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July 31, 2012

HAND DELIVERY

Ann Cole, Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

claim of confidentiality  
 notice of intent  
 request for confidentiality  
 filed by OPC

For DN 05109-12 which  
is in locked storage. You must be  
authorized to view this DN.-CLK

RECEIVED-FPSC  
12 JUL 31 PM 1:49  
COMMISSION  
CLERK

RE: Docket No. 120084-WS; Application of Utilities, Inc., for Authority for Transfer of Majority Organizational Control of Hydro Star, LLC to Corix Utilities (Illinois) LLC  
Our File No.: 30057.204

Dear Ms. Cole:

In the response filed on July 16, 2012 (Documents 04864-12 & 04065-12) the Purchase and Sale Agreement, and Disclosure Schedule were inadvertently omitted and are enclosed herewith in redacted and highlighted formats.

Thank you for your consideration, and please do not hesitate to contact me should Staff require any additional information.

Very truly yours,

MARTIN S. FRIEDMAN  
For the Firm

COM \_\_\_\_\_  
AFD \_\_\_\_\_  
APA \_\_\_\_\_  
ECO \_\_\_\_\_  
ENG \_\_\_\_\_ MSF/mp  
GCL \_\_\_\_\_ Enclosures  
IDM \_\_\_\_\_  
TEL \_\_\_\_\_  
CLK \_\_\_\_\_

cc: Ms. Pat Brady (via email) (w/o confidential documents)

DOCUMENT NUMBER-DATE

05108 JUL 31 12

**REDACTED**

**EXECUTION VERSION**

**CONFIDENTIAL**

**DISCLOSURE SCHEDULE**

**DISCLOSURE SCHEDULE TO THE PURCHASE AND SALE AGREEMENT, BY AND AMONG CORIX UTILITIES (ILLINOIS) LLC, A LIMITED LIABILITY COMPANY ORGANIZED UNDER THE LAWS OF DELAWARE, AND THE PERSONS SET FORTH ON SCHEDULE A THERETO**

**DATED AS OF February 17, 2012**

This Disclosure Schedule has been prepared in accordance with the Purchase and Sale Agreement (the "**Agreement**"), dated as of February 17, 2012, by and among Corix Utilities (Illinois) LLC, a limited liability company, organized under the laws of Delaware, and the persons set forth on Schedule A thereto.

This schedule constitutes the "**Disclosure Schedule**" referred to in the Agreement. The representations and warranties of the Sellers in Articles III and IV and of the Buyer in Article V are made subject to the exceptions and qualifications set forth herein. In no event shall the listing of agreements or matters in this Disclosure Schedule be deemed or interpreted to broaden or otherwise amplify the representations and warranties, obligations, covenants or agreements of the Sellers or the Buyer contained in the Agreement.

The section numbers used herein refer to sections in the Agreement. The Disclosure Schedule has been arranged for purposes of convenience only, in sections corresponding to the sections of the Agreement. The disclosure of any item in any section or subsection of Disclosure Schedule will be deemed disclosure with respect to each other section and subsection of the Disclosure Schedule to which the relevance of such item is reasonably apparent. Headings in this Disclosure Schedule are inserted for convenience only and shall not create any representation regarding the completeness or accuracy of the organization of the information in this Disclosure Schedule. In some instances, cross-references have been made to other disclosures; the existence of such cross-references does not and should not be construed to imply that disclosures made in sections not cross-referenced are not applicable.

Certain information set forth in this Disclosure Schedule is included solely for informational purposes, is not an admission of liability with respect to the matters covered by the information, and may not be required to be disclosed pursuant to the Agreement. The specification of any dollar amount in the representations and warranties contained in the Agreement or the inclusion of any specific item in this Disclosure Schedule is not intended to imply that such amounts (or higher or lower amounts) are or are not material. The inclusion of any item herein should not be interpreted as indicating that any Seller has determined that such item is necessarily material to the business, assets, liabilities, financial condition, results of

operation or prospects of the Company, or amounts to a Material Adverse Effect, or is otherwise material, or that such information is required to be included in this Disclosure Schedule, or is outside of the ordinary course of business of the Company. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

The information provided in this Disclosure Schedule is being provided solely for the purpose of making the disclosures to the Buyer or the Sellers, as applicable, under the Agreement. In disclosing this information, the Sellers and the Buyer, respectively, expressly do not waive any attorney-client privilege associated with such information or any protection afforded by the work product doctrine with respect to any of the matters disclosed or discussed herein.

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**Section 3.3**

**Noncontravention**

(b)

Filings under the HSR Act.

State and local Filings with and Permits from the PUCs in the following jurisdictions:

North Carolina

Kentucky

Florida

Bay County, Florida (in the event the Company or any of its Subsidiaries still have operations in such county)

Sarasota County, Florida

Pennsylvania

New Jersey

Illinois

Nevada

Tennessee

Virginia

Louisiana

Maryland

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**Section 3.4**  
**Legal Proceedings**

None.

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**Section 3.6**

**Brokers**

Citigroup Global Markets Inc.

RBC Capital Markets, LLC.

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**Section 4.2**  
**Capitalization**

(b)

None.

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## Section 4.3

### Subsidiaries

(a)(i)

Name	State of Incorporation
Acme Water Supply and Management Company	FL
Alafaya Utilities, Inc.	FL*
American Resources Development Company	NV
Apple Canyon Utility Company	IL
Bayside Utility Services, Inc.	FL
Bermuda Water Company, Inc.	AZ
Bio Tech, Inc.	SC*
Bradfield Farms Water Company	NC
Camelot Utilities, Inc.	IL
Carolina Trace – Utilities, Inc.	NC
Carolina Water Service, Inc.	DE
Carolina Water Service, Inc. of North Carolina	NC
Cedar Bluff Utilities, Inc.	IL
Charleston Utilities Inc.	MS*
Charmar Water Company	IL
Cherry Hill Water Company	IL
Clarendon Water Company	IL
Colchester Utilities, Inc.	VA
County Line Water Company	IL*
CWS Systems, Inc.	NC
Cypress Lakes Utilities, Inc.	FL
Del-Mar Water Company	IL
Eastlake Water Service, Inc.	FL*
Elk River Utilities, INC.	NC
Ferson Creek Utilities Company	IL
Galena Territory Utilities, Inc.	IL
Great Northern Utilities, Inc.	IL
Green Ridge Utilities, Incorporated	MD
Harbor Ridge Utilities, Inc.	IL
Holiday Hills Utilities, Inc.	IL
Holiday Service Corp.	OH*
Hydro Star Holdings Corporation	DE
Indiana Water Service, Inc.	IN
Killarney Water Co.	IL
Labrador Utilities, Inc.	FL
Lake Holiday Utilities Corporation	IL
Lake Marian Water Corporation	IL
Lake Placid Utilities, Inc.	FL
Lake Utility Services, Inc.	FL

Lake Wildwood Utilities Corporation	IL
Louisiana Water Service, Inc.	LA
Maryland Water Service, Inc.	MD
Massanutten Public Service Corporation	VA
Medina Utilities Corp.	IL
Mid-County Services, Inc.	FL
Miles Grant Water and Sewer Company	FL*
Montague Sewer Co., Inc.	NJ
Montague Water Co., Inc.	NJ
North Topsail Utilities, Inc.	NC*
Northern Hills Water and Sewer Company	IL
Pebble Creek Utilities, Inc.	FL*
Penn Estates Utilities, Inc.	PA
Perkins Mountain Utility Company	NV
Perkins Mountain Water Company	NV
Provinces Utilities, Inc.	MD
Sandy Creek Utility Services, Inc.	FL
Sanlando Utilities Corp	FL
Sky Ranch Water Service Corp.	NV
South Gate Utilities, Inc.	FL*
Southland Utilities, Inc.	SC
Spring Creek Utilities Co.	NV
Tega Cay Water Service, Inc.	SC
Tennessee Water Service, Inc.	TN
Tierra Verde Utilities, Inc.	FL
Transylvania Utilities, Inc.	NC
Twin Lakes Utilities Inc.	IN
United Utility Companies, Inc.	SC
Utilities Inc. of Nevada	NV
Utilities Services of South Carolina, Inc.	SC
Utilities, Inc.	IL
Utilities, Inc. of Eagle Ridge	FL
Utilities, Inc. of Georgia	GA
Utilities, Inc. of Central Nevada	NV
Utilities, Inc. of Florida	FL
Utilities, Inc. of Hutchinson Island	FL*
Utilities, Inc. of Longwood	FL
Utilities, Inc. of Louisiana	LA
Utilities, Inc. of Pennbrooke	FL
Utilities, Inc. of Pennsylvania	PA
Utilities, Inc. of Sandalhaven	FL
Utilities, Inc.-Westgate	PA
Valentine Water Service, Inc.	IL
Walk-Up Woods Water Company	IL
Water Service Company of Georgia, Inc.	GA
Water Service Company of Indiana, Inc.	IN

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Water Service Corporation	DE
Water Service Corporation of Kentucky	KY
Wedgfield Utilities, Inc.	FL*
Westlake Utilities, Inc.	IL
Whispering Hills Water Co.	IL
Wildwood Water Service Company	IL

\* Indicates inactive entity

(a)(ii)

None.

(a)(iii)

Water Services Company has filed an application for qualification in Tennessee but has not yet received approval of such qualification.

(b)

All of the capital stock of all Subsidiaries of Utilities, Inc. are pledged as collateral pursuant to that certain Amended and Restated Pledge Agreement, dated as of July 19, 2006 (as amended, restated, supplemented or otherwise modified and in effect), among Utilities, Inc., U.S. Bank National Association, as pledgee, the holders of Utilities, Inc.'s 6.58% Collateral Trust Notes, Series 2006-A, due July 21, 2036 and JPMorgan Chase Bank, N.A.

Prior to Closing only, all of the capital stock of Utilities, Inc. is pledged as collateral pursuant to that certain Pledge Agreement, dated as of July 19, 2006, by and among Hydro Star Holdings Corporation and Union Bank of California, N.A. as Collateral Agent for the benefit of the Secured Parties (as defined in the HSHC Credit Agreement), as amended, restated, supplemented or otherwise modified and in effect from time to time (so long as such pledge is released prior to Closing).

In the ordinary course of business, Utilities, Inc. has acquired water and/or wastewater systems. Certain of these systems (or portions thereof) are subject to rights of first refusal, options or other similar agreements with municipalities and other third parties allowing such municipalities or third parties the right to acquire such systems (or portions thereof) in the event of a proposed sale by Utilities, Inc. upon comparable terms to those Utilities, Inc. would otherwise obtain from the proposed sale, however, such rights, options or rights under similar agreements are not triggered by the execution and delivery of this Agreement and will not be triggered by the consummation of the transactions contemplated by this Agreement.

**Section 4.4**

**Noncontravention**

(a)

Utilities, Inc. Credit Agreement

HSHC Credit Agreement

(b)

The contents of Section 3.3 of this Disclosure Schedule are incorporated by reference for purposes of this Section 4.4(b).

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## Section 4.6

### Absence of Certain Changes or Events

On January 31, 2012 the board of directors of Utilities, Inc. approved the declaration and distribution of a dividend to its sole shareholder, HSHC, in the amount of [REDACTED]

On February 3, 2012, pursuant to the Tax Allocation Agreement, the Company directed Utilities, Inc. to pay, and Utilities, Inc. paid, to HSHC, [REDACTED].

Since the Balance Sheet Date, the Company or one of its Subsidiaries has sold or entered into a Contract to sell, a water utility systems as follows:

1. On January 31, 2012, Carolina Water Service of North Carolina, Inc. closed the Cabarrus Woods Transaction.
2. On February 16, 2012, Sandy Creek Utility Services, Inc. closed in escrow on the Sandy Creek Transaction. The transaction is not expected to close for at least one month.
3. On February 16, 2012, Bayside Utility Services, Inc. closed in escrow on the Bayside Transaction. The transaction is not expected to close for at least one month.
4. Bradfield Farms Water Company entered into a Utility Systems Asset Purchase Contract, dated as of March 1, 2011, with City of Charlotte. Such agreement was amended on January 23, 2012.

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## Section 4.7

### Legal Proceedings

#### Legal Proceedings

Forest Lakes Estates Co-op, Inc. v. Labrador Utilities, Inc. and Utilities, Inc. Case No.: 51-08-CA4033-ES/B, Circuit Court in and for the Sixth Judicial Circuit, in and for Pasco County, Florida, Civil Division.

Heritage Building Group, Inc. v. Utilities, Inc. of Pennsylvania. Case No.: 06-11005, Court of Common Pleas of Chester County, Pennsylvania.

Creech v. Utilities, Inc. Civil Action No. 09-CI-00091, Kentucky 44th Judicial Circuit, Bell Circuit Court.

R&M Construction v. Twin Lakes Utilities, Inc. Cause No. 640020907-CC -7538, Porter County Circuit/Superior Court.

Varner v. Twin Lakes Utilities, Inc. Cause No. 45C010908PL00278, Lake County Circuit Court.

Gameel Gabriel v. Louisiana Water Service, Inc. No. 2005-14562-Division: "C", 22<sup>nd</sup> Judicial District Court, Parish of St. Tammany, Louisiana.

Judy Malquist, et al. v. Utilities, Inc. of Central Nevada. Case No. CV 28835, Fifth Judicial District Court of Nevada, County of Nye.

Crouch v. Utilities, Inc. No. 2009-15029-E, 22<sup>nd</sup> Judicial District Court, Parrish of St. Tammany, Louisiana.

McKim v. Utilities, Inc. of Georgia. Civil Action No. STCV1100883, State Court of Chatham County, Georgia.

Miller v. Twin Lakes Utilities, Inc. Cause No. 64D02-1102-CT-956, Superior/Circuit Court for Porter County, Indiana.

Utilities, Inc. of Central Nevada v. Ashland Capital LLC, et al. Case No. CV28780, Fifth Judicial District Court for Nye County, Nevada.

Cantino, et al. v. Utilities, Inc. of Central Nevada et al. Case No. CV31294 Dept. 2, Fifth Judicial District Court for Nye County, Nevada.

Utilities, Inc. of Central Nevada v. Pahrump 88, LLC. Case No. CV31386, Fifth Judicial District Court for Nye County, Nevada.

Utilities, Inc. of Central Nevada v. Spirit Underground, LLC. Case No. A-11-646674-C, Dept. XXVI, District Court for Clark County, Nevada.

Spring Creek Utilities Company v. Lois and Edwin Sarman. Case No.: CV-C-07-917, Fourth Judicial District Court of the State of Nevada in and for the County of Elko.

United Utility Companies, Inc. v. The South Carolina Office of Regulatory Staff and North Greenville University. Docket No.: 2009-479-WS.

Water Service Corporation of Kentucky v. Kentucky Public Service Commission; Jack Conway, Attorney General of Kentucky; and Hickman County Fiscal Court. Civil Action No. 2011-CI-1776.

Apple Canyon Utility Company and Lake Wildwood Utilities Corporation v. Illinois Commerce Commission. Docket No. 09-0549, Appellate Court of Illinois, Third Judicial District.

As a regulated water utility, the customers of the Company and its Subsidiaries have the right to lodge complaints with Governmental Entities regarding the Company and its Subsidiaries. From time to time such customers do lodge complaints, none of which have resulted in any Legal Proceedings or, individually or in the aggregate, have had or would be reasonably expected to have, any material impact on the Company or any of its Subsidiaries, taken as a whole.

#### Rate Cases

##### *Arizona*

Bermuda Water Co. – Docket No. W-01812A-10-0521

##### *Florida*

Bayside Utility Services – Docket No. 10-001

Cypress Lakes Utilities Inc. – Docket No. 090349-WS

Labrador Utilities Inc. – Docket No. 110264-WS

Lake Placid Utilities Inc. – Docket No. 090531-WS

Lake Utility Services Inc. – Docket No. 100426-WS

Mid-County Services Inc. – Docket No. 090381-SU

Sandy Creek Utility Services – Docket No. 10-002

Sanlando Utilities Corp – Docket No. 110257-WS

Tierra Verde Utilities Inc. – Docket No. 080248-SU

Utilities Inc. of Eagle Ridge – Docket No. 110153-SU

Utilities Inc. of Florida – Docket No. 090462-WS

Utilities Inc. of Longwood – Docket No. 090381-SU

Utilities Inc. of Pennbrooke – Docket No. 090392-WS

Utilities Inc. of Sandalhaven – County regulated, so no docket number assigned.

*Illinois*

Apple Canyon Utility Co. – Docket No. 09-0548

Camelot Utilities Inc. – Docket No. 11-0141

Charmar Water Co. – Docket No. 11-0561

Cherry Hill Water Co. – Docket No. 11-0562

Clarendon Water Co. – Docket No. 11-0563

Ferson Creek Utilities Co. – Docket No. 11-0565

Galena Territory Utilities – Docket No. 10-0280

Great Northern Utilities – Docket No. 11-0059

Harbor Ridge Utilities Inc. 11-0566

Holiday Hills Utilities Inc. – No docket number assigned because Holiday Hills Utilities Inc. used a short form filing.

Killarney Water Co. – Docket No. 11-0564

Lake Holiday Utilities Corp – Docket No. 11-0142

Lake Marian Water Corp – No docket number assigned because the Lake Marian Water Corp used a short form filing.

Lake Wildwood Utilities Co. – Docket No. 09-0549

Northern Hills W & S Co. – Docket No. 10-0298

Whispering Hills Water Co. – Docket No. 10-0110

Wildwood Water Service Co. – No docket number assigned because the Wildwood Water Service used a short form filing.

*Indiana*

Indiana Water Service Inc. – Docket No. 44097

Twin Lakes Utilities Inc. – Docket No. 43957

Water Service Company of Indiana, Inc. – Docket No. 44164

*Kentucky*

Water Service Corporation of Kentucky – Docket No. 2010-00476

*Maryland*

Green Ridge Utilities Inc. – Docket No. 9283

Provinces Utilities Inc. – Docket No. 9135

*Nevada*

Spring Creek Utilities Co. – Docket No. 11-12032

*Pennsylvania*

Penn Estates Utilities Inc. – Docket No. R-2011-2255159

*South Carolina*

Carolina Water Service Inc. – Docket No. 2011-47-WS

United Utility Company – Docket No. 2009-479-WS

Other

Utilities, Inc. of Central Nevada is aware of a potential lawsuit by Nye County, Nevada against Utilities, Inc. of Central Nevada relating to construction defects in road repairs along Blagg Road liability for which could exceed [REDACTED]

Utilities, Inc., Bayside Utility Services, Inc. and Sandy Creek Utilities Co. are aware of a lawsuit by Bay County, Florida against those entities, which has been filed but has not been served, relating to unpaid regulatory assessment fees in the amount of approximately \$200,000. Upon closing of the sales of the Bayside Transaction and the Sandy Creek Transaction assets to the Cities of Panama City Beach, Florida and Callaway, Florida, respectively, the County has agreed to dismiss the lawsuit with prejudice and to permanently forbear any attempt to collect said fees.

Carolina Water Service of North Carolina, Inc. ("CWSNC") was required to notify all affected customers of the Cabarrus Woods Transaction following the filing of CWSNC's transfer application with the North Carolina Utility Commission ("NCUC"). Certain of those customers were not notified in a timely manner. The NCUC has been made aware of CWSNC's failure to provide the required notice. While it is likely that the NCUC will issue an order commenting on CWSNC's failure to provide timely notice to all affected customers, it is not anticipated that any NCUC order will affect the Cabarrus Woods Transaction, which closed January 31, 2012.

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## Section 4.8

### Compliance with Laws; Permits; Filings

(a)

Perkins Mountain Water Company and Perkins Mountain Utility Company failed to make filings with the Arizona Corporation Commission regarding the current status of construction and water use in their service areas. The filings were due at the end of 2011. The companies are currently seeking an extension of time to file. The grant of such extensions is routine, so no penalty is expected.

CWSNC was required to notify all affected customers of the Cabarrus Woods Transaction following the filing of CWSNC's transfer application with the NCUC. Certain of those customers were not notified in a timely manner. The NCUC has been made aware of CWSNC's failure to provide the required notice. While it is likely that the NCUC will issue an order commenting on CWSNC's failure to provide timely notice to all affected customers, it is not anticipated that any NCUC order will affect the Cabarrus Woods Transaction, which closed January 31, 2012.

(b)

None.

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## Section 4.9

### Material Contracts

(a)

Tax Allocation Agreement

Affiliate Interest Agreement, dated as of August 26, 2010, between Utilities, Inc., Penn Estates Utilities, Inc. – Sewer and Water Service Corporation.

Affiliate Interest Agreement, dated as of August 26, 2010, between Utilities, Inc., Penn Estates Utilities, Inc. – Water and Water Service Corporation.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Apple Canyon Utility Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Bayside Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Bermuda Water Company, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Bradfield Farms Water Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Camelot Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Carolina Pines Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Carolina Trace – Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Carolina Water Service, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Carolina Water Service, Inc. of North Carolina.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Cedar Bluff Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Charmar Water Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Cherry Hill Water

Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Clearendon Water Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Colchester Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and CWS Systems, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Cypress Lakes Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Del-Mar Water Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Elk River Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Ferson Creek Utilities Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Galena Territory Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Great Northern Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Green Ridge Utilities, Incorporated.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Harbor Ridge Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Holiday Hills Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Indiana Water Service, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Killarney Water Co.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Labrador Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Lake Holiday



Utilities Corporation.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Lake Marian Water Corporation.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Lake Placid Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Lake Utility Services, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Lake Wildwood Utilities Corporation.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Louisiana Water Service, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Maryland Water Service, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Massanutten Public Service Corporation.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Medina Utilities Corp.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Mid-County Services, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Montague Sewer Co., Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Montague Water Co., Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Northern Hills Water and Sewer Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Pebble Creek Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Penn Estates Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Perkins Mountain Utility Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Perkins Mountain Water Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Provinces Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Sandy Creek Utility Services, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Sanlando Utilities Corp.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Sky Ranch Water Service Corp.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Southland Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Spring Creek Utilities Co.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Tega Cay Water Service, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Tennessee Water Service, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Tierra Verde Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Transylvania Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Twin Lakes Utilities Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc. of Central Nevada.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc. of Eagle Ridge.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc. of Florida.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc. of Georgia.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc. of Longwood.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc. of

Louisiana.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc. of Pennbrooke.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc. of Pennsylvania.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc. of Sandalhaven.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities, Inc.- Westgate.

Agreement, dated as of December 19, 2007, between Water Service Corp. and United Utility Companies, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities Services of South Carolina, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Valentine Water Service, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Utilities Inc. of Nevada.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Walk-Up Woods Water Company.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Water Service Company of Georgia, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Water Service Company of Indiana, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Water Service Corporation.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Water Service Corporation of Kentucky.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Westlake Utilities, Inc.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Whispering Hills Water Co.

Agreement, dated as of December 19, 2007, between Water Service Corp. and Wildwood Water Service Company.

Guarantee, dated as of January 12, 2012, from Utilities, Inc. to Siemens Industry Inc. for approximately \$350,000.

Asset Purchase Agreement, dated as of January 29, 2009, between Sewerage District No. 6 of the Parish of St. Tammany, State of Louisiana and Utilities, Inc. of Louisiana.

Agreement for Purchase and Sale of Water Assets, dated as of March 1, 2011, between County of Currituck, North Carolina and Carolina Water Service, Inc. of North Carolina.

Agreement for Purchase and Sale of Water Assets, dated as of March 11, 2011, between Currituck Utilities, LLC and Carolina Water Service, Inc. of North Carolina.

Asset Purchase Agreement, dated as of July 19, 2010, between United Utility Companies, Inc. and Spartanburg Sanitary Sewer District.

Agreement for Purchase and Sale of Reclaimed Water and Wastewater Assets, dated as of April 15, 2010, between Alafaya Utilities, Inc. and City of Oviedo, Florida.

Contract, dated as of September 17, 2009, between Carolina Water Service, Inc. of North Carolina, the City of Charlotte and Emerald Point Condominium Homeowners' Association, Inc.

Utility Asset Purchase and Sale Agreement, dated as of August 13, 2009, between Martin County, Miles Grant Water and Sewer Company, Utilities, Inc. of Hutchison Island, and Acme Water Supply and Management Company.

Water System Acquisition Agreement, dated as of May 22, 2009, between County Line Water Company, Utilities, Inc. and Village of Palatine, Illinois.

Utility Asset Acquisition Agreement, dated as of April 20, 2009, between Wedgefield Utilities, Inc. and Pluris, LLC.

Utility Asset Acquisition Agreement, dated as of April 20, 2009, between Pebble Creek Utilities, Inc. and Pluris, LLC.

Utility Asset Acquisition Agreement, dated as of January 28, 2009, between Eastlake Utilities, Inc. and Pluris, LLC.

Utility Asset Acquisition Agreement, dated as of January 28, 2009, between South Gate Utilities, Inc. and Pluris, LLC.

Utility Systems Asset Purchase Contract, dated as of March 1, 2011, between City of Charlotte and Carolina Water Service, Inc. of North Carolina, as amended on January 16, 2012.

Asset Purchase Agreement, dated as of May 1, 2007, between Lennar Homes LLC; Acme Water Supply and Management Company and Hutchinson Island Irrigation Company.

Water System Acquisition Agreement, dated as of February 14, 2008, between Charleston

Utilities, Inc. and the City of Charleston, Mississippi.

Asset and Real Estate Purchase Agreement, dated as of May 30, 2008, between Holiday Service Corporation; Utilities, Inc. and Northern Ohio Rural Water.

The consummation of the transactions contemplated by the following Contracts are pending:

Utility Systems Asset Purchase Contract, dated as of March 1, 2011, between City of Charlotte and Bradfield Farms Water Company, as amended on January 23, 2012.

Asset Purchase Agreement, dated as of December 28, 2011, between the City of Callaway, FL and Sandy Creek Utility Services, Inc., as amended on February 15, 2012.

Asset Purchase Agreement, dated as of December 28, 2011, between the City of Panama City Beach, FL and Bayside Utility Services, Inc., as amended on February 15, 2012.

Environmental Utility Service Agreement, dated September 30, 1997, between the Environmental Services Division of St. Tammany Parish, LA and Utilities, Inc. The agreement grants Utilities, Inc. affiliates, Utilities, Inc. of Louisiana and Louisiana Water Service, Inc., a non-exclusive franchise to provide water and wastewater service in the Parish in exchange for a franchise service fee based on a percentage of Utilities, Inc. of Louisiana and Louisiana Water Service revenues.

Utilities, Inc. has insurance policies with Liberty Mutual for General & Products Liability; Auto; Workers Compensation; and Property coverage.

Utilities, Inc. has an Administrative Services Agreement and Stop-loss policy with Blue Cross Blue Shield of Illinois in connection with Utilities, Inc.'s self insured medical insurance program.

InfoSend Service Agreement, dated November 2, 2010, between Water Service Corporation and InfoSend, Inc., providing for Water Service Corporation's purchase of data processing, printing and mailing services.

Master Services Agreement between Water Service Corporation and IPSOFT, Inc. dated January 26, 2007 for data center hosting and backup.

Perfect Commerce Master Services Agreement between Utilities, Inc. and Perfect Commerce, LLC dated October 24, 2011 providing for group purchasing of wireless telephone and data service from Verizon Wireless, which Agreement attaches a Verizon Wireless Entity Agreement between Utilities, Inc. and Cellco Partnership d/b/a Verizon Wireless providing for quantity discounts on service.

Commercial Service Agreement between Utilities, Inc. and Access Point, Inc. dated as of April 17, 2011, and Statement of Work between Utilities, Inc. and Warner Telecomm Ltd. dated October 29, 2011 for landline telephone and data service and billing aggregation.

Service Agreement, dated as of December 28, 2009, between PAETEC Communications, Inc. and Utilities, Inc. for MPLS and Call Center telephone services.

Microsoft Volume Licensing Enterprising Signature Forum dated as of December 29, 2009, between Microsoft Licensing, GP and Water Service Corporation.

Agreement for Water and Wastewater Service, dated June 23, 2009, by and between SM South, L.L.C., Stirling Mandeville, L.L.C., Maurmont Properties L.L.C. and Utilities Inc. of Louisiana, a Louisiana corporation.

Repainting Proposal for the Harbor Ridge 50,000 Gallon Water Storage Tank, dated as of August 19, 2011, between Caldwell Tanks, Inc. and Utilities, Inc.

Notice of Award for Cherry Hill 50,000 Gallon Elevated Water Storage Tank Rehabilitation, dated as of August 18, 2011, between Caldwell Tanks, Inc. and Utilities, Inc.

Agreement for Sanitary Sewer Service, dated as of August 1, 2011, by and between Trilogy Investments, LLC and Utilities, Inc. of Pennsylvania.

Agreement for Water & Sanitary Sewer Service, dated as of July 31, 2008, by and between 64 Development, LLC and CWS Systems, Inc.

Agreement for Water & Wastewater Service, dated as of June 9, 2006, by and between Cow Rock Mountain, Inc. and CWS Systems, Inc.

Agreement for Water & Wastewater Service, dated as of September 12, 2006, by and between Red Bird Properties, Inc. and CWS Systems, Inc.

Agreement for Water and Sewer Service, dated as of November 10, 2011, by and between Marlin Bay Development Group, LLC and Carolina Water Service, Inc.

Siemens Equipment Proposal, dated as of October 18, 2011, and Purchase Order, dated as of December 2, 2011, between Siemens Industry, Inc. and Sanlando Utilities Corporation for equipment purchase for filter rehab project.

Agreement, dated as of February 16, 2012, between Environmental Equipment Sales, Inc. and Sandy Creek Utility Services, Inc. for interconnection of Sandy Creek water and wastewater distribution systems with City of Callaway, FL systems and decommissioning of Sandy Creek wastewater treatment plant.

Pricing and Contract Letter, dated as of July 20, 2011, between AdEdge Water Technologies, LLC and Spring Creek Utilities Co. for the purchase of water well arsenic treatment systems.

Agreement, dated as of October 10, 2011, between Floyds construction Inc. and Spring Creek Utilities Co., for well house modifications.

Agreement, dated as of October 4, 1990, between PPW Sewer Company, Inc. and Pasco County, FL for supply of bulk sewer service to PPW Sewer Company Inc. (assigned to Utilities Inc. of Florida).

Bulk Wastewater Agreement, dated as of October 6, 2005, between Englewood, FL Water District and Utilities, Inc. of Sandalhaven, as amended on April 6, 2006.

Agreement for Use of Sewage Force Main, dated as of November 18, 1996, between York County, SC and Carolina Water Service, Inc.

Agreement for Use of Water Line, dated as of November 18, 1996, between York County, SC and Carolina Water Service, Inc.

Water Supply Agreement, dated as of August 8, 1997, between the City of West Columbia, SC and Carolina Water Service, Inc., as amended on October 8, 1997.

Water Supply Agreement, dated as of June 22, 1993, between York County, SC and Tega Cay Water Service, Inc.

Agreement for Wastewater Services dated as of September 8, 2008 between the City of St. Petersburg, FL and Tierra Verde Utilities, Inc.

Promissory Note, dated April 19, 2006, in the principal amount of [REDACTED] made by HSHC in favor of the Company, as amended, restated, supplemented or otherwise modified through the date hereof.

Utilities, Inc. Credit Agreement and the "Loan Documents" referred to therein (as defined in the Utilities, Inc. Credit Agreement), as such Loan Documents may be amended, restated, supplemented or otherwise modified through the date hereof.

HSHC Credit Agreement and the "Loan Documents" referred to therein (as defined in the HSHC Credit Agreement), as amended, restated, supplemented or otherwise modified through the date hereof.

Master Note Purchase Agreement, dated as of July 19, 2006, by and among Utilities, Inc. and the purchasers from time to time party thereto, as amended, restated, supplemented or otherwise modified through the date hereof.

The 6.58% Collateral Trust Notes, Series 2006-A, due July 21, 2036 in the aggregate principal amount of [REDACTED] issued pursuant to that certain Master Note Purchase Agreement, dated as of July 19, 2006, by and among Utilities, Inc. and the purchasers from time to time party thereto, as amended, restated, supplemented or otherwise modified through the date hereof.

Irrevocable Letter of Credit No. CTCS-843678, in the amount of \$175,180, dated as of January 6, 1997, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago,

N.A. for the benefit of Progress Energy, as amended.

Irrevocable Standby Letter of Credit CTCS-440432, in the amount of \$10,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of State of South Carolina, as amended.

Irrevocable Standby Letter of Credit No. CTCS-440435, in the amount of \$20,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of State of South Carolina, as amended.

Irrevocable Standby Letter of Credit No. CTCS-314817, in the amount of \$90,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.

Irrevocable Standby Letter of Credit CTCS- 314815, in the amount of \$100,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.

Irrevocable Letter of Credit No. CTCS-633690, in the amount of \$22,320, dated as of October 12, 1995, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A., for the benefit of Florida Power Corp., as amended.

Irrevocable Letter of Credit No. CTCS-633688, in the amount of \$3,950, dated as of October 17, 1990, issued by JPMorgan Chase Bank N.A., as successor in interest to First Illinois Bank of Evanstown, N.A., for the benefit of Withlacoochee River Electric, as amended.

Irrevocable Standby Letter of Credit No. CTCS-730657, in the amount of \$12,000, dated as of February 10, 2009, issued by JPMorgan Chase Bank N.A. for the benefit of Lakeland Electric.

Irrevocable Standby Letter of Credit CTCS-843676, in the amount of \$12,940, dated as of June 11, 2010, issued by JPMorgan Chase Bank N.A. for the benefit of Progress Energy.

Irrevocable Standby Letter of Credit CTCS-854756, in the amount of \$22,320, dated as of June 14, 2010, issued by JPMorgan Chase Bank N.A. for the benefit of Progress Energy.

Irrevocable Letter of Credit No. CTCS-633691, in the amount of \$30,570, dated as of June 26, 1991, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A., for the benefit of Florida Power Corp., as amended.

Irrevocable Standby Letter of Credit No. CTCS-440436, in the amount of \$160,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.

Irrevocable Standby Letter of Credit No. CTCS-440431, in the amount of \$190,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.

Irrevocable Standby Letter of Credit No. CTCS-440429, in the amount of \$230,000, dated as of



October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.

Irrevocable Standby Letter of Credit No. CTCS-314811, in the amount of \$250,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of North Carolina Utilities Commission, as amended.

Irrevocable Standby Letter of Credit No. CTCS-440430, in the amount of \$360,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.

Irrevocable Standby Letter of Credit No. CTCS-440437, in the amount of \$950,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.

Irrevocable Standby Letter of Credit No. CTCS-294200, in the amount of \$1,500,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A. for the benefit of North Carolina Utilities Commission, as amended.

Irrevocable Standby Letter of Credit No. CTCS-440433, in the amount of \$350,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of Public Service Commission of South Carolina, as amended.

Irrevocable Standby Letter of Credit No. CTCS-440207, in the amount of \$500,000, dated as of June 7, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of South Carolina Public Service Commission, as amended.

Irrevocable Standby Letter of Credit No. CTCS-314813, in the amount of \$650,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.

Irrevocable Standby Letter of Credit No. CTCS-294197, in the amount of \$700,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.

Irrevocable Letter of Credit No. CTCS-633687, in the amount of \$250,000, dated as of January 6, 1997, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of West Bradford Township, as amended.

(c)

Utilities, Inc. Credit Agreement

HSBC Credit Agreement

**Section 4.10(b)**

**Real Property**

None.

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## **Section 4.11**

### **Employee Benefits**

(a)

Utilities, Inc. Value Creation Shares Plan, as amended and restated effective as of May 1, 2006 and as amended from time to time.

Utilities, Inc. Health Care Benefits Program, Plan I and Plan II– Blue Cross Blue Shield

Dental Insurance – Delta Dental

Vision Insurance – Vision Service Plan

Water Services Corporation Section 125 Plan

Life and Accidental Death and Dismemberment Insurance – Metropolitan Life Insurance Company

Long-Term Disability Insurance - Metropolitan Life Insurance Company

Short-Term Disability Insurance, as described in the Employee Benefits Guide

Supplemental Travel/Accident Insurance – ACE American Insurance Company

Employee Assistance Program – Metropolitan Life Insurance Company, as described in the Employee Benefits Guide

Patient Advocacy – Health Advocate, as described in the Employee Benefits Guide

Education Assistance, as described in the Employee Benefits Guide

Utilities, Inc. 401(k) Plan

Vacation/Holiday Pay, as described in the Employee Benefits Guide

Annual Short Term Incentive Plan

Discretionary Cash Bonus policy

Severance benefits pursuant to memorandum dated January 22, 2001

Severance plan for key management employees, as described in the Severance Policy

(b)

None.

(e) Utilities, Inc. is reclassifying an individual who was a consultant from contractor status to temporary employee status.

(g) None.

(h) Pursuant to a January 22, 2001 memorandum, Utilities, Inc.'s practice is to provide severance benefits to all full-time employees whose positions may be eliminated due to a change of ownership, direct or indirect, of the facilities in which they work. The amount of this benefit is based on length of service. If Utilities, Inc. is not able to move an employee into a similar position, and subsequently that individual is terminated due to a change in ownership, a severance benefit will be paid equal to one week's salary per year of service with Utilities, Inc. In addition, Utilities, Inc. maintains a separate severance plan for key management employees. Officers, Directors at the Corporate Office, and Regional Operations Vice-Presidents are considered "key management employees." The severance plan for key management provides that if Utilities, Inc. terminates said employment without cause, Utilities, Inc. will pay severance in a lump sum amount equal to the employee's monthly base salary times years of service with Utilities, Inc., with a minimum amount of six-months base salary and a maximum amount of 18-months base salary. Utilities, Inc. has also provided other benefits, such as outplacement services, from time-to-time, depending on the circumstances.

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## Section 4.13

### Environmental Matters

(a)

#### Legal Proceedings

Forest Lakes Estates Coop, Inc. v. Labrador Utilities, Inc. and Utilities, Inc. Case No.: 51-08-CA4033-ES/B, Circuit Court in and for the Sixth Judicial Circuit, in and for Pasco County, Florida, Civil Division.

Cantino, et al. v. Utilities, Inc. of Central Nevada et al. Case No. CV31294 Dept. 2, Fifth Judicial District Court for Nye County, Nevada.

The Company and its Subsidiaries perform water sampling in the ordinary course of their respective businesses which, from time to time, result in Legal Proceedings that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

#### Orders

South Carolina Department of Health and Environmental Control Consent Order 06-098-DW.

United States Environmental Protection Agency Region 5 Consent Agreement and Final Order, Docket No. CERCLA-05-2004-0001.

South Carolina Department of Health and Environmental Control Consent Order 09-036-DW.

South Carolina Department of Health and Environmental Control Consent Order 09-039-W.

Nevada Division of Environmental Protection of the State Department of Conservation and Natural Resources Administrative Order on Consent, dated as of December 31, 2009, In the Matter of Spring Creek MHP.

State of Florida Department of Environmental Protection Consent Order (OGC File No. 10-0801-03-DW).

State of Louisiana Department of Environmental Quality Office of Environmental Compliance, Enforcement Tracking No. WE-C-08-0262, Agency Interest No. 19476.

South Carolina Department of Health and Environmental Control Consent Order 10-034-W.

South Carolina Department of Health and Environmental Control Consent Order 11-004-W.

State of Florida Department of Environmental Protection Consent Order OCD-PW-CE-11-0813.

South Carolina Department of Health and Environmental Control Consent Order 11-005-DW.

Notices of Violation

In the ordinary course of business, the Company receives notifications of violations of certain Laws, which generally result in aggregate penalties that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b)

Utilities, Inc. of Louisiana and Louisiana Water Service, Inc. do not currently have the required discharge permits for any of their wastewater treatment plants that are issued by Louisiana Department of Wildlife and Fisheries (the "LDWF"). This requirement has only recently surfaced, and there has been no threat of enforcement actions by the LDWF. The LDWF has been contacted on several occasions to begin the permitting process, but there has been no interest in permitting existing facility at this time.

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**Section 4.14**

**Insurance**

Coverage	Deductible	Insurer	Policy #	Term	Limits	Premium
Property	Various	Liberty Mutual	YU2-L9L-452793- 011	10/1/11-12	\$150,000,000	\$288,649
Workers' Compensation	No deductible	Liberty Mutual	WC2-641-436609- 031	10/1/11-12	WC Stats/\$1mm EL	\$433,842
General Liability	\$25,000	Liberty Mutual	TB1-641-436609- 021	10/1/11-12	\$1mm occ/agg	\$351,144
Auto Liability	No deductible	Liberty Mutual	AS2-641-436609- 011	10/1/11-12	\$1mm	\$255,840
Umbrella	\$10,000	Lexington	013-136-508	10/1/11-12	\$25mm occ/agg	\$230,176
Excess Liability	Underlying	RSUI	NHA054278	10/1/11-12	\$25mm occ/agg	\$44,313
Storage Tank	\$25,000	Chartis/AIG	8089022	11/14/11-12	\$1mm occ/agg	\$2,732
Executive Liability - D&O	\$100,000	Arch	PCD0043918-00	4/19/11-12	\$10mm each claim/agg	\$51,719
Executive Liability - EPL	\$50,000	Arch	PCD0043918-00	4/19/11-12	\$5mm each claim/agg	Included
Executive Liability - Fiduciary	Nil	Arch	PCD0043918-00	4/19/11-12	\$5mm each claim/agg	Included
Executive Liability-Crime	\$10,000	Arch	PCD0043918-00	4/19/11-12	\$1,000,000	Included
Executive Liability-Special	Nil	Arch	PCD0043918-00	4/19/11-12	\$1,000,000	Included
Excess D&O	Underlying	ACE American	G23655408 001	4/19/11-12	\$10mm each claim/agg	\$10,750
Pollution Liability	\$25,000	Lexington	PLC 3777346	4/30/10-13	\$5mm each claim/agg	\$368,120
2006 D&O ERP Tail	Nil	Chubb	81694354	4/19/06-12	\$10mm each claim/agg	\$105,375
2006 Excess D&O ERP Tail	Nil	Hartford	224091	4/19/06-12	\$10mm each claim/agg	\$68,750

## Section 4.15

### Taxes

(b)

On September 7, 2010 Utilities, Inc. received notice from the Virginia Department of Taxation of an audit of Massanutten Public Service Corp. and Colchester Utilities, Inc. relating to consumer use tax.

(e)

Tax Allocation Agreement, dated as of August 1, 2006 (the "Tax Allocation Agreement"), between the Company, HSHC and Utilities, Inc., as amended.

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**Section 4.16**

**Intellectual Property**

(a)

**Copyright**

None.

**Trademark**

UTILITIES , INC. Plus Design, U.S. Trademark Registration No. 3,375,106

**Patent**

None.

**Internet Domain Names**

uiwater.com  
utilitiesinc-usa.com  
ui-home.com  
uiholding.com  
uisewer.com  
uiwastewater.com

(b)

None.

(c)

None.

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**Section 4.17**

**Absence of Undisclosed Liabilities**

None.

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## Section 4.18

### Indebtedness

(a)

1. Indebtedness under the HSHC Credit Agreement and the "Loan Documents" referenced therein (as defined in the HSHC Credit Agreement), as amended, restated, supplemented or otherwise modified through the date hereof.

2. Indebtedness under the Promissory Note dated April 19, 2006 in the principal amount of [REDACTED] made by HSHC in favor of Hydro Star, LLC, as amended on March 10, 2010.

3. Guarantee, dated as of January 12, 2012, from Utilities, Inc. to Siemens Industry Inc. for approximately \$350,000.

4. Indebtedness under the Utilities, Inc. Credit Agreement and the "Loan Documents" referenced therein (as defined in the Utilities, Inc. Credit Agreement), as amended, restated, supplemented or otherwise modified through the date hereof.

5. The 6.58% Collateral Trust Notes, Series 2006-A, due July 21, 2036 in the aggregate principal amount of \$ [REDACTED] issued pursuant to that certain Master Note Purchase Agreement, dated as of July 19, 2006, by and among Utilities, Inc. and the purchasers from time to time party thereto, as amended, restated, supplemented or otherwise modified through the date hereof.

The following letters of credit have been issued pursuant to the Utilities, Inc. Credit Agreement and are outstanding:

1. Irrevocable Letter of Credit No. CTCS-843678, in the amount of \$175,180, dated as of January 6, 1997, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of Progress Energy, as amended.
2. Irrevocable Standby Letter of Credit CTCS-440432, in the amount of \$10,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of State of South Carolina, as amended.
3. Irrevocable Standby Letter of Credit No. CTCS-440435, in the amount of \$20,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of State of South Carolina, as amended.
4. Irrevocable Standby Letter of Credit No. CTCS-314817, in the amount of \$90,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.
5. Irrevocable Standby Letter of Credit CTCS- 314815, in the amount of \$100,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.

6. Irrevocable Letter of Credit No. CTCS-633690, in the amount of \$22,320, dated as of October 12, 1995, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A., for the benefit of Florida Power Corp., as amended.
7. Irrevocable Letter of Credit No. CTCS-633688, in the amount of \$3,950, dated as of October 17, 1990, issued by JPMorgan Chase Bank N.A., as successor in interest to First Illinois Bank of Evanstown, N.A., for the benefit of Withlacoochee River Electric, as amended.
8. Irrevocable Standby Letter of Credit No. CTCS-730657, in the amount of \$12,000, dated as of February 10, 2009, issued by JPMorgan Chase Bank N.A. for the benefit of Lakeland Electric.
9. Irrevocable Standby Letter of Credit CTCS-843676, in the amount of \$12,940, dated as of June 11, 2010, issued by JPMorgan Chase Bank N.A. for the benefit of Progress Energy.
10. Irrevocable Standby Letter of Credit CTCS-854756, in the amount of \$22,320, dated as of June 14, 2010, issued by JPMorgan Chase Bank N.A. for the benefit of Progress Energy.
11. Irrevocable Letter of Credit No. CTCS-633691, in the amount of \$30,570, dated as of June 26, 1991, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A., for the benefit of Florida Power Corp., as amended.
12. Irrevocable Standby Letter of Credit No. CTCS-440436, in the amount of \$160,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.
13. Irrevocable Standby Letter of Credit No. CTCS-440431, in the amount of \$190,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.
14. Irrevocable Standby Letter of Credit No. CTCS-440429, in the amount of \$230,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.
15. Irrevocable Standby Letter of Credit No. CTCS-314811, in the amount of \$250,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of North Carolina Utilities Commission, as amended.
16. Irrevocable Standby Letter of Credit No. CTCS-440430, in the amount of \$360,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.

17. Irrevocable Standby Letter of Credit No. CTCS-440437, in the amount of \$950,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.
18. Irrevocable Standby Letter of Credit No. CTCS-294200, in the amount of \$1,500,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A. for the benefit of North Carolina Utilities Commission, as amended.
19. Irrevocable Standby Letter of Credit No. CTCS-440433, in the amount of \$350,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of Public Service Commission of South Carolina, as amended.
20. Irrevocable Standby Letter of Credit No. CTCS-440207, in the amount of \$500,000, dated as of June 7, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of South Carolina Public Service Commission, as amended.
21. Irrevocable Standby Letter of Credit No. CTCS-314813, in the amount of \$650,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.
22. Irrevocable Standby Letter of Credit No. CTCS-294197, in the amount of \$700,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.
23. Irrevocable Letter of Credit No. CTCS-633687, in the amount of \$250,000, dated as of January 6, 1997, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of West Bradford Township, as amended.

(b)

1. Indebtedness under the Promissory Note dated April 19, 2006 in the principal amount of [REDACTED] made by HSHC in favor of Hydro Star, LLC, as amended on March 10, 2010.
2. Guarantee, dated as of January 12, 2012, from Utilities, Inc. to Siemens Industry Inc. for approximately \$350,000.
3. Indebtedness under the Utilities, Inc. Credit Agreement and the "Loan Documents" referenced therein (as defined in the Utilities, Inc. Credit Agreement), as amended, restated, supplemented or otherwise modified through the date hereof. Upon consummation of the Closing, an "Event of Default" (as defined in the Utilities, Inc. Credit Agreement) shall have occurred under clause (m) of Article VII of the Utilities, Inc. Credit Agreement as a result of the occurrence of a "Change of Control" (as defined in the Utilities, Inc. Credit Agreement), unless a waiver of such "Event of Default" is received from JPMorgan Chase Bank, N.A., in its capacity as "Administrative Agent" (under and as defined in the Utilities, Inc. Credit Agreement), and the "Required Lenders" (under and as defined in the Utilities, Inc. Credit Agreement) prior to the

consummation of the Closing.

4. The 6.58% Collateral Trust Notes, Series 2006-A, due July 21, 2036 in the aggregate principal amount of [REDACTED] issued pursuant to that certain Master Note Purchase Agreement, dated as of July 19, 2006, by and among Utilities, Inc. and the purchasers from time to time party thereto, as amended, restated, supplemented or otherwise modified through the date hereof.

The following letters of credit have been issued pursuant to the Utilities, Inc. Credit Agreement and are outstanding:

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2. Irrevocable Standby Letter of Credit CTCS-440432, in the amount of \$10,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of State of South Carolina, as amended.
3. Irrevocable Standby Letter of Credit No. CTCS-440435, in the amount of \$20,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of State of South Carolina, as amended.
4. Irrevocable Standby Letter of Credit No. CTCS-314817, in the amount of \$90,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.
5. Irrevocable Standby Letter of Credit CTCS- 314815, in the amount of \$100,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.
6. Irrevocable Letter of Credit No. CTCS-633690, in the amount of \$22,320, dated as of October 12, 1995, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A., for the benefit of Florida Power Corp., as amended.
7. Irrevocable Letter of Credit No. CTCS-633688, in the amount of \$3,950, dated as of October 17, 1990, issued by JPMorgan Chase Bank N.A., as successor in interest to First Illinois Bank of Evanstown, N.A., for the benefit of Withlacoochee River Electric, as amended.
8. Irrevocable Standby Letter of Credit No. CTCS-730657, in the amount of \$12,000, dated as of February 10, 2009, issued by JPMorgan Chase Bank N.A. for the benefit of Lakeland Electric.
9. Irrevocable Standby Letter of Credit CTCS-843676, in the amount of \$12,940, dated as of June 11, 2010, issued by JPMorgan Chase Bank N.A. for the benefit of Progress Energy.

10. Irrevocable Standby Letter of Credit CTCS-854756, in the amount of \$22,320, dated as of June 14, 2010, issued by JPMorgan Chase Bank N.A. for the benefit of Progress Energy.
11. Irrevocable Letter of Credit No. CTCS-633691, in the amount of \$30,570, dated as of June 26, 1991, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A., for the benefit of Florida Power Corp., as amended.
12. Irrevocable Standby Letter of Credit No. CTCS-440436, in the amount of \$160,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.
13. Irrevocable Standby Letter of Credit No. CTCS-440431, in the amount of \$190,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.
14. Irrevocable Standby Letter of Credit No. CTCS-440429, in the amount of \$230,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.
15. Irrevocable Standby Letter of Credit No. CTCS-314811, in the amount of \$250,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of North Carolina Utilities Commission, as amended.
16. Irrevocable Standby Letter of Credit No. CTCS-440430, in the amount of \$360,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.
17. Irrevocable Standby Letter of Credit No. CTCS-440437, in the amount of \$950,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of North Carolina Utilities Commission, as amended.
18. Irrevocable Standby Letter of Credit No. CTCS-294200, in the amount of \$1,500,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A. for the benefit of North Carolina Utilities Commission, as amended.
19. Irrevocable Standby Letter of Credit No. CTCS-440433, in the amount of \$350,000, dated as of October 21, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of Public Service Commission of South Carolina, as amended.
20. Irrevocable Standby Letter of Credit No. CTCS-440207, in the amount of \$500,000, dated as of June 7, 2004, issued by JPMorgan Chase Bank N.A., as successor in interest

to Bank One, Chicago, N.A. for the benefit of South Carolina Public Service Commission, as amended.

21. Irrevocable Standby Letter of Credit No. CTCS-314813, in the amount of \$650,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.
22. Irrevocable Standby Letter of Credit No. CTCS-294197, in the amount of \$700,000, dated as of October March 9, 2007, issued by JPMorgan Chase Bank N.A. for the benefit of Public Service Commission of South Carolina, as amended.
23. Irrevocable Letter of Credit No. CTCS-633687, in the amount of \$250,000, dated as of January 6, 1997, issued by JPMorgan Chase Bank N.A., as successor in interest to Bank One, Chicago, N.A. for the benefit of West Bradford Township, as amended.

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**Section 4.19**

**Affiliate Transactions**

None.

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## Section 4.21

### Dividends and Distributions

On August 30, 2011, the board of directors of Utilities, Inc. approved the declaration and distribution of a dividend to its sole shareholder, HSHC, in the amount of [REDACTED]

On January 31, 2012 the board of directors of Utilities, Inc. approved the declaration and distribution of a dividend to its sole shareholder, HSHC, in the amount of [REDACTED]

On February 3, 2012, pursuant to the Tax Allocation Agreement, the Company directed Utilities, Inc. to pay, and Utilities, Inc. paid, to HSHC, [REDACTED].

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**Section 4.23**

**Assets; Rates**

None.

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**Section 5.3(b)**

**Noncontravention**

Filings under the HSR Act.

State and local Filings with and Permits from the PUCs in the following jurisdictions:

North Carolina

Kentucky

Florida

Bay County, Florida (in the event the Company or any of its Subsidiaries still have operations in such county)

Sarasota County, Florida

Pennsylvania

New Jersey

Illinois

Nevada

Tennessee

Virginia

Louisiana

Maryland

CFIUS Clearance

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**Section 6.2(a)**

**Conduct of Business Pending the Closing**

(i)

None.

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**Section 6.17**

**Intercompany Accounts**

None.

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**Section 7.1(e)**

**Permits**

State and local Filings with and Permits from the PUCs in the following jurisdictions:

North Carolina

Kentucky

Florida

Bay County, Florida (in the event the Company or any of its Subsidiaries still have operations in such county)

Sarasota County, Florida

Pennsylvania

New Jersey

Illinois

Nevada

Tennessee

Virginia

Louisiana

Maryland

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**Section 7.1(g)**

**Indebtedness**

Indebtedness under the HSHC Credit Agreement and the "Loan Documents" referenced therein (as defined in the HSHC Credit Agreement), as amended, restated, supplemented or otherwise modified through the date hereof, including the Pledge Agreement, dated as of July 19, 2006, by and among Hydro Star Holdings Corporation and Union Bank of California, N.A. as Collateral Agent for the benefit of the Secured Parties (as defined in the HSHC Credit Agreement), as amended, restated, supplemented or otherwise modified and in effect from time to time.

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## Section 10

### Permitted Liens

Any Liens arising under any of the following:

A. The Promissory Note dated April 19, 2006 in the principal amount of [REDACTED] made by HSHC in favor of Hydro Star, LLC, as amended on March 10, 2010.

B. Amended and Restated Pledge Agreement, dated as of July 19, 2006 (as amended, restated, supplemented or otherwise modified and in effect), among Utilities, Inc., U.S. Bank National Association, as pledgee, the holders of Utilities, Inc.'s 6.58% Collateral Trust Notes, Series 2006-A, due July 21, 2036 and JPMorgan Chase Bank, N.A.

C. Prior to Closing only, Pledge Agreement, dated as of July 19, 2006, by and among Hydro Star Holdings Corporation and Union Bank of California, N.A. as Collateral Agent for the benefit of the Secured Parties (as defined in the HSHC Credit Agreement), as amended, restated, supplemented or otherwise modified and in effect from time to time (so long as all such Liens are released prior to Closing).

CONFIDENTIAL

REDACTED

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**PURCHASE AND SALE AGREEMENT**

**by and among**

**CORIX UTILITIES (ILLINOIS) LLC**

**and**

**THE PERSONS SET FORTH ON SCHEDULE A HERETO**

**Dated as of February 17, 2012**

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CONFIDENTIAL

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**Appendix A**  
**Schedule A**  
**Exhibit A**

CONFIDENTIAL

**PURCHASE AND SALE AGREEMENT**, dated as of February 17, 2012 (this “**Agreement**”), by and among Corix Utilities (Illinois) LLC, a limited liability company organized under the laws of Delaware (the “**Buyer**”), and the persons set forth on Schedule A hereto (each a “**Seller**” and, collectively, the “**Sellers**”).

## **RECITALS**

**WHEREAS**, the Sellers collectively own 100% of the issued and outstanding membership interests (the “**Company Interests**”) in Hydro Star, LLC, a Delaware limited liability company (the “**Company**”); and

**WHEREAS**, in accordance with this Agreement, the Buyer desires to purchase from the Sellers, and the Sellers desire to sell to the Buyer, 100% of the Company Interests.

**NOW THEREFORE**, in consideration of the foregoing premises and the respective representations and warranties, covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**SECTION 1.1. Definitions.** Capitalized terms used in this Agreement have the meanings ascribed to them by definition in this Agreement or in Appendix A hereto.

## **ARTICLE II**

### **PURCHASE AND SALE**

#### **SECTION 2.1. Purchase and Sale of Company Interests; Letter of Credit.**

(a) Upon the terms and subject to the conditions set forth in this Agreement, at the Closing the Sellers will sell, transfer and deliver to the Buyer, and the Buyer will purchase from the Sellers, all of the Company Interests for an aggregate purchase price for all Company Interests (the “**Purchase Price**”) equal to (i) [REDACTED] (the “**Base Purchase Price**”), plus (ii) the Interim Capital Contribution Amount, plus (iii) the Cabarrus Woods Adjustment Amount plus (iv) the Bradfield Farms Adjustment Amount, plus (v) the Sandy Creek Adjustment Amount, plus (vi) the Bayside Adjustment Amount, plus (vii) the Specified Distribution Adjustment Amount.

(b) No later than five (5) Business Days prior to the Closing Date, the Sellers Representative will deliver to the Buyer a statement (the “**Estimated Purchase Price Statement**”) setting forth the Sellers calculation of the Purchase Price and each component thereof (together with reasonable documentation of its calculation of each such component) (the “**Estimated Purchase Price**”).

(c) If the Buyer reasonably disagrees with the Sellers’ calculation of the Estimated Purchase Price or any component thereof, it shall promptly notify the Sellers

Representative of its disagreement, and provide its calculation of such disputed components and the Parties shall negotiate in good faith to resolve any such disagreements and to agree on the Estimated Purchase Price and each component thereof by 5:00 p.m. New York time on the last Business Day prior to the Closing Date. If the Buyer and the Sellers Representative mutually agree on an adjustment to the Estimated Purchase Price set forth in the Estimated Purchase Price Statement, then that mutually agreed amount will be used in the determination of the Purchase Price paid by the Buyer pursuant to Section 2.3(a)(i). If the Buyer and the Sellers Representative are unable to mutually agree prior to the Closing Date on any change proposed by the Buyer to the Estimated Purchase Price set forth in the Estimated Purchase Price Statement, then (i) the Estimated Purchase Price set forth in the Estimated Purchase Price Statement delivered by the Sellers Representative pursuant to Section 2.1(b) (as adjusted to reflect any changes mutually agreed to by the Buyer and the Sellers Representative) will be used in the determination of the Purchase Price paid by the Buyer pursuant to Section 2.3(a) and (ii) the Buyer may dispute the Sellers' calculation of the Purchase Price pursuant to Section 2.5.

(d) No later than five (5) Business Days following the date of this Agreement the Buyer will provide the Letter of Credit to the Sellers.

**SECTION 2.2. Closing.** The closing of the transactions contemplated by Section 2.1 of this Agreement (the "Closing") shall take place at 10:00 a.m., local time, at the offices of Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, New York on the sixth Business Day following the satisfaction or waiver of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing), or at such other time, date and place as may be mutually agreed upon in writing by the Parties (the date on which the Closing actually occurs being referred to as the "Closing Date").

**SECTION 2.3. Transactions to be Effected at the Closing.**

(a) At the Closing, the Buyer will:

(i) pay to the Sellers (by wire transfer of immediately available funds in U.S. Dollars to such account or accounts specified by the Sellers to the Buyer prior to the Closing) an aggregate amount equal to (A) the Purchase Price minus (B) the Aggregate VCS Payment Amount;

(ii) pay to the Company (by wire transfer of immediately available funds in U.S. Dollars to such account or accounts specified by the Sellers to the Buyer prior to the Closing) an amount equal to the Aggregate VCS Payment Amount; and

(iii) deliver to the Sellers all other documents, instruments or certificates required to be delivered by the Buyer at or prior to the Closing pursuant to Section 7.2 of this Agreement.

(b) At the Closing, each Seller will deliver to the Buyer:

(i) all such Seller's right, title and interest in and to the percentage of outstanding Company Interests set forth opposite such Seller's name on Schedule A under the heading "Company Interests" free and clear of all Liens (other than Liens (x) arising pursuant



to, or as a result of the transactions contemplated by, or described in, this Agreement, (y) arising pursuant to applicable securities Laws and (z) for Taxes not yet due or delinquent or being contested in good faith) pursuant to an Instrument of Assignment; and

(ii) all documents, instruments or certificates required to be delivered by such Seller at or prior to the Closing pursuant to Section 7.1 this Agreement.

(c) Immediately prior to the Closing, all unvested or not fully vested Value Creation Share Awards then outstanding shall become fully vested. Seller shall cause each Value Creation Share Award outstanding at the Closing to be satisfied and cancelled by the Company's payment to each holder of any Value Creation Share Award at the Closing in an amount in cash equal to the amount due to such holder under the Value Creation Shares Plan arising from or otherwise triggered by the transactions contemplated by this Agreement (less any applicable withholding Taxes). The payments to be made by the Company pursuant to this Section 2.3(c) shall be made concurrently with the Closing.

#### **SECTION 2.4. Withholding.**

(a) At Closing, each Seller shall have delivered to the Buyer a non-foreign affidavit described under Treasury Regulation Section 1.1445-2(b)(2)(iv)(A) stating that he is not a "foreign person" as defined in Treasury Regulation Section 1.897-9T(c) and (ii) a fully executed IRS Form W-8 or W-9.

(b) The Buyer shall be entitled to deduct and withhold from the amounts paid to Sellers pursuant to this Agreement the amounts required to be deducted and withheld under the Code or any applicable provision of any federal, state, local or foreign Law. Any amounts so withheld shall be paid over to the appropriate Governmental Entity. To the extent that amounts are so deducted and withheld, such amounts shall be treated for all purposes of this Agreement as having been paid to the applicable Person in respect of whom such deduction and withholding was made. The Buyer acknowledges that (assuming the delivery of the documents set forth in Section 2.4(a)) no withholding is anticipated to be required pursuant to this Section 2.4(b), and the Buyer shall notify a Seller in writing prior to making any such withholding as to its intention to so withhold and the basis for such withholding.

**SECTION 2.5. Purchase Price Adjustment.** If the Buyer and the Sellers are unable to mutually agree on the Estimated Purchase Price pursuant to Section 2.1(c), then within ten (10) days following the Closing Date the Buyer shall provide the Sellers Representative written notice of the components of the Purchase Price to which the Buyer objects and its proposed calculation of such components (the "**Objection Notice**"); provided, however, that (a) the Buyer shall only be entitled to object to any component of the Purchase Price to the extent it objected to such component pursuant to Section 2.1(c). For purposes of clarity, the Parties acknowledge and agree that the Buyer shall not be permitted to object to (i) the Purchase Price unless the Buyer objected to the Purchase Price prior to the Closing pursuant to Section 2.1(c) and (ii) any component of the Purchase Price (A) that the Buyer did not object to prior to the Closing pursuant to Section 2.1(c) or (B) to which the Buyer and the Sellers reached an agreement pursuant to Section 2.1(c). The Buyer and the Sellers shall be deemed to have agreed upon all items and amounts that are not disputed by the Buyer in the Objection Notice. The

Parties shall use reasonable efforts to resolve in good faith during the thirty (30) days following delivery of the Objection Notice any dispute properly asserted in the Objection Notice. If the Parties are unable to resolve any disputed items within thirty (30) days following delivery of the Objection Notice, the disagreement may be submitted for resolution to a firm of independent accountants of national standing to which the Buyer and the Sellers agree (the “**Independent Accountants**”), which firm shall make a final and binding determination as to only those components of the Purchase Price in dispute with respect to this Section 2.5 on a timely basis and promptly shall notify the Parties in writing of its resolution. The Independent Accountants shall not have the power to modify or amend any term or provision of this Agreement or modify previously agreed to items among the Parties. The costs and expenses of the Independent Accountants shall be allocated between the Parties based upon the percentage which the portion of the contested amount not awarded to each Party bears to the amount actually contested by such Party, as determined by the Independent Accountants. If the Buyer does not provide an Objection Notice within the time period and in the manner set forth in this Section 2.5, the Estimated Purchase Price set forth in the Estimated Purchase Price Statement shall be final and binding on the Parties for all purposes hereunder. If the Purchase Price paid by the Buyer pursuant to Section 2.3(a)(i), exceeds the Purchase Price that would have been paid had the amounts of the components determined by the Independent Accountants been used to determine the Purchase Price, the Sellers shall (by wire transfer of immediately available funds in U.S. Dollars to such account or accounts specified by the Buyer to the Sellers concurrently with the delivery of the Objection Notice) pay the Buyer, an amount equal to such excess.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES RELATING TO THE SELLERS**

Each of the Sellers, severally, but not jointly, and solely with respect to such Seller, represents and warrants to the Buyer that each statement contained in this Article III as it applies to such Seller is true and correct as of the date hereof (and on the Closing Date to the extent specifically provided in Section 7.1(a)), except as set forth in the disclosure schedules accompanying this Agreement (collectively, the “**Disclosure Schedule**”):

**SECTION 3.1. Organization and Existence.** Such Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation.

**SECTION 3.2. Authority and Enforceability.** Such Seller has the requisite power and authority to execute and deliver this Agreement and the Instrument of Assignment, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by such Seller of this Agreement and the Instrument of Assignment, and the consummation by such Seller of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action on the part of such Seller, and no other action is necessary on the part of such Seller to authorize this Agreement or the Instrument of Assignment or to consummate the transactions contemplated hereby or thereby. This Agreement has been (and at Closing, the Instrument of Assignment will have been) duly executed and delivered by such Seller and, assuming the due authorization, execution and delivery by each other Party hereto, this Agreement constitutes (and at Closing, the Instrument of Assignment will constitute) a legal, valid and binding obligation of such Seller,

enforceable against such Seller in accordance with its terms, except as limited by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws relating to creditors' rights generally and (b) general principles of equity, whether such enforceability is considered in a proceeding in equity or at Law. Highstar Capital Fund II, L.P. also represents and warrants that the Power of Attorney is legal, valid and binding and has not been revoked and remains in full force and effect and provides Highstar Capital GP II, L.P. with sufficient authority to execute and deliver this Agreement, and the Instrument of Assignment, and to consummate the transactions contemplated hereby and thereby, in each case on behalf of American General Life Insurance Company such that this Agreement is, and at the Closing the Instrument of Assignment will be, a legal, valid and binding obligation of American General Life Insurance Company, enforceable against American General Life Insurance Company in accordance with its terms, except as limited by (A) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws relating to creditors' rights generally and (B) general principles of equity, whether such enforceability is considered in a proceeding in equity or at Law.

**SECTION 3.3. Noncontravention.**

(a) Neither the execution, delivery and performance of this Agreement by such Seller, nor the consummation of the transactions contemplated by this Agreement, will, with or without the giving of notice or the lapse of time or both, (i) violate any provision of the Organizational Documents of such Seller, (ii) violate any Law or Order applicable to such Seller or (iii) violate any Contract to which the such Seller is a party or is legally bound, except in the case of clauses (ii) and (iii) to the extent that any such violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or a material adverse effect on such Seller's ability to perform its obligations hereunder.

(b) No consent, approval, license, permit, certificate or authorization from any Governmental Entity (each, a "Permit") of, or notification, registration, declaration or filing with a Governmental Entity (each, a "Filing"), is required in connection with the execution and delivery of this Agreement by such Seller, the performance by such Seller of its obligations hereunder and the consummation by such Seller of the transactions contemplated hereby other than (i) Permits and Filings set forth on Section 3.3(b) of the Disclosure Schedule, (ii) Permits and Filings which have been obtained or made by such Seller prior to the date hereof and (iii) Permits and Filings the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect or a material adverse effect on such Seller's ability to perform its obligations hereunder.

**SECTION 3.4. Legal Proceedings.** Except as set forth on Section 3.4 of the Disclosure Schedule, there are no Legal Proceedings pending or, to the Knowledge of the Sellers, threatened against or otherwise relating to such Seller, that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on such Seller's ability to perform its obligations hereunder.

**SECTION 3.5. Capitalization.** Such Seller owns (of record and beneficially) the percentage of outstanding Company Interests set forth opposite such Seller's name on Schedule A under the heading "Company Interests" free and clear of all Liens (other than any

Lien (a) arising pursuant to, or as a result of the transactions contemplated by, or described in, this Agreement, (b) arising pursuant to applicable securities Laws and (c) for Taxes not yet due or delinquent or being contested in good faith) and, at Closing such Seller will transfer to Buyer all of Seller's right, title and interest in and to such percentage of outstanding Company Interests free and clear of all Liens (other than Liens (A) arising pursuant to, or as a result of the transactions contemplated by, or described in, this Agreement, (B) arising pursuant to applicable securities Laws, and (C) for Taxes not yet due or delinquent or being contested in good faith).

**SECTION 3.6. Brokers.** Except as set forth on Section 3.6 of the Disclosure Schedule, such Seller does not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES RELATING TO THE COMPANY

The Sellers, severally, but not jointly, represent and warrant to the Buyer that each statement contained in this Article IV is true and correct as of the date hereof (and on the Closing Date to the extent specifically provided in Section 7.1(a)), except as set forth in the Disclosure Schedule:

**SECTION 4.1. Organization and Existence.** The Company is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has all requisite power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted. The Company is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties or assets owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

#### **SECTION 4.2. Capitalization.**

(a) The Company Interests set forth on Schedule A represent all of the issued and outstanding Company Interests. The Company Interests are duly authorized and validly issued and were not issued in violation of any preemptive rights, rights of first refusal or similar rights. Except for such Company Interests and Value Creation Share Awards, and any additional Value Creation Share Awards permitted to be awarded pursuant to Section 6.2(a)(iii), there are no other authorized or outstanding Equity Securities of the Company. The Sellers will cause the Aggregate VCS Payment Amount to be calculated and paid correctly in accordance with the Value Creation Shares Plan.

(b) Except as set forth on Section 4.2(b) of the Disclosure Schedule, (i) there are no outstanding direct or indirect restrictions on transfers (including, no rights of first refusal or similar rights) or voting of the Company Interests and (ii) no Person has been granted any agreement or option, or any right or privilege capable of becoming an agreement or option, for

the purchase, subscription, allotment or issue of any Equity Securities of the Company.

**SECTION 4.3. Subsidiaries.**

(a) A true and complete list of each Subsidiary of the Company, together with the jurisdiction of incorporation of each such Subsidiary is set forth on Section 4.3(a)(i) of the Disclosure Schedule. Except as set forth on Section 4.3(a)(ii) of the Disclosure Schedule, each Subsidiary of the Company is duly organized, validly existing and in good standing under the laws of its jurisdiction of its incorporation or formation, as applicable, and has all requisite power to own, lease and operate its properties and to carry on its business as now being conducted. Except as set forth on Section 4.3(a)(iii) of the Disclosure Schedule, each such Subsidiary of the Company is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties or assets owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Except as set forth on Section 4.3(b) of the Disclosure Schedule, all of the Equity Securities of each Subsidiary of the Company are owned (of record and beneficially), directly or indirectly, by the Company free and clear of all Liens, other than any (i) Lien arising pursuant to applicable securities Laws and (ii) Permitted Liens. Except as set forth on Section 4.3(b) of the Disclosure Schedule, (A) there are no outstanding direct or indirect restrictions on transfers (including, no rights of first refusal or similar rights) or voting of the Equity Securities of any Subsidiary of the Company and (B) no Person has been granted any agreement or option, or any right or privilege capable of becoming an agreement or option, for the purchase, subscription, allotment or issue of any Equity Securities of any Subsidiary of the Company.

(c) Except for the ownership interests in the Subsidiaries of the Company, none of the Company or any of its Subsidiaries own, directly or indirectly, any Equity Securities in any other Person.

**SECTION 4.4. Noncontravention.**

(a) The consummation of the transactions contemplated by this Agreement will not, with or without the giving of notice or the lapse of time or both, (i) violate any provision of the Organizational Documents of the Company or any of its respective Subsidiaries, (ii) violate any Law or Order applicable to the Company or any of its respective Subsidiaries or (iii) except as set forth on Section 4.4(a) of the Disclosure Schedule, violate in any material way any Contract to which the Company or any of its Subsidiaries is a party or is legally bound, except in the case of clauses (i), (ii) and (iii) to the extent that any such violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) No Permit or Filing with any Governmental Entity is required by the Company or any of its Subsidiaries in connection with the consummation of the transactions contemplated by this Agreement other than (i) Permits and Filings set forth on Section 4.4(b) of the Disclosure Schedule, (ii) Permits and Filings which have been obtained or made prior to the date hereof and (iii) Permits and Filings the failure of which to obtain or make would not

reasonably be expected to have a Material Adverse Effect or materially prevent or delay the consummation of the transactions contemplated hereby.

**SECTION 4.5. Financial Statements.** The Sellers have previously furnished or made available to the Buyer copies of (a) (i) the audited consolidated balance sheets of Hydro Star Holdings Corporation, a Delaware corporation (“HSHC”), and its Subsidiaries as of December 31, 2009 and December 31, 2010 and the related consolidated statements of income, shareholder’s equity and cash flows for the years ended December 31, 2009 and December 31, 2010 and (ii) the unaudited balance sheets of the Company as of December 31, 2009 and December 31, 2010 and the related statements of income, shareholder’s equity and cash flows for the Company for the years ended December 31, 2009 and December 31, 2010 (items (a)(i) and (ii) collectively, the “**Annual Financial Statements**”) and (b) (i) the unaudited consolidated balance sheet of HSHC and its Subsidiaries as of November 30, 2011 and the related consolidated statements of income, shareholder’s equity and cash flows for the eleven-month period ended on November 30, 2011 and (ii) the unaudited balance sheet of the Company as of September 30, 2011 and the related statements of income, shareholder’s equity and cash flows for the Company for the nine-month period ended on September 30, 2011 (items (b)(i) and (ii) collectively, the “**Interim Financial Statements**” and, together with the Annual Financial Statements, the “**Financial Statements**”). The Financial Statements have been (and the Additional Financial Statements will have been) prepared in all material respects in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), and, on that basis, present fairly, in all material respects, the consolidated financial condition, results of operations and cash flows of the Company and HSHC and its Subsidiaries as of the indicated dates and for the indicated periods (subject, in the case of the Interim Financial Statements, to normal year-end adjustments that were not or are not expected to be, individually or in the aggregate, materially adverse to the Company, HSHC and their Subsidiaries, taken as a whole, and the absence of notes).

**SECTION 4.6. Absence of Certain Changes or Events.** Except as set forth on Section 4.6 of the Disclosure Schedule, since September 30, 2011 with respect to the Company, and November 30, 2011 with respect to HSHC and its Subsidiaries (respectively, the “**Balance Sheet Dates**”), the business of the Company and its Subsidiaries has been conducted in accordance with the ordinary course of business consistent with past practices, except in connection with any process relating to a sale of the Company, including entering into this Agreement. Since the Balance Sheet Date, as applicable, there has not been any change or event that, individually or in the aggregate with other changes or events, has resulted in, or would be reasonably expected to result in, a Material Adverse Effect.

**SECTION 4.7. Legal Proceedings.** Except as disclosed on Section 4.7 of the Disclosure Schedule, there are no Legal Proceedings pending or, to Knowledge of the Sellers, threatened in writing against or otherwise relating to the Company or its Subsidiaries that (a) challenges or seeks to enjoin, alter or materially delay the transactions contemplated by this Agreement or (b) would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Except as disclosed on Section 4.7 of the Disclosure Schedule, none of the Company nor any of its Subsidiaries is subject to any Order of any Governmental Entity that (a) challenges, enjoins, alters or materially delays the transactions contemplated by this Agreement or (b) would, individually or in the aggregate, reasonably be expected to result in a



Material Adverse Effect.

**SECTION 4.8. Compliance with Laws; Permits; Filings.**

(a) Except for such noncompliance that would not, individually or in the aggregate, reasonably be expected to be material in any state to all Subsidiaries of the Company operating in such state, taken as whole, or as disclosed on Section 4.8(a) of the Disclosure Schedule, the Company and each of its Subsidiaries is, and since January 1, 2009 has been, in compliance with all, and not in default under or in violation of any Laws applicable to it or its business or properties.

(b) All Permits of all Governmental Entities that the Company and its Subsidiaries require in order to own, lease, maintain, operate and conduct their respective businesses as currently conducted, are held by the Company and its Subsidiaries, as applicable, except as disclosed on Section 4.8(b) of the Disclosure Schedule or such Permits that failure to have would not, individually or in the aggregate, reasonably be expected to be material in any state to all Subsidiaries of the Company operating in such state, taken as a whole. The Company and each of its Subsidiaries is, and since January 1, 2009 has been, collectively, in compliance with the terms of all such Permits, except for such noncompliance that would not, individually or in the aggregate, reasonably be expected to be material in any state to all Subsidiaries of the Company operating in such state, taken as whole.

(c) All Filings (including all rates, tariffs, franchises, service agreements and related documents) required to be made by the Company and its Subsidiaries under applicable Laws relating to the regulation of public utilities have been filed with the appropriate Governmental Entities, and all such Filings complied in all material respects, as of their respective dates, with all applicable requirements of applicable Laws, except where the failure to make such filings or for such filings to comply with all applicable requirements of applicable Laws, would not, individually or in the aggregate, be reasonably expected to be material in any state to all Subsidiaries of the Company operating in such state, taken as whole.

(d) The Company and each of its Subsidiaries, to the extent necessary to conduct their respective businesses as currently conducted, is duly authorized and franchised by the relevant Governmental Entity to provide water service and/or wastewater service and otherwise operate as a “water company”, “water utility”, “waterworks corporation”, “wastewater company”, “wastewater utility” or similar entity within the jurisdictions in which the Company and its Subsidiaries provide water and/or wastewater service, except where the failure to be so authorized or to hold such franchise would not, in the aggregate, reasonably be expected to be material in any state to all Subsidiaries of the Company operating in such state, taken as whole.

(e) This Section 4.8 does not relate to (i) employee benefits, which matters are the subject of Section 4.11, (ii) environmental matters, which matters are the subject of Section 4.13, or (iii) matters related to Taxes, which matters are the subject of Section 4.15.

**SECTION 4.9. Material Contracts.**

(a) Section 4.9(a) of the Disclosure Schedule sets forth a list of the following types of Contracts (other than any Contracts affecting real property) to which the Company or

any of its Subsidiaries is a party or otherwise is legally bound:

(i) each Contract with any Affiliate of the Company or any of its Subsidiaries;

(ii) any non-competition Contract or other Contract that purports to limit in any material respect the ability of the Company or any of its Subsidiaries from providing water or wastewater services in any location (excluding use or other limitations on owned, leased or subleased real property);

(iii) any Contract providing for indemnification by the Company or any of its Subsidiaries of any Person, except for any indemnification provisions that are (x) both (A) not material to the Company or any of its Subsidiaries, taken as a whole and (B) entered into in the ordinary course of business consistent with past practice or (y) entered into in connection with the purchase or sale of any water or wastewater system (for purposes of clarity, this clause (y) does not limit the Sellers' disclosure obligations with respect to Contracts required to be disclosed by Section 4.9(a)(iv));

(iv) any Contract pursuant to which the Company or any of its Subsidiaries purchased or sold any water or wastewater system during the five-year period prior to the date hereof;

(v) any Contract (other than computer or telecommunications software and hardware licenses for generally commercially available software or hardware entered into in the ordinary course of business) pursuant to which the Company or any of its Subsidiaries is granted, or grants to a third party, a right to use any material Intellectual Property, or is restricted in its right to use or register any material Intellectual Property, including any material license agreements, coexistence agreements, and covenants not to sue;

(vi) any Contract for Indebtedness; and

(vii) any Contract reasonably expected to result in future payments to or by the Company and/or any of its Subsidiaries in excess of \$250,000 per annum, except for Contracts that are terminable on less than ninety (90) days' notice without penalty (other than de minimus payments).

(b) The Contracts required to be set forth on Section 4.9(a) of the Disclosure Schedule are collectively referred to as the "**Material Contracts**". None of the Company or any of its Subsidiaries or, to the Knowledge of the Sellers, any other party thereto, is in, or, during the three-year period prior to the date hereof, has received written notice of any, violation of or default under (including any condition which with the passage of time or the giving of notice would cause such a violation or default under) any Material Contract other than those violations or defaults that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. A copy of each Material Contract (subject to redaction or non-disclosure to protect proprietary or confidential information concerning the Company or its Subsidiaries or as otherwise necessary to comply with the confidentiality obligations of the Company or its Subsidiaries) has previously been made available to the Buyer. Each Material Contract is a valid and binding agreement of the Company and its relevant Subsidiaries, as



applicable, is in full force and effect (except to the extent such Material Contract terminates or expires after the date hereof in accordance with its terms), and is enforceable against the Company or its relevant Subsidiaries and, to the Knowledge of the Sellers, each other party thereto, in accordance with its terms, except (i) as limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws relating to creditors' rights generally, (ii) as limited by general principles of equity, whether such enforceability is considered in a proceeding in equity or at Law or (iii) for such failures to be valid and binding or in full force and effect that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Each of the Company and its relevant Subsidiaries has performed in all material respects all obligations required to be performed by it under each Material Contract and, to the Knowledge of the Sellers, each other party to each Material Contract has performed in all material respects all obligations required to be performed by it under each Material Contract, in each case except for such failures as would not individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) Except as set forth on Section 4.9(c) of the Disclosure Schedule, the consummation of the transactions contemplated by this Agreement will not (i) result in the loss or impairment of any material rights under any Material Contract, (ii) trigger the payment of any additional amounts with respect to any Material Contract, other than any immaterial amount or (iii) require the consent of any third party under a Material Contract.

#### **SECTION 4.10. Real Property.**

(a) Owned Real Property. The Company or a Subsidiary of the Company has good and marketable fee title to each parcel of real property purported to be owned by the Company and its Subsidiaries (the "**Company-Owned Real Property**") which are material to the business or consolidated financial condition of the Company or any of its Subsidiaries free and clear of all Liens, except for Permitted Liens.

(b) Leased Real Property. Section 4.10(b) of the Disclosure Schedule contains a list of all leases and subleases (such leases and subleases that are required to be set forth on Section 4.10(b) of the Disclosure Schedule, collectively, the "**Real Property Leases**") under which the Company or any of its Subsidiaries is lessee and which provide for payments by the Company or any of its Subsidiaries in any one case annual payments of \$100,000 or more (the "**Company-Leased Real Property**" and, together with the Company-Owned Real Property, the "**Real Property**"). None of the Company or any of its respective Subsidiaries or, to the Knowledge of the Sellers, any other party thereto, is in, or, during the three-year period prior to the date hereof, has received written notice of any, violation of or default under (including any condition which with the passage of time or the giving of notice would cause such a violation or default under) any Real Property Leases other than those violations or defaults that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. A copy of each Real Property Lease (subject to redaction or non-disclosure to protect proprietary or confidential information concerning the Company or its Subsidiaries or as otherwise necessary to comply with the confidentiality obligations of the Company or its Subsidiaries) has previously been made available to the Buyer. Each Real Property Lease is a valid and binding agreement of the Company and its relevant Subsidiaries, as applicable, is in full force and effect (except to the extent such Real Property Lease terminates or expires after the date hereof in accordance with its

terms), and is enforceable against the Company or its relevant Subsidiaries and, to the Knowledge of the Sellers, each other party thereto, in accordance with its terms, except (i) as limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws relating to creditors' rights generally, (ii) as limited by general principles of equity, whether such enforceability is considered in a proceeding in equity or at Law or (iii) for such failures to be valid and binding or in full force and effect that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Each of the Company and its relevant Subsidiaries has performed in all material respects all obligations required to be performed by it under each Real Property Lease and, to the Knowledge of the Sellers, each other party to each Real Property Lease has performed in all material respects all obligations required to be performed by it under each Real Property Lease, in each case except for such failures as would not individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) This Section 4.10 contains the sole and exclusive representations and warranties relating to real property.

#### **SECTION 4.11. Employee Benefits.**

(a) Section 4.11(a) of the Disclosure Schedule includes a list of all Benefit Plans maintained or contributed to by the Company or any of its ERISA Affiliates for the benefit of any present or former directors, officers or employees of the Company or any of its Subsidiaries (collectively, the "**Company Benefit Plans**"). The Sellers have delivered or made available to the Buyer copies of (i) each Company Benefit Plan, (ii) the most recent summary plan description for each Company Benefit Plan for which such a summary plan description is required, (iii) the most recent annual report (on IRS Form 5500) for each Company Benefit Plan for which such a report is required and (iv) the most recent favorable determination letters from the Internal Revenue Service with respect to each Company Benefit Plan intended to qualify under Section 401(a) of the Code.

(b) Except as set forth on Section 4.11(b) of the Disclosure Schedule:

(i) none of the Company Benefit Plans, and no Benefit Plan maintained by an ERISA Affiliate, is subject to Title IV of ERISA or is a multiemployer plan or a multiple employer welfare arrangement within the meaning of Section 3(37) and 3(40) of ERISA, respectively;

(ii) each Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code is subject to a favorable determination letter from the IRS and, to the Knowledge of the Sellers, no event has occurred and no condition exists that is reasonably likely to result in the revocation of any such determination;

(iii) each Company Benefit Plan has been maintained in all material respects in compliance with its terms and applicable Law, including ERISA and the Code; and

(iv) to the Knowledge of the Sellers, no Company Benefit Plan is reasonably expected to give rise to a tax under Section 409A of the Code to the extent the terms of the plan are complied with.

(c) There are no pending or, to the Knowledge of the Sellers, threatened claims by or against or otherwise in respect of any of Company Benefit Plan (other than routine claims for benefits).

(d) No Company Benefit Plan provides benefits, including without limitation death or medical benefits (whether or not insured), with respect to present or former directors or employees of the Company or its Subsidiaries beyond their retirement or other termination of service, other than (i) coverage mandated solely by applicable Law, (ii) death or retirement benefits under any "employee pension benefit plan" within the meaning of Section 3(2) of ERISA, (iii) deferred compensation benefits accrued as liabilities on the books of the Company or (iv) benefits the costs of which are borne by the present or former director or employee or his or her beneficiary.

(e) Except as set forth on Section 4.11(e) of the Disclosure Schedule, to the Knowledge of the Sellers, each person, who is providing services to the Company or its Subsidiaries or who has provided services during the past four years, is and has been properly treated or classified in all material respects, (i) as an employee or independent contractor and (ii) as "exempt" or "non-exempt," in each case, for purposes of the Company Benefit Plans, and applicable wage payment laws, applicable tax withholding requirements, applicable overtime requirements, and liability accruals.

(f) All contributions required to be made to and all amounts required to be credited under any Company Benefit Plan (whether required pursuant to the terms of the Company Benefit Plan, applicable Law or otherwise) have been timely made or accrued in accordance with GAAP, as the case may be.

(g) Except as set forth on Section 4.11(g) of the Disclosure Schedule or except as required by applicable Law, neither the Company nor any of its ERISA Affiliates has a contract, plan or commitment, whether legally binding or not, to adopt any plan, agreement or arrangement that would be a Company Benefit Plan if adopted.

(h) Except as set forth on Section 4.11(h) of the Disclosure Schedule and payments required under the Value Creation Shares Plan, the consummation of the transactions contemplated by this Agreement, whether alone or together with any other event, will not give rise to liability for severance or termination or other pay, or accelerate the time of payment or vesting or increase the amount of compensation or benefits due to any present or former employee, director or officer of the Company or its Subsidiaries or their beneficiaries. Except as set forth on Section 4.11(h) of the Disclosure Schedule, no amounts payable under the Company Benefit Plans will fail to be deductible for U.S. federal income tax purposes by virtue of Section 280G or Section 162(m) of the Code.

#### **SECTION 4.12. Labor and Employment Matters.**

(a) Neither the Company nor any of its Subsidiaries are party to any written employment agreements that obligate the Company or any of its Subsidiaries to pay an annual salary to an employee of the Company or any of its Subsidiaries, other than written employment

agreements that are terminable at will by the Company or any of its Subsidiaries, as applicable, without penalty.

(b) To the Knowledge of the Sellers, there are no pending strikes, labor disputes, work stoppages, requests for representation, pickets, work slow-downs due to labor disagreements or any actions or arbitrations that involve the labor or employment relations of the Company or any of its Subsidiaries. None of the Company or any of its Subsidiaries is party to any collective bargaining agreement.

**SECTION 4.13. Environmental Matters.**

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or except as disclosed on Section 4.13(a) of the Disclosure Schedule: (i) the Company and its Subsidiaries have been (since January 1, 2007) and are in compliance with all applicable Environmental Laws; (ii) there are no Legal Proceedings, administrative proceedings, notices of violation written investigations or written requests for information pending or, to the Knowledge of the Sellers, threatened in writing against the Company or any of its Subsidiaries alleging a violation of or liability under any Environmental Law; (iii) neither the Company nor any of its Subsidiaries are subject to any administrative or judicial orders, or subject to any enforceable written agreements with any Governmental Entity, pursuant to any Environmental Law; and (iv) since January 1, 2007, there have been no Releases of Hazardous Substances by the Company or any of its Subsidiaries or at any property currently or formerly owned or operated by the Company or any Subsidiary (A) with respect to which the Company or any Subsidiary would reasonably be expected to be required to undertake environmental investigation or remediation pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., or other federal or state Environmental Laws relating to the remediation of contaminated property, or (B) that would reasonably be expected to result in liability for property damage or personal or bodily injury pursuant to any applicable Law, including common law.

(b) Except as set forth on Section 4.13(b) of the Disclosure Schedule: (i) the Company and its Subsidiaries hold all material Environmental Permits required for the current operations of the Company and its Subsidiaries and to the extent that any such Environmental Permit has expired, have applied for a renewal of said Environmental Permit in a timely fashion so as to allow the continued operation of the Company's or its Subsidiary's facility in compliance with applicable Environmental Law; and (ii) except as could not reasonably be expected to have a Material Adverse Effect, the Company and its Subsidiaries are in compliance with such Environmental Permits.

(c) Except with respect to Section 4.5, Section 4.6 and Section 4.17, this Section 4.13 contains the sole and exclusive representations and warranties relating to Environmental Laws, Environmental Permits and other environmental matters.

**SECTION 4.14. Insurance.** Each of the Company, its Subsidiaries and their respective businesses and/or properties is insured to the extent specified under the insurance policies listed on Section 4.14 of the Disclosure Schedule. To the Knowledge of the Sellers, no written notice of cancellation or termination has been received by the Company or any of its

Subsidiaries with respect to any such material policies that have not been replaced on substantially similar terms prior to the date of such cancellation or termination. To the Knowledge of the Sellers, there is no claim or basis for any claim of default, cancellation, nonrenewal or termination under any such material policy. All material insurance policies of the Company and its Subsidiaries are valid, in full force and effect and enforceable policies and all premiums with respect thereto have been or will be timely paid. Each of the Company and its Subsidiaries is insured in such amounts on such terms and against such risks and losses as (x) the Company reasonably believes are customary in all material respects for companies in the United States conducting the business conducted by the Company or the applicable Subsidiaries (taking into account the location and size of such entity) and (y) as is required by applicable Law.

**SECTION 4.15. Taxes.** Except as set forth on Section 4.15 of the Disclosure Schedule:

(a) All material Tax Returns required to have been filed by the Company and each of its Subsidiaries have been timely filed with the appropriate Taxing Authority and each such Tax Return is true, correct and complete in all material respects and reflects the liability for Taxes for the period reflected on such Tax Return. All Taxes shown on such Tax Returns, have been paid, except for Taxes not yet due and payable, for which appropriate reserves are reflected on the balance sheet of the Company and its Subsidiaries.

(b) To the Knowledge of the Sellers, there is no audit pending against the Company or any of its Subsidiaries in respect of any Taxes, and no deficiency in respect of Taxes has been assessed or proposed, whether in writing or orally, against the Company or any of its Subsidiaries by any Taxing Authority. There are no material Liens on any of the assets of the Company or any of its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax, other than Liens for Taxes not yet due and payable.

(c) The Company and each of its Subsidiaries has withheld and timely paid to the appropriate Taxing Authority all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or any other third party.

(d) Neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) Neither the Company nor any of its Subsidiaries is a party to any Tax allocation, indemnification or sharing agreement.

(f) Neither the Company nor any of its Subsidiaries has ever been a member of any affiliated group of corporations (within the meaning of section 1504 of the Code or any similar provision of state or local Law) that has filed a combined, consolidated or unitary income Tax Return, other than the affiliated group of corporations of which the Company is currently the common parent. Neither the Company nor any of its Subsidiaries is liable for the Taxes of any other Person under Treasury Regulation section 1.1502-6 or any similar provision of state or local (other than Taxes of any corporation that is or has been a member of the affiliated group of

corporations of which the Company is the common parent) as a transferee or successor, by Contract or otherwise.

(g) Neither the Company nor any of its Subsidiaries has engaged in any listed transactions within the meaning of Treasury Regulation section 1.6011-4(b) or any similar provision of state or local Law.

(h) Neither the Company nor any of its Subsidiaries has been either a “distributing corporation” or a “controlled corporation” within the meaning of Section 355 of the Code.

(i) Neither the Company nor any of its Subsidiaries has received notice from any jurisdiction in which it does not file Tax Returns that it may be subject to taxation therein.

(j) Sellers have delivered to Buyer correct and complete copies of federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Company or any of its Subsidiaries, filed or received since December 31, 2008.

**SECTION 4.16. Intellectual Property.**

(a) Section 4.16(a) of the Disclosure Schedule identifies all Intellectual Property that is (i) owned by the Company and/or its Subsidiaries and (ii) either subject to an application or registration (which application or registration is accurately listed on Section 4.16(a) of the Disclosure Schedule by name, owner and, where applicable, registration or application number and jurisdiction). The Company or one of its Subsidiaries owns all of the Intellectual Property items set forth in Section 4.16(a) of the Disclosure Schedule.

(b) Except as set forth on Section 4.16(b) of the Disclosure Schedule, the Company and its Subsidiaries own, or to the Knowledge of the Sellers, have adequate rights to use the Intellectual Property necessary for the Company and its Subsidiaries to operate their businesses as currently conducted, except to the extent the failure to possess adequate rights in any Intellectual Property would not be material to the business of the Company and its Subsidiaries in the aggregate.

(c) Except as set forth on Section 4.16(c) of the Disclosure Schedule, there currently is not and, since January 1, 2009, has not been (a) any material claimed or, to the Knowledge of Sellers, threatened in writing infringement, misappropriation or other violation by the Company or any of its Subsidiaries of any Intellectual Property owned by third-parties or (b) to the Knowledge of Sellers, any material infringement, misappropriation or other violation by a third party of any Intellectual Property owned by the Company or its Subsidiaries.

**SECTION 4.17. Absence of Undisclosed Liabilities.** Except as disclosed on Section 4.17 of the Disclosure Schedule, none of the Company or any of its Subsidiaries have any liability or obligation, absolute or contingent, of a nature that would be required by GAAP to be reflected in a consolidated balance sheet of the Company and its Subsidiaries, except liabilities, obligations or contingencies that (a) are accrued or reserved against in the Financial Statements, (b) were incurred or accrued since the Balance Sheet Dates, as applicable, in the ordinary course of business (including Liens for current taxes and assessments not in default) or



(c) would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

**SECTION 4.18. Indebtedness.** Section 4.18(a) of the Disclosure Schedule sets forth all of the outstanding Indebtedness of the Company and its Subsidiaries. At the Closing, except as set forth on Section 4.18(b) of the Disclosure Schedule and any Indebtedness arising as a result of the Buyer's financing in connection with the transactions contemplated by this Agreement, neither the Company nor any of its Subsidiaries shall have any Indebtedness.

**SECTION 4.19. Affiliate Transactions.** Except as set forth on Section 4.9(a) of the Disclosure Schedule or Section 4.19 of the Disclosure Schedule, there are no Contracts between or among the Company or any of its Subsidiaries, on the one hand, and any of their Affiliates (other than the Company and its Subsidiaries), on the other hand.

**SECTION 4.20. Brokers.** Neither the Company nor any of its Subsidiaries has any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

**SECTION 4.21. Dividends and Distributions.** Except as set forth on Section 4.21 of the Disclosure Schedule, during the three year period prior to the date hereof, (a) the Company has not declared, set aside or paid any dividends on, or made any other distributions (whether in cash, stock or property) in respect of, any of its Equity Securities and (b) neither HSHC nor Utilities, Inc. has declared, set aside or paid any dividends on, or made any other distributions (whether in cash, stock or property) in respect of, any of their respective Equity Securities.

**SECTION 4.22. Regulation as a Holding Company.** Neither the Company nor any of its Subsidiaries is a "public utility company" or a "holding company" or a "subsidiary company" or an "affiliate" of any holding company which is required to register as a holding company under the Public Utility Holding Company Act of 2005, as amended (the "**Holding Company Act**"), in each case as defined in the Holding Company Act.

**SECTION 4.23. Assets; Rates.** Except for such tangible personal property the failure of which to have good and valid title to would not reasonably be expected to materially impair the conduct of operations of the Company and its Subsidiaries, taken as a whole, each of the Company and its relevant Subsidiaries has good and valid title to all tangible personal property which it purports to own, except for assets consumed in the ordinary course of business since the Balance Sheet Dates, as applicable, and which are material to the business or financial condition of the Company or relevant Subsidiaries free and clear of all Liens except Permitted Liens. Except as set forth in Section 4.23 of the Disclosure Schedule, each item of material tangible property is in good working order and is adequate and sufficient for the Company's or its Subsidiaries' current use, ordinary wear and tear expected, except for any failures that do not or would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

**SECTION 4.24. Exclusive Representations and Warranties.** Except for the representations and warranties contained in Article III and Article IV of this Agreement (as

qualified by the Disclosure Schedule), none of the Sellers nor any of their respective directors, officers, employees, stockholders, agents, Affiliates or Representatives, has made or shall be deemed to have made any representation or warranty to the Buyer, express or implied, at Law or in equity, including, without limitation, as to the accuracy or completeness of any information, documents or materials regarding the Company or any of their respective Subsidiaries furnished or made available to the Buyer and its representatives in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, the transactions contemplated by this Agreement (“**Evaluation Material**”). The Sellers hereby disclaim any such representations or warranties and the Buyer hereby disclaims any reliance upon any Evaluation Material and each acknowledges and agrees that none of the Sellers nor any of their respective directors, officers, employees, stockholders, agents, Affiliates or representatives shall have or be subject to any liability to the Buyer or any other Person resulting from the distribution to the Buyer of, or the Buyer’s use or reliance on, any such Evaluation Material.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Sellers that each statement contained in this Article V is true and correct as of the date hereof (and on the Closing Date to the extent specifically provided in Section 7.2(a)), except as set forth in the Disclosure Schedule.

**SECTION 5.1. Organization and Existence.** The Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware.

**SECTION 5.2. Authority and Enforceability.** The Buyer has the requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by the Buyer of this Agreement and the consummation by the Buyer of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Buyer, and no other action is necessary on the part of the Buyer to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Buyer and, assuming the due authorization, execution and delivery by each other party hereto, constitutes a legal, valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as limited by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws relating to creditors’ rights generally and (b) general principles of equity, whether such enforceability is considered in a proceeding in equity or at Law.

**SECTION 5.3. Noncontravention.**

(a) Neither the execution, delivery and performance of this Agreement by the Buyer, nor the consummation of the transactions contemplated by this Agreement, will, with or without the giving of notice or the lapse of time or both, (i) violate any provision of the Organizational Documents of the Buyer, (ii) violate any Law or Order applicable to the Buyer or (iii) violate any Contract to which the Buyer is a party or is legally bound, except in the case of



clauses (ii) and (iii) to the extent that any such violation would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Buyer's ability to perform its obligations hereunder.

(b) Assuming the accuracy of Sellers' representations in Sections 3.3(b) and 4.4(b), no Permit of, or Filing with, any Governmental Entity is required in connection with the execution and delivery of this Agreement by the Buyer, the performance by the Buyer of its obligations hereunder and the consummation by the Buyer of the transactions contemplated hereby other than (i) Permits and Filings set forth on Section 5.3(b) of the Disclosure Schedule, (ii) Permits and Filings which have been obtained or made by the Buyer prior to the date hereof and (iii) Permits and Filings the failure of which to obtain or make would not reasonably be expected to have a material adverse effect on the Buyer's ability to perform its obligations hereunder.

**SECTION 5.4. Legal Proceedings.** There are no Legal Proceedings pending or, to the Knowledge of the Buyer, threatened against or otherwise relating to the Buyer that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Buyer's ability to perform its obligations hereunder.

**SECTION 5.5. Available Funds.** The Buyer has access to, and will have access to at the Closing, cash which is sufficient to enable it to consummate the transactions contemplated by this Agreement (including paying the Purchase Price and other costs and expenses contemplated by this Agreement). Corix Infrastructure Inc. has delivered a valid and binding equity commitment letter to Highstar Capital Fund II, L.P. pursuant to which Corix Infrastructure Inc. has committed to fund the Purchase Price to the Buyer at the Closing (a copy of which has been provided to the Sellers) and Corix Infrastructure Inc. has received a valid and binding equity commitment letter from certain affiliates of British Columbia Investment Management Corporation ("bcIMC") pursuant to which bcIMC has committed to fund or cause its Affiliates to fund the Purchase Price to Corix Infrastructure Inc. at the Closing (a copy of which has been provided to the Sellers) (collectively, the "**Commitment Letters**"). Each Commitment Letter is in full force and effect and has not been withdrawn or terminated, or otherwise amended or modified in any respect, and no withdrawal, termination, amendment or modification is contemplated. Each Commitment Letter is a legal, valid and binding obligation of the parties thereto. There are no other agreements, side letters or arrangements relating to any Commitment Letter that could affect the availability of the funding of the Purchase Price under such Commitment Letters (the "**Financing**"), and the Buyer does not know of any facts or circumstances that may be expected to result in any of the conditions set forth in any Commitment Letter not being satisfied, or the Financing not being available to the Buyer, on the Closing Date. No event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach on the part of the Buyer or any other party under any term or condition of any Commitment Letter, and the Buyer has no reason to believe that any term or condition of closing to be satisfied by under the Commitment Letters will not be timely satisfied. Any and all commitment fees or other fees required by each Commitment Letter to be paid have been paid on or before the date of this Agreement. The Commitment Letters contain all of the conditions precedent to the obligations of the parties thereunder to make the Financing available on the terms therein. The Financing will be available to the Buyer on a timely basis to consummate the transactions contemplated by this Agreement and the Buyer knows of no fact or

circumstance that would cause the Financing to be unavailable on such basis. It is acknowledged and agreed by the Parties that the obligations of the Buyer under this Agreement are not subject to any conditions regarding the Buyer's, its Affiliate's, or any other Person's ability to obtain financing for the consummation of the transactions contemplated hereby.

**SECTION 5.6. No Distribution.** The Buyer acknowledges that the Company Interests being acquired pursuant to this Agreement have not been registered under the Securities Act of 1933, as amended, or under any state or foreign securities laws. The Buyer is purchasing the Company Interests for its own account and not with a view to any public resale or other distribution thereof, except in compliance with applicable securities laws.

**SECTION 5.7. Investigation.** The Buyer is a sophisticated entity, is knowledgeable about the industry in which the Company and its Subsidiaries operate, is experienced in investments in such businesses and is able to bear the economic risk associated with the purchase of the Company Interests and the other transactions contemplated by this Agreement. The Buyer has such knowledge and experience as to be aware of the risks and uncertainties inherent in the purchase of the type contemplated in this Agreement, as well as the knowledge of the Company and its Subsidiaries and their respective operations in particular, and has independently, based on such information made its own analysis and decision to enter into this Agreement. The Buyer has had access to the books, records, facilities and personnel of the Company and its respective Subsidiaries for purposes of conducting its due diligence investigation of the Company and its respective Subsidiaries.

**SECTION 5.8. Regulation as a Holding Company.** Neither the Buyer nor any of its Subsidiaries is a "public utility company" or a "holding company" or a "subsidiary company" or an "affiliate" of any holding company which is required to register as a holding company under the Holding Company Act, in each case as defined in the Holding Company Act.

**SECTION 5.9. No Conflicting Contracts.** Neither the Buyer, nor to the Knowledge of the Buyer any of its Affiliates, is a party to any Contract to build, develop, acquire or operate any water utility facility, or otherwise owns assets or is engaged in a business, that would reasonably be expected to materially impair or prevent the Closing (including materially impairing or preventing any Governmental Entity's granting of a Permit).

**SECTION 5.10. Brokers.** Except for Wells Fargo Securities, LLC (the fees and expenses of which will be the responsibility of Buyer and/or its Affiliates), neither the Buyer nor any of its Affiliates has any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

## ARTICLE VI

### COVENANTS

**SECTION 6.1. Access to Information.**

(a) During the Interim Period, the Sellers shall cause the Company and its Subsidiaries to provide the Buyer and its Representatives (including any Buyer appointee to the Transition Committee) with access to the Company's and its Subsidiaries' officers, employees,

material properties and all material information regarding the Company and its Subsidiaries and their material operations, in each case, as reasonably requested by the Buyer and to the extent such information is readily available or could be readily obtained without any material interference with the business or operations of the Sellers, the Company or the Company's Subsidiaries, in each case, other than information (i) which such Seller reasonably believes it, the Company or any of their respective Subsidiaries are prohibited from providing to the Buyer by reason of applicable Law, (ii) which constitutes or allows access to information protected by attorney/client privilege or (iii) which such Seller, the Company or Subsidiary are required to keep confidential or to prevent access to by reason of any Contract with a third party; provided, however, that such access (A) shall be conducted at the Buyer's expense, during normal business hours and under the supervision of the Company or any of its Subsidiaries' personnel, (B) does not disrupt the normal operations of the Company or any of its Subsidiaries, (C) shall comply with all applicable Laws, including those regarding the exchange of competitively-sensitive information and (D) to employees shall only be permitted if coordinated between the Buyer and either an officer of the Company or a member of the Transition Committee appointed by the Sellers. Notwithstanding anything contained herein, the Buyer shall not be permitted during the Interim Period to contact any of the Company's or its Subsidiaries' vendors, customers or suppliers, or any Governmental Entities (except in connection with applications for Permits or Filings required to be made prior to the Closing under this Agreement and, in such case, only in accordance with the terms of this Agreement) regarding the operations or legal status of the Company or its Subsidiaries without receiving prior written consent from the Sellers and the Buyer shall not have the right to conduct any environmental testing, sampling or analysis (including any soil, water, groundwater, surface water or air testing, sampling or analysis) at, on, under or from any Real Property.

(b) Following the Closing, each of the Sellers shall be entitled to retain copies (at such Seller's sole cost and expense) of all books and records relating to its ownership of the Company and its Subsidiaries, as applicable, and their respective businesses, provided, however, that such retained copies shall be subject to the confidentiality obligations set forth in Section 6.5(c).

(c) After the Closing, at Sellers' sole cost and expense, the Buyer will, and will cause its Representatives to, afford to each of the Sellers, including their respective Representatives, reasonable access to all books, records, files and documents to the extent they are related to the Company and their respective Affiliates and equity holders in order to permit such Persons to prepare and file their respective Tax Returns and to prepare for and participate in any investigation with respect thereto, to prepare for and participate in any other investigation and defend any Legal Proceedings relating to or involving such Person, to discharge its obligations under this Agreement, to comply with financial reporting requirements, and for other reasonable purposes, and will afford such Person reasonable assistance in connection therewith. The Buyer will cause such records to be maintained for not less than six years from the Closing Date and will not dispose of such records thereafter without first offering in writing to deliver them to the Sellers; provided, however, that in the event that the Buyer transfers all or a portion of the business of the Company or any of its Subsidiaries to any third party during such period, the Buyer may transfer to such third party all or a portion of the books, records, files and documents related thereof, provided such third party transferee expressly assumes in writing the obligations of the Buyer under this Section 6.1(c).

## **SECTION 6.2. Conduct of Business Pending the Closing.**

(a) During the Interim Period and except as prohibited pursuant to this Section 6.2, the Sellers shall cause the Company and each of its Subsidiaries to use commercially reasonable efforts to conduct their businesses in, and not take any action not in, the ordinary course of business consistent with past practices and good water and wastewater utility practices (giving consideration to the location, size and technology of each water and wastewater system), and, subject to the requirements of this Agreement, to use commercially reasonable efforts to preserve, maintain and protect in all material respects their assets and properties, maintain its corporate organization (including good standing in applicable jurisdictions) and to keep available the services of their key officers and employees, to preserve their relationships with Governmental Entities and counterparties to Material Contracts and to comply in all material respects with applicable Laws. Without limiting the foregoing, during the Interim Period, except as otherwise expressly contemplated by this Agreement or set forth on Section 6.2(a) of the Disclosure Schedule or as consented to by the Buyer, which consent shall not be unreasonably withheld, conditioned or delayed, the Sellers shall cause the Company and each of its Subsidiaries not to:

(i) transfer, lease, license, guarantee, sell, mortgage, pledge, encumber or otherwise dispose of any of its material assets or properties, other than (A) sales or dispositions of obsolete or surplus assets, (B) sales and dispositions in connection with the normal repair and/or replacement of assets or properties or involuntary sales in lieu of condemnation or in connection with eminent domain or similar Legal Proceedings, (C) sales or dispositions required by and in accordance with any Material Contract or Real Property Lease, (D) the grant of easements, rights of way and non-monetary Liens on real property in the ordinary course of business consistent with past practice and not having or reasonably expected to, individually or in the aggregate, materially detract from the value of the relevant property or materially interfere with the Company's or relevant Subsidiary's conduct of its business in the ordinary course consistent with past practice, (E) consummation of the Bradfield Farms Transaction, the Bayside Transaction or the Sandy Creek Transaction, in each case, in accordance with the terms of the relevant transaction agreement made available to Buyer prior to the date hereof and (F) sales or dispositions contemplated by Section 6.2(a) of the Disclosure Schedule;

(ii) directly or indirectly acquire, whether by merger or consolidating with, or acquiring all or substantially all of the assets of, any other Person;

(iii) grant, issue, sell, pledge, encumber or otherwise dispose of, or split or combine any of the Equity Securities of the Company or any of its Subsidiaries, other than any award of additional Value Creation Shares provided that the aggregate number of outstanding Value Creation Shares shall not exceed the 10,000,000 Value Creation Shares to the extent authorized under the Value Creation Shares Plan;

(iv) declare, set aside or pay any dividends on, or make any other

distributions (whether in cash, stock or property) in respect of, any of the Equity Securities of the Company or any of its Subsidiaries (other than the distribution of (u) the Cabarrus Woods Retained Amount; (v) the Bradfield Farms Amount concurrently with or after the consummation of the Bradfield Farms Transaction; (w) the Specified Distribution, (x) the Bayside Amount concurrently with or after the consummation of the Bayside Transaction and (y) the Sandy Creek Amount concurrently with or after the consummation of the Sandy Creek Transaction (each, a “Permitted Dividend” and collectively, the “Permitted Dividends”));

(v) liquidate, dissolve, reorganize or otherwise wind up their business or operations;

(vi) purchase any Equity Securities of any Person other than a Subsidiary, except for short-term investments or cash equivalents made in the ordinary course of business consistent with past practices;

(vii) amend or modify their respective Organizational Documents;

(viii) effect any recapitalization or reclassification of the Company or any of its Subsidiaries or effect any like change in the Company’s or any of its Subsidiaries’ equity capitalization (other than capital contributions by the Sellers to the Company or by the Company or any of its Subsidiaries to any other Subsidiary so long as any such capital contributions by the Sellers is done with the prior written consent, not to be unreasonably withheld, of the Buyer);

(ix) engage in any material new line of business;

(x) (A) change any material Tax or accounting methods, policies or practices, except as required by a change in GAAP or applicable Law, (B) make, revoke or amend any material Tax election or amend any material Tax Return or (C) enter into any settlement or closing agreement affecting any material Tax liability, if such action described in subclauses (A), (B) or (C) would reasonably be expected to materially and adversely affect the Company or any of its Subsidiaries after the Closing;

(xi) adopt any new or make any material amendment to any Company Benefit Plan, increase the compensation and employee benefits of any officer or employee of the Company or any of its Subsidiaries except (A) any increases in the rate of compensation to any officer or employee in the ordinary course of business consistent with past practice that in the aggregate do not exceed █ of the per annum compensation currently paid to all officers and employees of the Company and its Subsidiaries, in the aggregate (not including in such calculation any payments permitted pursuant to clause (D) of this Section 6.2(a)(xi) or made under the Utilities, Inc. Annual Short Term Incentive Plan), (B) any increases pursuant to any existing Contracts or Benefit Plans, (C) any immaterial amendment to any Benefit Plan made in the ordinary course of business or (D) any payments payable to any officer or employee of the Company or any of its



Subsidiaries that has been agreed to by the Buyer and the Sellers;

(xii) create, incur, assume, guarantee or otherwise become liable with respect to any Indebtedness other than (A) in the ordinary course of business consistent with past practices, including in respect of customer advances, customer deposits and construction advances, in an aggregate amount not to exceed [REDACTED] (B) intercompany debt, (C) the incurrence of indebtedness for money borrowed or guarantees of indebtedness for money borrowed under the Utilities, Inc. Credit Agreement that would cause all indebtedness under such facility to exceed [REDACTED] outstanding at that time (not including in this calculation (1) such indebtedness incurred in emergency situations, (2) such indebtedness incurred for capital expenditures directed by a Governmental Entity but not otherwise included in the Capital Expenditure Plan, (3) any outstanding letters of credit issued as of the date hereof pursuant to the Utilities, Inc. Credit Agreement (or the renewal or replacement of such letters of credit)), the Sellers shall consult with, and reasonably consider any comments received from, the Buyer's appointees to the Transition Committee, or (D) the incurrence of indebtedness for money borrowed pursuant to the HSHC Credit Agreement (to the extent such Indebtedness is repaid by the Sellers at or prior to Closing); provided, however, that HSHC or Utilities, Inc. may in the Sellers' sole discretion amend, amend and restate, supplement, modify, refinance, renew, extend or replace the HSHC Credit Agreement or the Utilities, Inc. Credit Agreement, as applicable, or enter into a new credit facility to replace such facility, at then current market rates and then current market terms (to the extent that such indebtedness under the HSHC Credit Agreement is repaid by Sellers at or prior to Closing and the changes to the Utilities, Inc. Credit Agreement would not reasonably be expected to result in material additional costs to terminate such agreement as of Closing).

(xiii) other than in connection with the expenditures to be made under the Capital Expenditure Plan, (A) prior to the expiration or termination of the applicable waiting period imposed by any Governmental Entity under the HSR Act, other than in the ordinary course of business, enter into any new Material Contract; and (B) following the expiration or termination of the applicable waiting period imposed by any Governmental Entity under the HSR Act, (1) other than in the ordinary course of business, amend, replace, modify, terminate (unless the counterparty is in default under the applicable Material Contract and such termination is permitted) or waive any material term under any Material Contract, other than as permitted pursuant to Section 6.2(a)(xii) or (2) enter into any new Material Contract, other than to replace a then-effective Material Contract on substantially similar terms;

(xiv) other than in the ordinary course of business, (A) prior to the expiration or termination of the applicable waiting period imposed by any Governmental Entity under the HSR Act, other than in the ordinary course of business, enter into any new Real Property Lease; and (B) following the expiration or termination of the applicable waiting period imposed by any

Governmental Entity under the HSR Act, (1) other than in the ordinary course of business, amend, replace, modify, terminate (unless the counterparty is in default under the applicable Real Property Lease and such termination is permitted) or waive any material term under any Real Property Lease or (2) enter into any new Real Property Lease, other than to replace a then-effective Real Property Lease on substantially similar terms;

(xv) fail to maintain insurance in such amount and against such risks and losses as are consistent with the insurance heretofore maintained by or on behalf of the Company and its Subsidiaries;

(xvi) other than in connection with Section 6.2(b), make any commitment for, make or authorize any capital expenditures other than (A) capital expenditures that do not exceed, in the aggregate, [REDACTED] in any given fiscal year (the "Capital Expenditure Plan"); (B) capital expenditures directed by a Governmental Entity but not otherwise included in the Capital Expenditure Plan; or (C) capital expenditures with respect to emergency situations, provided, however, that the Company and its Subsidiaries may, in the sole discretion of the Sellers, delay the making of any capital expenditures included on the Capital Expenditure Plan and in the event any portion of the Capital Expenditure Plan is not utilized in 2012, such amount shall be added to the Capital Expenditure Plan for 2013; provided, further, the Sellers shall cause Utilities, Inc. to deliver to the Transition Committee a copy of the annual capital expenditure budget prior to approval of such budget by the Board of Directors of Utilities, Inc. and cause Utilities, Inc. to consult with and reasonably consider any comments to such budget received from the Buyer's appointees to the Transition Committee, provided, further, that prior to making any material deviation from any capital expenditure that is budgeted in the then applicable Capital Expenditure Plan for more than [REDACTED] or new, unbudgeted capital expenditures in excess of [REDACTED], the Sellers shall cause Utilities, Inc. shall to consult with, and reasonably consider any comments received from, the Buyer's appointees to the Transition Committee;

(xvii) make any material changes in financial accounting methods, principles or practices (or change an annual accounting period), except insofar as may be required by a change in GAAP or applicable Law or the prior application method was deemed inconsistent with GAAP;

(xviii) pay, discharge, settle or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than (A) the payment, discharge, settlement or satisfaction in accordance with their terms (or less than as required under their terms) of liabilities, claims or obligations reflected or reserved against in the most recent Financial Statement or Additional Financial Statement, as the case may be, (B) such payments, discharges, settlements and satisfactions paid for or by insurance policies for which the sole payment obligation of the Company or any of its Subsidiaries is the deductible payment under such policies, or (C) such payments, discharges, settlements and

satisfactions that do not require more than [REDACTED] in the aggregate for all such payments, discharges, settlements and satisfactions;

(xix) make any rate case filing unless the Company or its Subsidiaries, as applicable, have first consulted with, and reasonably consider any comments received from, the Buyer's appointees to the Transition Committee; provided, in no event shall the Company or any of its Subsidiaries be required to consult with the Buyer with respect to index pass throughs, rate trackers, reconciliations or other routine filings; and

(xx) agree or commit to do any of the foregoing.

(b) Notwithstanding Section 6.2(a) or any other provision herein, the Company and each of its Subsidiaries may take commercially reasonable actions with respect to emergency situations and/or to comply with applicable Laws (which means, in the case of capital expenditures, as directed by a Governmental Entity); provided, however, that the Sellers shall provide the Buyer with notice of such action as soon as reasonably practicable after taking such action.

(c) Notwithstanding anything to the contrary contained herein, the Parties acknowledge that (i) except for Permitted Dividends, none of the Company, HSHC or Utilities, Inc. or any of its Subsidiaries shall make or pay any dividends or any distributions (whether in cash, stock or property) to HSHC, the Company or the Sellers and (ii) HSHC and the Company may, in the sole discretion of the Sellers, use any cash they hold as of the date hereof or the proceeds of any amount contributed by the Sellers, directly or indirectly to the Company or any of its Subsidiaries, or the proceeds of any Permitted Dividend to pay any Indebtedness of HSHC and making or paying any Permitted Dividend or paying any such Indebtedness shall not affect the calculation of the Purchase Price.

### **SECTION 6.3. Letter of Credit.**

(a) The Buyer shall cause the Letter of Credit to remain in full force and effect until the Closing. The Sellers shall not draw upon, or exercise any rights with respect to, the Letter of Credit except pursuant to this Section 6.3 or Section 8.3 of this Agreement. The Sellers will return the Letter of Credit to the Buyer at the earlier of (a) the Closing and (b) 30 days after a termination of this Agreement in accordance with Article VIII in a situation where the Termination Fee is not payable by the Buyer.

(b) The Buyer agrees to cause the issuer to renew the Letter of Credit, in the same form from time to time during the term of the Agreement, at least 30 days prior to the expiration of the Letter of Credit or any renewal thereof so that a Letter of Credit issued by the issuer, or a different commercial bank in the United States or Canada (that can be drawn on in the United States) that satisfies the credit rating set forth in the definition of "Letter of Credit", to the Sellers shall be in full force and effect through the term of this Agreement and for at least 30 days after any termination of this Agreement. Notwithstanding the foregoing, if the issuer does not satisfy the renewal requirements of the previous sentence, the Sellers shall be permitted to immediately draw upon and exercise rights with respect to the Letter of Credit and retain such



funds until such time as the Sellers would have been required to return the Letter of Credit to the Buyer pursuant to Section 6.3; provided, however, if following such draw by the Sellers the Buyer delivers to the Sellers a replacement Letter of Credit issued by a commercial bank in the United States or Canada (that can be drawn on in the United States) that satisfies the credit rating set forth in the definition of "Letter of Credit", the Sellers shall promptly return such funds to the Buyer.

(c) Notwithstanding the foregoing, if the credit ratings of the commercial bank that provides the Letter of Credit cease to satisfy the requirements set forth in the definition of "Letter of Credit" contained herein and the Buyer does not, within one (1) Business Day after such requirements have ceased to be satisfied, provide to the Sellers a substitute letter of credit containing substantially identical terms to the Letter of Credit from a commercial bank in the United States or Canada (that can be drawn on in the United States) that satisfies such credit rating requirements, the Sellers shall be permitted to immediately draw upon and exercise rights with respect to the Letter of Credit and retain such funds until such time as the Sellers would have been required to return the Letter of Credit to the Buyer pursuant to Section 6.3; provided, however, if following such draw by the Sellers the Buyer delivers to the Sellers a replacement Letter of Credit issued by a commercial bank in the United States or Canada (that can be drawn on in the United States) that satisfies the credit rating set forth in the definition of "Letter of Credit", the Sellers shall promptly return such funds to the Buyer.

(d) The Parties acknowledge and agree that a draw upon the Letter of Credit by the Sellers shall not be considered an admission by the Buyer that a Termination Fee is due or payable. In the event the Sellers draw upon the Letter of Credit and a court of competent jurisdiction enters a final, nonappealable order that such Termination Fee was not due pursuant to the terms of this Agreement, the Sellers shall return the drawn funds to the Buyer.

**SECTION 6.4. Non-Solicitation.** From the date hereof through the Closing or earlier termination of this Agreement, none of the Sellers, the Company nor any of their Subsidiaries nor any of their respective Representatives shall, directly or indirectly, enter into, knowingly solicit, initiate or continue any discussions or negotiations with, or knowingly encourage or respond to any inquiries or proposals by, or participate in any negotiations with, or provide any information to, or otherwise cooperate in any way with, any Person or other entity or group, concerning any sale of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, or a majority of outstanding shares of capital stock of the Company or any conversion, consolidation, liquidation, dissolution or similar transaction involving the Company and its Subsidiaries other than with Buyer and its Representatives.

**SECTION 6.5. Confidentiality; Publicity.**

(a) The Parties shall reasonably cooperate to prepare and make a public announcement and create and implement a communications plan regarding this proposed transaction promptly following the date hereof. Notwithstanding the foregoing, none of the Parties will make any public announcement or issue any public communication regarding this Agreement or the proposed transaction or any matter related to the foregoing, without the prior written consent of the other Parties (not to be unreasonably withheld), except (a) if such announcement or other communication is required by applicable Law or Order, in which case the

Division of the United States Department of Justice, the United States Federal Trade Commission or the antitrust or competition law authorities of any other applicable jurisdiction (the “**Antitrust Authorities**”) and take all other reasonable actions to obtain clearance from the Antitrust Authorities. The Buyer shall exercise its reasonable best efforts, and the Sellers shall cause the Company and its Subsidiaries to use their reasonable best efforts, to prevent the entry in any Legal Proceeding brought by an Antitrust Authority or any other Governmental Entity of an Order that would prohibit, make unlawful or delay the consummation of the transactions contemplated by this Agreement.

(b) Other Regulatory Filings. The Buyer and the Sellers will use their reasonable best efforts to, and Sellers will cause the Company and its Subsidiaries to, as soon as reasonably practicable and in no event more than 60 days following the execution of this Agreement, prepare and file with each applicable Governmental Entity all Filings and requests for such Permits as may be necessary for the consummation of the transactions contemplated hereby in accordance with the terms of this Agreement. The Buyer and the Sellers will, and Sellers will cause the Company or its Subsidiaries to, diligently pursue and use their reasonable best efforts to obtain such Permits as soon as reasonably practical and will cooperate with each other in seeking such Permits. To such end, the Parties agree to make available the personnel and other resources of their respective organizations in order to obtain all such Permits. Each Party will promptly inform the other Parties of any material communication received by such Party from, or given by such Party to, any Governmental Entity from which any such Permit is required and of any material communication received or given in connection with any Legal Proceeding by a private party, in each case regarding any of the transactions contemplated hereby, and will permit the other Party to review any communication given by it to, and consult with each other in advance of any response to, or meeting or conference with, any such Governmental Entity or, in connection with any Legal Proceeding by a private party, with such other Person, and to the extent permitted by such Governmental Entity or other Person, give the other Party the opportunity to review such response and to attend and to participate in such meetings and conferences.

(c) Subject to Section 6.7(d), the Buyer agrees that the obtaining of required consents and approvals of parties to Contracts with the Company and its Subsidiaries, and any Filings or Permits with or from any Governmental Entity, are the responsibility of the Buyer, and that the Buyer shall take, or cause to be taken, all actions and to do, or cause to be done, all things required, necessary, proper or advisable to obtain such third-party consents and approvals of parties to Contracts with the Company and its Subsidiaries and such Filings or Permits with or from any Governmental Entity as are required, necessary, proper or advisable in connection with the consummation of the transactions contemplated hereby; provided, however, that the Sellers shall, and shall cause the Company and its Subsidiaries to cooperate with reasonable requests of the Buyer in connection with obtaining such consents and approvals. Without limiting the foregoing, and subject to Section 6.7(d), from the date hereof through the Closing Date, the Buyer agrees that except as may be agreed in writing by the Sellers, the Buyer shall not, and shall not permit any action which could reasonably be expected to impact the ability of the Parties to secure all required Filings or Permits with or from any Governmental Entity to consummate the transactions hereunder, or take any action with any Governmental Entity relating to the foregoing, or agree, in writing or otherwise, to do any of the foregoing, in each case which could reasonably be expected to materially delay or prevent the consummation of the

transactions contemplated hereby or result in the failure to satisfy any condition to consummation of the transactions contemplated hereby. Without limiting the foregoing, and subject to Section 6.7(d), from the date hereof through the Closing Date, the Sellers agrees that except as may be agreed in writing by the Buyer, the Sellers shall not, and shall not permit any action which could reasonably be expected to impact the ability of the Parties to secure all required Filings or Permits with or from any Governmental Entity to consummate the transactions hereunder, or take any action with any Governmental Entity relating to the foregoing, or agree, in writing or otherwise, to do any of the foregoing, in each case which could reasonably be expected to materially delay or prevent the consummation of the transactions contemplated hereby or result in the failure to satisfy any condition to consummation of the transactions contemplated hereby.

(d) Notwithstanding any provision of this Agreement to the contrary, in using its reasonable best efforts as contemplated by this Section 6.7, the Buyer shall not be required to take or refrain from taking any action if such action would have, or would reasonably be expected to, individually or in the aggregate, have, a Material Adverse Effect or a material adverse effect on the business, properties, condition (financial or otherwise), assets or results of operations of the Buyer, the Company and its Subsidiaries, taken as a whole, after giving effect to the transactions contemplated hereby and the terms and conditions of any Permits obtained in respect of such transactions. Nothing in this Section 6.7 shall obligate the Buyer or the Company or any of their respective Subsidiaries to take any action that is not conditioned on the consummation of the transactions contemplated hereby.

**SECTION 6.8. Transfer Taxes.** Notwithstanding any provision of this Agreement to the contrary, all Transfer Taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Buyer; provided, however, that Buyer shall not be liable for, and Sellers shall be liable for, any Transfer Taxes incurred in connection with the Bayside Transaction, Bradfield Farms Transaction, Cabarrus Woods Transaction and Sandy Creek Transaction, regardless of when such transactions were or are consummated. The Sellers and the Buyer shall cooperate in timely making all filings, Tax Returns, reports and forms as may be required to comply with the provisions of such Tax laws.

**SECTION 6.9. Tax Matters.** Except as provided in Section 6.8 relating to Transfer Taxes:

(a) With respect to any Income Tax Return covering a taxable period ending on or before the date hereof (a "**Pre-Signing Taxable Period**"), or a taxable period beginning on or before the date hereof and ending after the date hereof, whether or not ending after the Closing Date (a "**Straddle Taxable Period**"), that is required to be filed after the Closing Date with respect to the Company or any of its respective Subsidiaries, (i) the Buyer shall cause the Company to prepare such Income Tax Return, in a manner consistent with the Company's past practice and reflecting the utilization of any available net operating loss carryforwards or other tax attributes, and to deliver a copy of such Income Tax Return as so prepared to each of the Sellers for the Sellers' review and approval (which approval shall not be unreasonably withheld, conditioned or delayed) at least 30 days prior to the due date for filing such Income Tax Return (after giving effect to any permitted extensions), (ii) the Sellers and the Buyer shall cooperate and consult with each other in order to finalize such Income Tax Return, reflecting all reasonable

comments of the Sellers with respect therewith, and (iii) thereafter the Buyer shall cause such Income Tax Return to be executed and timely filed with the appropriate Taxing Authority. Buyer shall pay or cause to be paid all Income Taxes due with respect to the period covered by such Income Tax Return, provided, however, that the Buyer will be entitled to indemnification pursuant to Section 9.2(a)(iii) with respect to any Taxes paid after the date hereof that are attributable to any Pre-Signing Taxable Period or the Pre-Signing portion of any Straddle Taxable Period, determined in accordance with Section 6.9(b), without regard to when such Tax Return is filed. The Buyer shall be responsible for the preparation of all Tax Returns, other than Income Tax Returns, of the Company and its Subsidiaries that is required to be filed after the Closing Date, and the payment of all Taxes, other than Income Taxes, due with respect to such Tax Returns, and the Sellers shall have no obligations with respect to such Tax Returns or such Taxes.

(b) The amount of Income Taxes that are payable for a Straddle Taxable Period that are allocated to the Pre-Signing portion of such period shall equal the amount of Income Taxes that would be payable if the taxable year ended on the date hereof (calculated as if there were an interim closing of the books as of the date hereof), provided, however, that deductions for depreciation and other similar deductions and allowances shall be apportioned by multiplying any such deductions and allowances by a fraction, the numerator of which is (A) the number of calendar days in the Pre-Signing portion of the Straddle Taxable Period and (B) the denominator of which is the number of calendar days in the entire relevant Straddle Taxable Period. For the avoidance of doubt, the amount of Income Taxes allocated to the Pre-Signing portion of a Straddle Taxable Period shall exclude any such Income Taxes that would not have been payable if not for the effect of transactions or events after the date hereof, including the Closing, on any net operating loss carryforwards or other tax attributes of the Company or its Subsidiaries.

(c) The Buyer shall (and shall cause the Company or its Subsidiaries, as applicable, to) give written notice to the Sellers of its receipt of any notice of any audit, examination, Legal Proceeding or assessment for any Income Tax for which the Sellers may have an indemnification obligation under Section 9.2 within 15 days after its receipt of such notice; provided, however, that a failure to provide such notice within such 15-day period shall not affect the rights or obligations of the Buyer other than if the Sellers shall have been actually prejudiced as a result of such failure.

(d) With respect to any contest relating to Income Taxes (a “**Tax Action**”) relating to a Pre-Interim Period Taxable Period for which Sellers could have an indemnification obligation under Section 9.2, the Sellers may, solely at their own cost and expense, control all proceedings and may make all decisions taken in connection with such Tax Action and, without limiting the foregoing, may in their sole discretion pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any Taxing Authority with respect thereto. The Buyer shall cooperate with the Sellers, including agreeing to extension of the statute of limitations, the selection of counsel and experts and the execution of powers of attorney, relating to Tax Actions by the Sellers for any such Pre-Signing Period Taxable Periods.

(e) The Sellers and the Buyer shall jointly control and participate in all proceedings taken in connection with any Tax Action relating to (i) Income Taxes of the

Company or any of its Subsidiaries for a Straddle Taxable Period, and (ii) Income Taxes of the Company or any of its Subsidiaries for a Pre-Signing Taxable Period to the extent that the Tax Action relating to such Pre-Signing Taxable Period could materially impact the Tax liability of the Buyer, the Company, or any of its Subsidiaries in any Straddle Taxable Period or any taxable period that begins after the date hereof, and shall bear their own respective costs and expenses. Neither the Sellers nor the Buyer shall settle any such Tax Action relating to a Straddle Taxable Period without the prior written consent of the others, such consent not to be unreasonably delayed, conditioned or withheld.

(f) Each of the Sellers shall grant to the Buyer (or its designees) access at all reasonable times to all of the information, books and records relating to the Company and its Subsidiaries within the possession of such Seller (including workpapers and correspondence with Taxing Authorities), and shall afford the Buyer (or its designees) the right (at the Buyer's expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit the Buyer (or its designees) to prepare Tax Returns, respond to Tax audits and investigations, prosecute Tax protests, appeals and refund Legal Proceedings and to conduct negotiations with Taxing Authorities. The Buyer shall grant or cause the Company and its Subsidiaries to grant to the Sellers (or their designees) access at all reasonable times to all of the information, books and records relating to the Company and its Subsidiaries within the possession of the Buyer (including workpapers and correspondence with Taxing Authorities) and to the employees of such entities, and shall afford the Sellers (or their designees) the right (at the Sellers' expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit the Sellers (or their designees) to prepare Tax Returns, respond to Tax audits and investigations, prosecute Tax protests, appeals and refund Legal Proceedings and to conduct negotiations with Taxing Authorities. After the Closing Date, the Sellers and the Buyer will preserve all information, records or documents in their respective possessions relating to liabilities for Taxes of the Company and its Subsidiaries until six months after the expiration of any applicable statute of limitations (including extensions thereof) with respect to the assessment of such Taxes; provided, that none of the Parties shall dispose of any of the foregoing items without first offering such items to the other Parties.

**SECTION 6.10. Schedule Update.** Prior to the Closing, each Party may (a) provide the other Party with written notice as soon as practicable upon becoming aware that any representation or warranty made by such Party in this Agreement is inaccurate in any material respect and (b) supplement, modify, update or amend its respective Disclosure Schedule, as appropriate (any such supplement, modification, update or amendment, a "**Disclosure Schedule Update**"); provided, however, that except as provided in the next sentence, no Disclosure Schedule Update shall be taken into account in determining (i) whether any representation or warranty has been breached for purposes of any claims for indemnification or (ii) whether the conditions to Closing set forth in Section 7.1(a) or Section 7.2(a) have been satisfied. Notwithstanding the foregoing, the Disclosure Schedule shall be deemed to be supplemented, modified, updated or amended to reflect (x) any activities permitted under Section 6.2(a) or otherwise consented to in writing by Buyer and, as so supplemented, modified, updated or amended, shall be taken into account in determining (i) whether any representation or warranty has been breached for purposes of any claims for indemnification or (ii) whether the conditions to Closing set forth in Section 7.1(a) or 7.2(a) have been satisfied.

**SECTION 6.11. Further Actions.**

(a) Subject to the terms and conditions of this Agreement, the Buyer and each of the Sellers agree to use their reasonable best efforts (except where a different efforts standard is specifically contemplated by this Agreement, in which case such different standard shall apply) to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement. Subject to Section 6.7(d), the Buyer and each of the Sellers agree not to take any action, or fail to take any action (and Sellers shall cause the Company and its Subsidiaries not to take any action or fail to take any action), that would otherwise have the effect of preventing or materially delaying the consummation of the Closing.

(b) Subject to the terms and conditions of this Agreement, at any time and from time to time after the Closing, at a Party's request and without further consideration, the other Parties shall execute and deliver to such requesting Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such Party may reasonably request in order to consummate or evidence the transactions contemplated by this Agreement.

**SECTION 6.12. VCS Payments.** The Parties shall cause the Company to, concurrently with the Closing, pay to each holder of a Value Creation Share immediately prior to the Closing, the amount owed to such holder pursuant to Section 2.3(c).

**SECTION 6.13. Non-Solicitation of Employees.** Each Seller agrees not to, for a period of two years after the Closing Date, directly or indirectly solicit any employee of the Company or any of its Subsidiaries as of the Closing Date or any former employee of the Company or any of its Subsidiaries who was employed by the Company or any of its Subsidiaries during the one-year period prior to the date hereof or during the Interim Period or intentionally encourage any employee of the Company or any of its Subsidiaries as of the Closing Date to leave such employee's employment with the Company or any of its Subsidiaries, as applicable; provided, however, that this Section 6.13 shall not prohibit any Seller from (A) engaging in any general advertisements or solicitations which are not directed specifically to any Employees or former Employees (including general solicitations and advertisements by recruiting firms) and hiring any Employees or former Employees that respond to such a solicitation or (B) soliciting and hiring any Employee or former Employee who voluntarily, and without any inducement from such Seller, terminated his or her employment with the Company or any of its Subsidiaries, as applicable after the Closing Date, or any such Employee or former Employee whose employment with the Company or any of its Subsidiaries, as applicable, is terminated after the Closing Date.

**SECTION 6.14. Employee Matters.**

(a) For the 12-month period following the Closing Date (the "Continuation Period"), the Buyer shall provide, or shall cause to be provided, to each individual who is an Employee at the Closing (each, a "Continuing Employee") base salary, bonus and other incentive compensation opportunities and employee benefits that are no less favorable, in the aggregate, than those provided to such Continuing Employee immediately prior to Closing;



provided, however, that no equity or equity based rights or amounts determined in respect of Value Creation Shares shall be taken into account for purposes of determining whether such employee benefits are no less favorable in the aggregate. Prior to the Closing, the Sellers shall make available to the Buyer a list of (i) base salary in effect for each Continuing Employee; (ii) bonus and other incentive compensation opportunities in effect for each Continuing Employee; and (iii) employee benefits provided to each Continuing Employee.

(b) For purposes of vesting and eligibility to participate (and for purposes of vacation and severance programs, level of benefits) under the Benefit Plans of the Buyer or its Affiliates (as applicable) providing benefits to Continuing Employees after the Closing (the “**New Plans**”), each Continuing Employee in such plans shall be credited with his or her years of service with the Company or its Subsidiaries, as applicable, and their respective predecessors before the Closing, to the same extent as such Continuing Employee was entitled, before the Closing, to credit for such service under any similar Company Benefit Plan in which such Continuing Employee participated or was eligible to participate immediately prior to Closing; provided, for the avoidance of any doubt, that the foregoing shall not apply to the extent that its application would result in a duplication of benefits with respect to the same period of service. In addition, and without limiting the generality of the foregoing, (i) each Continuing Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is comparable to a Company Benefit Plan in which such Continuing Employee participated immediately before the Closing (such plans, collectively, the “**Old Plans**”); and (ii) for purposes of each New Plan providing medical, dental, pharmaceutical, vision, disability, life insurance and/or other welfare benefits to any Continuing Employee (collectively, the “**New Welfare Plans**”). (1) the Buyer shall use its commercially reasonable efforts to cause all pre-existing conditions, exclusions and actively-at-work requirements of such New Welfare Plan to be waived for such Continuing Employee and his or her covered dependents (to the extent such conditions, exclusions and requirements were waived or satisfied as of immediately prior to the Closing under comparable Old Plans in which such Continuing Employee participated immediately prior to the Closing); and (2) the Buyer shall cause any eligible expenses incurred by each Continuing Employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date such Continuing Employee’s participation in the corresponding New Welfare Plan begins to be taken into account under such New Welfare Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Welfare Plan. During the Continuation Period, the participation cost to a Continuing Employee under the New Welfare Plans shall be not more than the participation cost to substantially similarly situated employees of the Buyer and its affiliates.

(c) Nothing contained in this Section 6.14 or elsewhere in this Agreement, express or implied, shall confer upon any Employee or Continuing Employee or legal representative or beneficiary thereof any rights or remedies of any nature or kind whatsoever under or by reason of this Agreement, including any right to employment or continued employment for any specified period, or level of compensation or benefits.

#### **SECTION 6.15. Indemnification and Insurance.**

(a) The Buyer agrees that all rights to exculpation, indemnification and advancement of expenses now existing in favor of the current or former directors, officers or employees, as the case may be, of the Company or its Subsidiaries as provided in their respective Organizational Documents or in any agreement with the Company or any of its Subsidiaries that is disclosed to the Buyer prior to the date hereof shall survive the Closing and shall continue in full force and effect. For a period of six years from the Closing Date, the Buyer shall cause the Company and its Subsidiaries to maintain in effect the exculpation, indemnification and advancement of expenses provisions of the Company's and its Subsidiaries' Organizational Documents as in effect immediately prior to the Closing Date or in any indemnification agreements of the Company or its Subsidiaries with any of their current or former respective directors, officers or employees as in effect immediately prior to the Closing Date and disclosed to the Buyer prior to the date hereof, and the Buyer shall cause the Company and its Subsidiaries to not amend, repeal or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any individuals who at the Closing Date were current or former directors, officers or employees of the Company or any of its Subsidiaries; provided, however, that all rights to indemnification or advancement of expenses in respect of any Legal Proceedings pending or asserted or any claim made within such period shall continue until the disposition of such Legal Proceeding or resolution of such claim. From and after the Closing Date, the Buyer shall cause the Company and its Subsidiaries to honor, in accordance with their respective terms, each of the covenants contained in this Section 6.15 without limit as to time.

(b) From and after the Closing Date, each of the Buyer, the Company and its Subsidiaries shall, to the fullest extent permitted under applicable Law, indemnify and hold harmless (and advance funds in respect of each of the foregoing, following receipt of any undertakings required by applicable Law) each current and former director, officer or employee of the Company or any of its Subsidiaries and each person who served as a director, officer, member, trustee or fiduciary of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise at the request or for the benefit of the Company or any of its Subsidiaries (each, together with such person's heirs, executors or administrators, a "**Director Indemnified Party**") against any loss in connection with any actual or threatened Legal Proceeding, arising out of, relating to or in connection with any action or omission occurring or alleged to have occurred in such Director Indemnified Party's capacity as a director, officer or employee of the Company or any of its Subsidiaries or in such Director Indemnified Party's capacity as a director, officer, member, trustee or fiduciary of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise at the request or for the benefit of the Company or any of its Subsidiaries, before the Closing Date (including acts or omissions in connection with such persons serving as an officer, director or other fiduciary in any entity if such service was at the request or for the benefit of the Company or any of its Subsidiaries). In the event of any such Legal Proceeding, the Buyer, the Company and its Subsidiaries, as applicable shall reasonably cooperate with the Director Indemnified Party in the defense of any such Legal Proceeding.

(c) The Sellers shall cause the Company and its Subsidiaries to obtain prior to the Closing Date fully-paid six-year "tail" insurance policies (the "**D&O Tail**") with respect to directors' and officers' liability insurance of the type and with the amount of coverage no less favorable than those of the directors' and officers' liability insurance maintained as of the date hereof by the Company and its Subsidiaries (the "**Current Policies**"), and with such other terms



as are no less favorable in the aggregate than those in the Current Policies. The Buyer shall cause the Company and its Subsidiaries to maintain the D&O Tail in full force and effect, for its full term, and cause all obligations thereunder to be honored by the Company and its Subsidiaries, as applicable, and no other party shall have any further obligation to purchase or pay for such insurance pursuant to this Section 6.15(c).

(d) The Buyer shall or shall cause the Company to pay all expenses, including reasonable attorneys' fees, that may be incurred by any Director Indemnified Party in enforcing the indemnity and other obligations provided in this Section 6.15.

(e) The rights of each Director Indemnified Party hereunder shall be in addition to, and not in limitation of, any other rights such person may have under the Organizational Documents of the Company or any of its Subsidiaries, any other indemnification arrangement, any Law or otherwise. The provisions of this Section 6.15 shall survive the Closing and expressly are intended to benefit, and are enforceable by, each of the Director Indemnified Parties, each of whom is an intended third-party beneficiary of this Section 6.15.

(f) In the event the Company or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then, and in either such case, proper provision shall be made so that the successors and assigns of the Company shall assume the obligations set forth in this Section 6.15.

**SECTION 6.16. Additional Financial Statements.** From the date hereof until the Closing, the Sellers will cause the Company to use commercially reasonable efforts to prepare and deliver to the Buyer, (i) no later than sixty (60) days following the end of each fiscal quarter, an unaudited consolidated balance sheet of HSHC and its Subsidiaries and (ii) no later than ninety (90) days following the end of each fiscal quarter, an unaudited balance sheet of the Company, in each case for the period then ended, together with unaudited consolidated statements of income and retained earnings and of cash flows of (a) HSHC and its Subsidiaries and (b) the Company, in each case for the period then ended (collectively for each period, an "**Additional Financial Statement**"); provided, however, that the Sellers will cause the Company to use commercially reasonable efforts to prepare and deliver to the Buyer, no later than one hundred and twenty (120) days following the end of each fiscal year, (x) an audited consolidated balance sheet of HSHC and its Subsidiaries for the period then ended, together with audited consolidated statements of income and retained earnings and of cash flows of HSHC and its Subsidiaries for the period then ended and (y) an unaudited balance sheet of the Company for the period then ended, together with unaudited statements of income and retained earnings and of cash flows for the period then ended (also, an "**Additional Financial Statement**").

**SECTION 6.17. Intercompany Accounts.** Except as set forth on Section 6.17 of the Disclosure Schedule, all Contracts between the Sellers or any of their respective Affiliates (other than the Company and its Subsidiaries), on the one hand, and the Company or any of its Subsidiaries, on the other hand, will be terminated at or prior to the Closing with no ongoing liabilities or obligations to any of the Sellers, the Buyer, the Company or any Subsidiary with respect thereto.

**SECTION 6.18. Transition Committee.** On or following the date hereof, the Parties shall form a transition committee (“**Transition Committee**”) comprised of three members appointed by the Buyer and three members appointed by the Sellers, which Transition Committee shall be permitted to monitor the business of the Company and its Subsidiaries and compliance with the terms of this Agreement, liaise with the Company’s management team regarding the transactions contemplated by this Agreement, make non-binding recommendations to the Parties with respect to certain decisions that may be required in advance of the Closing and develop a communication strategy and an integration plan. The Transition Committee will meet, either telephonically or otherwise, as often as its members reasonably deem necessary (but in any event at least once per month) and upon the reasonable call of either Party. In addition, the Transition Committee shall use its commercially reasonable efforts to establish such integration teams as mutually agreed upon by the Parties to (a) monitor the business of the Company and its Subsidiaries and (b) prepare for the consummation of the transactions contemplated hereby. The Buyer shall be deemed to have consented to any action consented to in writing by the lead member of the Transition Committee appointed by the Buyer.

**SECTION 6.19. Additional Information.** The Sellers shall promptly provide, or cause the Company and its Subsidiaries to promptly provide, to Buyer: (i) copies of all material, court-filed pleadings filed on or after the date hereof in any lawsuit involving the Sellers (in respect of the Company, its Subsidiaries or this Agreement), the Company or any of its Subsidiaries to the extent such pleading is actually possessed by the Sellers or members of the senior management team of Utilities, Inc., including its general counsel and (ii) copies of all written notices of violation received on or after the date hereof involving the alleged violation of Law, including Environmental Law, by the Company or any of its Subsidiaries to the extent such notices are actually possessed by the Sellers or members of the senior management team of Utilities, Inc., including its general counsel.

**SECTION 6.20. Financing.** Prior to Closing, the Sellers shall, and shall cause the Company and its Subsidiaries to, use commercially reasonable efforts to provide such cooperation as may be reasonably requested by the Buyer in connection with the financing of the transactions contemplated by this Agreement, if any, including using commercially reasonable efforts to cause appropriate officers and employees to be available, on a customary and reasonable basis and upon reasonable notice, to discuss pertinent matters with prospective lenders and investors in connection with the preparation of any information memos, offering memoranda or other marketing and disclosure documents and customary information in connection therewith (including (a) discussions with such officers and employees regarding the preparation of appropriate discussions of business, financial statements, pro forma financials, projections, management discussion and analysis, and other customary financial data of the Company and its Subsidiaries, and (b) one in-person meeting with the Buyer’s syndicate lenders in Northbrook, Illinois or the surrounding area and one on-site visit by such lenders, following which such officers and employees, subject to the terms of this Agreement, shall answer any reasonable questions arising from such meeting); provided, however, that nothing contained in this Section 6.20 shall require, and in no event shall the commercially reasonable efforts of the Sellers be deemed or construed to require, the Sellers or the Company or any of the Company’s Subsidiaries to (i) allow any arranger or syndicate lender access to the personnel or facilities of the Company or its Subsidiaries that is greater in scope or frequency than the access afforded to the Buyer under this Agreement, (ii) require the Sellers, the Company or any of the Company’s

Subsidiaries to make any representations or warranties in connection the Financing or otherwise incur any actual or potential liability or cost in connection with the Financing, (iii) be in privity with any arranger, lender or other party to the Financing, (iv) make any disclosure not required under this Agreement, (v) waive or modify any terms of this Agreement or any other Contract to which the Sellers the Company or any of the Company's Subsidiaries is a party or (vi) make any binding commitment by the Company or any of the Subsidiaries which commitment is not conditioned on the Closing and does not terminate without liability to the Company or any of its Subsidiaries upon the termination of this Agreement. The Buyer shall indemnify and defend the Sellers, their Affiliates and their respective stockholders, members, partners, managers, officers, directors, employees and agents against, and shall hold each of them harmless from, any Loss arising out of or resulting from any act taken by the Sellers, the Company or the Company's Subsidiaries pursuant to this Section 6.20. The Buyer shall, promptly upon request by the Sellers, reimburse the Sellers, the Company and the Company's Subsidiaries for any and all documented out-of-pocket costs or expenses incurred by the Sellers, the Company and/or any of the Company's Subsidiaries, as applicable, in connection with its cooperation pursuant to this Section 6.20.

**SECTION 6.21. Indebtedness.** The Sellers shall cause all Terminated Indebtedness to be cancelled at or prior to the Closing.

## ARTICLE VII

### CLOSING CONDITIONS

**SECTION 7.1. The Buyer's Conditions to Closing.** The obligation of the Buyer to consummate the transactions contemplated by this Agreement shall be subject to fulfillment at or prior to the Closing of the following conditions, any one or more of which may be waived in writing by the Buyer:

(a) **Representations and Warranties.** The Fundamental Representations of the Sellers shall be true and correct in all respects and all other representations and warranties of the Sellers set forth in Article III and Article IV hereof shall be true and correct (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" or any similar limitation contained herein), in each case, as of the Closing Date as though made on and as of such date and time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date), except where the failure of such representations and warranties of the Sellers to be so true and correct, individually or in the aggregate, has not had and is not reasonably likely to have a Material Adverse Effect.

(b) **Compliance with Agreements.** The covenants, agreements and obligations required by this Agreement to be performed and complied with by the Sellers prior to or at the Closing shall have been performed and complied with in all material respects prior to or at the Closing Date.

(c) **No Material Adverse Effect.** No Material Adverse Effect shall have occurred and there shall exist no facts or circumstances that, individually or in the aggregate,

would be reasonably expected to result in a Material Adverse Effect.

(d) Certificate. The Sellers shall execute and deliver to the Buyer a certificate executed by an authorized officer of each of the Sellers, dated as of the Closing Date, stating that the conditions specified in Section 7.1(a), Section 7.1(b) and Section 7.1(c) of this Agreement have been satisfied.

(e) Permits. (a) The Permits or Filings set forth on Section 7.1(e) of the Disclosure Schedule shall have been duly obtained, made or given (as applicable) and shall be in full force and effect, and, to the extent applicable, shall have become Final Orders and shall not impose terms and conditions that, individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect or a material adverse effect on the business, assets, properties, condition (financial or otherwise) or results of operations of the Buyer, the Company and its Subsidiaries, taken as a whole, after giving effect to the transactions contemplated hereby and the terms and conditions of any such Final Orders, and all terminations or expirations of applicable waiting periods imposed by any Governmental Entity with respect to the transactions contemplated thereby (including under the HSR Act) shall have occurred; provided, that absence of any appeals and the expiration of any appeal period with respect to any of the foregoing shall not constitute a condition to Closing hereunder and (b) the Buyer shall have received the CFIUS Clearance.

(f) No Injunctions. On the Closing Date, there shall be no Laws or Orders in effect that operate to restrain, enjoin or otherwise prevent or make illegal the consummation of the transactions contemplated by this Agreement.

(g) Indebtedness. The Sellers shall have delivered to the Buyer evidence of (a) cancellation of all Indebtedness of the Company and its Subsidiaries listed on Section 7.1(g) of the Disclosure Schedule (the Indebtedness to be so cancelled, the "**Terminated Indebtedness**"); and (b) release of the Liens, if any, on the assets of the Company and its Subsidiaries (other than any Lien (i) arising pursuant to, or as a result of the transactions contemplated by, or described in, this Agreement (ii) arising pursuant to applicable securities Laws and (iii) Permitted Liens (other than Liens arising pursuant to, or as a result of the transactions contemplated by, or described in, the HSHC Credit Agreement (which Liens will be released prior to the Closing together with reasonable evidence of same))).

(h) Documents. Each of the Sellers shall have delivered to the Buyer a duly executed Instrument of Assignment in respect of all such Seller's Company Interests and shall have delivered or shall stand ready to deliver all of the certificates, instruments, Contracts and other documents specified, or reasonably requested by Buyer, to be delivered by it hereunder.

(i) Resignation of Manager. The Company's Manager (as defined in the Company's Organizational Documents) shall have executed and delivered to the Company a letter of resignation resigning as Manager effective as of the Closing.

(j) Good Standing Certificates. Sellers shall have delivered to Buyer good standing certificates, dated no earlier than 5 days prior to Closing, for each of the Company, HSHC and Utilities, Inc.

**SECTION 7.2. The Sellers' Conditions to Closing.** The obligation of the Sellers to consummate the transactions contemplated by this Agreement shall be subject to fulfillment at or prior to the Closing of the following conditions, any one or more of which may be waived in writing by the Sellers:

(a) **Representations and Warranties.** The representations and warranties of the Buyer set forth in Article V hereof shall be true and correct (without giving effect to any limitation as to "materiality" or "material adverse effect" or any similar limitation contained herein) as of the Closing Date as though made on and as of such date and time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date), except where the failure of such representations and warranties of the Buyer to be so true and correct, individually or in the aggregate, would not reasonably be expected to prevent or materially delay the consummation of any of the transactions contemplated by this Agreement.

(b) **Compliance with Agreements.** The covenants, agreements and obligations required by this Agreement to be performed and complied with by the Buyer prior to or at the Closing shall have been performed and complied with in all material respects prior to or at the Closing Date.

(c) **Certificate.** The Buyer shall execute and deliver to the Sellers a certificate executed by an authorized officer of the Buyer, dated as of the Closing Date, stating that the conditions specified in Section 7.2(a) and Section 7.2(b) of this Agreement have been satisfied.

(d) **Permits.** (a) The Permits or Filings set forth on Section 7.1(e) of the Disclosure Schedule shall have been duly obtained, made or given (as applicable) and shall be in full force and effect, and, to the extent applicable, shall have become Final Orders, and all terminations or expirations of applicable waiting periods imposed by any Governmental Entity with respect to the transactions contemplated thereby (including under the HSR Act) shall have occurred; provided, that the absence of any appeals and the expiration of any appeal period with respect to any of the foregoing shall not constitute a condition to Closing hereunder and (b) the Buyer shall have received the CFIUS Clearance.

(e) **No Injunctions.** On the Closing Date, there shall be no Laws or Orders in effect that operate to restrain, enjoin or otherwise prevent or make illegal the consummation of the transactions contemplated by this Agreement.

(f) **Documents.** The Buyer shall have delivered or shall stand ready to deliver all of the certificates, instruments, Contracts and other documents specified to be delivered by it hereunder.

## ARTICLE VIII

### TERMINATION

#### SECTION 8.1. Grounds for Termination.

This Agreement may be terminated:

(a) by either the Buyer or the Sellers (provided that the terminating Party is not then in breach of any representation, warranty, covenant or other agreement contained herein in a manner that the conditions to Closing set forth in Section 7.1(a), Section 7.1(b), Section 7.1(c), Section 7.1(g), Section 7.2(a) or Section 7.2(b), as applicable, would not been satisfied) if the Closing shall not have occurred within 18 months after the date of this Agreement (the “**Outside Date**”); provided, that (i) if on the Outside Date all the Permits required in order to satisfy the conditions set forth in Section 7.1(e) and Section 7.2(d) have not been obtained and such Permits are being diligently pursued by the appropriate Party, and all of the other conditions to Closing contained in Article VII have been fulfilled or are capable of being fulfilled, then, at the option of the either the Buyer or the Sellers (which shall be exercised in the sole discretion of the Buyer or the Sellers, as applicable, by written notice any time before termination of this Agreement), the Outside Date shall automatically be extended for an additional six-month period; and thereafter, only upon mutual agreement of the Parties; and (ii) neither the Buyer nor the Sellers shall have the right to terminate this Agreement pursuant to this Section 8.1(a) if all of the conditions set forth in Section 7.1 with respect to the Buyer or Section 7.2 with respect to the Sellers, have been satisfied (other than those conditions that by their nature are to be satisfied by actions taken at the Closing);

(b) by the Buyer if (i) the Sellers shall have breached any of the covenants or agreements contained in this Agreement to be complied with by the Sellers such that the Closing conditions set forth in Section 7.1(b), Section 7.1(c) or Section 7.1(g) would not be satisfied or (ii) there exists a breach of any representation or warranty of the Sellers contained in this Agreement such that the closing condition set forth in Section 7.1(a) would not be satisfied; provided, (A) in the case of (i) or (ii), that such breach is not cured by the Sellers within 30 Business Days after the Sellers receive written notice of such breach from the Buyer and (B) the Buyer shall not be entitled to terminate this Agreement pursuant to this Section 8.1(b) if, at the time of such termination the Buyer is in breach of any representation, warranty, covenant or other agreement contained herein in a manner that the conditions to Closing set forth in Section 7.2(a) or Section 7.2(b) as applicable, would not been satisfied;

(c) by the Sellers if (i) the Buyer shall have breached any of the covenants or agreements contained in this Agreement to be complied with by the Buyer such that the closing condition set forth in Section 7.2(b) would not be satisfied or (ii) there exists a breach of any representation or warranty of the Buyer contained in this Agreement such that the closing condition set forth in Section 7.2(a) would not be satisfied; provided, (A) in the case of (i) or (ii), that such breach is not cured by the Buyer within 30 Business Days after the Buyer receives written notice of such breach from the Sellers; and (B) the Sellers shall not be entitled to terminate this Agreement pursuant to this Section 8.1(c) if, at the time of such termination the Sellers are in breach of any representation, warranty, covenant or other agreement contained herein in a manner that the conditions to Closing set forth in Section 7.1(a), Section 7.1(b), Section 7.1(c) or Section 7.1(g), as applicable, would not been satisfied;

(d) by either the Buyer or the Sellers if there shall be in effect a nonappealable Order prohibiting, enjoining, restricting or making illegal the transactions contemplated by this Agreement; or

(e) at any time prior to the Closing Date by mutual written agreement of the



Buyer and the Sellers.

**SECTION 8.2. Effect of Termination.** Termination of this Agreement pursuant to this Article VIII shall terminate all obligations of the Parties, except for the obligations under Section 6.3, Section 6.5, Section 6.6, Section 8.3, Article X and the Confidentiality Agreement; provided, that termination pursuant to clause (b), (c), (d) or (e) of Section 8.1 shall not relieve a defaulting or breaching Party (whether or not the terminating Party) from any liability to the other Party resulting from any default or breach hereunder unless, with respect to a termination pursuant to clause (e) of Section 8.1, the Parties have expressly waived such default or breach.

**SECTION 8.3. Termination Fee.**

(a) If this Agreement is terminated pursuant to Section 8.1(a) (or is terminated pursuant to another subsection of Section 8.1 but at such time the Sellers could have validly terminated pursuant to Section 8.1(a)) and all conditions to Closing contained in Section 7.1 have been fulfilled or are capable of being fulfilled except for Section 7.1(e) and/or Section 7.1(f), then notwithstanding any other provision of this Agreement but without limiting any right of the Sellers to an injunction, specific performance or other non-monetary equitable relief in accordance with Section 10.8, the Sellers shall have the right to require the Buyer to pay, and if so elected, the Buyer hereby agrees to pay immediately to the Sellers, as liquidated damages in connection with any such termination, an amount equal to Regulatory Termination Fee by wire transfer of immediately available funds in U.S. dollars to an account designated in writing by the Sellers; provided, the Sellers shall have the right immediately to draw on the Letter of Credit to satisfy such payment obligation of the Buyer in their sole discretion. Notwithstanding the foregoing, the Regulatory Termination Fee shall not be due pursuant to this Section 8.3(a) in the event of a termination pursuant to Section 8.1(a) in the event that the condition(s) set forth in Section 7.1(e) and/or Section 7.1(f) are not fulfilled solely as a result of (x) a failure to obtain any Permits that a Governmental Entity has conditioned upon the Buyer taking an action or refraining to take any action in order to obtain such Permits that, individually or in the aggregate, would reasonably be expected to have, a Material Adverse Effect or a material adverse effect on the business, assets, properties, condition (financial or otherwise) or results of operations of the Buyer, the Company and its Subsidiaries, taken as a whole, after giving effect to the transactions contemplated hereby and/or (y) any action or failure to act by the Sellers, the Company or its Subsidiaries that is a breach of the Sellers' obligations under this Agreement and/or (z) (A) any Law issued by a Governmental Entity from whom a Permit is required in order to consummate the transactions contemplated by this Agreement or (B) an Order in effect prohibiting, enjoining, restricting or making illegal the transaction contemplated by this Agreement, and such Order was sought by a Person other than a Governmental Entity from whom a Permit is required in order to consummate the transactions contemplated by this Agreement.

(b) If this Agreement is terminated pursuant to Section 8.1(d) (or is terminated pursuant to another subsection of Section 8.1 but at such time the Sellers could have validly terminated pursuant to Section 8.1(d)), then notwithstanding any other provision of this Agreement but without limiting any right of the Sellers to an injunction, specific performance or other non-monetary equitable relief in accordance with Section 10.8, the Sellers shall have the right to require the Buyer to pay, and if so elected, the Buyer hereby agrees to pay immediately

to the Sellers, as liquidated damages in connection with any such termination, an amount equal to Regulatory Termination Fee by wire transfer of immediately available funds in U.S. dollars to an account designated in writing by the Sellers; provided, the Sellers shall have the right immediately to draw on the Letter of Credit to satisfy such payment obligation of the Buyer in their sole discretion. Notwithstanding the foregoing, the Regulatory Termination Fee shall not be due pursuant to this Section 8.3(b) in the event of a termination pursuant to Section 8.1(d) in the event that a nonappealable Order prohibiting, enjoining, restricting or making illegal the transaction contemplated by this Agreement is entered solely as a result of (x) a failure by the Buyer to take any action or refrain from taking any action requested by a Governmental Entity that, individually or in the aggregate, would reasonably be expected to have, a Material Adverse Effect or a material adverse effect on the business, assets, properties, condition (financial or otherwise) or results of operations of the Buyer, the Company and its Subsidiaries, taken as a whole, after giving effect to the transactions contemplated hereby and/or (y) any action or failure to act by the Sellers, the Company or its Subsidiaries that is a breach of the Sellers' obligations under this Agreement and/or (z) (A) any Law issued by a Governmental Entity from whom a Permit is required in order to consummate the transactions contemplated by this Agreement or (B) an Order in effect prohibiting, enjoining, restricting or making illegal the transaction contemplated by this Agreement, and such Order was sought by a Person other than a Governmental Entity from whom a Permit is required in order to consummate the transactions contemplated by this Agreement.

(c) If this Agreement is terminated pursuant to Section 8.1(c) (or is terminated pursuant to another subsection of Section 8.1 but at such time the Sellers could have validly terminated pursuant to Section 8.1(c)), then notwithstanding any other provision of this Agreement but without limiting any right of the Sellers to an injunction, specific performance or other non-monetary equitable relief in accordance with Section 10.8, the Sellers shall have the right to require the Buyer to pay, and if so elected, the Buyer hereby agrees to pay immediately to the Sellers, as liquidated damages in connection with any such termination, an amount equal to [REDACTED] (the "**Breach Termination Fee**", and together with the Regulatory Failure Termination Fee, a "**Termination Fee**") by wire transfer of immediately available funds in U.S. dollars to an account designated in writing by the Sellers; provided, the Sellers shall have the right immediately to draw on the Letter of Credit in their sole discretion to satisfy a portion of such payment obligation of the Buyer equal to the face amount of the Letter of Credit.

(d) Notwithstanding anything to the contrary contained herein, the rights of the Sellers under this Section 8.3 in the event this Agreement is terminated pursuant to Section 8.1(a), Section 8.1(c) or Section 8.1(d) are independent of and in addition to such rights and remedies the Sellers may have under Section 10.8 for any misrepresentation, breach of warranty or failure to fulfill any agreement or covenant hereunder on the part of any Party hereto.

(e) The Buyer acknowledges that (i) the agreements contained in this Section 8.3 are an integral part of the transactions contemplated in this Agreement, (ii) the damages resulting from termination of this Agreement under circumstances where a Termination Fee is payable are uncertain and incapable of accurate calculation and therefore, the amount payable pursuant to this Section 8.3 is not a penalty but rather constitutes liquidated damages in a reasonable amount that will compensate the Sellers for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and



on the expectation of the consummation of the transactions contemplated hereby and (iii) without the agreements contained in this Section 8.3, the Parties would not have entered into this Agreement. Accordingly, if the Buyer fails promptly to pay the amounts due pursuant to this Section 8.3, the Buyer shall pay to the Sellers interest on the applicable Termination Fee from and including the date payment of such amount was due at a rate of 10% per annum, together with reasonable legal fees and expenses incurred in connection with the collection of such amount.

(f) The Parties acknowledge and agree that in no event will the Buyer be required to pay more than \$ [REDACTED] to the Sellers pursuant to this Section 8.3.

## ARTICLE IX

### INDEMNIFICATION

#### SECTION 9.1. Survival.

(a) Except as otherwise set forth in this Section 9.1(a), all representations and warranties contained in this Agreement shall survive the Closing for a period of twelve months. The representations and warranties contained in Section 3.2 (Authority and Enforceability), Section 3.5 (Capitalization), Section 4.2 (Capitalization), Section 5.1 (Organization and Existence), Section 5.2 (Authority and Enforceability), Section 5.6 (No Distribution) and Section 5.7 (Investigation) (collectively, the “**Fundamental Representations**”) shall survive the Closing indefinitely, the representation set forth in Section 4.11 (Employee Benefits), Section 4.13 (Environmental Matters) shall survive the Closing for a period of 36 months, and the representations and warranties contained in Section 4.15 (Taxes) shall survive until the earlier of (i) sixty (60) days following the close of the applicable statute of limitations and (ii) the six year anniversary of the Closing Date.

(b) The covenants and agreements contained in this Agreement which by their terms do not contemplate performance after the Closing shall terminate as of the Closing. The covenants and agreements contained in this Agreement which by their terms contemplate performance after the Closing Date shall survive the Closing in accordance with their terms until 60 days following the expiration of any applicable statute of limitations; provided that any such covenant or agreement which expires on a date certain shall survive until such date certain.

(c) The period for which a representation or warranty, covenant or agreement survives the Closing is referred to herein as the “**Applicable Survival Period.**” In the event notice of claim for indemnification under Section 9.2 or Section 9.3 is given within the Applicable Survival Period, the representation or warranty, covenant or agreement that is the subject of such indemnification claim shall survive with respect to such claim until such claim is finally resolved.

#### SECTION 9.2. Indemnification by the Sellers.

(a) Subject to the limitations set forth herein, after the Closing, each of the Sellers shall (jointly and severally in the case of the Highstar Sellers, and severally, but not jointly in the case of American General Life Insurance Company), in accordance with its Pro

Rata Share (with such Pro Rata Share limitation applicable only in respect of breaches of the representations and warranties contained in Article IV), indemnify and defend the Buyer against, and shall hold the Buyer, its Representatives and its Affiliates (including the Company), each of their respective shareholders, members, partners, officers, directors, managers, employees, agents, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the “**Buyer Indemnitees**”) harmless from, any loss, liability, claim, charge, action, suit, proceeding, assessed interest, penalty, damage, Tax or expense (collectively, “**Losses**”) resulting from, arising out of or incurred by such Buyer Indemnitee in connection with, or otherwise with respect to, (i) any breach of any representation and warranty of such Seller contained in Article III or Article IV, (ii) any breach of the covenants or agreements of such Seller (with respect to the Company and its Subsidiaries, only in respect of covenants and agreements that are required to be performed prior to or contemporaneously with the Closing) contained in this Agreement, (iii) any Income Taxes paid after the date hereof that are attributable to a Pre-Signing Taxable Period or the Pre-Signing portion of any Straddle Taxable Period pursuant to Section 6.9, (iv) any Income Taxes which the Company or any Subsidiary has paid or for which the Company or any Subsidiary is liable in connection with the consummation of the Bayside Transaction, the Bradfield Farms Transaction, the Cabarrus Woods Transaction and the Sandy Creek Transaction, as applicable, and Transfer Taxes for which Sellers are liable pursuant to Section 6.8 and (v) any indemnification or other post-closing obligations in respect of the Bayside Transaction, the Cabarrus Woods Transaction, the Bradfield Farms Transaction and the Sandy Creek Transaction and any liabilities remaining with the Company or any Subsidiary in respect of the assets sold pursuant to such transactions. If any representation or warranty contained herein is limited or qualified based on materiality, including the terms “material,” “Material Adverse Effect” or similar qualifications, such limitation or qualification shall in all respects be ignored and given no effect for purposes of determining the amount of Losses resulting from any breach of any such representation or warranty, but shall not be ignored for purposes of determining if there has been such a breach.

(b) No Seller shall be liable for any Loss or Losses (i) unless the claim for such Loss or Losses is brought within the Applicable Survival Period and (ii) with respect to claims for Losses under Section 9.2(a)(i) (other than a Loss or Losses arising from a breach of any Fundamental Representation or a breach of Section 4.18), unless and until the aggregate amount of all Losses incurred by Buyer Indemnitees exceeds [REDACTED] (the “**Deductible**”), and then only to the extent that such Losses exceed the Deductible; provided, that the cumulative indemnification obligation of the Sellers under Section 9.2(a)(i), other than with respect to a Loss or Losses arising from a breach of any Fundamental Representations or a breach of Section 4.15 or Section 4.18) shall in no event exceed [REDACTED] in the aggregate; provided, further, that the cumulative indemnification obligations of the Sellers under this Article IX, with respect to any Loss or Losses shall in no event exceed the Base Purchase Price in the aggregate (the “**Indemnity Cap**”).

(c) In addition to the limitations set forth in Section 9.2(b), with respect to any claim for indemnification regarding any breach of any representation and warranty set forth in Section 4.13 (Environmental), the Sellers shall not have an obligation to indemnify any Indemnitee for Losses arising out of a remediation that exceeds the least restrictive standard or remedy acceptable under Environmental Law based on the uses of the property in question as of the Closing Date, which remedy may rely on the use of engineering or institutional controls if

acceptable under applicable Environmental Law; provided, that said Indemnitee shall not be required to limit its remediation to such a standard if such remediation (including the use of engineering or institutional controls) (x) would unduly interfere with on-going operations at said property and (y) would require Indemnitee to incur on-going operations and monitoring costs after completion of the remediation, unless Seller agrees to reimburse Indemnitee for the costs and expense that are expected to be incurred over the life of the operations and monitoring period (not to exceed 30 years).

(d) In addition to the limitations set forth in Section 9.2(b), the Sellers shall not be obligated to indemnify any Buyer Indemnitee under this Section 9.2 with respect to any indirect, special, incidental, consequential or punitive damages, other than such damages payable by a Buyer Indemnitee pursuant to a Third Party Claim.

(e) No Buyer Indemnitee shall have any claim or right to indemnification pursuant to this Article IX or otherwise, and none of the Sellers or any other Person shall have or be subject to any liability to any Buyer Indemnitee or any other Person with respect to any Evaluation Material.

(f) The Buyer acknowledges and agrees that, should the Closing occur, its and each Buyer Indemnitee's sole and exclusive remedy with respect to any and all matters arising out of, relating to or connected with this Agreement, the Company or its Subsidiaries and their respective assets and liabilities, the transactions contemplated hereby and the Company Interests shall be pursuant to the indemnification provisions set forth in this Article IX.

### **SECTION 9.3. Indemnification by the Buyer.**

(a) Subject to the limitations set forth herein, after the Closing, the Buyer and the Company shall indemnify and defend the Sellers and their respective Representatives and Affiliates, including the Sellers Representative, and each of their respective shareholders, members, partners, officers, directors, managers, employees, agents, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "**Seller Indemnitees**") against, and shall hold each Seller Indemnitee harmless from, any Loss resulting from, arising out of, or incurred by such Seller Indemnitee in connection with, or otherwise with respect to (a) any breach of any representation and warranty of the Buyer contained in this Agreement and (b) any breach of any covenant or agreement of the Buyer contained in Article V.

(b) Neither the Buyer nor the Company shall be liable for any Loss or Losses (i) unless the claim for such Loss or Losses is brought within the Applicable Survival Period and (ii) other than a Loss or Losses arising from a breach of any Fundamental Representation, unless and until the aggregate amount of all Losses incurred by Seller Indemnitees exceeds the Deductible, and then only to the extent that such Losses exceed the Deductible; provided, further, that the cumulative indemnification obligations of the Buyer and the Company collectively under Section 9.3(a)(a) shall in no event exceed [REDACTED] in the aggregate; provided further that the cumulative indemnification obligations of the Buyer under this Article IX with respect to any Loss or Losses shall in no event exceed the Indemnity Cap.

(c) In addition to the limitations set forth in Section 9.3(b), neither the Buyer

nor the Company shall be obligated to indemnify any Seller Indemnitee under this Section 9.3 with respect to (i) any fact, event or action disclosed in the Disclosure Schedule, (ii) any covenant or condition waived by the Sellers on or prior to the Closing or (iii) any indirect, special, incidental, consequential or punitive damages, other than such damages payable by a Seller Indemnitee pursuant to a Third Party Claim.

(d) The Sellers acknowledge and agree that, should the Closing occur, its and each Seller Indemnitee's sole and exclusive remedy with respect to any and all matters arising out of, relating to or connected with this Agreement, the Company or its Subsidiaries and their respective assets and liabilities, the transactions contemplated hereby and the Company Interests shall be pursuant to the indemnification provisions set forth in this Article IX.

#### **SECTION 9.4. Indemnification Procedure for Third Party Claims.**

(a) In the event that any claim or demand, or other circumstance or state of facts which could give rise to any claim or demand, for which an Indemnitor may be liable to an Indemnitee hereunder is asserted or sought to be collected by a third party ("**Third Party Claim**"), the Indemnitee shall as soon as practicable notify the Indemnitor in writing of such Third Party Claim ("**Notice of Claim**"); provided, however, that a failure by an Indemnitee to provide notice as soon as practicable shall not affect the rights or obligations of such Indemnitee other than if the Indemnitor shall have been actually prejudiced as a result of such failure. The Notice of Claim shall (a) state that the Indemnitee has paid or properly accrued Losses or anticipates that it will incur liability for Losses for which such Indemnitee is entitled to indemnification pursuant to this Agreement, and (b) specify in reasonable detail each individual item of Loss included in the amount so stated, the date such item was paid or properly accrued, the basis for any anticipated Liability and the nature of the misrepresentation, breach of warranty, breach of covenant or claim to which each such item is related and the computation of the amount to which such Indemnitee claims to be entitled hereunder. The Indemnitee shall enclose with the Notice of Claim a copy of all papers served with respect to such Third Party Claim, if any, and any other documents evidencing such Third Party Claim.

(b) The Indemnitor shall have the right, but not the obligation to assume the defense or prosecution of such Third Party Claim and any litigation resulting therefrom with counsel of its choice and at its sole cost and expense (a "**Third Party Defense**"). If the Indemnitor assumes the Third Party Defense in accordance herewith, (i) the Indemnitee may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim but the Indemnitor shall control the investigation, defense and settlement thereof, (ii) the Indemnitee will not file any papers or consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnitor, and (iii) the Indemnitor will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim to the extent such judgment or settlement provides for equitable relief without the prior written consent of the Indemnitee. The Parties will use commercially reasonable efforts to minimize Losses from Third Party Claims and will act in good faith in responding to, defending against, settling or otherwise dealing with such claims. The Parties will also cooperate in any such defense and give each other reasonable access to all information relevant thereto. Whether or not the Indemnitor has assumed the Third Party Defense, such Indemnitor will not be obligated to indemnify the Indemnitee hereunder for any

settlement entered into or any judgment that was consented to without the Indemnitor's prior written consent.

(c) If the Indemnitor does not assume the Third Party Defense, the Indemnitee will be entitled to assume the Third Party Defense, at its sole cost and expense (or, if the Indemnitee incurs a Loss with respect to the matter in question for which the Indemnitee is entitled to indemnification pursuant to Section 9.2 or Section 9.3, as applicable, at the expense of the Indemnitor) upon delivery of notice to such effect to the Indemnitor; provided that the (i) Indemnitor shall have the right to participate in the Third Party Defense at its sole cost and expense, but the Indemnitee shall control the investigation, defense and settlement thereof; (ii) the Indemnitor may at any time thereafter assume the Third Party Defense, in which event the Indemnitor shall bear the reasonable fees, costs and expenses of the Indemnitee's counsel incurred prior to the assumption by the Indemnitor of the Third Party Defense; and (iii) the Indemnitor will not be obligated to indemnify the Indemnitee hereunder for any settlement entered into or any judgment that was consented to without the Indemnitor's prior written consent.

**SECTION 9.5. Indemnification Procedures for Non-Third Party Claims.**

The Indemnitee shall notify the Indemnitor in writing promptly of its discovery of any matter that does not involve a Third Party Claim, such notice shall (a) state that the Indemnitee has paid or properly accrued Losses or anticipates that it will incur liability for Losses for which such Indemnitee is entitled to indemnification pursuant to this Agreement, and (b) specify in reasonable detail each individual item of Loss included in the amount so stated, the date such item was paid or properly accrued, the basis for any anticipated liability and the nature of the misrepresentation, breach of warranty, breach of covenant or claim to which each such item is related and the computation of the amount to which such Indemnitee claims to be entitled hereunder. The Indemnitee will reasonably cooperate and assist the Indemnitor in determining the validity of any claim for indemnity by the Indemnitee and in otherwise resolving such matters. Such assistance and cooperation will include providing reasonable access to and copies of information, records and documents relating to such matters, furnishing employees to assist in the investigation, defense and resolution of such matters and providing legal and business assistance with respect to such matters.

**SECTION 9.6. Calculation of Indemnity Payments.**

(a) Each Indemnitee shall use its commercially reasonable efforts to pursue and collect on any recovery available under any insurance policies. Each Indemnitor agrees that the Indemnitee shall have no obligation to maintain insurance other than against such losses and risks and in such amounts as are customary in the type and size of business to which the Indemnitee is engaged. The amount of Losses payable under this Article IX by the Indemnitor shall be reduced by any and all amounts recovered by the Indemnitee under applicable insurance policies or from any other Person alleged to be responsible therefor. If the Indemnitee receives any amounts under applicable insurance policies or from any other Person alleged to be responsible for any Losses, subsequent to an indemnification payment by the Indemnitor, then such Indemnitee shall promptly reimburse the Indemnitor for any payment made or expense incurred by such Indemnitor in connection with providing such indemnification up to the amount received by the Indemnitee, net of any expenses incurred by such Indemnitee in collecting such



amount.

(b) The amount of Losses incurred by an Indemnitee shall be reduced to take account of any net Tax benefit actually recognized by the Indemnitee or its affiliates (without treating the Company or any of its Subsidiaries as an Affiliate of a Seller) arising in connection with the circumstances relating to such Losses.

**SECTION 9.7. Characterization of Indemnification Payments.** Except as otherwise required by applicable law, the Parties shall treat any payment made pursuant to this Article IX as an adjustment to the Purchase Price.

**SECTION 9.8. Assignment of Claims.** If any Indemnitee receives any indemnification payment pursuant to this Article IX, at the election of the Indemnitor, such Indemnitee shall assign to the Indemnitor all of its claims for recovery against third Persons as to such Losses, whether by insurance coverage, contribution claims, subrogation or otherwise.

**SECTION 9.9. Sellers Representative.**

(a) Each Seller irrevocably appoints Highstar Capital Fund II, L.P. (the “**Sellers Representative**”) with power of designation and assignment as its true and lawful attorney-in-fact and agent with full power of substitution, to act solely and exclusively on behalf of, and in the name of, such Seller, with the full power, without the consent of such Seller, as applicable, to exercise as the Sellers Representative in its sole discretion deems appropriate, the powers which such Seller could exercise under the Letter of Credit, the provisions of this Article IX (including consenting to the settlement of any indemnification claim under this Article IX) or Section 2.1 and Section 2.5 and to take all actions necessary or appropriate in the judgment of the Sellers Representative in connection with this Agreement. In any Third Party Defense in which more than one Seller is an Indemnitor, the Sellers Representative shall act on behalf of all such Sellers. The Buyer and any Buyer Indemnitee shall be entitled to rely exclusively upon any notices and other acts of the Sellers Representative relating to the Sellers’ rights and obligations under the Letter of Credit, this Article IX or Section 2.1 and Section 2.5 as being legally binding acts of each Seller individually and the Sellers collectively and the Buyer and any Buyer Indemnitee shall deliver any notice required or permitted under the Letter of Credit, this Article IX or Section 2.1 or Section 2.5 to be delivered to the Sellers to the Seller Representative. The appointment and power of attorney granted by each Seller to the Sellers Representative shall be deemed coupled with an interest and all authority conferred hereby shall be irrevocable.

(b) Each Seller acknowledges and agrees that the Sellers Representative will not be liable to the Sellers for any act done or omitted hereunder as the Sellers Representative while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of counsel will be conclusive evidence of such good faith. The Sellers will jointly and severally indemnify the Sellers Representative and hold it harmless against any Losses incurred without gross negligence or bad faith on the part of the Sellers Representative and arising out of or in connection with the acceptance or administration of its duties under this Agreement.

(c) The Sellers will reimburse the Sellers Representative for their Pro Rata

Share, of any out-of-pocket, independent, third-party fees and expenses (including fees and expenses of counsel, accountants and other advisors) incurred by the Sellers Representative that arise out of or are in connection with the acceptance or administration of the Sellers Representative's duties under this Agreement.

#### **SECTION 9.10. Release.**

(a) Effective upon and following the Closing, the Buyer, on its own behalf and on behalf of the Company and the Subsidiaries of the Company, generally, irrevocably, unconditionally and completely releases and forever discharges the Sellers and any of their respective former, current and future direct or indirect equityholders, controlling persons, shareholders, directors, officers, employees, agents, Affiliates, members, managers, general or limited partners or assignees (collectively, the "**Released Parties**") from all past, present and future disputes, claims, losses, controversies, demands, rights, liabilities, actions and causes of action of every kind and nature that the Company or any of its Subsidiaries has or may have arising from any matter concerning the Company and its Subsidiaries occurring prior to the Closing Date (other than as contemplated hereby), including for controlling stockholder liability or breach of any fiduciary duty relating to any pre-Closing actions or failures to act by the Released Parties; provided that, nothing in this Section 9.10 shall release the Released Parties from their obligations under this Agreement or for their fraud or willful misconduct.

(b) Effective upon and following the Closing, each Seller, generally, irrevocably, unconditionally and completely releases and forever discharges the Company and its Subsidiaries and any of their respective former, current and future directors, officers, employees, agents, Affiliates, members, managers, general or limited partners or assignees from all past, present and future disputes, claims, losses, controversies, demands, rights, liabilities, actions and causes of action of every kind and nature that such Seller has or may have arising from any matter concerning such Seller occurring prior to the Closing Date (other than as contemplated hereby); provided that, nothing in this Section 9.10 shall release any of the Company and its Subsidiaries and any of their respective former, current and future directors, officers, employees, agents, Affiliates, members, managers, general or limited partners or assignees from their obligations under this Agreement or for their fraud or willful misconduct.

### **ARTICLE X**

#### **MISCELLANEOUS**

**SECTION 10.1. Notices.** Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given: (a) on the date established by the sender as having been delivered personally, (b) on the date delivered by a private courier as established by the sender by evidence obtained from the courier, (c) on the date sent by facsimile, with confirmation of transmission, or (d) on the fifth Business Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

(a) if to the Buyer, to:

Corix Utilities (Illinois) LLC  
c/o Corix Infrastructure Inc.  
1160-1188 West Georgia Street  
Vancouver, British Columbia  
V6E 4A2  
Attention: Hamish Cumming  
Fax: (604) 697-6703

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

Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
Attention: Pankaj Sinha  
Fax: (202) 661-8238

(b) if to the Sellers or the Sellers Representative to:

Highstar Capital Fund II, L.P.  
277 Park Avenue  
45th Floor  
New York, New York 10172  
Attention: General Counsel  
Fax: (646) 857-8848

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

Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178  
Attention: Jonathan D. Morris  
Fax: (212) 309-6001

or to such other address or to the attention of such Person or Persons as the recipient party has specified by prior written notice to the sending party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

**SECTION 10.2. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms of such illegal, invalid or unenforceable



provision as may be possible; provided, that the Parties intend that the remedies and limitations thereon (including provisions that payment of the Termination Fee be the sole and exclusive remedy for the recipient thereof, except for the right of the Sellers to seek an injunction, specific performance or other equitable relief pursuant to, and only to the extent expressly permitted by this Agreement) contained in Article VIII are to be construed as an integral provision of this Agreement and that such remedies and limitations shall not be severable in any manner that increases a Party's liability or obligations hereunder or under the Financing.

**SECTION 10.3. Limited Recourse.** Each Party covenants and agrees that it shall not institute, and shall cause its Affiliates not to institute, a Legal Proceeding arising under or in connection with, this Agreement or the transactions contemplated hereby, except against the other parties hereto. Any claim or cause of action based upon, arising out of, or related to this Agreement may only be brought against Persons that are expressly named as parties hereto, and then only with respect to the specific obligations set forth herein. No former, current or future direct or indirect equity holders, controlling Persons, stockholders, directors, officers, employees, agents, Affiliates, members, managers, general or limited partners or assignees of any Party or any of their respective Affiliates shall have any liability or obligation for any of the representations, warranties, covenants, agreements, obligations or liabilities of any Party under this Agreement or of or for any Legal Proceeding based on, in respect of, or by reason of, the transactions contemplated hereby (including the breach, termination or failure to consummate such transactions), in each case whether based on Contract, tort, strict liability, other Laws or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a party hereto or another Person or otherwise.

**SECTION 10.4. Counterparts.** This Agreement may be executed in counterparts, and any Party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by the other Party hereto. The Parties agree that the delivery of this Agreement, and any other agreements and documents at the Closing, may be effected by means of an exchange of facsimile or electronically transmitted signatures.

**SECTION 10.5. Entire Agreement; No Third Party Beneficiaries.** This Agreement, the Schedules, Exhibits, Appendices and the other documents, instruments and agreements specifically referred to herein or delivered pursuant hereto set forth the entire understanding of the Parties hereto with respect to the transactions contemplated by this Agreement. All Schedules, Exhibits and Appendices referred to herein are intended to be and hereby are specifically made a part of this Agreement. Any and all previous agreements and understandings between or among the Parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement, except for the Confidentiality Agreement, between Corix Infrastructure Inc. and Highstar Capital Fund II, L.P., dated September 26, 2011 (the "**Confidentiality Agreement**"). This Agreement will not confer any rights or remedies upon any Person other than the Parties hereto and their respective successors and permitted assigns, other than Section 6.15 and Section 9.5.

**SECTION 10.6. Governing Law.** This Agreement and the exhibits and

schedules hereto shall be governed by and interpreted and enforced in accordance with the Laws of the State of New York, without giving effect to any choice of Law or conflict of Laws rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of New York.

**SECTION 10.7. Consent to Jurisdiction; Waiver of Jury Trial.** Each Party hereto irrevocably submits to the exclusive jurisdiction of any state or federal court located within the County of New York in the State of New York for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby, and agrees to commence any such action, suit or proceeding only in such courts. Each Party further agrees that service of any process, summons, notice or document by United States registered mail to such Party's respective address set forth herein shall be effective service of process for any such action, suit or proceeding. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in such courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

**SECTION 10.8. Right to Specific Performance.** The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which such Party is entitled at law or in equity.

**SECTION 10.9. Assignment.** Neither this Agreement nor any of the rights or obligations hereunder shall be assigned by any of the Parties hereto without the prior written consent of the other Parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns. Any attempted assignment in violation of the terms of this Section 10.9 shall be null and void, ab initio.

**SECTION 10.10. Headings.** All 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.

**SECTION 10.11. Construction.** For the purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) the meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both

genders as the context requires; (b) where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning; (c) the terms “hereof”, “herein”, “hereunder”, “hereby” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; (d) when a reference is made in this Agreement to an Article, Section, paragraph, Exhibit or Schedule, such reference is to an Article, Section, paragraph, Exhibit or Schedule to this Agreement unless otherwise specified; (e) the word “include”, “includes” and “including” when used in this Agreement shall be deemed to be by the words “without limitation”, unless otherwise specified; (f) a reference to any Party to this Agreement or any other agreement or document shall include such Party’s predecessors, successors and permitted assigns; and (g) all accounting terms used and not defined herein have the respective meanings given to them under GAAP. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof.

**SECTION 10.12. Amendments and Waivers.** This Agreement may not be amended, supplemented or modified except by an instrument in writing signed on behalf of the Buyer and the Sellers. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective, unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

**SECTION 10.13. Schedules and Exhibits.** Except as otherwise provided in this Agreement, all Exhibits and Schedules referred to herein are intended to be and hereby are made a part of this Agreement. The Disclosure Schedule has been arranged for purposes of convenience only, in sections corresponding to the Sections of this Agreement. The disclosure of any item in any section or subsection of Disclosure Schedule will be deemed disclosure with respect to each other section and subsection of the Disclosure Schedule to which the relevance of such item is reasonably apparent. Certain information set forth in the Disclosure Schedule is included solely for informational purposes, is not an admission of liability with respect to the matters covered by the information, and may not be required to be disclosed pursuant to this Agreement. The specification of any dollar amount in the representations and warranties contained in this Agreement or the inclusion of any specific item in the Disclosure Schedule is not intended to imply that such amounts (or higher or lower amounts) are or are not material, and no Party shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Disclosure Schedule in any dispute or controversy between the Parties as to whether any obligation, item, or matter not described herein or included in a Disclosure Schedule is or is not material for purposes of this Agreement.

**SECTION 10.14. Legal Representation.** Each of the Parties to this Agreement hereby agrees, on its own behalf and on behalf of its directors, members, partners, officers, employees and Affiliates, that Morgan, Lewis & Bockius LLP may serve as counsel to each and any Seller and their respective Affiliates (individually and collectively, the “**Seller Group**”), on the one hand, and the Company, on the other hand, in connection with the negotiation,

preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and that, following consummation of the transactions contemplated hereby, Morgan, Lewis & Bockius LLP (or any successor) may serve as counsel to the Seller Group or any director, member, partner, officer, employee or Affiliate of the Seller Group, in connection with any litigation, claim or obligation arising out of or relating to this Agreement or the transactions contemplated by this Agreement notwithstanding such representation and each of the Parties hereto hereby consents thereto and waives any conflict of interest arising therefrom, and each of such Parties shall cause any Affiliate thereof to consent to waive any conflict of interest arising from such representation.

*[Signature page follows.]*

CONFIDENTIAL

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

HIGHSTAR CAPITAL II PRISM FUND, L.P.

By: Highstar Capital GP II, L.P., its general partner

By: Highstar Capital LP, as attorney in fact

By:   
Name: Scott D. Litman  
Title: Executive Vice President

HIGHSTAR CAPITAL FUND II, L.P.

By: Highstar Capital GP II, L.P., its general partner

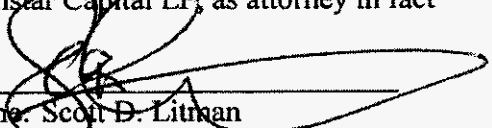
By: Highstar Capital LP, as attorney in fact

By:   
Name: Scott D. Litman  
Title: Executive Vice President

HYDRO STAR INTERCO LLC

By: Highstar Capital GP II, L.P., its general partner

By: Highstar Capital LP, as attorney in fact

By:   
Name: Scott D. Litman  
Title: Executive Vice President

AMERICAN GENERAL LIFE INSURANCE  
COMPANY

By: Highstar Capital GP II, L.P., as attorney in fact

By: Highstar Capital LP, as attorney in fact

By:   
Name: Scott D. Litman  
Title: Executive Vice President

CORIX UTILITIES (ILLINOIS) LLC

By: Inland Pacific Resources, Inc., its sole member

By:



Name: DIETZ KELLMANN

Title: EXECUTIVE VICE PRESIDENT

CONFIDENTIAL

## Appendix A

When used in the Agreement, the following terms have the meanings assigned to them in this Section:

**“Additional Financial Statements”** has the meaning set forth in Section 6.16.

**“Annual Financial Statements”** has the meaning set forth in Section 4.5.

**“Affiliate”** of any Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person. For purposes of this definition, “control” of a Person means the power to, directly or indirectly, direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or other ownership interests, by contract or otherwise, including, with respect to a corporation, partnership or limited liability company, the direct or indirect ownership of more than 50% of the voting securities in such corporation or of the voting interest in a partnership or limited liability company.

**“Aggregate VCS Payment Amount”** means an amount in cash equal to the aggregate amount due to all holders under the Value Creation Shares Plan arising from or otherwise triggered by the transactions contemplated by this Agreement.

**“Agreement”** has the meaning set forth in the preamble to this Agreement.

**“Antitrust Authorities”** has the meaning set forth in Section 6.7(a).

**“Applicable Survival Period”** has the meaning set forth in Section 9.1(c).

**“Balance Sheet Dates”** has the meaning set forth in Section 4.6.

**“Base Purchase Price”** has the meaning set forth in Section 2.1(a).

**“Bayside Amount”** means (a) if the Bayside Transaction is consummated prior to the Closing, the actual amount of proceeds received by the Company and its Subsidiaries in such transaction, (b) if the Bayside Transaction is terminated prior to the Closing, [REDACTED] and (c) if the Bayside Transaction is not consummated prior to the Closing, the amount of proceeds the Company and its Subsidiaries are entitled to receive in the Bayside Transaction pursuant to the definitive agreements for such transaction that are in place immediately prior to the Closing. For purposes of clarity, the parties acknowledge and agree that as of the date hereof the Bayside Amount is an amount equal to, and in no event shall ever exceed, [REDACTED].

**“Bayside Adjustment Amount”** means the portion of the Bayside Amount that has not been distributed by Utilities, Inc. to HSHC prior to or at the Closing (without regard to whether the Bayside Transaction is consummated prior to or at the Closing).

**“Bayside Transaction”** means the disposition of water distribution systems as well as sewage collection systems of every kind and nature owned by Bayside Utilities Services, Inc. in Bay County, Florida, located west of the north-south line of the Hathaway Bridge

centerpoint, pursuant to an agreement in substantially the form of that certain Asset Purchase Agreement, dated as of December 28, 2011, by and between Bayside Utilities Services, Inc. and the City of Panama City Beach, Florida, as amended in February 2012.

“bcIMC” has the meaning set forth in Section 5.5.

“**Benefit Plan**” means any “employee benefit plan” as defined in ERISA Section 3(3) and any bonus, incentive compensation, deferred compensation, equity, retention, change in control or severance plan, program, policy or other arrangement.

“**Bradfield Farms Adjustment Amount**” means the portion of the Bradfield Farms Amount that has not been distributed by Utilities, Inc. to HSHC prior to or at the Closing (without regard to whether the Bradfield Farms Transaction is consummated prior to or at the Closing).

“**Bradfield Farms Amount**” means (a) if the Bradfield Farms Transaction is consummated prior to the Closing, the actual amount of proceeds received by the Company and its Subsidiaries in such transaction, (b) if the Bradfield Farms Transaction is terminated prior to the Closing, [REDACTED] and (c) if the Bradfield Farms Transaction is not consummated prior to the Closing, the amount of proceeds the Company and its Subsidiaries are entitled to receive in the Bradfield Farms Transaction pursuant to the definitive agreements for such transaction that are in place immediately prior to the Closing. For purposes of clarity, the parties acknowledge and agree that as of the date hereof the Bradfield Farms Amount is an amount equal to, and in no event shall ever exceed, [REDACTED]

“**Bradfield Farms Transaction**” means the disposition of water and sewer systems that serve the Woodbury system in the counties of Mecklenburg and Cabarrus counties of North Carolina pursuant to that certain Utility Systems Asset Purchase Contract, dated as of March 1, 2011, among Carolina Water Service, Inc. and the City of Charlotte, as amended on January 23, 2012.

“**Business Day**” means any day, other than Saturday, Sunday or any other day on which banks located in the State of New York are authorized or required to close.

“**Buyer**” has the meaning set forth in the preamble to this Agreement.

“**Buyer Indemnitee**” has the meaning set forth in Section 9.2(a).

“**Breach Termination Fee**” has the meaning set forth in Section 8.3(c).

“**Cabarrus Woods Adjustment Amount**” means the portion of the Cabarrus Woods Retained Amount that has not been distributed by Utilities, Inc. to HSHC prior to or at the Closing.

“**Cabarrus Woods Retained Amount**” means [REDACTED] or such lesser amount as is released to the Company and its Subsidiaries pursuant to Section 2(b) of that certain Utility Systems Asset Purchase Contract, dated as of March 1, 2011, among Carolina Water Service, Inc. and the City of Charlotte as amended on January 16, 2012.



**“Cabarrus Woods Transaction”** means the disposition of water and sewer systems that serve the Mecklenburg and Cabarrus counties of North Carolina pursuant to that certain Utility Systems Asset Purchase Contract, dated as of March 1, 2011, among Carolina Water Service, Inc. and the City of Charlotte as amended on January 16, 2012.

**“Capital Expenditure Plan”** has the meaning set forth in Section 6.2(a)(xvi).

**“CFIUS”** means the Committee on Foreign Investment in the United States, as established by the Defense Production Act.

**“CFIUS Clearance”** means the voluntary joint filing of notice by the Buyer and the Sellers with respect to the Transactions in accordance with the requirements of the Defense Production Act and its applicable regulations and (a) the receipt by the Buyer and the Sellers of written notice from CFIUS, acting through its Chairman, of its determination that the transactions contemplated by this Agreement are not subject to review under the Defense Production Act, (b) the determination by CFIUS under the Defense Production Act not to undertake an investigation of the Transactions, (c) CFIUS has investigated and found no unresolved national security concerns with respect to the Transactions, or (d) the determination by the President of the United States of America not to exercise his authority under the Defense Production Act with respect to the transactions contemplated by this Agreement.

**“Closing”** has the meaning set forth in Section 2.2.

**“Closing Date”** has the meaning set forth in Section 2.2.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Commitment Letters”** has the meaning set forth in Section 5.5.

**“Company”** has the meaning set forth in the recitals to this Agreement.

**“Company Benefit Plans”** has the meaning set forth in Section 4.11.

**“Company Interests”** has the meaning set forth in the recitals to this Agreement.

**“Company-Leased Real Property”** has the meaning set forth in Section 4.10(b).

**“Company-Owned Real Property”** has the meaning set forth in Section 4.10(a).

**“Confidentiality Agreement”** has the meaning set forth in Section 10.5.

**“Continuation Period”** has the meaning set forth in Section 6.14(a).

**“Continuing Employee”** has the meaning set forth in Section 6.14(a).

**“Contract”** means any written contract, lease, license, indenture, undertaking or other agreement that is legally binding.

**“Credit Rating”** means, with respect to any Person, the rating then assigned to

such Person's unsecured, senior long-term debt obligations not supported by third party credit enhancements, or if such Person does not have such a rating, then the rating then assigned to such Person as an issuer, by Standard & Poor's Corporation or Moody's Investors Services, Inc., as applicable.

**"Current Policies"** has the meaning set forth in Section 6.15(c).

**"D&O Tail"** has the meaning set forth in Section 6.15(c).

**"Deductible"** has the meaning set forth in Section 9.2(b).

**"Defense Production Act"** means, collectively, Section 721 of the Defense Production Act of 1950, 50 U.S.C. App. §2061 *et seq.*, as amended by the Omnibus Trade and Competitiveness Act of 1988, 50 U.S.C. App. §2170 *et seq.* and the Foreign Investment and National Security Act of 2007, Pub.L. 110-49, 121 Stat. 246.

**"Director Indemnified Party"** has the meaning set forth in Section 6.15(b).

**"Disclosure Schedule"** has the meaning set forth in the lead in to Article III.

**"Disclosure Schedule Update"** has the meaning set forth in Section 6.10.

**"Employee"** means any employee of the Company or any of its Subsidiaries.

**"Environmental Law"** shall mean all applicable federal, state and local laws, regulations, rules and ordinances in effect as of the date of this Agreement and as of the Closing Date relating to pollution or protection of the environment or human health and safety to the extent related to Releases of or exposure to Hazardous Substances, including, without limitation, applicable laws in effect as of the date of this Agreement and as of the Closing Date relating to Releases or threatened Releases of Hazardous Substances into the outdoor or indoor environment (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport or handling of Hazardous Substances and all applicable laws and regulations in effect as of the date of this Agreement and as of the Closing Date with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Substances, and all applicable laws in effect as of the date of this Agreement and as of the Closing Date relating to endangered or threatened species of fish, wildlife and plants, and the management or use of natural resources.

**"Environmental Permit"** means any federal, state or local permit, license, registration or other written approval required under any applicable Environmental Law and issued by a Governmental Entity pursuant to applicable Environmental Law.

**"Equity Securities"** means (i) capital stock, partnership or membership interests or units (whether general or limited), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity or a right to control such entity (an **"Equity Interest"**), (ii) subscriptions, calls, warrants, options, purchase rights or commitments of any kind or character relating to, or

entitling any Person to acquire, any Equity Interest, (iii) stock appreciation, phantom stock, equity participation, Value Creation Shares or similar rights and (iv) securities convertible into or exercisable or exchangeable for shares of Equity Interests.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and the regulations promulgated thereunder.

“**ERISA Affiliate**” means any entity which is a member of a “controlled group of corporations” with or under “common control” with the Company or any of its Subsidiaries within the meaning of Section 414(b), (c), or (m) of the Code.

“**Estimated Purchase Price**” has the meaning set forth in Section 2.1(b).

“**Estimated Purchase Price Statement**” has the meaning set forth in Section 2.1(b).

“**Evaluation Material**” has the meaning set forth in Section 4.24.

“**Filing**” has the meaning set forth in Section 3.3(b).

“**Final Order**” means action by the relevant Governmental Entity that has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period presented by Law before the transactions contemplated hereby may be consummated has expired and as to which all conditions to the transactions contemplated hereby prescribed by Law or required to be satisfied at or prior to Closing of the transactions contemplated hereby have been satisfied.

“**Financial Statements**” has the meaning set forth in Section 4.5.

“**Financing**” has the meaning set forth in Section 5.5.

“**Fundamental Representations**” has the meaning set forth in Section 9.1(a).

“**GAAP**” means generally accepted accounting principles in the United States, consistently applied in accordance with past practices.

“**Governmental Entity**” means any court, tribunal, arbitrator, authority, agency, commission, legislative body, official or other instrumentality of the United States or any state, county, city or other political subdivision or similar governing entity, in the United States, including any PUC.

“**Hazardous Substances**” shall mean (a) any petrochemical or petroleum products, radioactive materials, asbestos, polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “contaminants” or “pollutants” or words of similar meaning and regulatory effect under applicable Environmental Law; or (c) any other chemical, material or substance, exposure to which is prohibited, limited, or regulated by any applicable

Environmental Law or which may result in liability under Environmental Law arising from injury to persons, property or resources.

**“Highstar Sellers”** means Highstar Capital II Prism Fund, L.P., Highstar Capital Fund II, L.P. and Hydro Star Intero LLC.

**“Holding Company Act”** has the meaning set forth in Section 4.22.

**“HSHC”** has the meaning set forth in Section 4.5.

**“HSHC Credit Agreement”** means that certain Credit Agreement, dated as of July 14, 2006, among HSHC, as borrower, Union Bank of California, N.A., as administrative agent, collateral agent and sole lead arranger, and the lender parties party thereto, as amended, amended and restated, supplemented, modified, refinanced, renewed, extended or replaced from time to time.

**“HSR Act”** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

**“Income Tax”** or **“Income Taxes”** shall mean all Taxes based upon, measured by, or calculated with respect to, net income (not including sales, use, goods and services, real or personal property transfer or other similar Taxes).

**“Income Tax Return”** shall mean a Tax Return with respect to Income Taxes.

**“Indebtedness”** means any of the following: (a) any indebtedness for borrowed money; (b) any obligations evidenced by bonds, debentures, notes or other similar instruments; (c) any obligations to pay the deferred purchase price of property or services, except trade accounts payable and other current liabilities; (d) any obligations as lessee under capitalized leases; (e) any obligations, contingent or otherwise, under acceptance, letters of credit or similar facilities; and (f) any guaranty of any of the foregoing.

**“Indemnitee”** means any Person that is seeking indemnification pursuant to the provisions of this Agreement.

**“Indemnitor”** means any party to this Agreement from which a Person is seeking indemnification pursuant to the provisions of this Agreement.

**“Indemnity Cap”** has the meaning set forth in Section 9.2(b).

**“Independent Accountants”** has the meaning set forth in Section 2.5.

**“Instrument of Assignment”** means an instrument of assignment in form and substance reasonably satisfactory to the Buyer.

**“Intellectual Property”** means all intellectual property (i) patents and patent applications; (ii) trademarks, trademark and service mark applications and registrations, trade dress, logos, trade names and domain names, together with the goodwill symbolized by any of

the foregoing; (iii) copyrights, together with all applications, registrations and renewals therefor; (iv) trade secrets and confidential and proprietary know-how, inventions, processes, formulae, models and methodologies; and (v) all applications and registrations for the foregoing.

**“Interim Capital Contribution Amount”** means an amount equal to the aggregate amount contributed by the Sellers (a) with the prior consent, not to be unreasonably withheld, of the Buyer or (b) in an emergency situation, directly or indirectly to Utilities, Inc. or any of its Subsidiaries by any of the Sellers or any of their Affiliates during the Interim Period.

**“Interim Financial Statements”** has the meaning set forth in Section 4.5.

**“Interim Period”** means the period beginning on the date hereof and ending on the earlier of (i) the Closing and (ii) the termination of this Agreement.

**“IRS”** means the Internal Revenue Service.

**“Knowledge”** means, (i) in the case of the Sellers, the actual knowledge after reasonable inquiry of Lisa Sparrow, John Hoy, Jim Japczyk, Don Sudduth, Steve Lubertozzi, John Stover and Jim Devine and (ii) in the case of the Buyer, the actual knowledge after reasonable inquiry of Brett Hodson, Albert Low, Dietz Kellmann and Hamish Cumming.

**“Law”** means, with respect to any Person, any statute, law (including common law), code, treaty, ordinance, rule or regulation of any Governmental Entity applicable to such Person as of the date hereof.

**“Legal Proceeding”** means any legal proceeding (whether at law or in equity), formal investigation or arbitration before a Governmental Entity.

**“Letter of Credit”** means, at all times, an irrevocable, standby letter of credit in the form of Exhibit A with a face amount equal to [REDACTED] from a commercial bank in the United States or Canada (provided that the Letter of Credit may be drawn on in the United States) with ratings of at least “A” by Standard & Poor’s Corporation and at least “A2” by Moody’s Investor Services, with such changes as shall otherwise be in form and substance satisfactory to the Sellers. The Letter of Credit shall secure the obligations of the Buyer pursuant to Section 8.3.

**“Lien”** means with respect to any property or asset, any lien, mortgage, pledge, charge, security interest or other encumbrance in respect of such property or asset, other than any license or sublicense of Intellectual Property.

**“Losses”** has the meaning set forth in Section 9.2(a).

**“Material Adverse Effect”** means any change or event that is materially adverse to the business, assets, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that any changes or events resulting from the following items shall not be considered when determining whether a Material Adverse Effect has occurred (but, in the case of clauses (a), (b), (c), (d) and (e) solely to the extent such changes or events do not affect the Company and its Subsidiaries

disproportionately to other companies in the same industry): (a) changes in economic, political, regulatory, financial or capital market conditions generally or in the industries in which the Company and its Subsidiaries operate (including the inability to finance the acquisition or any increased costs for financing or suspension of trading in, or limitation on prices for, securities on any domestic or international securities exchange) or any failure or bankruptcy (or any similar event) of any financial services or banking institution or insurance company, (b) changes in national, regional, state or local markets for water and wastewater services or related products or services, including those due to actions by competitors, (c) any acts of war, sabotage, terrorist activities or changes imposed by a Governmental Entity associated with additional security, (d) effects of weather or meteorological events, (e) any change of Law, accounting standards, regulatory policy or industry standards after the date hereof, (f) the announcement, execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby or the fact that the prospective owner of the Company or any of its Subsidiaries is the Buyer, (g) any actions taken by, or at the request of, the Buyer or any breach by the Buyer of this Agreement, (h) any change in the financial condition or results of operation of the Buyer or its Affiliates, including changes to the Credit Rating of the Buyer and its Affiliates; (i) any failure by the Company and its Subsidiaries to meet projections or forecasts or revenue or earnings predictions for any period (but, for the purposes of clarity, not the underlying cause of such failure) and (j) any failure to take any action for which the Buyer's consent is required pursuant to this Agreement, has been requested in writing after the date hereof and is not timely granted.

**"Material Contracts"** has the meaning set forth in Section 4.9(b).

**"New Plans"** has the meaning set forth in Section 6.14(b).

**"New Welfare Plans"** has the meaning set forth in Section 6.14(b).

**"Note Purchase Agreement"** means that certain Master Note Purchase Agreement, dated as of July 19, 2006, among Utilities, Inc., an Illinois corporation, the purchasers named on Schedule A thereto.

**"Notice of Claim"** has the meaning set forth in Section 9.4(a).

**"Objection Notice"** has the meaning set forth in Section 2.5.

**"Old Plans"** has the meaning set forth in Section 6.14(b).

**"Order"** means any award, injunction, judgment, order, writ, decree or ruling entered, issued, made, or rendered by any Governmental Entity which possesses competent jurisdiction.

**"Organizational Documents"** means, with respect to any Person, the articles or certificate of incorporation or organization, by-laws, limited partnership agreement, partnership agreement, limited liability company agreement or such other organizational documents of such Person.

**"Outside Date"** has the meaning set forth in Section 8.1(a).

**“Parties”** means the Sellers and the Buyer collectively.

**“Permit”** has the meaning set forth in Section 3.3(a).

**“Permitted Dividend”** has the meaning set forth in Section 6.2(a)(iv).

**“Permitted Lien”** means (a) any Lien for Taxes not yet due or delinquent or being contested in good faith, (b) any landlords’, mechanics’, workmen’s, repairmen’s, warehousemen’s, carriers’ or other like Lien arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or which is being contested in good faith, (c) imperfections or irregularities of title to real property and other non-monetary Liens that would not, individually or in the aggregate, be reasonably expected to materially impair the operations of or interfere with the Company and its Subsidiaries, taken as a whole, in the ordinary course of business consistent with past practice, (d) zoning, planning, building and other similar limitations, restrictions and rights of any Governmental Entity to regulate property, (e) any Lien to be released on or prior to Closing, (f) any Lien arising pursuant to, or as a result of the transactions contemplated by, or described in, this Agreement, (g) Liens and other matters listed on Section 10 of the Disclosure Schedule, (h) any condition that may be shown on a current survey or by inspection of any real property which would not, individually or in the aggregate, be reasonably expected to materially impair the operations of or interfere with the Company and its Subsidiaries, taken as a whole, in the ordinary course of business consistent with past practice, (i) any Lien which a reputable title insurance company would be willing to omit as an exception or affirmatively insure against in a title insurance policy for the affected real property which would not, individually or in the aggregate be reasonably expected to materially impair the operations of or interfere with the Company and its Subsidiaries, taken as a whole, in the ordinary course of business consistent with past practice, (j) any Lien recorded or filed in any land register or other public register, which would not, individually or in the aggregate, be reasonably expected to materially impair the operations of or interfere with the Company and its Subsidiaries, taken as a whole, in the ordinary course of business consistent with past practice, and (k) any Lien arising pursuant to, or as a result of the transactions contemplated by, or described in, the Note Purchase Agreement, the HSHC Credit Agreement or the Utilities, Inc. Credit Agreement. For purposes of clarity, all Liens arising pursuant to, or as a result of the HSHC Credit Agreement shall be released at Closing.

**“Person”** means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization or Governmental Entity.

**“Power of Attorney”** means that certain power of attorney, dated January 27, 2012, granted by American General Life Insurance Company in favor of Highstar Capital GP II, L.P. and a copy of which was provided to the Buyer prior to the date hereof.

**“Pre-Signing”** means any period of time prior to the date hereof.

**“Pre-Signing Period Taxable Period”** has the meaning set forth in Section 6.9(a).

**“Pro Rata Share”** means for any Seller an amount, equal to the percentage set

forth opposite each such Seller's name on Schedule A hereto under the heading "Company Interests".

"PUC" means any state or county public utility commission, state or county public service commission or similar state or county regulatory body.

"Purchase Price" has the meaning set forth in Section 2.1.

"Real Property" has the meaning set forth in Section 4.10(b).

"Real Property Leases" has the meaning set forth in Section 4.10(b).

"Regulatory Termination Fee" means [REDACTED].

"Release" shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of a Hazardous Substance into the outdoor or indoor environment (including, without limitation, ambient air, surface water, groundwater, and surface or subsurface strata) or into or out of any property.

"Released Party" has the meaning set forth in Section 9.10.

"Representatives" means the officers, directors, managers, employees, counsel, accountants, financial advisers and consultants of a Person.

"Sandy Creek Adjustment Amount" means the portion of the Sandy Creek Amount that has not been distributed by Utilities, Inc. to HSHC prior to or at the Closing (without regard to whether the Sandy Creek Transaction is consummated prior to or at the Closing).

"Sandy Creek Amount" means (a) if the Sandy Creek Transaction is consummated prior to the Closing, the actual amount of proceeds received by the Company and its Subsidiaries in such transaction, (b) if the Sandy Creek Transaction is terminated prior to the Closing, [REDACTED] and (c) if the Sandy Creek Transaction is not consummated prior to the Closing, the amount of proceeds the Company and its Subsidiaries are entitled to receive in the Sandy Creek Transaction pursuant to the definitive agreements for such transaction that are in place immediately prior to the Closing. For purposes of clarity, the parties acknowledge and agree that as of the date hereof the Sandy Creek Amount is an amount equal to, and in no event shall ever exceed, [REDACTED].

"Sandy Creek Transaction" means the disposition of water distribution systems as well as sewage collection systems of every kind and nature owned by Sandy Creek Utilities Services, Inc. in Bay County, Florida, located east of the north-south line of the Hathaway Bridge centerpoint, pursuant to an agreement in substantially the form of that certain Asset Purchase Agreement, dated as of December 28, 2011, by and between Sandy Creek Utilities Services, Inc. and the City of Callaway, Florida, as amended on February 15, 2012.

"Seller or Sellers" has the meaning set forth in preamble to this Agreement.



**“Seller Group”** has the meaning set forth in Section 10.14.

**“Seller Indemnitee”** has the meaning set forth in Section 9.3(a).

**“Sellers Representative”** has the meaning set forth in Section 9.9(a).

**“Specified Distribution”** means a distribution of [REDACTED] from Utilities, Inc. to HSHC. For the purposes of clarity, the distribution or dividend of the Cabarrus Woods Retained Amount, the Bradfield Farms Amount, the Sandy Creek Amount and/or the Bayside Amount shall not (i) be considered to be the distribution of all of any portion of the Specified Dividend and (ii) be taken into account when calculating the Specified Distribution Adjustment Amount.

**“Specified Distribution Adjustment Amount”** means the portion of the Specified Dividend that has not been distributed by Utilities, Inc. to HSHC prior to or at the Closing.

**“Straddle Taxable Period”** has the meaning set forth in Section 6.9(a).

**“Subsidiary”** means, with respect to any Person, any corporation, partnership, joint venture or other legal entity of which such Person (either alone or through or together with any other Subsidiary), owns, directly or indirectly, more than 50% of the stock or other equity interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of a non-corporate Person.

**“Tax”** or **“Taxes”** means any United States local, state or federal or foreign income, profits, gross receipts, franchise, withholding, ad valorem, personal property (tangible and intangible), environmental, employment, payroll, sales and use, social security, disability, occupation, real property, severance, excise and other taxes imposed by a Taxing Authority, including any interest, penalty or addition thereto.

**“Tax Action”** has the meaning set forth in Section 6.9(d).

**“Tax Returns”** means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including any information return, claim for refund, amended return and declaration of estimated Tax.

**“Taxing Authority”** means, with respect to any Tax, the Governmental Entity or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

**“Terminated Indebtedness”** has the meaning set forth in Section 7.1(g).

**“Termination Fee”** has the meaning set forth in Section 8.3(c).

**“Third Party Claim”** has the meaning set forth in Section 9.4(a).

**“Third Party Defense”** has the meaning set forth in Section 9.4(b).

**“Transfer Taxes”** means all transfer, sales, use, real property transfer, goods and services, value added, documentary, stamp duty, gross receipts, excise, transfer and conveyance Taxes and other similar Taxes, duties, fees or charges.

**“Transition Committee”** has the meaning set forth in Section 6.18.

**“Treasury Regulation”** means the regulations promulgated under the Code, as the same may be amended hereafter from time to time.

**“Utilities, Inc. Credit Agreement”** means that certain Credit Agreement, dated as of July 8, 2011, among Utilities, Inc., the lender parties thereto and JPMorgan Chase Bank, N.A. as administrative agent, as amended, amended and restated, supplemented, modified, refinanced, renewed, extended or replaced from time to time.

**“Value Creation Share”** has the meaning set forth for such term in the Value Creation Shares Plan.

**“Value Creation Share Awards”** has the meaning set forth for such term in the Value Creation Shares Plan.

**“Value Creation Shares Plan”** means the Utilities, Inc. Value Creation Shares Plan, as amended and restated effective as of May 1, 2006 and as amended from time to time.

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**Schedule A**

<b>Name</b>	<b>Company Interests</b>
<b>Highstar Capital II Prism Fund, L.P.</b>	<b>29.87%</b>
<b>Highstar Capital Fund II, L.P.</b>	<b>43.87%</b>
<b>Hydro Star Interco LLC</b>	<b>8.40%</b>
<b>American General Life Insurance Company</b>	<b>17.86%</b>

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**EXHIBIT A**

**FORM OF LETTER OF CREDIT**

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IRREVOCABLE STANDBY LETTER OF CREDIT

The Toronto-Dominion Bank, Trade Finance Group,  
909 Fannin Street, Suite 1950  
Houston, Texas 77010 U.S.A.  
Tel: 1-866-661-6866, Fax: 1-866-661-6766

[•] [•], 2012

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [•]

Highstar Capital Fund II, L.P.  
277 Park Avenue  
45th Floor  
New York, New York 10172  
Attention: General Counsel

Re: Irrevocable Letter of Credit established for the benefit of Highstar Capital II Prism Fund, L.P., Highstar Capital Fund II, L.P., Hydro Star Interco LLC and American General Life Insurance Company (collectively the "**Beneficiaries**")

Ladies and Gentlemen:

At the request, on the instructions and for the account of Corix Utilities (Illinois) LLC (the "**Company**"), we hereby establish this Irrevocable Standby Letter of Credit in favor of the Beneficiaries.

We hereby irrevocably authorize Highstar Capital Fund II, L.P. ("Highstar") to draw on us in accordance with the terms and conditions hereinafter set forth in the initial stated amount equal to [REDACTED] (as reduced by drawings on this Letter of Credit, the "**Stated Amount**") effective immediately and expiring on [REDACTED] (the "**Expiration Date**").

Subject to the foregoing and the further provisions of this Letter of Credit, a demand for payment may be made by Highstar by presentation to us at The Toronto-Dominion Bank, Trade Finance Group, 909 Fannin Street, Suite 1950, Houston, Texas 77010 U.S.A., of Highstar's drawing certificate in the form of Annex A attached hereto. Such certificate, which forms an integral part of this Letter of Credit, shall have all blanks appropriately filled in and shall be purportedly signed by two of the authorized signatories of Highstar Capital Fund II, L.P. (each an "**Authorized Officer**"), and shall be on the form of a letter on Highstar's letterhead.

Demand for payment may be made by Highstar under this Letter of Credit on any Business Day prior to the Expiration Date hereof at any time prior to 5:00 p.m., Houston, Texas time, at our address set forth above or via facsimile at 1-866-661-6766. As used herein the term "**Business Day**" means (a) a day on which we (at our above address) are open for the purpose of conducting a commercial banking business and (b) a day on which banking institutions in Houston, Texas, generally are open for the purpose of conducting a commercial banking business.

If demand for payment is made by Highstar hereunder on a Business Day on or prior to 12:00 noon, Houston, Texas time, and your drawing certificate conforms to the terms and conditions hereof, payment shall be made to you on or before 1:00 p.m., Houston, Texas time, on the second immediately succeeding Business Day. If demand for payment is made by Highstar hereunder on a Business Day after 12:00 noon, Houston, Texas time, and your drawing certificate conforms to the terms and conditions hereof, payment shall be made to you on or before 1:00 p.m., Houston, Texas time, on the third immediately succeeding Business Day.

Drawings made by facsimile must be faxed to us to fax no. 1-866-661-6766 to the attention of the manager of Guarantee Department, with prior notice by phone to telephone no. 1-866-661-6866, verbally advising the Bank that a fax draw is to be shortly received by the Bank, and that the original drawing will follow by courier by the next Business Day.

Partial drawings under this Letter of Credit are allowed. Demands for payment hereunder honored by us shall not, in the aggregate, exceed the Stated Amount in effect at the time, and each such drawing shall reduce pro tanto the Stated Amount of this Letter of Credit.

In the event that a drawing request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiaries prompt notice of same stating the reasons therefor and shall upon your instructions hold any nonconforming drawing request and other documents at your disposal or return any nonconforming drawing request and other documents to the Beneficiaries at the address set forth above by Courier or facsimile transmission (with originals thereof sent by overnight courier for receipt within two (2) Business Days). Upon being notified that the drawing was not effected in compliance with this Letter of Credit, the Beneficiaries may attempt to correct such noncomplying drawing request in accordance with the terms of this Letter of Credit, provided however that any such corrected drawing request is received by us prior to the Expiration Date.

Upon the earliest of (i) the honoring by us of the final drawing available to be made hereunder, or (ii) the Expiration Date hereof, this Letter of Credit shall automatically terminate whether or not the original Letter of Credit is returned to us.

This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

This Letter of Credit is non-transferable and may not be assigned without our prior written consent. Only Highstar may make drawings under this Letter of Credit. Upon the payment to you or your account of the amount specified in the drawing certificate, we shall be fully discharged on our obligation under this Letter of Credit with respect to such drawing, and we shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such drawing to you or to any other person.

All charges related to this Letter of Credit are for the Company's account.

There is only one original instrument issued for this Letter of Credit. In the event Highstar makes a written demand related to this Letter of Credit, we will be under no obligation to inform or otherwise notify the other Beneficiaries and will not enquire whether any of the Beneficiaries has a right as between each other or as between themselves and the Company and without recognizing any claim of the Company or any of the Beneficiaries.

It is understood that any demands presented hereunder may be executed and paid by the Toronto-Dominion Bank to any one of the Beneficiaries and all the Beneficiaries will be bound by such demand and payment.

This Letter of Credit shall be governed by, and construed in accordance with, the terms of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600, as adopted or amended from time to time (the "*Uniform Customs*"), including, but not limited to, any provisions relating to force majeure. As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, including, without limitation, the Uniform Commercial Code as in effect in the State of New York.

Communications with respect to this Letter of Credit shall be in writing and be addressed to us at [ ], Attn: [ ], specifically referring to the number of this Letter of Credit.

Very truly yours,

[ ]

By: \_\_\_\_\_

Title:

By: \_\_\_\_\_

Title:

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**Annex A**  
**DRAWING CERTIFICATE**

[INSERT ISSUING BANK INFORMATION]

Attention: [Standby Letter of Credit Unit]

Ladies and Gentlemen:

Highstar Capital Fund II, L.P. ("**Highstar**") hereby certifies to The Toronto-Dominion Bank, Trade Finance Group, 909 Fannin Street, Suite 1950, Houston, Texas 77010 U.S.A. (the "**Bank**"), with reference to the Bank's Irrevocable Standby Letter of Credit No.[●] (the "**Letter of Credit**"; capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the Letter of Credit) that:

1. The Highstar is making a demand for payment under the Letter of Credit of the sum of \$[●], which amount does not exceed the then current Stated Amount of the Letter of Credit.

[2. Highstar is [entitled to draw on the Letter of Credit pursuant to][the Beneficiaries are owed money under] that certain Purchase and Sale Agreement, dated as of [●], 2012 by and among the Company, as Buyer, and Highstar Capital II Prism Fund, L.P., Highstar, Hydro Star Interco LLC and American General Life Insurance Company, as Sellers.]

[2. The Bank has ceased to be a bank whose senior unsecured long-term debt is rated "A" or higher by Standard & Poor's Corporation or "A2" or higher by Moody's Investor Service, Inc. (a "**Qualified Bank**"), and we have not, within one (1) Business Day after the Bank ceased to be a Qualifying Bank, been provided with a substitute letter of credit containing substantially identical terms to the Letter of Credit from a Qualified Bank.]

[2. The Company is the subject of a case under the United States Bankruptcy Code.]

3. The amount of the requested drawing is \$ \_\_\_\_\_, which does not exceed the undrawn Stated Amount of the Letter of Credit.

IN WITNESS WHEREOF, Highstar has executed and delivered this Certificate as of the [●] day of [month], 201[ ].

[ ]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title: