Business to which Seller is a party. Seller has delivered or caused to be delivered to Buyer correct and complete copies of each Contract (including all amendments thereto), a description of the terms of each Contract which is not in writing, and all documents affecting the rights or obligations of any party thereto. The Contracts have not been modified or amended except as disclosed on Schedule 3.6.

~~Each Contract is valid and enforceable against Seller in accordance with its terms and is in full force and effect, and each Contract constitutes a legal, valid and binding obligation of the other parties thereto, enforceable against them in accordance with its terms. No default and no event which, with the giving of notice, lapse of time, or both, would be a default has occurred under any Contract. There are no setoffs, counterclaims or disputes existing or asserted with respect to such Contracts, and Seller has not made any agreement with any other party thereto for any deduction from or increase to any amount payable thereunder. There are no facts, events or occurrences which in any way impair the validity or enforcement of any Contract or tend to reduce or increase the amounts payable thereunder. Seller has not, directly or indirectly, by operation of Law or otherwise, transferred or assigned all or any part of its right, title or interest in and to any Contract to any other Person. There are no Proceedings pending nor threatened against any party to any of the Contracts which relate to the subject matter of the Contracts.~~

~~3.7 — Environmental Matters.~~

~~Except as set forth on Schedule 3.7(a):~~

~~(a) — Seller Is~~(c) Financial Statements. The Seller's Financial Statements that have been made available to TAWC by Seller have been prepared by Seller on a consistent basis and certified as being true and correct. The Financial Statements were prepared from the books and records of Seller, are true, correct and complete and present fairly in all material respects the financial condition, operating results and cash flows of Seller as of the dates and during the periods indicated therein (subject in the case of the Unaudited Financial Statements to normal year-end adjustments and the absence of footnotes).

(d) Due Authorization; Valid and Binding; No Encumbrances. Seller has the full power and lawful authority to enter into this Agreement and all related agreements and to consummate and perform the transactions contemplated hereby and thereby. Seller has duly and validly authorized the execution and delivery of this Agreement (which has been duly executed and delivered) and all related documents and agreements to which Seller is a party by all necessary proceedings, and this Agreement and all related documents and agreements constitute the valid and binding obligations of Seller enforceable against it in accordance with its terms. No filings or registrations with, notifications to, or authorizations, consents or approvals of, a governmental authority or third party are required to be obtained or made by Seller in connection with the execution, delivery or performance by Seller of this Agreement, all related agreements, or the consummation by Seller of the transactions contemplated herein or therein. Neither the contemplated transactions, nor this Agreement will result in the creation of any Encumbrance against any of the Assets.

(e) Current Operations. Seller has all requisite power and authority and all agreements, contracts, commitments, leases, certificates, licenses, Permits, regulatory authorizations and other instruments required to conduct the operation of the Water System as it has been and is now being conducted and to own and operate the Assets.

(f) Approvals or Violations. **Schedule 4.1(f)** sets forth a list of each consent, waiver, authorization, approval or Permit of any governmental authority or other person, and each declaration, notice to, or registration with any governmental authority, required to be obtained, given or made by Seller in connection with the execution and delivery of this Agreement and each related agreement, and the performance by Seller of its obligations under this Agreement and all related agreements and the transactions contemplated hereunder and thereunder. Except for those items set forth on **Schedule 4.1(f)**, this Agreement does not require any further approvals of any other party, does not violate any law, ordinance or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any contract, lease or Permit to which Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected. The execution and delivery of this Agreement and all related documents and agreements, and the consummation of the transactions contemplated hereby and thereby, do not and will not violate, conflict with or result in the breach of any term, condition or provision of Seller's articles of incorporation, bylaws or other governing documents, or any instrument, contract, lease, agreement, Permit, certificate or other document to which Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected.

(g) Accounts Receivable. All accounts receivable being retained by Seller under **Section 1.5** (whether billed or unbilled) (collectively, the "**Retained Accounts Receivable**"), are valid, genuine and existing and arose (or will have arisen on or prior to Closing) from bona fide

sales of products or services actually made in the ordinary course of business on or prior to the Closing Date. All products and services with regard to the Retained Accounts Receivable have been provided by Seller (and no further obligations exist), and no offset, agreement for deduction, free goods, discount or deferred price or quantity adjustment has been made with respect to any Retained Accounts Receivable (or with respect to TAWC's accounts receivable for the period after Closing).

(h) Free Service; Customer List; Prepayments. Seller has not entered into any agreements or other understandings for the provision of free or otherwise subsidized or discounted services to any parties. The data contained in the customer records provided to TAWC under **Section 6.1(i)** is true and accurate in all material respects. Seller has not received payments made in advance by any third party (including Seller's water customers) for future service (including service after the Closing) with regard to the Water System or the Assets.

(i) Undisclosed Liabilities. Except as set forth in **Schedule 4.1(i)**, there are no material liabilities or obligations of Seller, either accrued, absolute, liquidated or unliquidated, contingent or otherwise, relating to the Assets that would be required to be set forth on a balance sheet prepared under GAAP applicable to municipalities, other than liabilities incurred in the ordinary course. There is no basis for any claim against Seller, the Water System or any of the Assets for any such liability or obligation, and there is no basis for any such liability or obligation to become the liability or obligation of TAWC from and after the Closing.

(j) Intentionally Omitted.

(k) Contracts. **Schedule 4.1(k)** contains a true, complete and accurate list of all agreements (including all verbal agreements), contracts, leases (including any leasehold interests constituting part of the Assets as described in **Section 4.1(b)**), licenses, commitments, arrangements and instruments related to the Assets to which Seller is a party or the Assets are otherwise subject or bound, along with all amendments and addenda related thereto (collectively, the "**Contracts**"). **Schedule 4.1(k)** also identifies with an asterisk any Contract which requires consent to, or prohibits, assignment of the Contract. All Contracts are in full force and effect and are valid and enforceable in accordance with their terms, and to the best of Seller's knowledge, the parties thereto are in material compliance with the provisions thereof, and there exists no event or condition which with the giving of notice or lapse of time, or both, would constitute a default thereunder. Seller has received, or will receive prior to the Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(k)** as requiring consent to the assignment, or otherwise complied with Seller's obligations under **Section 6.1(b)** hereof. Seller has delivered to TAWC correct and complete copies of those Contracts requested by TAWC, as well as copies of the requisite assignments for each of the Assigned Contracts which effectuates the transfer of the Assigned Contracts to TAWC as of the Closing Date. Except as disclosed on **Schedule 4.1(k)(i)**, Seller is not a party to any contract or subject to any arrangement for future payment of refunds under any extension agreement, customer deposit agreement or similar arrangement (including any prepaid tap fee) with respect to the Assets or the Water System.

(l) Adequacy of Property Rights; Real Property and Easements.

(i) Seller possesses all property rights necessary to operate the Assets, and

Seller owns and has good and marketable title to the real property, free and clear of all options, leases, covenants, conditions, easements, agreements, claims, and other encumbrances of every kind, and there exists no restriction on the use or transfer of such property. As it relates to the Assets, **Schedule 4.1(I)(i)** contains a complete and accurate list of the real property owned by Seller and a complete and accurate list of each lease of real property to which Seller is a party (as the lessor, lessee or otherwise). Seller's current use and occupancy of the real property and its operation of the Water System thereon does not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such real property. To the best of Seller's knowledge, all leases, licenses, rights of way, and easements related in any manner to the Assets and properties comprising the Assets and all other instruments, documents and agreements pursuant to which Seller has obtained the right to use any real property in connection with the Assets are in good standing, valid and effective in accordance with their respective terms, and with respect thereto, there is no existing material default or event that could constitute a material default. The real property is properly classified under applicable zoning laws, ordinances, and regulations for the current and continued operation of the Water System on the real property. No proceeding that could adversely affect the zoning classification of the real property is pending or threatened. At and after the Closing, TAWC shall have the right to maintain and use the real property, including the space, facilities and appurtenances outside of building lines, whether on, over or under the ground, and to conduct such activities thereon as maintained, used or conducted by Seller on the date hereof, and such right is not subject to revocation. Seller has made available to TAWC copies of all title reports, surveys, title policies and appraisals in Seller's possession relating to the real property.

- (ii) Set forth on **Schedule 4.1(I)(ii)** hereto is a true, correct and complete list of all easements and rights of way relating to the real property and the Assets. All of such easements and rights of way are valid and will be transferred to TAWC and remain in full force as of the Closing and thereafter. Seller has not received any notice of violation of any easements, covenants, restrictions or similar instruments and there is no basis for the issuance of any such notice or the taking of any action for such violation. At and after the Closing, TAWC shall have all rights, easements and agreements necessary for the use and maintenance of water, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the real property to operate and maintain the Water System.
- (iii) There are no outstanding options, rights of first refusal or rights of first offer to purchase any of the real property or any portion thereof or interest therein, except as otherwise set forth on **Schedule 4.1(I)(iii)**.

- (iv) All improvements located on, and the use presently being made of, the real property comply with all applicable zoning and building codes, ordinances and regulations and all applicable fire, environmental, occupational safety and health standards and similar standards established by applicable law, and the same use thereof by TAWC following Closing will not result in any violation of any such code, ordinance, regulation or standard. No improvements encroach on any land that is not included in the real property or on any easements affecting such real property, or violate any building lines or set-back lines, and there are no encroachments onto the real property, or any portion thereof, that would interfere with the use or occupancy of such real property or the continued operation of the Water System as currently conducted.
- (v) There is no unpaid tax, levy or assessment against the real property (except for encumbrances relating to assessments not yet due and payable), nor is there pending or threatened any condemnation proceeding against the real property or any portion thereof. **Schedule 4.1(I)(v)** contains a list of all impending taxes, levies and assessments that are due and owing after the Closing Date.
- (vi) Except as set forth in **Schedule 4.1(I)(vi)**, there is no condition affecting the real property or the improvements located thereon that requires repair or correction to restore the same to reasonable operating condition.

(m) Litigation. Except as disclosed on **Schedule 4.1(m)**, there is no action, suit, claim or litigation, arbitration, proceeding, judgment, injunction, audit or legal, administrative or governmental investigation pending (including any citations, notices, summons or orders), and none are known to be threatened against, pertaining to or affecting the Water System or any of the Assets (including any such actions, litigation and other claims against Seller) before any court, arbitrator or governmental authority (including any governmental agency board or instrumentality), nor is there any order, writ, injunction or decree of any court, arbitrator or governmental authority, in existence against, pertaining to or affecting the Seller (including it commissioners, directors or officers), the Water System or any of the Assets. Except as noted in **Schedule 4.1(m)**, all matters disclosed in **Schedule 4.1(m)** are fully covered by Seller's insurance. There are no known laws, ordinances, regulations or official orders now in effect or pending that could reasonably be expected to have a material adverse effect on the Water System or the ownership, condition or operation of the Water System or the Assets. There are no actions, suits, claims, proceedings or investigations pending or, to the knowledge of the Seller, threatened against the Seller, and the Seller is not subject to any outstanding judgment, order or decree of any court or governmental body, which would in either case, reasonably be expected to prevent or materially interfere with or delay the Seller's ability to perform its obligations under this Agreement.

(n) Tax Matters.

- (i) Seller has timely and properly filed all tax returns that it was required to file. All such tax returns were complete and correct in all material respects

and were prepared in compliance with all applicable laws. All taxes owed by Seller have been paid. Seller is not the beneficiary of any extensions of time within which to file any tax return. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any tax.

(ii) To the best of Seller's knowledge, seller has withheld and paid all taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, supplier, vendor, creditor, or other third party. Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

(iii) There are no audits or examinations of any tax returns pending or threatened that relate to Seller's operation of the Water System or the Assets. Seller is not a party to any action or proceeding by any governmental authority for the assessment or collection of taxes relating to the operation of the Water System, nor has such event been asserted or threatened. There is no waiver or tolling of any statute of limitations in effect with respect to any tax returns relating to Seller's operation of the Water System or the Assets.

(o) No Material Adverse Conditions; Insurance. To the best of Seller's knowledge, there are no facts, circumstances or conditions existing or threatened that would have, or would be reasonably be expected to have, a material adverse effect on the condition, properties, assets, indebtedness, liabilities, commitments, operations or prospects of the Water System or the Assets. Seller maintains and has maintained appropriate insurance necessary for the full protection of all of the Assets, the Water System, and all related operations, products and services. All such policies are in full force and effect and Seller will use commercially reasonable efforts to cause such policies to be outstanding and in full force and effect as of Closing and immediately following the execution of this Agreement and the consummation of the contemplated transactions. There are no pending claims or proceedings arising out of, based upon or with respect to any of such policies of insurance and, to Seller's knowledge, no basis for any such claims or proceedings exists. Seller is not in default with respect to any provisions contained in any such insurance policies, and no insurance provider is in default with respect to such insurance policies.

(p) Compliance with Law. To the best of Seller's knowledge, except as disclosed on **Schedule 4.1(p)**, Seller is and has been in material compliance with all laws, ordinances, and governmental rules and regulations, whether civil or criminal, of any federal, state, local or foreign governmental authority applicable to the operation of the Water System and the Assets, including any Environmental Laws (defined below) and employee labor, pension and benefits laws, to which Seller, the Water System or the Assets are subject, and has not failed to obtain, or to adhere to the requirements of, any certificate, license, Permit or other governmental authorization necessary for the operation of the Water System and the Assets, nor has Seller committed any violation of law or any provision of its governing documents applicable to the Water System or the Assets. Except as disclosed on **Schedule 4.1(p)**, Seller has not received, and has no reason to believe that it will receive, notice of any violation of law.

(q) Adequacy of Permits. Set forth in **Schedule 4.1(q)** is a complete and correct list of all permits, licenses, franchises, registrations, certificates, consents, orders, adjudications, variances, waivers, privileges, approvals and other authorizations, including any authorizations issued, granted, approved or allowed by or obtained from, or required to be obtained from, any governmental authority, including any environmental permits, operating permits and approvals (collectively, the “**Permits**”) held by Seller in the continuing operation of the Water System and for the Assets. Such Permits constitute all those necessary for the continuing operation of the Water System and for the Assets, and are all valid and subsisting and in full force and effect. To the best of Seller’s knowledge, no fact or circumstance exists that is reasonably likely to cause any such Permit to be revoked or materially altered subsequent to the execution of this Agreement and the Closing Date, and neither the execution of this Agreement, nor the Closing do or will constitute or result in a default under or violation of any such Permit. Seller likewise has obtained and continues to possess all Permits required under, by or pursuant to Environmental Laws (defined below), has filed such timely and complete renewal applications as may be required prior to the Closing Date, and also has complied with all reporting and record keeping requirements under Environmental Laws (defined below).

(r) Environmental Matters.

(i) To the best of Seller’s knowledge, there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans pertaining or relating to the Assets or the Water System that may materially impede or prevent compliance with Environmental Laws, and Seller is, and at all times has been, in full compliance with and has not been, and is not in violation of or liable under any applicable Environmental Law. Seller has no basis to expect, nor has ~~fit~~ received any actual or threatened ~~Order~~order, notice or other communication from any ~~Governmental Authority~~governmental authority or ~~private citizen acting in the public interest~~other person of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any ~~Environmental, Health~~environmental, health and ~~Safety Liabilities~~safety liabilities with respect to ~~the Assets—real property~~ or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest or with respect to the ~~Real Property~~real property or any other real property at or to which ~~Hazardous Materials~~hazardous materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other ~~Person~~person for whose conduct it is or may be held responsible, or from which ~~Hazardous Materials~~hazardous materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(~~b~~ii) There are no pending or threatened claims, ~~Encumbrances~~liens, encumbrances or other restrictions of any nature, resulting from any ~~Environmental, Health~~environmental, health and ~~Safety Liabilities~~safety liabilities or arising under or pursuant to any Environmental Law with respect to or affecting the ~~Assets—Seller’s real property~~ or any other properties and assets (whether real, personal or mixed) in which Seller has or had an interest.

~~(c) — Neither Seller nor any other Person for whose conduct it is or may be held to be responsible has received any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Activity, Hazardous Materials or any alleged, actual or potential violation or failure to comply with any Environmental Law or of any alleged, actual or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to the Assets or any other properties (whether real, personal or mixed) in which Seller has or has had an interest or with respect to any other real property to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received.~~

~~(d) —~~ Neither Seller nor any other Person for whose conduct it is or may be held to be responsible has any ~~Environmental, Health~~material environmental, health and ~~Safety—Liabilities~~safety liabilities with respect to the ~~Assets~~Seller's real property or with respect to any other properties and assets (whether real, personal or mixed) in which Seller (or any predecessor) has or has had an interest or at any property geologically or hydrologically adjoining the ~~Assets~~real property or any such other ~~properties (whether real, personal property or mixed)~~assets.

~~(e) —~~ ~~There~~iii) To the best of Seller's knowledge, there are no ~~Hazardous Materials~~hazardous materials, except those used in connection with the ordinary course operation of the Water System and which are used in accordance with and in compliance with all Environmental Laws, present on or in the ~~Environment~~environment at the ~~Real Property~~real property or at any geologically or hydrologically adjoining property, including any ~~Hazardous Materials~~hazardous materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent and deposited or located in land, water, sumps or any other part of the ~~Real Property~~real property or such adjoining property or incorporated ~~into~~into any structure therein or thereon. Neither Seller, nor any other ~~Person~~person for whose conduct ~~it~~it is or may be held to be responsible has permitted or conducted, or is aware of, any ~~Hazardous Activity~~hazardous activity conducted with respect to the ~~Assets~~real property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest except in material compliance with all applicable Environmental Laws. To the best of Seller's knowledge, there has been no release or threat of release, of any hazardous materials at or from the real property or from or by any other properties and assets (whether real, personal or mixed) in which Seller has or has had an interest (e.g., other properties that may impact or affect the Assets or the Water System), or any geologically or hydrologically adjoining property, whether by Seller or any other person.

~~(f) — There has been no Release or threat of Release, of any Hazardous Materials at or from the Assets or any other properties (whether real, personal or mixed) in~~

~~which Seller has or has had an interest, or any geologically or hydrologically adjoining property, whether by Seller or any other Person.~~

~~(g)(iv)~~ Except as set forth in **Schedule 4.1(r)(iv)**, none of the following exists at the Water System or on the real property that is part of the Assets: (1) underground storage tanks; (2) asbestos-containing material in any form; (3) materials or equipment containing polychlorinated biphenyl; (4) groundwater monitoring wells; or (5) landfills, surface impoundments, or disposal areas.

~~(v)~~ Seller has delivered to ~~Buyer~~**TAWC** true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by Seller ~~or its predecessors~~ pertaining to ~~Hazardous Materials or Hazardous Activities~~**hazardous materials or hazardous activities** in, on or under the ~~Real Property~~**real property**, or concerning compliance by Seller, ~~its predecessors~~, or any other ~~Person~~**person** for whose conduct ~~It Is~~**Seller is** or may be held to be responsible, with Environmental Laws, said reports, studies, ~~etc.~~**analyses, tests and monitoring** to include without limitation, any and all Phase I environmental reports now or hereafter in the possession or control of Seller.

~~3.8 — **Permits.** Set forth on Schedule 3.8 is a complete and correct list of all Permits used by Seller In the operation of the Business. Such Permits constitute all Permits necessary for the operation of the Business and all such Permits are valid and subsisting and in full force and effect. There exists no fact or circumstance which is reasonably likely to cause any Permit to be revoked or materially altered after the Closing Date.~~

~~3.9 — **Insurance.** Seller maintains and has maintained appropriate insurance necessary for the full protection of all of its Assets, Business, operations, products and services. All such policies are in full force and effect and Seller will use commercially reasonable efforts to cause such policies to be outstanding and in full force and effect up to the Effective Time on the Closing Date and the premiums therefor have been paid in full as they become due and payable. There are no pending Proceedings arising out of, based upon or with respect to any of such policies of insurance and no basis for any such Proceedings exists which will result in an Encumbrance against the Assets, Business, operations, products or services. Seller is not in default with respect to any provisions contained in any such insurance policies and no insurance provider is in default with respect to such insurance policies.~~

~~3.10 — **No Material Adverse Change.** There have been no material adverse changes in the Business or Assets nor has there been any material adverse change in the relationships Seller maintains with its customers, employees and Governmental Authorities nor are there any events, transactions or other facts which exist or have occurred and which are likely to have an adverse effect on the foregoing.~~

~~3.11 — **Conduct of Business in Ordinary Course.** Seller has operated the Business only in the ordinary course of business. Without limitation of the foregoing, since such date, Seller has not entered into, amended, terminated or received notice of termination of any Contract or~~

Permit.

~~3.12 — **Proceedings.** Other than as set forth on Schedule 3.12, there are no Proceedings pending or threatened against Seller or directly affecting any of the Assets or the Business by or on account of any P on or before any Governmental Authority and there is no valid basis for any such Proceeding. Seller has not been charged with, nor is it under investigation with respect to any charge which has not been resolved to their favor concerning any violation of any applicable Law with respect to any of the Assets or the Business and there is no valid basis for any such charge or investigation. No judgment, Order, writ, injunction, decree, assessment or other command of any Governmental Authority affecting Seller or any of the Assets or the Business has been entered which is presently in effect. There Is no Proceeding pending or threatened which challenges the validity of this Agreement or the Contemplated Transaction or otherwise seeks to prevent, directly or indirectly, the consummation of the Contemplated Transaction, nor is there any valid basis for any such Proceeding.~~

~~3.13 — **Compliance with Laws.** Seller Is in compliance with all Laws applicable to the Assets and the operation of the Business and has not committed any violation of any Law applicable to the Assets and/or operation of the Business. Seller has not received any notice or other communication (whether oral or written) from any Governmental Authority or any other Person regarding (i) any actual, alleged, possible or potential violation of, or failure to comply with, any Law or (ii) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature. The Assets, in their current condition, are capable of complying with all Laws.~~

~~3.14 — **Material Omissions.** Independent of and in addition to the foregoing representations and warranties contained in this Article 3, neither this Agreement nor any written statement, list, certificate or other information furnished by or on behalf of Seller In response to specific written requests made by Buyer or Buyer's representatives or attorneys contains an untrue statement of a material fact or omits to slate a material fact necessary to make the statements contained herein or therein not misleading.~~

ARTICLE 4

Representations and Warranties of Buyer

~~Buyer hereby makes the following representations and warranties to Seller:~~

~~4.1 — **Organization.** Buyer is a duly organized and validly existing public utility corporation under the Laws of the State of Tennessee and at Closing has the power and authority to own, lease and operate its assets and to conduct this Business as it is now being conducted.~~

~~4.2 — **Enforcement; Authority; No Conflict.**~~

~~(a) — This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder, and such action has been duly authorized by all necessary action by Buyer's board of directors.~~

~~(b) — Neither the execution and delivery of this Agreement, nor the consummation of the Contemplated Transaction nor compliance by Buyer with any of the provisions hereof will result in: (i) a violation of or a conflict with any provision of the Organizational Documents of Buyer; (ii) a material breach of or default under any term, condition or provision of any Contract to which Buyer is a party, or an event which, with the giving of notice, lapse of time, or both, would result in any such breach or default; (iii) a material violation of any applicable Law, Order, Judgment, writ, injunction, decree or award or any event which, with the giving of notice, lapse of time, or both, would result in any such violation; or (iv) any Person having the right to enjoin, rescind or otherwise prevent or impede the Contemplated Transaction or to obtain Damages from Seller or to obtain any other judicial or administrative relief.~~

~~4.3 — **Proceedings.** There is no Proceeding pending nor, to the Knowledge of Buyer, threatened which challenges the validity of this Agreement or the Contemplated Transaction or otherwise seeks to prevent, directly or indirectly, the consummation of such transactions, nor, to the Knowledge of Buyer, is there a valid basis for any such Proceeding.~~

~~ARTICLE 5~~

~~Conditions Precedent to Closing~~

~~5.1 — **Conditions Precedent to the Obligations of Buyer.** Buyer's obligations to consummate the Contemplated Transaction are subject to the satisfaction in full, unless expressly waived in writing by Buyer, of each of the following conditions:~~

~~(a) — **Representations and Warranties.** Each of the representations and warranties of Seller contained in Article 3 is true, correct and accurate from the Effective Date of this Agreement and as of the Closing Date shall be true, correct and accurate as though restated on and as of such date (except in the case of any representation and warranty that by its terms is made as of a date specified therein, which shall be accurate as of such date);~~

~~(b) — **Covenants.** Seller shall have performed and complied with all covenants required by this Agreement to be performed or complied with by them prior to or at the Closing;~~

~~(c) — **Proceedings.** No Order shall be in effect and no Proceeding by any Person shall be threatened or pending before any Governmental Authority, or before any arbitrator, wherein an unfavorable Order would: (i) prevent consummation of the Contemplated Transaction; (ii) have a likelihood of causing the Contemplated Transaction to be rescinded following consummation; (iii) adversely affect the right of Buyer to own any of the Assets; or (iv) adversely affect the Business prospects, value or condition of any of the Assets or the Business;~~

~~(d) — **Approvals.** Buyer shall have received prior to Closing: (i) an oral or written Order, from the Tennessee Public Utility Commission ("TPUC") approving the requested change of control and allowing the use of Seller's water tariff rates for the provision of water service to Seller's customers and the encumbrance of the Real Property with the lien of its mortgage indenture; and (ii) all other regulatory approvals required by any Governmental Authority to operate the Business within the Service Area. In addition, the refund payable by~~

~~Buyer to Seller as set forth in Exhibit A, is contingent on TPUC approval.~~

~~(e) — Bulk Water Agreement. Buyer shall have obtained an executed bulk water agreement with South Pittsburg, TN prior to Closing.~~

~~(f) — Closing Deliveries. Seller shall have delivered to Buyer the Closing requirements set forth in Section 2.6(a);~~

~~(g) — Due Diligence. Buyer shall be satisfied, in its sole and absolute discretion, with the results of its due diligence review of the Business, the Assets and the Seller, including without limitation, satisfaction with the results of any environmental assessment performed with respect to the Assets.~~

~~(h) — No Adverse Change. Buyer has determined that there has not been any adverse change in the Business, the Assets, financial condition or Business prospects of Seller and that there is no adverse change in the relationships maintained by Seller with its employees, suppliers, customers or Governmental Authorities as of Closing;~~

~~(i) — Board Approval. Buyer shall have obtained approval of the Contemplated Transaction by Buyer's board of directors.~~

~~5.2 — Conditions Precedent to Obligations of Seller. The Seller's obligation to consummate the Contemplated Transaction is subject to the satisfaction in full, unless expressly waived in writing by Seller, of each of the following conditions:~~

~~(a) — Representations and Warranties. Each of the representations and warranties of Buyer contained in Article 4 is true, correct and accurate as of the date of this Agreement and, as of the Closing Date, shall be true, correct and accurate as though restated on and as of such date (except in the case of any representation and warranty that by its terms is made as of a date specified therein, which shall be accurate as of such date);~~

~~(b) — Covenants. Buyer shall have performed and complied with all covenants required by this Agreement to be performed and complied with by Buyer prior to or at Closing;~~

~~(c) — Buyer's Service Obligations. Seller shall be satisfied that, based on: (i) Buyer's tariff on file with the Tennessee Public Utility Commission; (ii) Buyer's statutory and regulatory obligations under Tennessee Code Annotated Chapters 4 and 5; and Buyer's service obligations to Seller's water customers, including the continuity, reliability and extension of service, will be satisfactory; and~~

~~(d) — Closing Deliveries. The Buyer shall have delivered to Seller the Closing requirements set forth in Section 2.6(b);~~

~~ARTICLE 6~~

~~Covenants and Special Agreements~~

~~6.1 — Covenants of Seller Prior to Closing. Seller covenants and agrees that during the period from the Effective Date hereof until Closing:~~

(vi) Seller has been and is in compliance with all orders, decrees, judgments and notices issued against the Seller under or in connection with all Environmental Laws.

(vii) As used in this Agreement, the term “**Environmental Laws**” shall include all federal, state, and local environmental laws and regulations, including, but not limited to the Clean Water Act (“CWA”), also known as the Federal Water Pollution Control Act (“FWPCA”), 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. §§ 136 et. seq., the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §§ 300 (f) et seq., the Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. §§ 1201 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., the Superfund Amendment and Reauthorization Act of 1986 (“SARA”), Public Law 99-499, 100 Stat., 1613, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. 6901, the Atomic Energy Act (“AEA”), Act of August 30, 1954, Ch. 1073, 68 Stat. 919 (codified as amended in scattered sections of 5 U.S.C. and 42 U.S.C.), Emergency Planning and Community Right to Know Act (“EPCRA”), 42 U.S.C. §§ 11001 et seq., Hazardous Materials Transportation Act (“HMTA”), 49 U.S.C. §§ 5101 et seq.. Any reference to a legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments, opinions directives or notices issued thereunder.

(s) Brokers. Seller has not employed any investment banker, broker or finder or incurred any liability for any investment banking fees, brokerage fees, commissions or finders’ fees or any similar other fees or commissions in connection with the transactions contemplated by this Agreement for which TAWC has or could have any liability.

(t) Customer Advances. Set forth in **Schedule 4.1(t)** is a complete and accurate list of all unexpired customer advances for construction held by Seller as of the date of this Agreement and extension deposit agreements (or similar agreements) to which Seller is a party (each an “**Extension Deposit Agreement**”), and which contain unexpired obligations of Seller to provide for the payment of periodic refunds to parties making advances for the construction of facilities for water service. Seller will provide to TAWC within fifteen (15) days of the execution of this Agreement (to be updated at Closing), accurate and complete copies of each such customer advances and Extension Deposit Agreement. All records of Seller relating to each Extension Deposit Agreement are complete and accurate in all material respects and, together with the relevant Extension Deposit Agreement, represents all the information reasonably required to determine Seller’s obligations to each party to the Extension Deposit Agreements; and there are no disputes or disagreements with any party to an Extension Deposit Agreement relating to the amount due under that agreement or the method of calculating that amount. **Schedule 4.1(t)** may be updated at Closing only with the mutual consent of the parties.

(u) Interconnection and Supply Agreements. **Schedule 4.1(u)** contains a true,

complete and accurate list of all agreements (including all verbal agreements and intermunicipal agreements), contracts, leases, licenses, commitments, arrangements and instruments related to the purchase and supply of water for use in the Water System (each individually an “ICSU Agreement” and collectively, the “ICSU Agreements”). **Schedule 4.1(u)** also identifies with an asterisk any ICSU Agreement which requires consent to, or prohibits, assignment of the ICSU Agreement. All ICSU Agreements are in full force and effect and are valid and enforceable in accordance with their terms, and to the best of Seller’s knowledge, the parties thereto are in material compliance with the provisions thereof, and there exists no event or condition which with the giving of notice or lapse of time, or both, would constitute a default thereunder. Seller has received, or will receive prior to the Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(u)** as requiring consent to the assignment, or otherwise complied with Seller’s obligations under **Section 6.1(b)** hereof. Seller has delivered to TAWC correct and complete copies of all ICSU Agreements, as well as copies of the requisite assignments for each of the Assigned Contracts which effectuates the transfer of the Assigned Contracts to TAWC as of the Closing Date.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF TAWC

5.1 TAWC’s Representations. TAWC hereby represents and warrants to Seller as follows:

(a) Organization. TAWC is a public utility corporation duly organized, validly existing and subsisting under the laws of the State of Tennessee.

(b) Due Authorization; Valid and Binding. TAWC has the full power and lawful authority to execute this Agreement and, to consummate and perform the transactions contemplated hereby, and TAWC has duly and validly authorized the execution of this Agreement by all necessary proceedings. This Agreement constitutes the valid and binding obligations of TAWC.

(c) Assigned Contracts. TAWC has disclosed on **Schedule 5.1(c)** those Contracts which TAWC has agreed to assume (“Assigned Contracts”), subject to receiving all necessary consents to assignment in accordance with the terms of **Section 8.1(i)**. TAWC may update **Schedule 5.1(c)** between the date hereof and up to twenty (20) days before Closing to include any of the Contracts.

(d) Financial Wherewithal. TAWC has sufficient funds on hand to pay the amounts due pursuant to this Agreement.

(e) Absence of Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of TAWC, threatened against TAWC, and TAWC is not subject to any outstanding judgment, order or decree of any court or governmental body, which would in either case, reasonably be expected to prevent or materially interfere with or delay TAWC’s ability to perform its obligations under this Agreement.

(f) Brokers. TAWC has not employed any investment banker, broker or finder or incurred any liability for any investment banking fees, brokerage fees, commissions or finders’

fees or any similar other fees or commissions in connection with the transactions contemplated by this Agreement for which the Seller has or could have any liability.

ARTICLE 6 COVENANTS

6.1 Covenants of Seller. From and after the date of this Agreement, Seller covenants and agrees that:

(a) Non-Solicitation. Unless and until such time as this Agreement is terminated pursuant to **Article 810**, Seller shall not, and will cause each employee, officer, governing body, and agent not to, directly or indirectly: (i) submit, solicit, initiate, encourage or discuss any proposal or offer from any Person (defined herein) relating to any sale of all or any portion of the Assets or a sublease or assignment of any lease or any similar transaction involving Seller and the ~~Business~~Water System or the Assets; (ii) enter into any agreement or commitment related to any such transaction; or ~~(NIiii)~~ furnish any ~~Information~~information with respect to or assist or participate in or facilitate in any other manner any effort or attempt by any Person to do or seek any of the foregoing. Seller shall notify ~~Buyer Immediately~~TAWC immediately if any Person makes any proposal, offer, ~~Inquiry~~inquiry or contact with respect to any of the foregoing. As used in this Agreement, "Person" shall mean any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or governmental authority.

~~(b) Access. Upon reasonable prior notice by Buyer, Seller shall: (i) furnish Buyer and its financial and legal advisors with copies of all such Contracts, books and Records and other existing documents and data as Buyer may reasonably request; (ii) furnish Buyer and its financial and legal advisors with such additional financial, operating and other data and information as Buyer may reasonably request; (iii) permit Buyer or its representatives to conduct such physical inspections and environmental audits of the Real Property, as requested by Buyer; and (iv) permit Buyer or its representatives to conduct interviews of employees of Seller.~~

~~(c) Ordinary Course. Conduct of Business. Between the date of this Agreement and the Closing Date, Seller shall carry on the operation ~~of the Business and~~ management of the Water System, the business and the Assets in the ordinary course of business, consistent with ~~prior~~past practice and procedures, and in compliance with all laws, not introduce any materially new method of management or operation, ~~and~~ use reasonable best efforts to preserve the ~~Business and~~Water System, the business and the Assets, conserve the goodwill and relationships of ~~Seller's~~its customers, suppliers, ~~Governmental Authorities~~governmental authorities and others having business relations with it. ~~Seller shall not engage in any activity or transaction which is inconsistent with the terms of this Agreement.~~~~

~~(d) Liens: Encumbrances. Seller shall not enter into or assume any mortgage, pledge, security agreement or other title retention agreement or permit any Encumbrance to attach to any of the Assets, whether now owned or hereafter acquired.~~

~~(e) All Reasonable Efforts. Seller will use commercially reasonable efforts to satisfy each of the conditions for Closing of the Buyer set forth In Section 5.1 above.~~

~~(f) — Further Covenants.~~

~~(i) — Reports. Seller shall duly and timely file all reports required to be filed with any Governmental Authority and will promptly pay when due all Taxes, assessments and governmental charges including Interest and penalties levied or assessed, unless diligently contested in good faith by appropriate Proceedings;~~

~~(ii) — Condition of Property. Consistent with past practice, Seller shall maintain and keep the Assets in substantially the same condition as of the date hereof, normal wear and tear excepted;~~

~~(iii) — Insurance. Seller shall, maintain in full force ~~end~~and effect all policies of insurance now in effect ~~up and through~~for the ~~Effective Time on the Closing Date,~~ but not thereafter;~~

~~(iv) — No Breach or Defaultbenefit of Contracts. Seller shall not do any act or omit any act or permit any omission to act which will cause a breach or default by Seller of any Contract;~~

~~(v) — Supplies. Seller shall keep, maintain supplies at a level that is sufficient to operate the ~~Business~~Water System in accordance with past practice; and procedures, maintain the Assets in substantially the condition currently existing, normal wear and tear excepted, and comply in all material respects with the Permits. Without limiting the foregoing, Seller shall not sell, lease, dispose, retire, distribute, create or assume any lien, or encumber any of the Assets, or construct, purchase or acquire any new assets, properties or rights relating to the Water System or Assets, or enter into a commitment or contract to do any of the foregoing (other than the purchase and use of supplies and maintenance of the Water System and the Assets in the ordinary course of business and consistent with past practices and procedures), without the prior written consent of TAWC.~~

~~(vi) — Contracts. Seller shall not enter into any Contract regarding the Assets or the Business other than in the ordinary course of business; and~~

~~(vii) — Related Person Transactions. Seller shall not enter into any transaction with any Related Person regarding the Assets or the Business.~~

~~(viii) — Approvals. Seller shall obtain all necessary regulatory and governmental approvals that may be required for Seller to sell its Assets to Buyer. These approvals are separate from and in addition to the Approvals in Section 5.1(d) that are the responsibility of Buyer.~~

~~8.2 — Environmental Assessment. Buyer, in its sole discretion and at its sole expense, may conduct a Phase I environmental analysis of any or all of the Real Property, and the Seller shall cooperate and provide access for same. In the event that a Phase I study detects any actual or possible violation of any Environmental Law, the Buyer may, in its sole discretion, terminate this Agreement the effect of which is described in Section 8.2 herein.~~

~~6.3 — Certain Post-Closing Covenants of Seller. Seller:~~

~~(a) — shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed.~~

~~(b) — shall pay, or make adequate provisions for the payment, in full, of all of the retained Liabilities and other Liabilities of Seller under this Agreement.~~

~~(c) — hereby agrees to cooperate with Buyer to ensure a proper transition of all customers with respect to billing and customer service activities.~~

~~(d) — hereby acknowledges that Buyer must comply with all provisions of its tariffs as filed with and approved by the PSC.~~

~~ARTICLE 7~~

(c) Contracts and Commitments. Except normal and usual commitments for the purchase of materials and supplies consistent with past practice and procedures, no contract or commitment shall be entered into by or on behalf of Seller relating to the Water System or the Assets that would place an Encumbrance thereon or materially affect the operation of the Water System, the business or the Assets after Closing, except for those commitments approved or ratified in writing by TAWC. Seller shall use reasonable commercial efforts to obtain, prior to Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(k)** and **Schedule 4.1(u)** as requiring consent to the assignment. Notwithstanding any other provision of this Agreement, to the extent that any consent necessary for the assignment from Seller to TAWC of the Assigned Contracts is not obtained, or cannot be obtained, prior to the Closing Date, Seller shall use its commercially reasonable efforts to secure an arrangement reasonably satisfactory to TAWC intended to provide for TAWC following the Closing all of the material benefits of Seller under such Assigned Contracts; provided, that nothing in this **Section 6.1(c)** shall constitute a waiver of the condition set forth in **Section 8.1(i)**; and provided, further, that TAWC shall not be obligated to assume, and shall not be liable under, any Assigned Contract for which Seller has not obtained all necessary consents, or otherwise secured an alternative arrangement satisfactory to TAWC (in its sole discretion) as provided above. Seller shall transfer all of the utilities used or necessary for the Water System from Seller to TAWC effective as of the Closing Date, and Seller shall be responsible to pay all bills and fees for these utilities for the period prior to and including the Closing Date. TAWC shall provide any necessary information reasonably required by Seller to effectuate this transfer.

(d) Release of Encumbrances. Seller shall take all action necessary to cause the release, cancellation and discharge of any and all Encumbrances, so that as of the Closing Date, the Assets will be free and clear of any and all such Encumbrances. Seller also agrees not to create any new Encumbrances on the Water System or Assets from and after the date of this Agreement without the prior written consent of TAWC.

(e) Material Events and Circumstance. Seller shall promptly inform TAWC in writing of any specific event or circumstance of which Seller is aware, or of which Seller receives notice, that has or is reasonably likely to have, individually or in the aggregate, taken together with the other events or circumstances, a material adverse effect on the Water System or the Assets.

(f) Supplemental Information.

- (i) Seller shall provide TAWC, within fifteen (15) days of execution or the date of receipt thereof, a copy of (a) each of the Contracts entered into by Seller after the date hereof and prior to Closing relating to the Water System or the Assets; (b) a copy of any written notice of assessments for public improvements against any of the Assets received after the date hereof and prior to Closing; (c) any writs of summons or complaints filed against Seller or its representatives for any and all claims relating to the Water System or the Assets; and (d) a copy of the filing of any condemnation, eminent domain or similar proceeding affecting all or any portion of the Water System or the Assets received after the date hereof, but prior to the Closing.
- (ii) Seller shall notify TAWC within fifteen (15) days of the receipt of any notice of violation.

(g) Regulatory Consents. Seller shall at all times, use its best efforts to and diligently pursue all approvals, authorizations, consents and Permits required to be obtained to consummate the transaction contemplated by this Agreement. Seller shall (i) as promptly as practicable, make or cause to be made such filing and submissions under the laws, rules and regulations applicable to it as may be required for Seller to sell the Assets pursuant to the terms of this Agreement; and (ii) keep TAWC apprised of the status of any filing or submission to any such governmental or regulatory agency.

(h) Access. Seller shall provide TAWC and its representatives free and full access to and right to inspect, during normal business hours and upon prior written notice, all of the premises, properties, assets, records, Permits, contracts and other documents relating to the Assets and shall permit TAWC to consult with its officers, employees and other representatives for purposes of making such investigation of the Assets as TAWC shall desire to make, provided that no investigation shall unreasonably interfere with the Seller's operation of the Water System.

(i) Customer List. Within [thirty (30) days] of execution of this Agreement, Seller shall provide TAWC an accurate and complete listing of all customers of the Water System. This customer list shall provide the customer names, service addresses, billing addresses, and meter sizes and serial numbers in meter reading route sequence and shall denote those customers from which Seller has received notice to cancel or intend to cancel their account with Seller (or TAWC after Closing). This customer list shall be true and correct as of the date such list is provided to TAWC and shall be updated at Closing and provided to TAWC at Closing so as to be true and correct as of the Closing Date.

(j) Rates. Prior to the Closing, Seller shall reduce the water rate that is in effect as of the Effective Date by the amount of TAWC then-current cumulative Capital Recovery Riders surcharge, which is estimated to be approximately [] and []/100 per centum ([] %). Subsequent to the Closing, the rates shall be subject to any changes, increases or decreases, permitted, approved and/or ordered by the Tennessee Public Utility Commission,

including those related to TAWC's Capital Recovery Riders and its Production Costs and Other Pass-Throughs Rider.

(k) Customer Advances. Prior to the Closing Date, Seller shall complete the construction of all mains and facilities for which Seller has received customer advances and return all unexpended customer advances to the appropriate depositor. Provided, however, that for projects acceptable to and approved in writing by TAWC, Seller may pay over to TAWC the unexpended, customer advances, and TAWC shall assume all of the responsibility of Seller as to those unexpired customer advances and shall be bound by the terms and conditions contained in the Extension Deposit Agreements. TAWC shall not assume any responsibility for any unexpired customer advances received by Seller, or for any Extension Deposit Agreements to which Seller becomes a party, except as specifically agreed to in writing.

(l) Updating of Information. Between the date of this Agreement and the Closing Date, Seller will deliver revised or supplementary Schedules to this Agreement, containing accurate information as of the Closing Date, in order to enable TAWC to confirm the accuracy of Seller's representations and warranties and otherwise effectuate the provisions of this Agreement. The receipt by TAWC of any revised or supplementary Schedules to this Agreement shall in no way prejudice TAWC's right to terminate this Agreement based upon the failure of any condition to be satisfied under **Section 8.1** hereof or seek indemnification under **Section 9.1**. Seller will promptly inform TAWC, in writing, of the occurrence or failure of any action or event that would violate Seller's representations and warranties under this Agreement or render them inaccurate as of the date hereof or the Closing Date or that would constitute a breach of any covenant of Seller under this Agreement or a failure of any condition to the obligations of either Seller or TAWC under this Agreement.

(m) Retention of Records. Seller shall preserve any books and records relating to the Water System and the business that are not delivered to TAWC hereunder for a period no less than seven (7) years after the Closing Date (or such longer period as shall be required by applicable law), and Seller shall make available such books and records for review and copying to TAWC and its authorized representatives following the Closing at TAWC's expense upon reasonable notice during normal business hours. During such period, Seller shall permit, to the extent permitted by applicable law and upon request of TAWC, TAWC and any of its agents, representatives, advisors or consultants reasonable access to all properties, books, contracts and records of Seller related to the Water System and employees of or servicing the business for information related to periods up to and including the Closing.

(n) Municipal Ordinances. To the extent that the Water System is located within municipalities that have ordinances or laws that require properties to connect to and remain connected to the Water System, Seller shall use reasonable commercial efforts to cause such municipalities to maintain such ordinances or laws so long as the Assets, or modifications, renewals, replacements thereto, exist within the municipal boundaries of such municipalities.

6.2 Title Information. Within thirty (30) days following the execution of this Agreement, Seller shall deliver to TAWC true, correct and complete copies of all existing title policies, surveys, leases, deeds, instruments and agreements in Seller's possession relating to title to the real estate and easements constituting any part of the Assets, as well as any amendments

thereto through to Closing. Thereafter, TAWC and Seller shall conduct an abstract of such title information to determine whether Seller has sufficient real estate rights and continuous rights-of-way to permit TAWC, upon Closing, to operate a continuous water system, including lines, facilities fittings and appurtenances necessary to operate such water system, and that such rights are represented by legal instruments in appropriate form, duly recorded. Upon notification by TAWC that such legal rights for the Water System are not sufficient for the operation of the Water System, Seller shall, at its sole expense, secure such additional legal rights as TAWC may request. Title to the real property constituting the Assets shall be insurable by a title company of TAWC's choosing (in its sole discretion), at regular rates, as a good and marketable title, free and clear of all liens and Encumbrances and exceptions to coverage, except for any permitted liens, pursuant to an owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006 (the "Title Policy").

6.3 Dual Meter Readings. On or about the Closing Date, TAWC and Seller shall take a dual meter reading for each customer of the Water System, which shall be used for (i) Seller to issue a final invoice to customers covering the period on and before the Closing Date, and (ii) TAWC to obtain its initial meter reading for future invoices covering the period after the Closing Date. The parties shall coordinate in good faith and agree upon these meter readings at such time, which shall be used for such invoices and all accounts receivable being retained by Seller (per **Section 1.5**).

6.4 Further Assurances. Each party to this Agreement shall cooperate and deliver such instruments and take such action as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby. After the Closing, each party shall take such other actions and execute such other documents, agreements, instruments, certifications, and further assurances as Seller or TAWC, as the case may be, may reasonably require in order to make effective the transactions contemplated hereby (including to transfer to TAWC or to put TAWC more fully in possession of any of the Assets).

6.5 Cooperation. Subject to the terms and conditions of this Agreement, the parties shall cooperate fully with each other and their respective counsel and accountants in connection with, and take or cause to be taken and do or cause to be done, any actions required to be taken under applicable law to make effective the contemplated transactions as promptly as practicable. Prior to the Closing, the parties shall proceed expeditiously and in good faith to make such filings and take such other actions as may be reasonably necessary to satisfy the conditions to Closing set forth herein. Any and all filing fees in respect of such filings shall be paid by Seller, with the exception of those fees implemented by TPUC (as defined below in **Section 7.1**), which shall be paid by TAWC. On or after the Closing Date, the parties shall, on request, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and instruments, including contract assignments not obtained prior to Closing, and doing any and all such other things as may be reasonably required by the parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement. Seller hereby agrees to cooperate with TAWC to ensure a proper transition of all customers with respect to billing and customer service activities, including assisting TAWC to place all customer information in a format reasonably requested by TAWC.

6.6 Water System Growth. With Seller's planned continued development of the Subdivision, the parties hereto recognize and agree that future expansions and growth of the Water System within the Subdivision, including the extension of any main(s) and related facilities in the Subdivision, shall need to transfer to TAWC for proper operation of the Water System. To facilitate the expansion and growth of the Water System within the Subdivision, TAWC and Seller covenant and agree (a) that each shall negotiate and execute an Acquisition Agreement in form and substance acceptable to TAWC to transfer to TAWC the ownership of and the responsibility for continued operation, maintenance, repair and replacement of such main(s) and appurtenant facilities constructed and installed by Seller (the "**Acquisition Agreement**") and (b) any extension deposit agreement(s) (or similar agreement) entered into by Seller or TAWC for the development and expansion of the Water System in the Subdivision will be in form and substance acceptable to TAWC (the "**Developer Extension Deposit Agreement**"). The proposed forms of Acquisition Agreement and Developer Extension Deposit Agreement are attached hereto as **Exhibit B** and **Exhibit C**. The Acquisition Agreement and Developer Extension Deposit Agreement will each require the review and approval of TPUC (as defined below in **Section 7.1**).

6.7 Condition of Property. Except as otherwise set forth in this Agreement, Buyer acknowledges that the Assets are bought "as-is" and there are no express or implied warranties of any kind with respect to the condition of the Assets, including warranties of merchantability or fitness for a particular purpose.

ARTICLE 7 TENNESSEE PUBLIC UTILITY COMMISSION APPROVAL

7.1 Tennessee TPUC Approval. The obligation of TAWC to consummate the transactions contemplated by this Agreement are conditioned upon TAWC receiving the approvals of the Tennessee Public Utility Commission ("**TPUC**"). TAWC covenants and agrees to initiate, and use commercially reasonable efforts to prosecute the necessary proceedings to obtain the approval of TPUC for: (a) this Agreement and the transactions contemplated hereby which require approval by the TPUC, including the transfer by sale of the Assets to TAWC and the Assignment of Contracts Agreement; (b) the right of TAWC to provide water service to the public primarily in the service area presently being served by Seller's Water System; (c) a tariff, on such terms and conditions which are acceptable to TAWC, and which set forth the rates, rules and regulations for water service for the service area presently being served by Seller's Water System; and (d) any other approval as may be appropriate to consummate the transactions contemplated by this Agreement. Seller, by this Agreement, covenants and agrees to provide such information, documents and assistance as may be reasonably requested by TAWC in connection with any such proceedings and to otherwise cooperate in the initiation and prosecution of any such proceeding.

ARTICLE 8 CONDITIONS PRECEDENT

8.1 Conditions Precedent to TAWC's Obligations. The obligation of TAWC to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing, of each of the following conditions (any one or more of which may be waived in

writing in whole or in part by TAWC in its sole discretion):

(a) Consents and Approvals. Seller shall have obtained the written, final and unappealable approvals, authorizations and consents (including consents for Permit transfers) that are required to consummate the transactions contemplated by this Agreement and for TAWC to operate the Water System and the Assets after the Closing, including the approval of every regulatory agency of federal, state or local government that may be required in TAWC's opinion, each in form and substance (including with respect to the terms and conditions contained in any such approval) acceptable to TAWC in its sole and absolute discretion, and all waiting periods under existing laws, and all extensions thereof, the passing of which is necessary to consummate the contemplated transactions and finalize a Closing, shall have expired.

(b) Representations and Warranties. Seller's representations and warranties set forth in this Agreement or in any Schedule, list, certificate or document delivered pursuant to this Agreement shall be true, correct and accurate as of the date made and at and as of the time of the Closing with the same force and effect as though such representations and warranties were made at and as of the Closing Date (without giving effect to any supplement to the Schedules), and TAWC shall have received from a proper representative of Seller a certificate to such effect, in form and substance reasonably satisfactory to TAWC.

(c) Performance of Covenants and Agreements. Seller shall have performed and complied with in all material respects all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and TAWC shall have received from a proper representative of Seller a certificate to such effect, in form and substance reasonably satisfactory to TAWC.

(d) Adverse Change. There shall not have been a material adverse change, occurrence or casualty, financial or otherwise, to the Water System or the Assets (including a material loss of customers or Contracts), whether covered by insurance or not.

(e) Release of Liens. All necessary action shall have been taken to cause the release, cancellation and discharge of any and all of the Encumbrances so that as of the Closing, the Assets shall be free and clear of any and all Encumbrances, and Seller shall have provided TAWC with such opinions, instruments or documents as TAWC may reasonably request, and in form and substance satisfactory to TAWC, evidencing the release, cancellation and discharge of any and all Encumbrances and that the Assets are not subject to any liens or Encumbrances.

(f) Bulk Water Supply Agreement. On or before Closing, TAWC shall have negotiated and executed a bulk water supply agreement (the "**Bulk Water Agreement**") with the Town of South Pittsburg, Tennessee on terms and conditions agreeable to TAWC.

(g) Opinion of Counsel. Seller shall have delivered to TAWC a written Opinion of Seller's counsel, dated as of the Closing Date and addressed to TAWC, in the form set forth in **Schedule 8.1(g)**.

(h) Certificate of Secretary. Seller shall have delivered to TAWC a certificate of the Secretary of Seller, dated as of the Closing Date, containing such exhibits and confirmations and as required in **Section 3.2(a)(x)**.

(i) Contractual Consent. Seller shall have obtained written approvals, authorizations and consents of transfer to all Assigned Contracts and Permits, to the extent specifically required by the terms of such Assigned Contracts and Permits.

(j) Certification of Financial Information. Seller shall have delivered to TAWC a certificate, in substantially the form set forth in **Schedule 8.1(j)**, executed by its authorized representative in the form and substance satisfactory to TAWC, listing (i) the amount of its net outstanding long-term debt or notes, if any, related to the Water System (ii) all unexpired customer advances for construction and unexpired contributions in aid of construction as of the Closing Date, and (iii) and any and all additions or retirements to the Water System during the period from the date of execution of this Agreement to the Closing Date, together with the cost thereof.

(k) Closing Deliveries. Seller shall have delivered all documents required to be delivered by it pursuant to **Section 3.2(a)**.

(l) Proceedings. No provision of any law or order shall be in effect, and no proceeding by any person shall be threatened or pending before any governmental authority, or before any arbitrator, that would: (i) prevent consummation of the contemplated transactions; (ii) have a likelihood of causing the contemplated transactions to be rescinded following consummation; (iii) adversely affect the right of TAWC to own any of the Assets or operate the Water System; or (iv) adversely affect the Water System's prospects or the value or condition of any of the Assets or the Water System.

(m) Due Diligence. TAWC shall have completed and be satisfied, in its sole and absolute discretion, with the results of its due diligence review of the Water System, the Assets and Seller, including with the results of any environmental assessment performed with respect to any real property or the Assets or chain of title search, all material contracts and operating Permits and licenses of the Water System, and the Seller's operations, contracts, employment practices, compliance, accounting and other items as TAWC deems necessary, as each of the foregoing items relate to the Water System or the Assets.

(n) Authorization of Contemplated Transactions. TAWC shall have obtained all necessary corporate approvals to consummate the contemplated transactions, including the approval of its Board of Directors.

(o) TPUC Approval. The TPUC shall have entered an order (or orders) providing the approvals set forth in **Section 7.1** and **Section 8.1(f)** and approval of the refund payable from TAWC to Seller as set forth in **Schedule 8.1(o)**, and such order(s) shall not be subject to appeal, challenge, supersedeas or injunction.

8.2 Conditions Precedent to Seller's Obligations. The obligation of Seller to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Seller in its sole discretion):

(a) Representations and Warranties. TAWC's representations and warranties contained in this Agreement or in any Schedule, list, certificate or document delivered pursuant

this Agreement shall be true, correct and accurate as of the date made and at and as of the time of the Closing, with the same force and effect as though such representations and warranties were made at and as of the Closing Date (without giving effect to any supplement to the Schedules), and Seller shall have received from an officer of TAWC a certificate to such effect, in form and substance reasonably satisfactory to Seller.

(b) Performance of Agreements. TAWC shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and Seller shall have received from an officer of TAWC a certificate to such effect, in form and substance reasonably satisfactory to Seller.

(c) Closing Deliveries. TAWC shall have delivered the Closing Payment and all documents required to be delivered by it pursuant to Section 3.2(b).

ARTICLE 9 INDEMNIFICATION

9.1 Indemnification

~~7.1 **Survival; Right to Indemnification Not Affected by Knowledge.** All representations, warranties, covenants and obligations of Seller given in this Agreement and/or any Transaction Document delivered pursuant to this Agreement shall survive Closing. The right to indemnification, payment of Damages or other remedy based on such representations, warranties, covenants and obligations will not be affected by any investigation conducted with respect to or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation. The waiver of any condition based on the accuracy of any representation or warranty or on the performance of or compliance with any covenant or obligation will not affect the right to Indemnification, payment of Damages or other remedy based on such representations, warranties, covenants and obligations.~~

~~7.2 **Indemnification and Payment of Damages by Seller.** Seller hereby unconditionally, irrevocably and absolutely agrees to~~ By Seller. Seller shall fully pay, protect, defend, indemnify and hold harmless ~~Buyer~~TAWC and ~~Buyer's past, present~~its affiliates and ~~future~~their respective officers, directors, ~~shareholders, employees, and agents, attorneys, and representatives, successors and assigns (collectively, the "~~" ("TAWC Indemnified Persons"), Parties") from any and all ~~manner of actions, suits, debts, sums of money, interest owed, accounts, controversies, agreements, charges, damages, judgments, executions, and reasonably incurred costs, expenses, fees (including reasonable attorneys' fees and court costs), counterclaims, claims, demands, causes of action, liabilities and losses and award all other liabilities incurred, paid or sustained by any of the foregoing (hereinafter referred to in this Agreement as "Damages"); in each case,~~ arising out of, resulting from, relating to or caused by: (i) ~~the~~a misrepresentation, inaccuracy in or breach of (or any claim by any third party alleging or constituting a misrepresentation, inaccuracy in, or breach of) any representation or warranty of, or any failure to perform or nonfulfillment of any provision ~~of~~or covenant contained in this

Agreement ~~or any other transaction document~~, by Seller ~~or~~; (ii) ~~any and~~ all ~~Liabilities and/or duties~~ liabilities of Seller ~~of any nature (including the retained liabilities in Section 1.3(a)), whether due or to become due, whether accrued, absolute, contingent or otherwise, whether accruing prior to or after the Effective Time on the Closing Date, or arising out of any transaction entered into, any state of facts existing or any event occurring on or prior to such date, and any Encumbrance affecting the Assets or the Water System that arose on or prior to the Closing Date;~~ (iii) assessments, charges and other similar claims due or owing, directly or indirectly, by Seller or otherwise as a result of or on account of the Assets or the ~~Business~~ Water System at any time ~~on or~~ prior to the ~~Effective n me on the~~ Closing Date; (iv) ~~the claims made by any third party relating to the~~ ownership and/or operation of any of the Assets or the ~~Business~~ Water System ~~on or~~ prior to ~~the Effective Time on the~~ Closing Date; (v) any ~~claim or Proceeding~~ proceeding now existing or hereafter arising and relating to the Assets or the ~~Business of Seller~~ Water System and arising from events or matters occurring ~~prior to the Effective Time on the Closing Date;~~ and (vi) ~~any claim by an employee of Seller for any severance payment or arising out of such employee's employment with Seller or under the Worker Adjustment and Retraining Notification Act, COBRA (Sections 601 through 608 of the Employee Retirement Income Security Act of 1974), or under any employee benefit plan or employment Contract to which Seller is a party~~ on or prior to the Closing Date, regardless of when realized; (vi) all assets, properties and rights of Seller excluded from the Assets; (vii) any and all liabilities relating to the employees, agents and independent contractors of Seller who performed services for Seller or related to the Water System or the Assets, regardless of whether such liabilities arose from events occurring prior to or after the Closing; (viii) the failure to comply with the provisions of any so-called bulk transfer or bulk sale law of any jurisdiction in connection with the sale of the Water System and the Assets to TAWC, and (ix) transaction costs and expenses incurred by or on behalf of Seller in connection with this Agreement or the contemplated transactions.

7.3 As used in this Agreement, the term “**Damages**” means all losses, damages, assessments, judgments, awards, fines, penalties, taxes, interest, costs and expenses (including actual, reasonable out-of-pocket third party costs, fees and expenses of legal counsel and reasonable out-of-pocket third party costs, fees and expenses of investigation).

9.2 ~~Indemnification and Payment of Damages~~ by Seller ~~for~~ Environmental Matters. In addition to the provisions of ~~Section 7.2~~ 9.1, Seller hereby unconditionally, ~~Irrevocably~~ irrevocably and absolutely agrees to fully pay, protect, defend, indemnify and hold harmless the TAWC Indemnified Persons, and will pay to the ~~indemnified~~ TAWC Indemnified Persons the amount of any Damages (including costs of cleanup, containment or other remediation) arising, directly or indirectly, from or in connection with:

(a) Any ~~Environmental, Health~~ environmental, health and ~~Safety Liabilities~~ safety liabilities arising out of or relating to: (i) (A) the ownership, operation or condition at any time on or prior to ~~the Effective Time on the~~ Closing Date of the Assets or any other properties (whether real, personal or mixed and whether tangible or intangible) in which Seller has or had an interest; or (B) any ~~Hazardous Materials~~ hazardous materials or other contaminants that were present on or in the Assets or any other properties at any time on or prior to the ~~Effective Time on the~~ Closing Date; or (ii) (A) any ~~Hazardous Materials~~ hazardous materials or other contaminants, wherever located, that were, or were allegedly, generated, transported, stored, treated, ~~Released~~ released or otherwise handled by Seller or by any other Person for whose

conduct it is or may be held responsible at any time on or prior to the ~~Effective Time on the~~ Closing Date; or (B) any ~~Hazardous Activities~~hazardous activities that were, or were allegedly, conducted by Seller or by any other Person for whose conduct it ~~Is~~is or may be held responsible on or prior to ~~the Effective Time on~~ the Closing Date; or

(b) Any bodily injury (including illness, disability and death), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any Person, including any employee or former employee of Seller or any other Person for whose conduct it is or may be held responsible, ~~In~~in any way arising from or allegedly arising from any ~~Hazardous Activity~~hazardous activity conducted or allegedly conducted with respect to the Assets or the ~~Real Property~~real property by ~~Seiter~~Seller prior to the ~~Effective Time on the~~ Closing Date, or from ~~Hazardous Material~~hazardous material that was: (i) present or suspected to be present on or before the ~~Effective Time on the~~ Closing Date on or at the ~~Real Property~~real property (or present or suspected to be present on any other property, if such ~~Hazardous Material~~hazardous material emanated or allegedly emanated from any of the ~~Real Property~~real property and was present or suspected to be present on any of the ~~Real Property~~real property on or prior to the ~~Effective Time on the~~ Closing Date); or (ii) ~~Released~~released or allegedly ~~Released~~released by Seller or any other Person for whose conduct it is or may be held responsible, at any time on or prior to ~~the Effective Time on~~ the Closing Date.

~~Buyer~~(c) ~~TAWC~~ shall control any ~~Cleanup~~cleanup, any related ~~Proceeding~~proceeding and, ~~except as provided in the following sentence,~~ any other ~~Proceeding~~proceeding with respect to which indemnity may be sought under this **Section 7.2.**

~~9.3. The procedure described in Section 7.5 will apply to any claim solely for monetary Damages relating to a matter covered by this Section 7.3.~~

7.4 Indemnification By Buyer. ~~Buyer hereby unconditionally, irrevocably and absolutely~~TAWC. TAWC agrees to ~~fully pay, protect, defend, indemnify, defend~~ and hold harmless Seller and ~~Seller's past, present~~its affiliates and ~~future~~their respective officers, governing body, employees, directors and agents, attorneys, representatives, successors and assigns from any and all Damages arising out of, or caused by: (i) Buyer's misrepresentation, ~~breach of warranty or nonfulfilment of any provision~~ at all times after the date of this Agreement; (ii) any claim or Proceeding arising after the Effective Time on the Closing Date and relating to events or matters occurring subsequent to the Effective Time on the Closing Date; and (iii) any claim by an employee of Buyer arising out of such employee's employment with Buyer after the Effective Time on the Closing Date.

7.5 Procedure for Indemnification. ~~The procedure for indemnification shall be as follows:~~

(a) ~~The party claiming indemnification (the "Claimant") shall promptly give notice to the party from whom indemnification Is claimed (the "Indemnifying Party") of any claim, whether between the parties or brought by a third party, specifying: (i) the factual basis for such claim; and (ii) the amount of the claim. If the claim relates to a Proceeding filed by a third party, from, against Claimant, Claimant shall give such notice within ten (10) Business Days~~

~~after written notice of such Proceeding was given to Claimant. Claimant's failure to give the Indemnifying Party such notice shall not preclude Claimant from obtaining indemnification from the Indemnifying Party unless Claimant's failure has materially prejudiced the Indemnifying Party's ability to defend the claim or litigation, and then the Indemnifying Party's obligation shall be reduced to the extent of such prejudice.~~

~~(b) — Following receipt of notice from the Claimant of a claim, the Indemnifying Party shall have thirty (30) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For the purposes of such investigation, the Claimant agrees to make available to the Indemnifying Party and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree at or prior to the expiration of said thirty (30)-day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim. If the Claimant and the Indemnifying Party do not agree within said period (or any mutually agreed upon extension thereof), the Claimant may seek appropriate legal remedy.~~

~~(e) — (i) — With and in respect to any claim by a third party as to which the Claimant asserts it is entitled to indemnification hereunder, the Indemnifying Party shall have the right, at its own expense, to participate in or at its election to assume control of the defense of such claim, with counsel reasonably satisfactory to Claimant, subject to reimbursement of Claimant for actual out-of-pocket expenses incurred by Claimant as the result of request by the Indemnifying Party, subject to the following;~~

~~(A) — The Claimant may retain separate co-counsel at its sole cost and expense and participate in the defense of any such claim by a third party; and~~

~~(B) — The Indemnifying Party shall conduct the defense of the third party claim actively and diligently thereafter.~~

~~(ii) — If the Indemnifying Party elects to assume control of the defense of any third party claim pursuant to Section 7.S(c)(i), the Indemnifying Party may nevertheless reserve the right to dispute the amount of indemnification claimed or dispute Claimant's right to be indemnified with respect to all or any portion of the claim. Except with the written Consent of the Claimant, the Indemnifying Party shall not, in defending any claim or any litigation of any and all Damages resulting therefrom, consent to entry of any judgment or enter into any settlement which does not release the Claimant from all Liability in respect of such claim or litigation. In the event the Claimant fails to consent to any settlement or compromise which such failure results in Damages in excess of the amount for which Consent was requested, the limitation of the Indemnifying Party's obligations to indemnify the Claimant with respect to the subject matter of the claim shall be the amount of the proposed settlement or compromise rejected by Claimant and the Claimant shall be responsible for, and shall hold harmless the Indemnifying Party from, all Damages (including, without limitation, reasonable attorneys' fees Incurred with respect to matters subsequent to the rejection of the settlement by Claimant) in excess of the amount of the proposed settlement or compromise rejected by Claimant.~~

~~(d) — If a claim, whether between the parties or by a third party, requires~~

immediate action, the parties will make every effort to reach a decision with respect thereto as expeditiously as possible.

~~7.6 — **Means of Indemnification and Right to Setoff.**~~ In addition to any other right or means Buyer may have to enforce the indemnities provided for in Sections 7.2 and 7.3 hereof, Buyer shall be entitled to set off any amount to which It may be entitled under this Agreement or Damages which Buyer may incur as a result of any from (i) a misrepresentation, an inaccuracy in or breach of (or any claim by any third party alleging or constituting a misrepresentation, an inaccuracy in, or breach of this Agreement or any) any representation or warranty of, or any failure to perform or nonfulfillment of any provision or covenant, guaranty or other provision contained within this Agreement against any payments of the Purchase Price and/or any indebtedness or obligation owed to Seller whether under this Agreement or any agreement or in this Agreement or any other transaction document, by TAWC, (ii) any claim or proceeding relating to the Assets or the Water System and arising from events or matters occurring after the Closing Date, and (iii) any and all liabilities of any nature related hereto. ~~Buyer's right to setoff or its exercise thereof shall not prejudice the right of Buyer to pursue. In addition or as an alternative to such right, any other right or means Buyer may have to enforce the Indemnification provided for in Sections 7.2 and 7.3 hereof and in no event shall the amount actually setoff limit Buyer's right to indemnification under Sections 7.2 and 7.3 hereof~~ to TAWC's operation of the Water System and the Assets and occurring after the Closing Date, including obligations to maintain and repair the Water System after the Closing Date.

9.4 Survival of Representations and Warranties. All representations, warranties, covenants and agreements made by the parties in this Agreement or in any agreement, document, statement or certificate furnished hereunder or in connection with the negotiation, execution and performance of this Agreement shall survive the Closing. Notwithstanding any investigation or audit conducted before or after the Closing Date, or the decision of any party to complete the Closing, each party shall be entitled to rely upon the representations, warranties, covenants and agreements set forth herein and therein. Notwithstanding anything contained herein or elsewhere to the contrary, all "material" and "material adverse effect" or similar materiality type qualifications contained in the representations and warranties set forth in this Agreement shall be ignored and not given any effect for purposes of the indemnification provisions hereof, including for purposes of determining the amount of any Damages.

9.5 Notice of Claim. If either party seeks indemnification on behalf of an indemnified person, such party seeking indemnification (the "**Indemnified Party**") shall give reasonably prompt written notice to the indemnifying party (the "**Indemnifying Party**") specifying the facts constituting the basis for such claim and the amount, to the extent known, of the claim asserted; provided, however, that the right of a person or entity to be indemnified hereunder shall not be adversely affected by a failure to give such notice unless, and then only to the extent that, an Indemnifying Party is actually irrevocably and materially prejudiced thereby. Subject to the terms hereof, the Indemnifying Party shall pay the amount of any valid claim not more than ten (10) days after the Indemnified Party provides notice to the Indemnifying Party of such amount.

ARTICLE 8
~~Termination~~10
TERMINATION

~~8.1 **Termination and Abandonment.** This Agreement may be terminated and abandoned at any time prior to the Closing Date:~~

~~(a) by mutual written Consent of Buyer and Seller; or~~

~~(b) by Buyer, If the TPUC does not approve the adoption or approval of change of control and water rates prior to the Closing Date or such other later date as agreed upon in writing.~~

~~(c) by Buyer, if the Tennessee Department of Environment and Conservation ("TDEC") prohibits the purchase of Seller's Assets for environmental reasons or if TDEC imposes different water quality requirements on Buyer as a condition to purchasing Seller's Assets.~~

~~(d) by Buyer, if Buyer has not obtained an executed bulk water agreement with South Pittsburg, TN prior to Closing.~~

810.1 Termination. This Agreement may be terminated at any time prior to the Closing only (a) by mutual written consent of Seller and TAWC; (b) by TAWC upon written notice to the Seller, if the Closing shall not have occurred on or prior to three hundred sixty-five (365) days from the Effective Date; provided, however, that the right to terminate this Agreement under this **Section 10.1** shall not be available if a breach by TAWC under this Agreement has caused or resulted in the failure of the Closing to occur on or before such date; (c) by TAWC, if TAWC is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a breach of a representation, warranty, covenant or agreement contained in this Agreement on the part of Seller and Seller has not cured such breach within fifteen (15) business days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured); (d) by TAWC, if, at any time before Closing, TAWC is not satisfied (in its sole and absolute discretion) with the results of its due diligence review of the Water System and the Assets or the prospects of obtaining all regulatory consents and approvals; (e) if the Tennessee Department of Environment and Protection ("TNDEC") prohibits the purchase of Seller's Assets for environmental reasons or if TNDEC imposes different water quality requirements on Buyer as a condition to purchasing Seller's Assets; (f) if TAWC has not obtained the executed Bulk Water Agreement; (g) by Seller, if Seller is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of TAWC and TAWC has not cured such breach within fifteen (15) business days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured); or (h) by Seller or TAWC upon written notice to the other, if any court of competent jurisdiction or other competent governmental entity shall have issued a statute, rule, regulation, order, decree or injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting the contemplated transactions, and such statute, rule, regulation, order, decree or injunction or other action shall have become final and non-appealable.

10.2 **Effect of Termination.** The right of each party to terminate this Agreement under

Section 810.1 is in addition to any other rights such party may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to **Section 810.1**, all further obligations of the parties under this Agreement will terminate, except that the obligations set forth in ~~Sections 9.9 ("Legal Fees; Costs")~~this Section 10.1 ("Effect of Termination") and ~~9.15 ("Publicity; Announcements"); and all other covenants and agreements which by their terms continue after the termination of this Agreement~~Article 11 ("Miscellaneous") will survive; provided, however, that ~~If~~ this Agreement is terminated by a party because of the breach of the Agreement by another party or because one ~~(1)~~ or more of the conditions ~~to~~ the terminating ~~party's~~party's obligations under this Agreement is not satisfied as a result of the other ~~party's~~party's failure to comply with ~~Its~~its obligations under this Agreement, the terminating ~~party's~~party's right to pursue all legal remedies will survive such termination unimpaired.

ARTICLE 9

General Provisions11 MISCELLANEOUS

~~911.1 **Amendment and Modification.** No amendment, modification, supplement, termination, Consent or waiver~~Contents of any section or provision of this Agreement, nor any ~~Consent for departure therefrom, will~~Agreement. Parties in any event be effective unless the same is in writing and is signed by the parties. Any waiver of any provision of this Agreement and any ~~Consent to any departure from the terms of any provision of this Agreement is to be~~ effective only in the specific instance and for the specific purpose for which given.

~~9.2 **Assignments.** Seller may not assign or transfer any of its rights or obligations under this Agreement to any other Person without the prior written Consent of Buyer. Buyer may assign its rights and obligations under this Agreement to any Related Person or successor in interest without the Consent of Seller.~~

~~9.3 **Captions.** Captions contained in this Agreement and any table of contents preceding this Agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.~~

~~9.4 **Counterparts; Electronic Mail.** Interest.~~ This Agreement ~~may be executed by~~sets forth the entire understanding of the parties hereto ~~on any number of separate counterparts, with respect to the transactions contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any~~ and all ~~such counterparts so executed constitute one agreement binding on all the parties hereto notwithstanding that all the parties hereto are not signatories to the same counterpart. For purposes of this Agreement, a document (or signature page thereto) signed and transmitted in .pdf format by electronic mail is to be treated as an original document. The signature of any party thereon is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any party hereto, the .pdf copy is to be re-executed in original form by the parties who executed the .pdf copy. No party hereto may raise the use of a .pdf copy or the fact that any signature was transmitted through the use of electronic mail as a defense to the enforcement of this Agreement or any~~

~~amendment or other document executed in compliance with this section.~~

~~9.5 — **Entire Agreement.** This Agreement and the other Transaction Documents constitute the entire agreement among the parties hereto pertaining to previous agreements and understandings between or among any or all of the parties regarding the subject matter hereof and supersede all prior agreements, letters of intent, understandings, negotiations and discussions of the parties hereto, whether ~~oral or written~~ or oral, are superseded by this Agreement.~~

~~9.6 — **Exhibits and Schedules.**~~11.2 Binding Effect. All of the ~~Exhibits~~terms and ~~Schedules attached to~~provisions of this Agreement ~~are deemed Incorporated herein~~shall be binding upon, inure to the benefit of, and be enforceable by ~~reference~~the legal representatives, successors and assigns of Seller or TAWC.

~~9.7 — **Failure or Delay.** Except as otherwise provided by this Agreement, no failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No notice to or demand on any party hereto in any case entitles such party to any other or further notice or demand in similar or other circumstances.~~

~~9.8 — **Governing**~~11.3 Waiver. Any term or provision of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument executed by such party or parties.

11.4 Transfer Taxes. Any transfer taxes imposed on the conveyance or transfer of any real property pursuant to this Agreement shall be split equally by TAWC and Seller (i.e., each pay 50% of such taxes).

11.5 Notices. Any notice, request, demand, waiver, consent, approval or other communication that is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally, by facsimile (if followed by overnight courier on the same date) or sent by nationally recognized overnight courier, as follows:

If to TAWC:

Tennessee-American Water Company
109 Wiehl Street
Chattanooga, Tennessee 37403
Attention: President
Fax: [_____]

With a required copy to:

Tennessee-American Water Company
109 Wiehl Street
Chattanooga, Tennessee 37403
Attention: General Counsel

If to Seller:

Thunder Air, Inc.
d/b/a Jasper Highlands Development, Inc.,
John Thornton, Owner
P.O. Box 4737
Chattanooga, Tennessee 37405

or to such other address as the addressee may have specified in a written notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered.

11.6 Law to Govern. This Agreement ~~and the rights and obligations of the parties hereunder are to~~ shall be governed by and ~~construed~~ interpreted and ~~Interpreted~~ enforced in accordance with the ~~Laws~~ laws of the State of Tennessee ~~applicable to Contracts made and to be performed wholly within Tennessee, without regard to choice or conflict of Laws rules, without giving effect to any conflicts of law's provisions.~~ In the event of any litigation or claim regarding breach of this Agreement, the Circuit ~~court~~ Court of Hamilton County, Tennessee would have sole venue and jurisdiction. As to any matter relating to any required regulatory approval of this Agreement, the parties agree that the TPUC has jurisdiction to govern all matters involving the ~~Contemplated Transaction~~ transactions contemplated by this Agreement and all such agreements, documents and instruments related to or required pursuant to this Agreement and the provision of water service by ~~Buyer~~ TAWC to the residents ~~located within~~ served by the ~~Service Area~~ Water System.

~~9.9 — Legal Fees, Costs.~~ All legal, consulting and advisory fees and other costs and expenses incurred in connection with this Agreement and the Contemplated Transaction are to be paid by the party incurring such costs and expenses; provided, however, in the event litigation is instituted by either party to enforce or remedy a breach of any provision of this Agreement, in addition to any other relief there in awarded, the prevailing party shall be entitled to judgment for reasonable attorney's fees and litigation expenses. The term "prevailing party" shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

~~9.10 — Notices.~~ All notices, Consents, requests, demands and other communications hereunder are to be in writing and are deemed to have been duly given, made or delivered: (i) when delivered in person, (ii) three (3) days after deposited in the United States mail, first class postage prepaid, (iii) In the case of telegraph or overnight courier services, one (1) Business Day after delivery to the telegraph company or overnight courier service with payment provided, or (iv) in the case of electronic mail, when sent, verification received, in each case addressed as follows:

If to Seller:

Thunder Air Inc., d/b/a Jasper Highlands Development, Inc.,
John Thornton, Owner

P.O. Box 4737
Chattanooga, Tennessee 37405

If to Buyer:-

Attn: President
Tennessee American Water Company
109 Wiehl Street
Chattanooga, Tennessee 37403

with a copy to (which shall not constitute notice):-

Attn: Corporate Counsel
Tennessee American Water Company
2300 Richmond Road
Lexington, Kentucky 40502

~~or to such other address as any party hereto may designate by notice to the other parties in accordance with the terms of this Section. For e-mail, a Party shall contact the other Party to receive the then applicable e-mail for the person in the position stated above.~~

9.11—11.7 No Benefit to Others. The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto, and their legal representatives, successors and assigns, and they shall not be construed as conferring any rights on any other persons.

11.8 Interpretation. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Unless otherwise indicated, the words “including”, “includes”, “included” and “include”, when used, are deemed to be followed by the words “without limitation.”

11.9 Schedules. All Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

11.10 Severability. Any provision of this Agreement ~~which is prohibited, that is invalid or unenforceable or not authorized~~ in any jurisdiction ~~is, as to such jurisdiction, ineffective or under any circumstance shall be ineffective~~ to the extent of ~~any such prohibition, invalidity or unenforceability or nonauthorization~~ without invalidating ~~or rendering unenforceable~~ the remaining provisions hereof, and any such invalidity or affecting the validity, enforceability ~~unenforceability in any jurisdiction or legality of~~ under any circumstance shall not ~~invalidate or render unenforceable~~ such provision ~~in~~ any other jurisdiction ~~or under any other circumstance~~, unless ~~the ineffectiveness~~, in either event, the involved or unenforceable provision causes this Agreement to fail of its essential purpose.

11.11 Counterparts. This Agreement may be executed by facsimile, electronically or by

~~exchange of such provision would result in such a material change as to cause completion~~ documents in PDF format, and in several counterparts, each ~~of the Contemplated Transaction to be unreasonable~~ which shall be deemed an original instrument and all of which together shall constitute a single agreement. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

~~9.12~~11.12 Risk of Loss. Seller assumes risk of loss in connection with the Assets prior to Closing, including risk of loss from fire and other casualty. In the event of any loss or damage to any of the Assets, TAWC at its option, prior to or at Closing shall have the right to (i) request that the damaged asset be replaced or restored to substantially the same condition of the asset as of the date of this Agreement; (ii) request an adjustment to the Purchase Price as can be agreed upon by the parties, or (iii) request the insurance proceeds of the Seller and/or other moneys to enable TAWC to make a proper restoration of the damaged asset.

11.13 Environmental Assessment. Without limiting the parties rights and obligations under this Agreement (including **Sections 6.1(h), 8.1(i) and 10.1(d)**), after the date of this Agreement and until the Closing Date, TAWC shall have the reasonable right to enter upon the property and facilities constituting the Water System, after making reasonable prior arrangement with Seller, for the purposes of conducting an environmental assessment of the Water System. TAWC shall notify Seller in writing if the environmental assessment reveals the presence of oil or petroleum products or any hazardous or toxic wastes or materials or storage of fuel tanks or any other environmental hazard or contamination. Within fifteen (15) days of the date of such notice, Seller shall advise TAWC in writing as to whether Seller can cure the environmental hazard or contamination and, if so, what remediation actions Seller will take to cure. In connection with such environmental assessment, TAWC shall have the right, in TAWC's sole discretion, to terminate this Agreement upon written notice to Seller.

11.14 Specific Performance and Injunctive Relief; Remedies. The parties hereto recognize that if ~~any or all~~either of them ~~fail~~fails to perform, observe or discharge any of their respective obligations under this Agreement, a remedy at ~~Law~~law may not provide adequate relief to the other ~~parties hereto~~party. Therefore, in addition to any other remedy provided for ~~In~~in this Agreement or under applicable ~~Law, any~~law, a party hereto may demand specific performance of this Agreement, and such party shall be entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time ~~when any of~~if the other ~~parties hereto fail~~party fails to comply with any of the provisions of this Agreement applicable to such party. To the extent permitted by applicable ~~Law, all~~law, the parties ~~hereto~~hereby irrevocably waive any defense based on the adequacy of a remedy at ~~Law which~~law that might be asserted as a bar to such ~~party's~~party's remedy of specific performance or ~~Injunctive~~injunctive relief. Except as otherwise provided herein, all rights and remedies of the parties under this Agreement are cumulative and without prejudice to any other rights or remedies under law. Nothing contained herein shall be construed as limiting the parties' rights to redress for fraud.

~~9.13 — Successors and Assign.~~ Subject[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, ~~intending~~ to Section 9.2, all provisions of this Agreement are binding upon, inure to the benefit of and are enforceable by or against be legally bound, the parties hereto and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

~~9.14 — No Third-Party Beneficiary. This Agreement is solely for the benefit of the parties hereto and their respective successors and permitted assigns, and no other Person has any right, benefit, priority or Interest under, or because of the existence of, this Agreement.~~

~~9.15 — Publicity; Announcement. From the date hereof through and including Closing, no party hereto shall issue, cause or permit the publication by any of their respective Related Persons, agents or representatives, any press release or other public announcement with respect to this Agreement or the Contemplated Transaction except: (i) with the Consent of the other parties hereto (which shall not be unreasonably withheld); or (ii) as required by applicable Law (including, without limitation, any applicable securities Law). Seller will not, without the prior Consent of Buyer, make any announcements to employees of Seller with respect to the Contemplated Transaction and, at such time as an announcement to the employees is made, Buyer shall be allowed to participate in such announcement.~~

~~9.16 — Cooperation. Any notices or certifications given under this Agreement or any related agreement shall be given in good faith without any intention to unfairly impede or delay the other party. Buyer and Seller shall cooperate fully with each other and their respective counsel and accountants in connection with any actions required to be taken as part of their respective obligations under this Agreement including, without limitation, actions required to be taken with respect to obtaining any applicable regulatory approval of the Contemplated Transaction. Buyer and Seller shall execute such other documents as may be necessary and desirable to the Implementation and consummation of this Agreement. Each party agrees to use all reasonable efforts to consummate the Contemplated Transaction including, without limitation, doing all things reasonably necessary to obtain the requisite regulatory approval.~~

~~9.17 — Inspection. Buyer shall have the right to inspect Seller's water system assets prior to Closing.~~

~~9.18 — Future Growth. All future growth of the water system within the Service Area shall transfer to Buyer consistent with the form Acquisition Agreement and Extension Deposit Agreement or similar developer agreements as approved by TPUC. The form Acquisition Agreement is Attached as Exhibit A. The form Extension Deposit Agreement is attached as Exhibit B. All operation and maintenance responsibilities associated with all future growth of the water system within the Service Area shall transfer to Buyer pursuant to said agreements.~~

~~9.19 — Operation and Maintenance Responsibilities. Buyer shall assume all operation and maintenance responsibilities of the Business Including, but not limited to, customer service as of Closing.~~

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

Buyer

~~TENNESSEE AMERICAN WATER
COMPANY, a Tennessee public utility
corporation~~

By: _____
Valoria Armstrong, President

Seller

~~THUNDER AIR INC., d/b/a JASPER
HIGHLANDS DEVELOPMENT, INC., A
Tennessee corporation~~

By: _____

Name: _____

Title: _____

SELLER:

THUNDER AIR, INC.,
a Tennessee corporation d/b/a Jasper Highlands
Development, Inc.

By: _____

Name: _____

Title: _____

TAWC:

TENNESSEE-AMERICAN WATER COMPANY,
a Tennessee public utility corporation

By: _____

Name: Darlene Williams

Title: President

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 20-00011
FIRST DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE AND PROTECTION DIVISION**

Responsible Witness: Elaine K. Chambers, TAWC

Question:

1-4. Provide annual pro forma budgeted financial statements (income statements, balance sheets and projected monthly customer counts by tariff rate) for the first ten years (2020 - 2029) of operations for the water system being acquired by TAWC. Please describe in detail all budget assumptions and documents utilized to support these calculations.

Response:

TAWC objects to this request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving this objection, TAWC responds as follows: Attached is the analysis prepared by TAWC in making its acquisition determination, which is being submitted **UNDER SEAL as CONFIDENTIAL and PROPRIETARY.**

Supplemental Response:

TAWC objects to this request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving this objection, TAWC responds as follows: Attached is the analysis prepared by TAWC at the request of the Consumer Advocate's Office, which is being submitted **UNDER SEAL as CONFIDENTIAL and PROPRIETARY.**

The Balance Sheet was produced per the request of the Consumer Advocate. The Balance Sheet was not part of the original purchase analysis and did not exist when DR 4 was submitted by the Consumer Advocate's Office. Therefore, the Balance Sheet was not relied upon when making the decision to purchase Jasper Highlands. To be cooperative, we produced a balance sheet after the fact. After producing this Balance Sheet, we updated the P/L. Nothing significant changed between the original and updated P/L. In addition to syncing up the Balance Sheet and the P/L, one formula in cell H15 was corrected in the P&L tab. Please see the updated attachment, which is being submitted **UNDER SEAL as CONFIDENTIAL and PROPRIETARY.**

PUBLIC VERSION


SUPPLEMENTAL ATTACHMENT TO 1-4

STATE OF Tennessee)


COUNTY OF Hamilton)

BEFORE ME, the undersigned, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Grady Stout, being by me first duly sworn deposed and said that:

He is appearing as a witness on behalf of Tennessee-American Water Company before the Tennessee Public Utility Commission, and duly sworn, verifies that the data requests and discovery responses are accurate to the best of his knowledge.


Grady Stout

Sworn to and subscribed before me
this 31 day of March, 2020.


Notary Public

My Commission expires: 3/13/2022

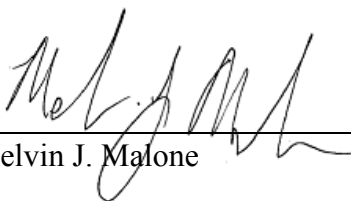


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Daniel P. Whitaker III
Assistant Attorney General
Economic and Regulatory Section
Financial Division, Consumer Advocate Unit
Office of the Tennessee Attorney General
War Memorial Building, 2nd Floor
301 6th Avenue North
Nashville, TN 37243
Daniel.Whitaker@ag.tn.gov

This the 13th day of April, 2020.



Melvin J. Malone