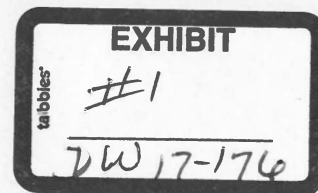


BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION



*Lakes Region Water Co., Inc.  
Wildwood Water Company, Inc.*

*Petition to Transfer Utility Assets and Franchise and for Related Approvals*

*Docket No. DW 17 – \_\_\_\_\_*

NOW COME Lakes Region Water Co., Inc. ("Lakes Region"), by and through Upton & Hatfield, LLP, and Wildwood Water Company, Inc., ("Wildwood"), by and through Cooper Cargill Chant, P.A., and petition the Commission for approval to: (1) transfer Wildwood's water utility assets and franchise to Lakes Region pursuant to RSA 374:22 & 30 and as set forth in the Asset Purchase Agreement (the "APA") (Exhibit A); (2) discontinue Wildwood's operation as a public water utility following the transfer pursuant RSA 374:28; and (3) authorize Lakes Region to make minor modifications to Wildwood's existing tariff pursuant to RSA 378:3. In support hereof, Lakes Region and Wildwood state as follows:

**I. PARTIES**

1. Lakes Region is a New Hampshire corporation and public water utility. Lakes Region serves a total of approximately 1,760 customers in 18 separate systems located in the Lakes Region and Mt. Washington Valley of New Hampshire.

2. Wildwood is a New Hampshire corporation and public water utility that provides water service to 49 customers in the Town of Albany, New Hampshire. Wildwood is owned by Bernard E. Quint and Robert Letoile, who are its shareholders.

## II. TRANSFER OF UTILITY ASSETS AND FRANCHISE

3. RSA 374:22 requires approval by the Commission to engage in the business of a public utility as follows:

### **374:22 Other Public Utilities. –**

I. No person or business entity ... shall commence business as a public utility within this state, or shall engage in such business, ... or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.

4. RSA 374:30 requires approval for the transfer of the franchise, works, or system of an existing public utility as follows:

### **374:30 Other Public Utility Leases, Etc. –**

I. Any public utility may transfer or lease its franchise, works, or system, or any part of such franchise, works, or system, exercised or located in this state, ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise ....

5. The Supreme Court has interpreted these provisions to require that “all sales or transfers of regulated public utility property must be approved by the PUC after a finding that the sales are for the public good.” *Appeal of Verizon New Eng., Inc.*, 153 N.H. 50, 62 (2005) *citing Appeal of Public Serv. Co. of N.H.*, 124 N.H. 479, 483 (1984). In making this determination, the Commission “consider[s] all the interests involved and all the circumstances in determining what is reasonable.” *Pennichuck Water Works, Order No. 25,292* (November 23, 2011) *citing Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539, 540 (1915); *Parker-Young Co. v. State*, 83 N.H. 551, 561-562 (1929); *Appeal of Pinetree Power*, 152 N.H. 92, 97 (2005). The Commission also “has a longstanding practice of evaluating the managerial, financial, and technical ability of the proposed transferee to operate a public utility.” *Eastman Sewer Company, Order No. 25,634* (March 11, 2014).

6. Lakes Region and Wildwood request that the Commission approve the transfer of Wildwood assets and franchise to Lakes Region as set forth in the APA. The transfer of the Wildwood water system and franchise to Lakes Region is in the public good because it will benefit customers of both Wildwood and Lakes Region. These benefits include the following:

- **Increased Experience.** Lakes Region has significant expertise operating small water systems in New Hampshire that are similar to the Wildwood water system. It employs a staff of 7 professionals who specialize in operation of small community water systems. It also employs and office staff that includes: a Utility Manager; an Office Manager; and an administrative assistant. Two of Lakes Region's office staff are certified water system operators with a 1A Water Operators Certificate. Lakes Region's field staff includes: a Field Supervisor with a Level 2 Distribution and Level 2 Treatment certification; two Water Operators with a 1A Water Operator certification. By comparison, Wildwood employs only one (1) certified operator.
- **Increased Technical, Emergency and Administrative Support.** Lakes Region's professional certified water operators and other staff are available to support normal operations for all of its systems. Lakes Region has technical staff available on a 24/7 basis in the event of an emergency. It has the ability to provide information in real time to customers using its web site and One-Call Notification system.
- **Improved Efficiencies and Economies of Scale.** Lakes Region expects to improve administration and provide greater economies of scale by serving Wildwood with Lakes Region's professional staff. The addition of 49 existing

Wildwood customers to Lakes Region will provide a larger customer base and thereby lessen future costs per customer.

- **Reduced Costs of Capital and Rate Impacts.** Wildwood's capital structure as of 12/31/2016 is 100% equity. . Lakes Region has access to lower cost debt financing through CoBank ACB which it expects to use to finance upgrades and improvements to the Wildwood system based on a capital improvements plan to be prepared in consultation with the New Hampshire Department of Environmental Services.<sup>1</sup> Use of lower cost debt financing will benefit customers by improving service at lower cost to customers.

7. As a result of the foregoing, Lakes Region and Wildwood submit that, consistent with the provisions of RSA 374:22 & 30: (1) transfer of the Wildwood water system and franchise to Lakes Region as set forth in the APA is in the public good; and (2) Lakes Region has the managerial, financial, and technical ability to operate the Wildwood public water utility.

### **III. PETITION TO DISCONTINUE OPERATION AS A PUBLIC UTILITY**

8. RSA 374:28 allows Wildwood to discontinue operations as a public utility "whenever it shall appear that the public good does not require the further continuance of such service." The APA provides for Wildwood to transfer all of its utility assets and franchise to Lakes Region. Once transfer has been completed, there is no reason to "require the further continuance of [Wildwood's] service" as a public utility. *See e.g. Eastman Sewer, Order No. 25,634*, Pages 19 to 21. As a result, Lakes Region and Wildwood petition the Commission to authorize Wildwood to discontinue operation as a public utility following the transfer of its assets and franchise as provided by the APA.

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<sup>1</sup> Lakes Region anticipates providing a draft capital improvements plan at the time of the Commission holds a prehearing or technical conference in this proceeding.

#### IV. TARIFF MODIFICATIONS.

9. Lakes Region requests that the Commission authorize Lakes Region to modify Wildwood's existing tariff to reflect Lakes Region as the owner of the Wildwood water system and to reflect Lakes Region's existing, approved terms and conditions, pursuant to RSA 378:3. This will enable Lakes Region to operate all of its water systems using consistent terms and conditions.

WHEREFORE Lakes Region Water Co., Inc., and Wildwood Water Company, Inc., respectfully request that the Commission:

- (1) Approve the transfer Wildwood's water utility assets and franchise to Lakes Region as set forth in the APA and pursuant to RSA 374:22 & 30;
- (2) Authorize Wildwood to discontinue operation as a public water utility following the transfer pursuant RSA 374:28;
- (3) Authorize Lakes Region to modify Wildwood's existing tariff as set forth herein; and
- (4) Grant such other relief as justice may require.

Respectfully submitted,

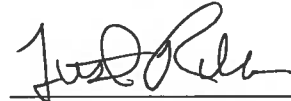
Lakes Region Water Company

By Its Counsel,

UPTON & HATFIELD, LLP

Date: November 9, 2017

By:



Justin C. Richardson

NHBA #12148

159 Middle Street

Portsmouth, New Hampshire 03801

(603) 436-7046

[jrichardson@uptonhatfield.com](mailto:jrichardson@uptonhatfield.com)

Wildwood Water Company, Inc.

By Its Counsel,

COOPER CARGILL CHANT, P.A.

Date: November 9, 2017

By:

A handwritten signature in black ink, appearing to read "Just. R. Dean" followed by a flourish.

Andrew A. Dean

NHBA # 268937

2935 White Mountain Highway

North Conway, New Hampshire 03860

(603) 356-5439

[adean@coopercargillchant.com](mailto:adean@coopercargillchant.com)

**ASSET PURCHASE AGREEMENT**

by and among

**Lakes Region Water Co., Inc.**

as Buyer

**Wildwood Water Company, Inc.  
Albany, NH**

as Seller

and

**Burnham E. Quint, Jr.**

as Shareholders

Dated: September 21, 2017

## ASSET PURCHASE AGREEMENT

AGREEMENT entered into as of September 21, 2017 by and among Lakes Region Water Co., Inc., a New Hampshire corporation with a principal place of business of Route 109, P.O. Box 389, Moultonborough, NH 03254 (“Buyer”), Wildwood Water Company, Inc., a New Hampshire corporation with a principal place of business is a subdivision in the Town of Albany NH with a mailing address of P.O. Box 543, Conway New Hampshire 03818 (“Seller”), and Burnham E. Quint Jr., individual with a mailing address of P.O. Box 543, New Hampshire 03818(the “Shareholders”).

### W I T N E S S E T H

WHEREAS, Seller is engaged in the business of, among other things, owning, constructing, operating, and managing facilities and plants for the distribution and sale of water as a public utility water system (the “Business”);

WHEREAS, subject to the terms and conditions hereof, Seller desires to sell the Business and substantially all of its properties and assets relating to the Business;

WHEREAS, subject to the terms and conditions hereof, Buyer desires to purchase all of the property and assets of Seller related to the Business for the consideration specified herein;

WHEREAS, the Shareholders own all of the issued and outstanding equity interests in the Seller; and

NOW, THEREFORE, in order to consummate said purchase and sale and in consideration of the mutual agreements set forth herein, the parties hereto agree as follows:

### **SECTION 1. PURCHASE AND SALE OF ASSETS**

1.1 Purchased Assets. Subject to the provisions of this Agreement, Seller agrees to sell and Buyer agrees to purchase, at the Closing (as defined in Section 1.5 hereof), Seller’s Business and all of the properties and assets of every kind and description of Seller relating to such business, including, without limitation, those assets listed on Schedule 1.1 and particularly described below (however, excluding the Excluded Assets set forth in Section 1.2 hereof) (collectively, the “Purchased Assets”):

(a) all of Seller’s goodwill relating or attributable to or arising from Seller’s Business and the Purchased Assets;

(b) all of Seller’s property (both real and personal), plant and equipment, all as set forth on Schedule 1.1(b);

(c) all of Seller’s office supplies, machinery, office equipment, telephone equipment, furniture, furnishings, fixtures, computer hardware and other computer equipment (including any cell phones or other similar devices), tools, instruments, vehicles, and other tangible personal property, all as set forth on Schedule 1.1(c);



- (d) all of Seller's contracts, agreements, commitments, claims and rights under any such orders, contracts and proposals set forth on Schedule 1.1(d) (the "Assumed Contracts");
- (e) all franchise rights to operate the Seller's regulated utility service in its franchise areas;
- (f) all contributions in aid of construction ("CIAC"), as set forth on Schedule 1.1(f);
- (g) all construction work in process ("CWIP"), as set forth on Schedule 1.1(g);
- (h) all inventory of the Seller as of the Closing Date as set forth on Schedule 1.1(h) identifying all of the inventory by product, location and Seller's cost of inventory;
- (i) all of Seller's general and other intangibles, trade secrets and information, know-how, methods, processes, formulae, drawings, material and performance specifications and all computer software, owned or licensed;
- (j) all of Seller's customer lists, lists of prospective customers, pending quotations, pending new business, files and records, personnel files and records;
- (k) all of Seller's licenses and permits that can be transferred to Buyer as set forth on Schedule 1.1(k) together with, if any, all rights of renewal and amenities thereto;
- (l) the use of Seller's mailboxes, telephone numbers (cellular and land line), facsimile numbers, electronic addresses and web sites, including passwords, user identifications and related information;
- (m) all books and records of Seller relating to the assets being transferred including, without limitation, receivables journals and ledgers, invoices, receipts, canceled checks, repair and maintenance records, correspondence related to the operation of Seller's Business and correspondence and materials related to Seller's tax returns, including any declarations, reports or statements,
- (n) all of Seller's intellectual property of every kind, including without limitation all trademarks, service marks, logos and marketing materials, and any trade names and designations relating to or used by Seller; and

(o) all domain names and web sites registered to the Seller or to the Shareholders that are related to the Business, including passwords, user identifications and related information.

It is expressly agreed that the assets and properties sold hereunder shall include all assets and properties needed by Buyer to own and operate the Business, whether or not listed in any Schedule hereto.

1.2 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include the following items (the “Excluded Assets”):

- (a) all cash on hand in Seller bank accounts;
- (b) all accounts receivable of the Seller for services rendered by the Seller as of the Closing Date, all of which are set forth on Schedule 1.2(b) to be completed and delivered to the Buyer as of the Closing Date (the “Accounts Receivable”) identifying each account by customer and balance due, which Accounts Receivable the Buyer shall use reasonable efforts to assist the Seller in collection and remittance to the Seller within thirty (30) business days of the Buyer’s receipt thereof, and Buyer agrees (i) that monies received from a customer shall first be applied to the Accounts Receivable of such customer and (ii) to terminate the service of delinquent customers in accordance with NHPUC regulations;
- (c) the prorated amount of all service in process covering the days prior to Closing (the “Prorated Service In Process”), which Prorated Service In Process the Buyer shall use reasonable efforts to assist the Seller in collection and remittance to the Seller within thirty (30) business days of the Buyer’s receipt thereof;
- (d) all contracts other than the Assumed Contracts;
- (e) the additional Excluded Assets set forth on Schedule 1.2(d) hereto.

1.3 Assumption of Liabilities. The Buyer will assume the following liabilities (the “Assumed Liabilities”):

- (a) Seller’s obligations under the Assumed Contracts.
- (b) Except for the Assumed Liabilities, Buyer will not assume any liabilities or obligations of the Seller of any nature, whether accrued, absolute, contingent or otherwise, asserted or unasserted, known or unknown, in connection with the sale and purchase of the Purchased Assets, and is expressly not assuming any State of New Hampshire Drinking Water Revolving Loan Fund loans (“SRF Loans”) outstanding as of the Closing. Without limiting the preceding sentence, Buyer specifically disclaims any liability of any nature of the Seller in connection with any accounts payable and accrued expenses of the Seller or the Excluded Assets set forth in Section 1.2 and on Schedule 1.2(d).

1.4 Purchase Price.

(a) Payment of Purchase Price. The consideration for the Purchased Assets (the "Purchase Price") shall be \$25,000. Buyer shall pay the Purchase Price to the Seller on the Closing Date, by wire transfer of immediately available funds, cashier's or certified check, or such other form of payment as shall be acceptable to the Seller and Buyer.

(b) Except as otherwise provided herein, Seller and the Shareholders understand and agree that they are responsible for all taxes associated with the Purchase Price.

1.5 Time and Place of Closing. The closing of the purchase and sale provided for in this Agreement (herein called the "Closing") shall be held at the offices of Upton & Hatfield, LLP, 10 Centre Street, Concord, New Hampshire, as soon as possible after the NHPUC Approval (as defined in Section 2.1(a) below), or at such other time and place as the parties may agree, but no later than sixty (60) business days after the NHPUC Approval. The date of the Closing is hereinafter referred to as the "Closing Date" and the effective time of the Closing of the purchase and sale under this Agreement shall be 11:59 p.m. on the Closing Date.

1.6 Further Assurances. Seller and the Shareholders from time to time after the Closing at the request of Buyer and without further consideration shall execute and deliver further instruments of transfer and assignment and take such other action (including, without limitation, providing any information regarding the Seller's Business) as Buyer may reasonably require to more effectively transfer and assign to, and vest in, Buyer each of the Purchased Assets. Nothing herein shall be deemed a waiver by Buyer of its right to receive at the Closing an effective assignment of each of the leases, contracts, commitments or rights of Seller as otherwise set forth in this Agreement.

1.7 Allocation of Purchase Price. The Purchase Price will be allocated amongst the Purchased Assets as set forth on Schedule 1.7, which has been agreed to by all of the parties to this Agreement, and the parties shall file all local, state and federal tax returns, including Form 8594, consistent with such Schedule.

1.8 Sales and Transfer Taxes. All sales and transfer taxes (with the exception of New Hampshire real estate transfer taxes, which shall be paid equally by Seller and Buyer), fees and duties under applicable law incurred in connection with this Agreement or the transactions contemplated thereby will be borne and paid by Seller, and Seller shall promptly reimburse Buyer for the payment of any such tax, fee or duty which it is required to make under applicable law. Buyer shall pay the recording fees for the deeds associated with the Purchased Assets and attendant LCHIP fees, while Seller shall pay any fees to record any title or lien clearing documents and any attendant LCHIP fees.

## **SECTION 2. CLOSING OBLIGATIONS AND CONDITIONS**

2.1 Conditions to Each Party's Obligations to Effect the Closing. The respective obligations of each party to effect the transaction contemplated hereby are subject to the fulfillment or joint waiver by the parties at or prior to the Closing Date of the following conditions:

(a) Required Approvals. The Buyer, with the cooperation of the Seller and the Shareholders, shall have obtained all required regulatory approvals, specifically including

but not limited to the approval of the NHPUC to the acquisition of the assets and franchise of the Seller by the Buyer (Ref: Section 3.5) (the "NHPUC Approvals"), and that all such approvals shall have become final orders, including the expiration of any applicable rehearing or statutory or regulatory appeal periods, and that such final orders shall not impose terms and conditions which, individually or in the aggregate, would have a material adverse effect on the transaction (each party agreeing to use its commercially reasonable efforts to obtain all such approvals);

(b) RESERVED;

(c) Material Adverse Changes. There shall have been no Material Adverse Changes as defined in Section 3.2 in the business prospects or condition, financial or otherwise, of the Business or the Purchased Assets, except as may be accepted or agreed by the Buyer and Seller and reflected in the Schedules to this Agreement prior to the Closing Date;

(d) Litigation. On the Closing Date no suit, action or other proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator, by which the petitioner or other party seeks to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, which in the opinion of counsel for Buyer makes it inadvisable to proceed with the consummation of such transactions, except as may be accepted or agreed by the Buyer and Seller and reflected in the Schedules to this Agreement prior to the Closing Date; and

(e) Due Diligence Review. Buyer shall have completed to its satisfaction its due diligence review of the Business, including a review of the Seller's December 31, 2016 year-end financial statements and the Seller's financial statements for the month-end immediately preceding the Closing Date as well as the Real Property inspections and examination of title described in Sections 2.1(f) and 2.1(g) below.

(f) Inspections. Buyer shall have the right, upon reasonable notice to the Seller, to enter upon the Real Property at reasonable times and places, in order to conduct inspections, examinations and surveys of the Real Property, so long as said inspections do not unreasonably interfere with Seller's operation and maintenance of the Business. Buyer shall be responsible for the conduct of its agents, employees and contractors and shall indemnify and hold harmless Seller from any and all claims made pursuant to said inspections and examinations. Buyer shall be entitled to an Inspection Period of 90 days from the effective date of this Agreement to conduct its due diligence on the Real Property and Personal Property of the Seller. Buyer may, for any or no reason, terminate this Agreement by giving written notice of termination ("Termination Notice") to Seller on or before the expiration of the Inspection Period. Upon receipt by Seller of such Termination Notice, this Agreement shall be terminated and the parties shall have no further obligations to or recourse against each other.

(g) Examinations of Title. The Buyer shall have until the expiration of the Inspection Period to examine title to the Property, at the Buyer's expense, and to make any



objections thereto to the Seller in writing. If Buyer fails to make any objections on or before the expiration of the Inspection Period, the Buyer shall be deemed to have accepted all exceptions to title that would have been shown in a title commitment, survey or UCC search, all such exceptions and matters and any matters caused by or through the Buyer shall be referred to herein as "Permitted Exceptions". If any objections to title, survey or a UCC search are made properly on or before the expiration of the Inspection Period, the Seller shall have the right, but not the obligation, exercisable by written notice to the Buyer within fourteen (14) days after delivery of Buyer's objections, to cure (by removal, endorsement over, or otherwise) such objections to the Buyer's reasonable satisfaction, on or before the Closing Date. If no such notice from the Seller concerning such election is received by the Buyer by such date, the Seller shall be deemed to have elected not to cure any such objections. If any such objections are not cured by the Seller by the scheduled Closing Date, the Buyer shall have the option to either terminate the Agreement and neither party shall thereafter have any claim against the other, or to accept the transfer of such title as the Seller is able to convey and pay the full Purchase Price thereof. At no cost to Seller, Buyer shall deliver to Seller's counsel a complete copy of the abstract of title and title opinion obtained or prepared for this transaction as soon as Buyer or Buyer's counsel receives it, or is entitled to receive it.

(h) Water Supplies/Sewage Disposal Disclosure: Attached hereto and incorporated herein as Exhibit A is the Water Supply and Sewage Disposal Disclosure made pursuant to New Hampshire RSA 477:4-c. The Buyer acknowledges receipt of this Disclosure and agrees that the Seller has complied with RSA 477:4-c.

(i) Radon Gas/Lead Paint: Attached hereto and incorporated herein as Exhibit B is the Radon Gas and Lead Paint Disclosure made pursuant to RSA 477:4-a. The Buyer acknowledge receipt of this Disclosure and agrees that the Seller has complied with RSA 477:4-a.

2.2 Seller's and Shareholders' Closing Deliverables. At or prior to the Closing, except as otherwise noted, Seller and the Shareholders shall deliver, or cause to be delivered, to Buyer the following documents in such form and substance as are reasonably satisfactory to Buyer and Buyer's counsel:

(a) Such executed and, as appropriate, notarized transfer documents as may be requested by Buyer or its counsel in order that good and marketable title to the Purchased Assets shall pass from Seller to Buyer;

(b) A Warranty Deed, unless otherwise agreed by the Buyer and Buyer's counsel, for each parcel of the Real Property (Ref: Section 3.6) running to the Buyer conveying good, clear, record, marketable and insurable title in fee simple absolute;

(c) Evidence satisfactory to Buyer and Buyer's counsel of Seller's agreement to discontinue the Wildwood Water Company, Inc. by: (i) amendment to its Articles of Incorporation to change its name from "Wildwood Water Company, Inc" to a name that is substantially dissimilar; or (ii) terminate the Wildwood Water Company, Inc said discontinuance or termination to be completed and effective no later than one (1) year following the Closing;

(d) Pay-off letters and evidence of release of encumbrances on the Purchased Assets by the State of New Hampshire and any other third party;

(e) Certificate of good standing of Seller from the New Hampshire Secretary of State dated as of a date that is within ten (10) days of the Closing;

(f) Certificate of Secretary of Seller certifying (i) adoption of resolutions of the Board of Directors and the Shareholders of Seller approving and authorizing the Agreement and the transactions contemplated hereby, and (ii) the incumbency of the officers of Seller executing this Agreement and other documents delivered pursuant to this Agreement;

(g) A certificate signed by Seller's President and the Shareholders, dated as of the Closing Date, certifying that (i) all of the representations and warranties of Seller and the Shareholders hereunder are true and accurate on and as of the Closing Date and (ii) that all the covenants of Seller and the Shareholders have been duly performed on and as of the Closing Date;

(h) RESERVED;

(i) RESERVED;

(j) All of Seller's leases, contracts, commitments, agreements and rights relating to the Purchased Assets, with such assignments thereof and consents to assignments as are necessary to assure Buyer of the full benefit of the same;

(k) All of Seller's current business records, books and other data relating to the Purchased Assets shall be maintained in the Gilford, New Hampshire office of the Seller with Buyer's right to fully access such records, books, and data at any time;

(l) RESERVED;

(m) Seller shall have made all filings with and notifications of governmental authorities, regulatory agencies and other entities required to be made by Seller in connection with the execution and delivery of this Agreement, the performance of the transactions contemplated hereby and the continued operation of the Business of Seller by Buyer subsequent to the Closing; and Seller and Buyer shall have received all authorizations, waivers, consents and permits, in form and substance reasonably satisfactory to Buyer, from all third parties, including, without limitation, applicable governmental authorities, regulatory agencies, including the NHPUC, lessors, lenders and contract parties, required to permit the continuation of the Business of Seller and the consummation of the transactions contemplated by this Agreement, and in connection with the transfer of Purchased Assets or Seller's contracts, permits, leases, licenses and franchises, to avoid a breach, default, termination, acceleration or modification of any indenture, loan or credit agreement or any other agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award as a result of, or in connection with, the execution and performance of this Agreement; and

(n) Such other documents, agreements or instruments that Buyer may reasonably request that do not materially expand the Seller's obligations under this Agreement but rather only evidence Seller's or Shareholders' compliance with its terms.

2.3 Buyer's Closing Deliverables. At or prior to the Closing, except as otherwise noted, Buyer shall deliver, or cause to be delivered, to or on behalf of, Seller in such form and substance as are satisfactory to Seller and Seller's counsel:

(a) The Purchase Price, payable in accordance with Section 1.4;

(b) RESERVED;

(c) Certificate of the Secretary of Buyer certifying (i) adoption of resolutions of the Board of Directors of Buyer approving and authorizing the Agreement and the transactions contemplated hereby, (ii) the incumbency of the officers or managers of Buyer executing this Agreement and or the other documents delivered pursuant to this Agreement, as applicable;

(d) A certificate signed by Buyer's President, dated as of the Closing Date, certifying that all of the representations and warranties of Buyer hereunder are true and accurate on and as of the Closing Date; and

(e) Such other documents, agreements or instruments that Seller may reasonably request that do not materially expand the Buyer's obligations under this Agreement but rather only evidence Buyer's compliance with its terms.

### **SECTION 3. REPRESENTATIONS AND WARRANTIES OF SELLER AND THE SHAREHOLDERS**

3.1 Making of Representations and Warranties. As a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated hereby, Seller and Shareholders jointly and severally hereby make to Buyer the representations and warranties contained in this Section 3.

3.2 Corporate Organization and Qualifications of Seller. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New Hampshire. Seller has the corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified, either individually or in the aggregate, would not have a Material Adverse Effect on Seller. The terms "Material Adverse Effect" and "Material Adverse Change" as used in this Agreement means a material adverse effect or a material adverse change on the properties, business, assets, financial condition or prospects of the relevant party and its affiliates, taken individually or as a whole (whichever is greater), exceeds \$5,000. Seller is not in violation of any term of its Articles of Incorporation or Bylaws.

3.3 Capitalization. The Shareholders own beneficially and of record all of the issued and outstanding shares of capital stock of Seller. Seller does not have and is not bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements or agreements of any character calling for the purchase or issuance of any shares of its capital stock. There are no voting agreements, trusts, proxies or other agreements, instruments or undertakings with respect to the voting of Seller's capital stock to which Seller or Shareholders are a party. Shareholders hold their shares free and clear of all liens, charges, encumbrances and security interests, all such shares are, and as of the Closing, will be, duly authorized and validly issued and are fully paid, non-assessable and free of all preemptive rights, liens, charges, encumbrances and securities interests, of any kind or nature whatsoever, with no personal liability attaching to the ownership thereof.

3.4 Authority of Seller and the Shareholders. Seller has full right, authority and power to enter into this Agreement and each agreement, document and instrument to be executed and delivered by Seller pursuant to this Agreement and to carry out the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and each such other agreement, document and instrument have been duly authorized by all necessary action of Seller and the Shareholders and no other action on the part of Seller or the Shareholders is required in connection therewith. This Agreement and all ancillary documents have been duly and validly executed and delivered by Seller and or the Shareholders as applicable, and this Agreement and the ancillary documents constitute valid, legal and binding obligations of Seller and Shareholders, and are enforceable against Seller and Shareholders in accordance with their terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

3.5 Consents and Approvals; No Violation. Except as set forth on Schedule 3.5, the execution and delivery of this Agreement by Seller and Shareholders, the consummation of the transactions contemplated by this Agreement, the sale of the Purchased Assets, and the assumption of the Assumed Liabilities pursuant to the terms of this Agreement, do not require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority or any third party, and will not violate or breach any order, writ, injunction, decree, statute, contract, agreement, rule or regulation applicable to Seller, Shareholders, the Business, or any of the Purchased Assets.

3.6 Real and Personal Property.

(a) Seller owns the real property, easements and other interests in real estate described in the deeds attached hereto in Schedule 1.1(b) (the "Real Property"). The Real Property is not subject to any outstanding option, right of first refusal or agreement of sale, other than this Agreement. Neither the Seller nor Shareholders has received any notice from any governmental authority concerning, or has any knowledge of (A) any special tax, lien or other assessment to be levied against any of the Real Property or (B) any change in the tax assessment of any of the Real Property.



(b) Seller has not granted any other person any right to use or occupy any portion of the Real Property, except as such right to use or occupy is specifically identified and described in Schedule 1.1(b).

(c) To the best of the Seller's or Shareholders's knowledge, there is no action, pending or threatened, to change the zoning or building ordinances or any other laws, rules, regulations or ordinances affecting the Real Property.

(d) Seller has not received any notices of any violation of any applicable federal, state or local laws, ordinances or regulations with regard to the Real Property, which have not been finally resolved.

(e) There are no condemnation, environmental, zoning or other land use regulation proceedings, either instituted or, to the knowledge of the Seller or Shareholders, planned to be instituted, that would affect the Real Property.

(f) All buildings, structures, and equipment that are a part of the Purchased Assets and purportedly located within easements lie, where the easement is upon an expressly defined space, wholly within the boundaries of such easements.

(g) None of the buildings, structures or equipment that are a part of the Assets, nor the operation and maintenance thereof, violates any restrictive covenant other than such violations, if any, which are not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

(h) Seller has obtained, possesses, and is in compliance with all licenses, permits, approvals, certificates, and other authorizations required by applicable laws for the use and occupancy of the Real Property as it is currently being utilized, including, without limitation, zoning variances. Seller has not granted any mortgage, pledge, lien, conditional sale agreement, security agreement, encumbrance or other charge on the Real Property which remains outstanding except as specifically disclosed in said Schedule.

(i) Personal Property. A complete description of all the tangible personal property owned or leased by Seller and used in connection with the Business is contained in Schedule 3.6(b). Except as specifically disclosed in said Schedule, Seller has good and marketable title to all of its owned and leased personal property. None of such personal property or assets is subject to any mortgage, pledge, lien, conditional sale agreement, security agreement, encumbrance or other charge except as specifically disclosed in said Schedule.

(j) Sufficiency of Assets. The Purchased Assets are all of the assets used or held for use in the operation of the Business of Seller as the same has been operating prior to the date hereof.

3.7 Intellectual Property. To Seller's knowledge, Seller has ownership of, or license to use, any patent, copyright, trade secret, trademark, trade name or other proprietary rights (collectively, "Intellectual Property") used or to be used in the Business of Seller as presently conducted or contemplated. Seller's rights in all of such Intellectual Property are freely transferable. To Seller's knowledge, Seller has the right to use, free and clear of all claims or

rights of other persons, all customer lists, lists of prospective customers, customer files and records, computer software, systems, data compilations, research results and other information required for or incident to its products or its Business as presently conducted or contemplated.

(a) To Seller's knowledge, the present and contemplated business, activities and products of Seller do not infringe any Intellectual Property of any other person. No proceeding charging Seller with infringement of any adversely held Intellectual Property has been filed or, to the best knowledge of Seller and the Shareholders, is threatened to be filed. Seller is not making unauthorized use of any confidential information or trade secrets of any person, including without limitation, any former employer of any past or present employee of Seller. To Seller's knowledge, none of Seller's employees have any agreements or arrangements with any persons other than Seller related to confidential information or trade secrets of such persons or restricting any such employee's ability to engage in business activities of any nature. The activities of their employees on behalf of Seller do not violate any such agreements or arrangements known to Seller or the Shareholders.

3.8 Financial Statements; Absence of Certain Changes. Seller has delivered to Buyer, or will deliver to the Buyer on or before the Closing Date, the following financial statements, copies of which are attached hereto as Schedule 3.8 (the "Financial Statements"):

(i) Financial statements of Seller for the twelve months ended December 31, 2015, and

(ii) Financial statements for year to date for the period ending the month immediately preceding the Closing Date.

Said financial statements have been prepared, are complete and correct in all material respects, and present fairly the financial condition of Seller at the dates of said statements and the results of its operations and its cash flows for the periods covered thereby.

Since December 31, 2016 (a) there has been no change in the assets, liabilities or financial condition of the assets of the Seller from that reflected in the Financial Statements except for changes in the ordinary course of business consistent with past practice and which have not had a Material Adverse Effect and (b) to the Seller's knowledge, none of the business, prospects, financial condition, operations, property or affairs of the Seller has been materially adversely affected by any occurrence or development, individually or in the aggregate, whether or not insured against.

(a) Except as set forth on Schedule 3.8, as of the Closing, Seller has no known liabilities of any nature, whether accrued, absolute, contingent or otherwise, asserted or unasserted, (including without limitation liabilities as guarantor or otherwise with respect to obligations of others, or liabilities for taxes due or then accrued or to become due or contingent or potential liabilities relating to activities of Seller or the conduct of its business prior to the Closing regardless of whether claims in respect thereof had been asserted as of such date).

3.9 Taxes. All tax returns required to be filed by Seller with respect to the Business and the Purchased Assets have been filed, including but not limited to any sales tax returns, and all taxes shown to be due on such tax returns have been paid in full. No notice of deficiency or

assessment has been received from any taxing authority with respect to liabilities for taxes of Seller with respect to the Business or the Purchased Assets or of the Shareholders, which have not been fully paid or finally settled. There are no outstanding agreements or waivers extending the applicable statutory periods of limitation for taxes of Seller associated with the Purchased Assets or the Business for any period.

3.10 Collectability of Accounts Receivable. Attached hereto as Schedule 3.10 is a true, correct, and complete listing of all of the accounts receivable of the Business as of the Closing Date (the “Accounts Receivable”), including an aging showing how long the Accounts Receivable have been outstanding. To the best of Seller’s and the Shareholders’s knowledge, all of the Accounts Receivable of Seller shown or reflected on Schedule 3.10 or existing at the date hereof (less the reserve for bad debts set forth on the financial statements delivered under Section 3.8) are or will be at the Closing valid and enforceable claims, fully collectable and subject to no setoff or counterclaim. Except as set forth on Schedule 3.10, Seller does not have any accounts or loans receivable from any person, firm or corporation which is affiliated with Seller or from any director, officer or employee of Seller, and all accounts and loans receivable from any such person, firm or corporation shall be paid in cash prior to the Closing.

3.11 Accounts Payable. Attached hereto as Schedule 3.11 is a true, correct, and complete listing of all of the accounts payable of the Business as of the Closing Date (the “Accounts Payable”), including an aging showing when such amounts were due. All such Accounts Payable arose from bona fide transactions in the ordinary course of business. Except as set forth on Schedule 3.11, Seller and the Shareholders are not aware of any circumstance, situation, reason, or other basis that currently exists or is likely to arise which would or might reasonably result in any vendor or supplier failing or refusing to provide to Buyer the equipment, materials, or other supplies of the type and quantity provided by such vendor or supplier during the one (1) year period preceding the Closing Date, or to otherwise conduct business with Buyer after the Closing Date.

3.12 Contracts. Except as disclosed on Schedule 3.12 (true and complete copies of which have been delivered to Buyer), Seller is not a party to or subject to:

- (a) any other contracts or agreements creating any obligations of Seller of \$2,500 or more with respect to any such contract or agreement not specifically disclosed elsewhere under this Agreement;
- (b) any contract or agreement which by its terms does not terminate at the Closing or is not terminable without penalty by Seller or any successor or assign after the Closing;
- (c) any contract or agreement for the sale or lease of its products or services not made in the ordinary course of business;
- (d) any contract containing covenants limiting the freedom of Seller to compete in any line of business or with any person or entity;
- (e) any license agreement (as licensor or licensee) except for off the shelf software used in connection with the Business;

(f) any indenture, mortgage, promissory note, loan agreement, guaranty or other agreement or commitment for the borrowing of money;

(g) any contract or agreement with any officer, employee, director or stockholder of Seller or with any persons or organizations controlled by or affiliated with any of them; or

(h) any employment contract or contract for services which is not terminable within 30 days by Seller without liability for any penalty or severance payment.

Seller is not in default under any such contracts, commitments, plans, agreements or licenses described in said Schedule including, without limitation, any record retention requirements, and neither Seller nor either Shareholders has any knowledge of conditions or facts which with notice or passage of time, or both, would constitute a default.

3.13 Litigation. Except as set forth on Schedule 3.13, there is no currently pending or, to the knowledge of Seller or either Shareholders, threatened litigation and governmental or administrative proceedings or investigations to which Seller or any Shareholders is a party. There is no litigation or governmental or administrative proceeding or investigation pending or, to the knowledge of Seller or Shareholders, threatened (including but not limited to any proceeding before the NHPUC) against Seller or to which Seller is a party (either as a named party or intervenor), any affiliate of Seller or any subsidiary of any affiliate of Seller which may have any adverse effect on Seller's properties, assets, prospects, financial condition or business or which would prevent or hinder the consummation of the transactions contemplated by this Agreement. To the knowledge of Seller or either Shareholders, there is no information, investigation, proceeding, accusation or inquiry relating to Seller or either Shareholders which may give rise to any claim which may have an adverse effect on the Purchased Assets. There are no existing claims under any errors and omissions insurance policy or policies naming the Seller or any Shareholders as an insured.

3.14 Compliance with Laws. To Seller's knowledge, Seller is in compliance with all applicable statutes, ordinances, orders, judgments, decrees and rules and regulations promulgated by any federal, state, municipal or other governmental authority which apply to Seller or to the conduct of its business, including, without limitations, environmental laws, anti-money laundering and privacy laws and regulations and any record retention requirement, and Seller has not received notice of a violation or alleged violation of any such statute, ordinance, order, rule or regulation.

3.15 Finder's Fee. Neither Seller nor either Shareholders has incurred any obligation or liability, contingent or otherwise, for brokerage or finder's fees or agent's commissions or other similar payments in connection with the sale of Seller's Business or the Purchased Assets or in connection with the transactions contemplated by this Agreement.

3.16 Employee Matters; Independent Contractors. No employee or other benefit plans of the Seller will be assumed by the Buyer and Seller shall remain responsible for any and all liabilities thereunder.



3.17 Permits; Burdensome Agreements. To Seller's knowledge, Seller has obtained all permits, registrations, licenses, franchises, certifications and other approvals (collectively, the "Approvals") required from federal, state or local authorities in order for Seller to conduct its business, which Approvals are set forth on Schedule 3.5. To Seller's knowledge, all such Approvals are valid and in full force and effect, and Seller is operating in compliance therewith. Seller has not received any notice of a violation or alleged violation of any such Approval. Such Approvals include, but are not limited to, those required under federal, state or local statutes, ordinances, orders, requirements, rules, regulations, or laws pertaining to environmental protection, public health and safety, worker health and safety, buildings, highways or zoning. Other than the agreements disclosed by Seller in any schedule or exhibit hereto, Seller is not subject to or bound by any agreement, judgment, decree or order which would have a Materially Adverse Effect.

3.18 Environmental Matters. The Company is in compliance with Environmental Laws (which compliance includes, but is not limited to, the possession by the Company of all permits and other governmental authorizations required under applicable Environmental Laws, and compliance with the terms and conditions thereof). The Company has not received any written notice, report or other information regarding any actual or alleged material violation of Environmental Laws, or any material liabilities or potential material liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to the Company, the Business or any of the Company's facilities arising under Environmental Laws. There is no Environmental Claim pending or, to the knowledge of the Company, threatened against the Company. There are no past or present actions, activities, circumstances, conditions, events or incidents which reasonably would be expected to form the basis of an Environmental Claim against the Company. "Environmental Claim" means any action, investigation or notice by any person alleging potential liability (including potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (i) the presence, release or threatened release of any hazardous materials at any location, whether or not owned or operated by the Company, or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law. "Environmental Laws" means all applicable federal, state and local statutes or laws, judgments, orders, regulations, licenses, permits, rules and ordinances relating to pollution or protection of health, safety or the environment, including, but not limited to the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resources Conservation and Recovery Act (42 U.S.C. §6901 et. seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et. seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et. seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the New Hampshire Safe Drinking Water Act (N.H. RSA 485), and other similar state and local statutes.

3.19 Disclosure. The representations, warranties and statements contained in this Agreement and in the certificates, exhibits and schedules delivered by Seller and the Shareholders pursuant to this Agreement to Buyer do not contain any untrue statement of a material fact, and, when taken together, do not omit to state a material fact required to be stated therein or necessary in order to make such representations, warranties or statements not misleading in light of the circumstances under which they were made. To Seller's knowledge, there are no facts which presently or may in the future have a Material Adverse Effect on the

business, properties, prospects, operations or condition of Seller, Seller's Business being sold to Buyer, or the Purchased Assets, which have not been specifically disclosed herein or in a Schedule furnished herewith, other than general economic conditions affecting Seller's industry.

3.20 Transactions with Interested Persons. Except as set forth in Schedule 3.20, Seller is not a party to or subject to any loans, leases, or other agreements or transactions with any present or former stockholder, director, officer, affiliated entity or person, or employee of the Seller or, to the Seller's knowledge, any of their respective spouses or family members other than as has been disclosed and filed with the NHPUC pursuant to New Hampshire RSA 366. Neither Seller, Shareholders, nor any officer, supervisory employee or director of Seller or, to the knowledge of Seller and the Shareholders, any of their respective spouses or family members owns directly or indirectly on an individual or joint basis any material interest in, or serves as an officer or director or in another similar capacity of, any competitor, supplier or key customer of Seller, or any organization which has a material contract or arrangement with Seller.

3.21 Insurance. All of Sellers' tangible assets are insured with respect to loss due to fire and other risks in accordance with good industry practice and in amounts and with types of coverage adequate to insure fully against risks to which Seller and its assets are normally exposed in the operation of the Business. Neither Seller, the Shareholders, nor any officer, supervisory employee or director of Seller has received notice that any insurer under any policy referred to in this Section is denying liability with respect to a claim thereunder or defending under a reservation of rights clause.

#### **SECTION 4. COVENANTS OF SELLER AND THE SHAREHOLDERS**

4.1 Making of Covenants and Agreements. Seller and the Shareholders hereby make the respective covenants and agreements set forth in this Section 4.

4.2 Consummation of Agreement. Seller and the Shareholders shall use their best efforts to perform and fulfill all conditions and obligations on their parts to be performed and fulfilled under this Agreement, to the end that the transactions contemplated by this Agreement shall be fully carried out. To this end, Seller will obtain prior to the Closing all necessary authorizations or approvals of its Shareholders and Board of Directors.

4.3 Cooperation of Seller. Seller and the Shareholders shall cooperate with all reasonable requests of Buyer and Buyer's counsel in connection with the consummation of the transactions contemplated hereby. The Seller and the Shareholders shall be responsible for the costs of cooperation under this Agreement.

4.4 RESERVED.

4.5 NHPUC Petition. Promptly after execution of this Agreement by the parties, the Buyer shall prepare, the Seller shall sign, and the Buyer will file with the NHPUC a petition for approval of the proposed transfer of Purchased Assets, including financing approval, contemplated by this Agreement. The Buyer shall prosecute such petition, and the Seller and the Shareholders will cooperate and fully participate in the proceeding relating to such petition. The Buyer shall pay all costs and expenses of said petition and prosecution, except for (i) Seller's and

Shareholders' attorneys' fees, and (ii) Seller's or Shareholders' costs or fees associated with providing testimony or responding to data requests.

4.6 Taxes and Tax Returns. Seller, in accordance with applicable law, shall (i) promptly prepare and file on or before the due date or any extension thereof all federal, state and local tax returns required to be filed by it with respect to taxable periods of Seller that include any period ending on or before the Closing or including any income or gain relating to the sale of the Purchased Assets (including any reported under the installment method), and (ii) pay all taxes of Seller attributable to periods ending on or before the Closing or relating to the sale of the Purchased Assets (including any reported under the installment method).

## **SECTION 5. REPRESENTATIONS AND WARRANTIES OF BUYER**

5.1 Making of Representations and Warranties. As a material inducement to Seller and the Shareholders to enter into this Agreement and consummate the transactions contemplated hereby, Buyer hereby makes the representations and warranties to Seller and the Shareholders contained in this Section 5.

5.2 Organization of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Hampshire with full corporate power to own or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it.

5.3 Authority of Buyer. Buyer has full right, authority and power to enter into this Agreement, and each agreement, document and instrument to be executed and delivered by Buyer pursuant to this Agreement and to carry out the transactions contemplated hereby. This Agreement and each other agreement, document and instrument executed and delivered by Buyer pursuant to this Agreement constitute, or when executed and delivered will constitute, valid and binding obligations of Buyer enforceable in accordance with their terms.

5.4 Litigation. There is no litigation or governmental or administrative proceeding or investigation pending or, to its knowledge, threatened against Buyer, which would prevent or hinder the consummation of the transactions contemplated by this Agreement.

5.5 NHPUC Petition. Promptly after execution of this Agreement by the parties and not later than thirty (30) calendar days, the Buyer shall prepare, the Seller shall sign, and the Buyer will file with the NHPUC a petition for approval of the proposed transfer of Purchased Assets, including financing approval, contemplated by this Agreement. The Buyer shall prosecute such petition, and the Seller and the Shareholders will cooperate and fully participate in the proceeding relating to such petition. The Buyer shall pay all costs and expenses of said petition and prosecution, except for (i) Seller's and Shareholders' attorneys' fees, and (ii) Seller's or Shareholders' costs or fees associated with providing testimony or responding to data requests.

**SECTION 6. SURVIVAL; INDEMNIFICATION**

6.1 Survival of Representations, Warranties, Etc. All representations and warranties herein or in any exhibit, schedule or certificate delivered by any party incident to the transactions contemplated hereby (except deeds) shall survive the Closing for a period of three (3) years, provided however that (a) the representations and warranties set forth in Sections 3.2 (Corporate Organization and Qualifications of the Seller), 3.4 (Authority of Seller and the Shareholders), 3.6 (Real and Personal Property), 3.20 (Transactions with Interested Persons), 5.2 (Organization of Buyer), and 5.3 (Authority of Buyer) shall survive the Closing indefinitely; (b) the representations and warranties set forth in Section 3.9 (Taxes) shall survive until the expiration of the applicable statute of limitations; and (c) the three (3) year time limit shall not apply to any breach of representations or warranties arising out of the fraudulent statements or intentional omissions of the Seller, the Shareholders, or the Buyer. Warranties in deeds shall continue as provided by law.

6.2 Indemnification by the Seller and Shareholders. The Seller and the Shareholders will jointly and severally indemnify, defend and hold harmless the Buyer from and against any and all claims, demands or suits, losses, liabilities, damages (including consequential or special damages), obligations, payments, costs and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) asserted against or suffered by the Buyer relating to, resulting from or arising out of the following:

- (a) the operation of the Business before the Closing Date;
- (b) any breach by the Seller or any Shareholders, of any covenant, representation, warranty, or agreement of the Seller, or the Shareholders, contained in this Agreement;
- (c) any and all liabilities and obligations of, or claims against, the Seller or the Shareholders not expressly assumed by Buyer under this Agreement.

6.3 Indemnification by the Buyer. The Buyer will indemnify, defend and hold harmless the Seller and the Shareholders, from and against any and all claims, demands or suits, losses, liabilities, damages (including consequential or special damages), obligations, payments, costs and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) asserted against or suffered by the Seller or the Shareholders, relating to, resulting from or arising out of the following:

- (a) the operation of the Business after the Closing Date; and
- (b) any breach by the Buyer of any covenant, representation, warranty, or agreement of the Buyer contained in this Agreement.



6.4 Indemnification Procedures. The expiration, termination or extinguishment of any covenant, representation, warranty, or agreement shall not affect the parties' obligations under this Section 6 if the party to be indemnified provided the party required to provide indemnification under this Agreement with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment. The procedure set forth below shall be followed with respect to every claim for indemnification.

(a) Notice. The party seeking indemnification (the "Indemnified Party") shall give to the party from whom indemnification is sought (the "Indemnifying Party") written notice of any claims for which indemnity is sought under Section 6.2 or 6.3 promptly, but in any event within thirty (30) calendar days after the Indemnified Party receives notice thereof; provided, however, that failure by the Indemnified Party to give such notice shall not relieve the Indemnifying Party from any liability it shall otherwise have pursuant to this Agreement, except to the extent that the Indemnifying Party is actually prejudiced by such failure. Such notice shall set forth in reasonable detail the basis for such potential claims and shall be given in accordance with Section 8.4 below. The indemnification period provided for herein shall be tolled for a particular claim for the period beginning on the date that the Indemnified Party receives written notice of such claims until the final resolution thereof;

(b) Defense and Control of Third Party Claims. The Indemnifying Party shall have the right, at its option, to be represented by counsel of its choice and to assume the defense or otherwise control the handling of any third party claims for which indemnity is sought by notifying the Indemnified Party in writing to such effect within thirty (30) business days of receipt of such notice. If the Indemnifying Party does not give timely notice in accordance with the preceding sentence, the Indemnifying Party shall be deemed to have given notice that it does not wish to control the handling of such third party claims for which indemnity is sought. In the event the Indemnifying Party elects (by written notice within such thirty (30) business-day period) to assume the defense of or otherwise control the handling of any such third party claims for which indemnity is sought, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party from and against all claims suffered therefrom. In the event that the Indemnifying Party does not assume the defense or otherwise control the handling of third party claims for which the Indemnified Party is entitled to indemnification hereunder, the Indemnified Party may retain counsel, as an indemnifiable expense, to defend such third party claims.

(c) Cooperation. The parties shall cooperate in the defense of any third party claims and each shall make available all books and records which are relevant in connection with such third party claims. The Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to any matter which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto, without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld.

(d) Limitation of Liability. The Shareholder's aggregate liability to the Buyer under Section 6.2 shall be limited to the Purchase Price (the "Indemnification Cap"), provided

however, that the Indemnification Cap shall not apply to any indemnification claims under Section 6.2 arising out of any fraudulent statements or intentional misstatements or omissions of the Seller or the Shareholders or any indemnification claims arising out of the gross negligence or willful misconduct of the Seller or the Shareholders, or the Seller's directors, officers, employees, consultants, or agents.

## **SECTION 7. RIGHTS AND OBLIGATIONS SUBSEQUENT TO CLOSING**

### **7.1 Collection of Assets.**

(a) Subsequent to the Closing, Buyer shall have the right and authority to collect all receivables and other items transferred and assigned to it by Seller hereunder and to endorse with the name of Seller any checks received on account of such receivables or other items, and Seller agrees that it will promptly transfer or deliver to Buyer from time to time (no later than thirty days following receipt thereof), any cash or other property that Seller may receive with respect to any claims, contracts, licenses, leases, commitments, sales orders, purchase orders, receivables of any character or any other items included in the Purchased Assets. This authority shall remain in effect until the earlier of: (i) collection of all receivables identified in the Schedules to this Agreement; or (ii) the expiration of the applicable statute of limitations for collection of said receivables.

(b) Seller hereby irrevocably appoints Buyer or any officers of Buyer, each acting singularly, as its attorney-in-fact with full power and authority to endorse and deposit checks and any other assets transferred hereunder and to execute and deliver forms and documents necessary to effect the conveyance and transfer of the Purchased Assets, as fully as Seller could or might do if present.

7.2 Payment of Obligations. Seller shall pay all of its liabilities in the ordinary course of business as they become due.

7.3 Proration of Expenses. All expenses relating to the Purchased Assets attributable to the period prior to the Closing Date shall be borne by Seller and all such expenses attributable to the period on or after the Closing Date shall be borne by Buyer. Each of Seller and the Shareholders (on the one hand) and Buyer (on the other hand) shall cooperate with the other party to effect the proration of expenses set forth in the preceding sentence and shall promptly reimburse the other party for any expenses of such first party that have been paid by such other party.

## **SECTION 8. GENERAL PROVISIONS**

8.1 Expenses. Unless otherwise expressly provided in this Agreement, whether or not this Agreement and the transactions contemplated hereby are consummated, Buyer, Seller and the Shareholders will each pay their respective expenses in connection with this Agreement and the transactions contemplated hereby.

8.2 Termination of Agreement. This Agreement may be terminated:

(a) By Buyer upon the material breach by the Seller or Shareholders of any representation, warranty, covenant, agreement, undertaking, or restriction contained in this Agreement, which has not been cured by the thirtieth (30<sup>th</sup>) day after the giving of notice by Buyer to the Seller or Shareholders of such breach; or

(b) By the Seller or Shareholders upon the material breach by Buyer of any representation, warranty, covenant, agreement, undertaking, or restriction contained in this Agreement, which has not been cured by the thirtieth (30<sup>th</sup>) day after the giving of notice by Seller or Shareholders to Buyer of such breach;

(c) By Buyer, upon the failure of the Seller or Shareholders to satisfy any of the conditions required to be satisfied by the Seller or Shareholders pursuant to this Agreement;

(d) By the Seller or Shareholders, upon the failure of the Buyer to satisfy any of the conditions required to be satisfied by Buyer pursuant to this Agreement; or

(e) By mutual agreement of the parties in writing.

8.3 Governing Law. This Agreement shall be construed under and governed by the internal laws of the State of New Hampshire without regard to its conflict of laws provisions.

8.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, tele copied (with confirmation), or delivered by an express courier (with confirmation) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Buyer, to:

Thomas Mason, President  
Lakes Region Water Co., Inc.  
Route 109, P.O. Box 389  
Moultonborough, NH 03254  
[Lrwh2oserv@yahoo.com](mailto:Lrwh2oserv@yahoo.com)

with a copy to:

Justin C. Richardson  
Upton & Hatfield, LLP  
159 Middle Street  
Portsmouth, NH 03801  
[jrichadson@uptonhatfield.com](mailto:jrichadson@uptonhatfield.com)

(b) if to Seller or the Shareholders, to:

Wildwood Water Company, Inc.  
P.O. Box 398  
Conway, NH 03818

(603) 447-4478 (office)

with a copy to:

Kenneth Roy Cargill  
Cooper Cargill Chant, PA  
2935 White Mountain Hwy  
North Conway, NH 03860-5210  
[kcargill@coopercargillchant.com](mailto:kcargill@coopercargillchant.com)

8.5 Entire Agreement. This Agreement, including the schedules and exhibits referred to herein and the other writings specifically identified herein or contemplated hereby, is complete, reflects the entire agreement of the parties with respect to its subject matter, and supersedes all previous written or oral negotiations, commitments and writings. No promises, representations, understandings, warranties and agreements have been made by any of the parties hereto except as referred to herein or in such schedules and exhibits or in such other writings; and all inducements to the making of this Agreement relied upon by either party hereto have been expressed herein or in such schedules or exhibits or in such other writings.

8.6 Assignability; Binding Effect. This Agreement shall only be assignable by Buyer to a corporation or other entity controlled by or under common control with Buyer upon written notice to Seller and the Shareholders, and such assignment shall not relieve Buyer of any liability hereunder. This Agreement may not be assigned by Seller or the Shareholders without the prior written consent of Buyer. This Agreement shall be binding upon and enforceable by, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

8.7 Publicity. Except as otherwise required by law, so long as this Agreement is in effect, neither Seller nor the Shareholders shall issue or cause the publication of any press release or other public announcement with respect to, or otherwise make any public statement concerning, the transactions contemplated by this Agreement without the consent of the Buyer, which consent shall not be unreasonably withheld.

8.8 Captions and Gender. The captions in this Agreement are for convenience only and shall not affect the construction or interpretation of any term or provision hereof. The use in this Agreement of the masculine pronoun in reference to a party hereto shall be deemed to include the feminine or neuter, as the context may require.

8.9 Execution in Counterparts. For the convenience of the parties and to facilitate execution, this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

8.10 Amendments. This Agreement may not be amended or modified, nor may compliance with any condition or covenant set forth herein be waived, except by a writing duly and validly executed by each party hereto, or in the case of a waiver, the party waiving compliance.



8.11 Consent to Jurisdiction. Solely for the purpose of allowing a party to enforce its indemnification and other rights hereunder, each of the parties hereby consents to personal jurisdiction, service of process and venue in the federal or state courts of New Hampshire.

8.12 Non-Disclosure and Confidentiality. Buyer and Seller will keep Confidential Information (as hereinafter defined) confidential and will not disclose it to any person or entity, except for required disclosures: (a) regulatory officials having jurisdiction over the party; (b) to the party's Representatives (as hereinafter defined) who reasonably need to know such Confidential Information in connection with the performance of such party's obligation under this Agreement (it being understood that such Representatives shall be informed of the confidential nature of such Confidential Information and shall be required by the party to treat such Confidential Information confidentially); (c) as otherwise required by law or legal process; or (d) as otherwise authorized by the other parties in writing. If a party is requested to disclose any Confidential Information pursuant to subpart (c) above, such party shall make reasonable efforts to notify the other parties of the request, if lawfully permitted to do so, so that such other parties may attempt, if desired, to seek a protective order with regard to the disclosure of such Confidential Information. The confidentiality and nondisclosure provisions of this Section shall not apply to any information that: (i) is or becomes generally available to the public other than as a result of a breach of this Agreement by a party or any Representative of a party; (ii) is or becomes available to a party or its Representatives from a source (other than one of the other parties) that is not known by the first party or its Representatives to be subject to a duty of confidentiality with respect thereto; or (iii) is or was independently developed by the party or its Representatives without using any Confidential Information. The confidentiality and non-disclosure provisions of this Section shall survive closing and terminate three (3) years from the date hereof.

For purposes herein, "Confidential Information" shall include, but not be limited to, the fact of negotiations between the parties for the purchase and sale of assets contemplated hereby, any versions of or excerpts from any draft documents associated with the transactions contemplated hereby, any communications between the parties in connection with such negotiations, any trade secrets or non-public information respecting Wildwood Water Company or the Business, finances, marketing plans, strategies, methods, know-how, formulae, techniques, systems, processes, customer/account lists, projects, pricing methodologies, prospects, plans and proposals, in each case respecting Wildwood Water Company, its affiliates, and the Business, whether disclosed prior to or during the negotiation of this Agreement. Also for purposes herein, "Representatives" shall mean each party and its respective affiliates, and its and their respective directors, officers, members, managers, employees, agents, accountants, legal counsel, auditors, business consultants, appraisers, environmental consultants and similar professional advisors.

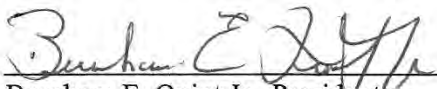
[Signature page follows.]

**IN WITNESS WHEREOF**, Buyer, Seller and the Shareholders have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

*BUYER:*  
LAKES REGION WATER CO., INC.

By: \_\_\_\_\_  
Thomas Mason, President

*SELLER:*  
WILDWOOD WATER COMPANY, INC.

By:  \_\_\_\_\_  
Burnham E. Quint Jr., President

*SHAREHOLDERS:*

 \_\_\_\_\_  
Name: Burnham E. Quint Jr., Shareholder

\_\_\_\_\_  
Name: Robert Letoile, Shareholder

## LIST OF SCHEDULES AND EXHIBITS

### Schedules

1.1	Purchased Assets
1.1 (b)	Seller's Real and Personal Property, Plant, and Equipment
1.1 (c)	Seller's Office Supplies, Furniture, and Office Equipment
1.1 (d)	Assumed Contracts
1.1 (f)	CIAC (contributions in aid of construction)
1.1 (g)	CWIP (construction work in process)
1.1 (h)	Inventory
1.1(k)	Transferable Licenses and Permits
1.2(b)	Accounts Receivable (to be provided as of the Closing Date)
1.2(d)	Excluded Assets
1.4(a)	Recovery Rate Case Expense (to be provided as of the Closing Date)
3.5	Consents and Approvals
3.6(b)	Seller's Personal Property
3.8	Financial Statements
3.10	Accounts Receivable
3.11	Accounts Payable (to be provided as of the Closing Date)
3.12	Contracts
3.13	Litigation
3.20	Transactions with Interested Persons

### Exhibits

Exhibit A	Water Supply and Sewage Disposal Disclosure
Exhibit B	Radon Gas and Lead Paint Disclosure

Schedule 1.1Purchased Assets1.1(b) Net Plant, Property and Equipment

All Plant, Personal Property, Inventory, Equipment and other Property of the Seller.

All real property rights, appurtenances, improvements to real property, easements, licenses, covenants, declarations, reservations, and all other interests in real estate of the Seller of any kind whatsoever, including, without limitation, the following:

1. Warranty Deed assigning all of the Seller's rights, title and interest in the deed of Quin-Let Trust to Wildwood Water Company, Inc., recorded in the Carroll County Registry of Deeds ("CCROD") at **Book 1497, Page 0117** including but not limited to:
  - (a) The easement to use the property formerly owned by Quin-Let Trust as a water source and well lot for all purposes necessary thereto, being a portion of the premises conveyed by warranty deed of James E. Gore and Deborah B. Gore to Quin-Let Trust dated April 4, 1987, recorded in the CCROD at **Book 1229, Page 0021**.
  - (b) The right of access over all roads for all purposes on the premises conveyed by warranty deed of James E. Gore and Deborah B. Gore to Quin-Let Trust dated April 4, 1987, recorded in the CCROD at **Book 1229, Page 0021**.
  - (c) All rights reserved to the developer under the *Declaration of Covenants to Run With Land Wildwood, Section I* dated October 4, 1972 and recorded in the CCROD at **Book 524, Page 0310**.
  - (d) All rights reserved to the developer under the *Declaration of Covenants to Run With Land Wildwood, Section II* dated September 17, 1973 and recorded in the CCROD at **Book 552, Page 0427**.
  - (d) All easements, pipes, fixtures, and poles, together with all rights to enter upon said lands in said development to maintain and repair the same, being a portion of the premises conveyed by warranty deed of James E. Gore and Deborah B. Gore to Quin-Let Trust dated April 4, 1987, recorded in the CCROD at **Book 1229, Page 0021**.
  - (e) All easement rights to the protective well radius shown on the Plan recorded in the CCROD at **Plan Book 0024, Page 0031**;
  - (f) All other express or implied easements, rights, rights-of-way or other interests acquired by the Seller in the deed of Quin-Let Trust to Wildwood Water Company, Inc., recorded in the CCROD at **Book 1497, Page 0117**.



2. Quitclaim Deed assigning all of the Seller's rights, title and interest to the following:
  - (a) All rights, title and interest in the existing water pipeline easement and the right to do all things necessary to maintain, replace, repair and improve said water pipeline reserved by the North Valley Development Corp., in the deed of said North Valley Development Corp., to the Town of Albany, dated January 31, 1975 and recorded in the CCROD at **Book 0920, PG 0105**.
  - (b) All rights-of-way, easements or other interests depicted on the Subdivision Plan of North Valley Development Corp., dated April 12, 1976 and recorded in the CCRD at **Plan Book 0033, Page 0008**, including but not limited to the "200' Protective Well Radius" and the "16' R.O.W." depicted on said Plan.
  - (c) All rights, title and interest in the retained easements for and appurtenant to the community water system together with all pipelines, well, pump house, underground tanks and all other accessories thereto as generally serve lots in the Wildwood Development, as described in the deed of James E. Gore and Deborah B. Gore to Quin-Let Trust dated April 4, 1987 and recorded in the CCRD at **Book 1229, Page 0021**.
  - (d) All rights, title and interest to enforce all covenants, restrictions, easements and/or conditions related to the community water system serving lots in the Wildwood Development as described in the deed of James E. Gore and Deborah B. Gore to Quin-Let Trust dated April 4, 1987 and recorded in the CCRD at **Book 1229, Page 0021**.
3. Quitclaim Deed assigning all of the Seller's and all of **Quin-Let Trust's** rights, title and interest to do all things necessary to maintain, repair, replace and improve the water pipe lines that may be located within the rights-of-way conveyed by said Quin-Let Trust to the Town of Albany by Warranty Deed dated April 17, 1994 and recorded in the CCRD at **Book 1590, Page 0607**.
4. Quitclaim Deed assigning all of the Seller's and all of **Quin-Let Trust's** rights, title and interest in the water distribution system and its appurtenances for the purposes of furnishing water to the owners of Wildwood, Section I, as shown on Plan recorded at **Plan Book 22, Page 22**, as amended, and Wildwood, Section II as shown on Plan recorded at **Plan Book 36, Page 82**, as amended, as reserved in the Warranty Deed of Quin-Let Trust to the Town of Albany dated April 17, 1994 and recorded in the CCRD at **Book 1590, Page 0607**.
5. Quitclaim deed from **James E. Gore and Deborah B. Gore** discharging and releasing Wildwood Water Company, Inc., or Lakes Region Water Co., Inc., and its successors and assigns from the Mortgage of Quin-Let Trust to James E. Gore and Deborah B. Gore dated June 11, 1987 and recorded in the CCROD at **Book 1229, Page 24**.

6. All other real property rights, appurtenances, improvements to real property, easements, licenses, covenants, declarations, reservations, and all other interests in real estate of the Seller related to the Wildwood water system.
7. An assignment of the Seller's right to collect any outstanding liens for water service provided by the Seller prior to the Closing Date to be collected by the Buyer.

The foregoing list of interests in real property shall be updated by the Buyer prior to closing as of the closing date based on the Buyer's examination of title.

Schedule 1.1(c)

Office Equipment, Vehicles, and Other Tangible Property

All Office Equipment, Vehicles and Other Tangible Property of the Seller. This Schedule is to be updated prior to closing as of the Closing Date.

Schedule 1.1(d)

Assumed Contracts

None.

Schedule 1.1(f)

Contributions in Aid of Construction

All Contributions in Aid of Construction of the Seller. This Schedule is to be updated prior to closing as of the Closing Date.

Schedule 1.1(g)

Construction Work in Process

All Construction Work in Progress of the Seller. This Schedule is to be updated as of the Closing Date.

Schedule 1.1(h)

Inventory

All Inventory of the Seller. This Schedule is to be updated prior to closing as of the Closing Date.

Schedule 1.1(k)

Licenses and Permits

DES Permit to Operate

Schedule 1.2

Excluded Assets

- (a) all cash on hand in Seller bank accounts;
- (b) all accounts receivable of the Seller for services rendered by the Seller as of the Closing Date, all of which are set forth on Schedule 1.2(b) to be completed and delivered to the Buyer as of the Closing Date (the "Accounts Receivable") identifying each account by customer and balance due, which Accounts Receivable the Buyer shall use reasonable efforts to assist the Seller in collection and remittance to the Seller within thirty (30) business days of the Buyer's receipt thereof, and Buyer agrees (i) that monies received from a customer shall first be applied to the Accounts Receivable of such customer and (ii) to terminate the service of delinquent customers in accordance with NHPUC regulations;
- (c) the prorated amount of all service in process covering the days prior to Closing (the "Prorated Service In Process"), which Prorated Service In Process the Buyer shall use reasonable efforts to assist the Seller in collection and remittance to the Seller within thirty (30) business days of the Buyer's receipt thereof;

Schedule 1.7

Allocation of Purchase Price

To be completed prior to closing as of the Closing Date.

Schedule 3.5

Consents and Approvals

As provided, *inter alia*, by Sections 2.1, 3.5 and 4.5 of this Agreement:

- (1) Approval by the Public Utilities Commission to transfer the Seller's water utility assets and franchise to the Buyer pursuant to RSA 374:22 & 30;
- (2) Approval by the Department of Environmental Services of the transfer of the Seller's Permit to Operate to the Buyer pursuant to RSA 485.

Schedule 3.6

Seller's Personal Property

Reference Schedule 1.1 (b).

To be completed prior to closing as of the Closing Date.

Schedule 3.8

Seller's Financial Statements

Reference the Seller's Annual Report to the Public Utilities Commission for the Year Ending 12/31/2016.

To be completed prior to closing as of the Closing Date.

Schedule 3.10

Seller's Accounts Receivable

To be completed prior to closing as of the Closing Date.

Schedule 3.11

Seller's Accounts Payable

To be completed prior to closing as of the Closing Date.

Schedule 3.12

Seller's Contracts.

None.

To be updated prior to closing as of the Closing Date.

Schedule 3.13

Litigation

None.

To be updated prior to closing as of the Closing Date.

Schedule 3.20

Transactions with Interested Persons.

None.

To be updated prior to closing as of the Closing Date.

Schedule 4.8 Assumed Contracts

None.

**IN WITNESS WHEREOF**, Buyer, Seller and the Shareholders have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

**BUYER:**  
LAKES REGION WATER CO., INC.

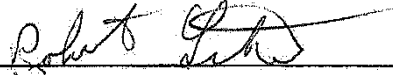
By:   
Thomas Mason, President

**SELLER:**  
WILDWOOD WATER COMPANY, INC.

By:   
Burnham E. Quint Jr., President

**SHAREHOLDERS:**

  
Name: Burnham E. Quint Jr., Shareholder

  
Name: Robert Letoile, Shareholder