BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company (U 314 W), and Apple Valley Ranchos Water Company (U-346-W) for Authority for Western Water Holdings, LLC to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.	A.	**A1101019**

APPLICATION

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January 21, 2011

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Application of Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company (U 314 W) and, Apple Valley Ranchos Water Company (U-346-W) for Authority for Western Water Holdings, LLC to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.	A.

APPLICATION

In accordance with Section 854(a) of the California Public Utilities Code and Rules 2.1, 2.2, 2.3, 2.4, and 3.6 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC"), Western Water Holdings, LLC ("Holdings"), PWC Merger Sub, Inc. ("Merger Sub"), Park Water Company ("Park Water"), and Apple Valley Ranchos Water Company ("AVR") (collectively, "Applicants") respectfully submit this joint application (the "Application") seeking the Commission's authorization for Merger Sub to merge with and into Park Water and for Holdings to acquire and control, directly or indirectly, Park Water and AVR. Both Merger Sub and Holdings are wholly owned subsidiaries of Carlyle Infrastructure Partners Western Water, L.P. ("CIP Western Water"), which is wholly owned by a group of investment fund vehicles associated with Carlyle Infrastructure Partners, L.P. (collectively, "Carlyle Infrastructure"). Both Park Water and AVR are Class A water companies, incorporated in the State of California, that provide public

utility water service in California, subject to the Commission's jurisdiction and regulation.

On December 21, 2010, Holdings, Merger Sub, and Park Water executed an Agreement and Plan of Merger (the "Merger Agreement"), which is attached to this Application as Exhibit A. Mr. Wheeler, his son Henry H. Wheeler, III, and his daughter Nyri A. Wheeler, record and/or beneficial shareholders of Park Water, also are parties to the Merger Agreement. Pursuant to the terms of the Merger Agreement, Holdings will acquire 100% of the outstanding capital stock of Park Water as of the effective time of the merger (the "Effective Time").

The Merger Agreement provides that the holder of each outstanding share of Park Water capital stock at the Effective Time will be entitled to receive specified cash consideration for such shares. The Merger Agreement and associated commitments as well as the respective roles of each of the Applicants and related parties in the proposed merger and acquisition of Park Water (the "Transaction") are discussed in detail in Section IV below.

I. Overview.

Holdings, the acquiring company under the Merger Agreement, is a wholly owned subsidiary of CIP Western Water, which is, in turn, wholly owned by Carlyle Infrastructure. The entities comprising Carlyle Infrastructure have been created and are managed by The Carlyle Group, a global alternative asset manager. The Carlyle Group comes to the proposed Transaction as the result of a studied effort, over several years, to identify an appropriate group of assets in the public utility water service sector that would provide a stable, long-term investment vehicle for certain investors.

The Carlyle Group identified Park Water as its initial investment in the public utility water sector because of, among other factors, its highly qualified and experienced management team and its well-maintained water systems. The Carlyle Group initially contacted Mr. Wheeler to determine whether he and his family would consider selling Park Water to a Carlyle entity. Negotiations ensued over a period of time, leading to the execution of the Merger Agreement in December 2010.

In order to ensure management continuity at Park Water and AVR, at the Effective Time, Park Water will offer continuing employment contracts to a number of members of Park Water's and AVR's management team. The form of this employment contract is attached as Exhibit F-2 to the Merger Agreement. The only contemplated change in the management team at Park Water or AVR after the Effective Time of the merger will be the transition of Mr. Wheeler to a consulting role and service as a member of the Board of Directors of Park Water and the appointment of Christopher Schilling, currently Co-CEO of Park Water, as its sole CEO and as CEO of AVR.

The proposed Transaction will have no impact on the Commission's authority over Park Water or AVR. The Commission will retain all its current jurisdiction and control over Park Water's and AVR's public utility water services. The transfer of ownership and control from the Wheeler family to Holdings pursuant to the terms of the Merger Agreement will not affect Park Water's or AVR's day-to-day operations. Nor will this transfer of ownership and control affect the policies of either Park Water or AVR with respect to customer service, employees, capitalization, rates, or other matters relating to the public interest or to the utilities' operations. The

Transaction will enhance the financial strength of Park Water and AVR by providing the utilities potential access to capital through Carlyle Infrastructure.

II. Description of Applicants and Related Entities.

An organization chart, showing the ownership and control relationships that are proposed to exist among the several Applicants and related entities once the proposed Transaction has been completed, is attached to this application as Exhibit B. In accordance with Rules 2.1(a), 2.2, and 3.6(a), the Applicants and related entities are identified and described below.

A. The Carlyle Group

The Carlyle Group is a global alternative asset manager with $97.7 billion of assets under management committed to 76 active funds as of September 30, 2010. Among investors in funds created and managed by The Carlyle Group are state pension funds, organized labor pension funds, and university foundations. In addition to infrastructure assets in the United States and Canada, The Carlyle Group invests domestically and internationally in the aerospace & defense, automotive & transportation, consumer & retail, energy & power, financial services, healthcare, industrial, infrastructure, technology & business services and telecommunications & media sectors. Since 1987, the firm has invested $64.7 billion of equity in 1,015 transactions. The Carlyle Group employs more than 900 people in 19 countries. As of June 30, 2010, in the aggregate, its portfolio companies had more than $84 billion in revenue and employed more than 398,000 people around the world, including providing nearly 175,000 jobs in the United States.

The Carlyle Group's principal place of business is 1001 Pennsylvania Avenue, N.W., Suite 2020 South, Washington, D.C. 20004. Detailed information about The Carlyle Group and its investments may be found at www.carlyle.com.

B. Carlyle Infrastructure Partners, L.P. and Associated Investment Fund Vehicles

Carlyle Infrastructure has committed capital of $1.14 billion managed by The Carlyle Group and invests primarily in transportation and water infrastructure assets in the United States and Canada. Carlyle Infrastructure seeks opportunities to invest in water and wastewater treatment and distribution facilities; toll roads, bridges and tunnels; transit and rail systems; airports and aviation services; and maritime ports and waterways. Carlyle Infrastructure invests in privately owned companies as well as publicly owned assets through long-term public-private-partnerships. Carlyle Infrastructure's current investments include: (a) Project Service LLC, a 35-year public-private partnership with the State of Connecticut to redevelop, operate, and maintain Connecticut's 23 highway service areas across the state; (b) Synagro Technologies, Inc., a company with over 600 municipal contracts in 32 states providing long-term arrangements for recycling of organic, non-hazardous waste and wastewater residuals; (c) Illinois Central School Bus, LLC, a Midwest school bus transportation business, providing home-to-school bus services for public schools, school charter services, and non-school charter services; and (d) ITS Technologies & Logistics, LLC, an intermodal services company providing lift-on / lift-off of containers from trains and trucks, as well as furnishing maintenance and repair of transport and lift equipment, and checkpoint administration for the U.S. freight and logistics system.

Carlyle Infrastructure Partners, L.P. and the associated investment fund vehicles that together comprise Carlyle Infrastructure all are privately held Delaware limited partnerships. Carlyle Infrastructure's principal place of business is 1001 Pennsylvania Avenue, N.W., Suite 2020 South, Washington, D.C. 20004. Additional information about Carlyle Infrastructure may be found at www.carlyle.com.

C. Western Water Holdings, LLC.

Holdings is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware, and qualified to do business in the State of California. Holdings is a special purpose entity created by The Carlyle Group and wholly owned by Carlyle Infrastructure to facilitate the acquisition of Park Water and potentially other water systems in the western United States and to hold Carlyle Infrastructure's investments in such properties on an ongoing basis. Accordingly, Holdings currently does not own any assets, but at the Effective Time of the merger, Holdings will own all of the outstanding capital stock of Park Water. The Limited Liability Company Agreement of Western Water Holdings, LLC and its certificate of good standing to conduct business in California are attached to this Application as Exhibit C. Its principal place of business is 1001 Pennsylvania Avenue, N.W., Suite 2020 South, Washington, D.C. 20004.

D. PWC Merger Sub, Inc.

Merger Sub is a corporation duly formed, validly existing, and in good standing under the laws of the State of California. Merger Sub is a special purpose entity created by Carlyle Infrastructure and wholly owned by Holdings to facilitate the acquisition of Park Water. Pursuant to the Merger Agreement, Merger Sub will merge

with Park Water and Park Water will be the surviving company, under the ownership of Holdings. A copy of the Articles of Incorporation of PWC Merger Sub, Inc. as filed December 15, 2010, is attached to this Application as Exhibit D. The principal place of business of Merger Sub is 1001 Pennsylvania Avenue, N.W., Suite 2020 South, Washington, D.C. 20004.

E. Park Water Company

Park Water is a corporation duly formed, validly existing, and in good standing under the laws of the State of California. Park Water is a Class A water company, subject to the Commission's jurisdiction, with its principal office and place of business located at 9750 Washburn Road, Downey, California 90241. Park operates a public utility water system in the southeastern portion of Los Angeles County (the "Central Basin Division") serving 27,158 active customers as of December 31, 2010, including the three separate service areas of Compton/Willowbrook (Compton West), Lynwood/Rancho Dominguez (Compton East), and Bellflower/Norwalk. Park also operates as a parent company, holding 100% of the outstanding capital stock of two other water utilities: AVR, which also is a Class A water company subject to the Commission's jurisdiction, providing public utility water service to approximately 19,100 customers in and near the Town of Apple Valley in San Bernardino County, and Mountain Water Company, a Montana corporation that provides water service to approximately 22,300 customers within and around the community of Missoula, Montana, subject to the jurisdiction of the Montana Public Service Commission.

Park Water's current management team consists of the following officers:

- Henry H. Wheeler, Jr., Co-Chief Executive Officer
- Christopher Schilling, Co-Chief Executive Officer
- Leigh K. Jordan, Executive Vice President
- Douglas K. Martinet, Senior Vice President/CFO

Mary Young, Senior Vice President – Administration

Jeanne-Marie Bruno, Senior Vice President /General Manager

Gary Lynch, Vice President – Water Quality

David Warner, Vice President –Risk Management

Richard Dalton, Assistant Vice President/ Chief Corporate Engineer

As discussed above, this management team will not change as a result of the proposed Transaction, except that Mr. Wheeler will retire from his positions as Co-CEO of Park Water and CEO of AVR, but will continue to serve Park Water as a consultant and as a member of its Board of Directors. At the Effective Time, Mr. Schilling will become sole CEO of Park Water and AVR. As discussed further below, the day-to-day operations of Park Water and AVR will not be affected by the proposed change of ownership. As previously noted, the Commission will retain jurisdiction over both companies' public utility water services after the Transaction is completed, and there will be no change in either company's rates or rate base as a result of the Transaction.

A certified copy of Park's Articles of Incorporation, as amended, has been heretofore filed with the Commission as Exhibit D attached to Application 32254, filed on March 10, 1951, and made a part thereof.

In accordance with Rule 3.6(e), Park Water's unaudited balance sheet as of November 30, 2010, together with its unaudited income statement for the first 11

months of calendar year 2010, are attached to this Application as Exhibit E.[1] Park Water's audited 2009 balance sheet and income statement were submitted as part of its Annual Report to the Commission for 2009, filed on or about March 31, 2010.

F. Apple Valley Ranchos Water Company

AVR is a Class A water company, subject to the Commission's jurisdiction, with its principal office and place of business located at 21760 Ottawa Road, Apple Valley, California 92307. AVR operates a public utility water system in and near the Town of Apple Valley in San Bernardino County, serving 19,127 active customers as of December 31, 2010. The management team for AVR includes most of the officers identified above for Park Water, along with Scott Weldy, AVR's Vice President/General Manager. Again, there will be no changes in the AVR management team as a result of the Transaction except that Mr. Wheeler will retire from his position as CEO and be replaced by Mr. Schilling.

A certified copy of AVR's Articles of Incorporation of was filed with the Commission as Exhibit C attached to its amendment of Application No. 58520, filed on March 9, 1979, and made a part thereof.

In accordance with Rule 3.6(e), AVR's unaudited balance sheet as of November 30, 2010, together with an unaudited income statement for the first 11 months of calendar year 2010, are attached to this Application as Exhibit F. AVR's audited balance sheet and income statement for 2009 were submitted as part of

[1] These financial statements are for Park Water 's utilities operations. Consolidated financial statements for Park Water Company and its subsidiaries can be provided upon request.

AVR's 2009 annual financial report to the Commission, filed on or about March 31, 2010.

III. Designated Contacts for Applicants.

In accordance with Rule 2.1(b), the following persons are designated for receipt of correspondence or communications regarding this Application:

For Holdings, and Merger Sub:

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IV. Description of the Proposed Change in Ownership and Control.

The Merger Agreement provides for the acquisition of Park Water by Holdings to be accomplished through a merger transaction in which Merger Sub, a wholly owned subsidiary of Holdings, will merge with and into Park Water, with Park Water continuing as of the Effective Time of the merger as the surviving corporation of the merger and as a wholly-owned subsidiary of Holdings. At the Effective Time of the merger, each Park Water shareholder will receive $4,177.65 for each share of Park

Water common stock. The Merger Agreement requires that Mr. Wheeler, Henry H. Wheeler, III, and Nyri A. Wheeler place $10 million of the purchase price for their shares in escrow to secure their indemnification obligations, if any, under the Merger Agreement.

The Board of Directors of Park Water at the Effective Time of the merger will consist of Mr. Wheeler and three representatives of Holdings. As discussed previously, the officers of Park Water will be unchanged, except for the transition of Mr. Wheeler who will serve after the merger as a consultant to Park Water and as a member of its Board of Directors and the appointment of Mr. Schilling as sole CEO of Park Water and AVR. Mr. Schilling became Park Water's Co-CEO in June of 2009.

Concurrently with the execution of the Merger Agreement, Carlyle Infrastructure Partners, L.P. executed in favor of Park Water a Limited Guarantee of the purchase price payable to the Park Water shareholders under the terms of the Merger Agreement . The purpose of the Limited Guarantee is to assure Park Water and its shareholders that the payment obligations of the newly organized buyer, Holdings, will be performed and discharged.

Prior to the Effective Time, Park Water will enter into employment agreements with certain members of its management, to be effective as of the Effective Time. A copy of the form of the employment agreements is attached as Exhibit F-2 to the Merger Agreement. Park also will enter into a one year consulting agreement with Mr. Wheeler, attached as Exhibit F-4 to the Merger Agreement. Concurrently with the execution of the Merger Agreement, Mr. Wheeler and Carlyle Infrastructure Partners, L.P. executed a letter agreement which gives Mr. Wheeler the right to lend certain funds to Park Water if Park Water concludes that an outside

borrowing is necessary. Any such borrowings will be at market rates or less, and will be subject to prior approval by the Commission. Mr. Wheeler's willingness to make such loans may be helpful to Park Water in the event that any of its current bondholders exercise their rights to redeem outstanding bonds upon the planned transfer of control.

V. Applicants' Reasons for the Proposed Transaction.

Rule 3.6(c) requires a statement of each Applicant's detailed reasons for entering into the proposed Transaction. Because Holdings and Merger Sub are entities created to implement the investment goals of Carlyle Infrastructure, and because Park Water and AVR are family-owned companies, Applicants will respond to the requirements of Rule 3.6(c) by explaining the reasons why Carlyle Infrastructure and Park Water and the Wheeler family have chosen to undertake the Transaction.

A. Carlyle Infrastructure's Reasons for the Proposed Transaction

Carlyle Infrastructure collectively manages $1.14 billion of committed capital focusing on water and transportation infrastructure assets in the United States and Canada. Carlyle Infrastructure's investors – which include several public pension funds and union pension funds – have chosen to invest with Carlyle Infrastructure because they have a desire to invest in low risk assets over a long term horizon. Most of Carlyle Infrastructure's portfolio companies have a high level of interaction with public agencies and/or government entities, and understand constituent and user needs. Carlyle Infrastructure considers the water distribution utility sector to be particularly interesting because it provides the opportunity to match investors' funds with the significant capital needs in the water distribution sector.

More specifically, Carlyle Infrastructure believes that the well established and transparent regulatory framework in California provides Park Water with defensive characteristics. In addition, Park Water's longstanding operations, customer focus, and management team strength are all significant investment merits. Carlyle Infrastructure has not undertaken the proposed Transaction with an intent to change the management or operations of Park Water. Rather, Carlyle Infrastructure's motive is to take advantage of the effectiveness of Park Water's management team.

B. Park Water's and the Wheeler Family's Reasons for the Proposed Transaction

As stated above, Henry H. Wheeler, Jr. and members of his family are the record and/or beneficial owners of substantially all of Park Water's outstanding capital stock. Mr. Wheeler, age 84, has been CEO of Park Water for 35 years, and the company has been owned by the Wheeler family through most of Mr. Wheeler's lifetime. Mr. Wheeler is seeking an orderly succession in the management and ownership of Park Water. He has concluded that the sale of the company to The Carlyle Group will be in the best interest of Park and its shareholders because of The Carlyle Group's commitment to Park Water's management team and operating philosophy and its plan to conduct the day-to-day operations of Park Water and AVR as they have been conducted in the past. Park Water will not take on any additional debt in connection with the Transaction and following the Transaction will have access to additional and more diverse financial resources than have been available to it in the past. Historically, Park Water's only source of capital has been the private debt market. It has not had access to the public equity or debt markets or to substantial additional equity infusions from its owner. Accordingly, Park Water and the Wheeler

family anticipate that Park Water's new ownership will eliminate some of its financial and ownership uncertainties that otherwise would be present upon the eventual passing of Mr. Wheeler.

VI. Commission Authorization of the Proposed Acquisition of Ownership and Control Is Consistent With and Not Adverse to the Public Interest.

As previously noted, Section 854(a) requires Commission approval prior to acquisition by any person of direct or indirect control or ownership of a public utility. Authorization of an acquisition of control under Section 854(a) may be granted where the Commission finds the proposed transaction is in the public interest.[2] The Commission often has framed the applicable standard as being whether the proposed transaction is not adverse to the public interest.[3] [4]

A. The Proposed Transaction Will Not Be Adverse to Ratepayers.

The Commission's jurisdiction and authority over Park Water and AVR will not be affected by the proposed Transaction. The Commission will retain full authority over Park Water's and AVR's public utility water services for the protection and benefit of their ratepayers and the public interest. Any proposed future changes in the utilities'

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[2] *See, e.g., Re California-American Water Company, et al. (El Toro Water),* Decision 07-11-034, 2007 Cal. PUC Lexis 658; *Re Verizon Communications, Inc. and MCI, Inc.,* Decision 05-11-029, 2005 Cal. PUC Lexis 217; *Re Lennar Corporation, et al.,* Decision 04-01-051, 2003 Cal. PUC Lexis 646; *Re California-American Water Company, et al.,* Decision 02-12-068, 2002 Cal. PUC Lexis 909.

[3] *See, e.g., Re Suburban Water Systems, et al.,* D.10-09-012, 2010 Cal. PUC Lexis 333; *see also, Re Qwest Communications Corporation, et al. D.00-06-079,* 2000 Cal. PUC Lexis 645.

[4] As the Commission has ruled in prior, similar cases, the Commission is not required to apply the additional public interest standards set forth in Sections 854(b) and (c), because the proposed transaction involves a water corporation, not an electric, gas or telephone corporation, and also because the annual revenues of Park and AVR fall far short of the statutory threshold for applying these provisions. *See, e.g., Re Lennar Corporation, et al.,* Decision 04-08-047, *mimeo.* at 10-11, *Re Suburban Water Systems, Decision 10-09-012.*

rates will continue to be subject to the Commission's prior approval. The Transaction will have no impact on the Commission's ability to govern Park Water's and AVR's utility operations.

The proposed change in ownership will not affect the day-to-day operations of Park Water or AVR, as their current management will not change as a result of the proposed Transaction, except for the retirement of Mr. Wheeler and the appointment of Mr. Schilling to sole CEO status. The proposed Transaction will not affect the quality or reliability of either Park Water's or AVR's service to customers; nor will it result in any increase in rates to these customers. Specifically, neither utility will propose any increase in rate base to reflect the price paid by Holdings to acquire Park Water's capital stock, or any rate adjustment to recover or reflect any costs or expenses incurred by any parties in connection with the proposed Transaction. In sum, the proposed transfer of ownership and control will have no negative impact on the utilities' operations or rates.

The stability of its management team ensures that, after completion of the Transaction, Park Water will continue to possess the technical competence and experience necessary to operate and maintain a California public water utility with affordable rates and high quality service.

The Transaction can be expected to enhance Park Water's ability to raise capital, and so will not adversely affect its costs of capital or operations, its assets or liabilities, or its revenue requirements.

Applicants are fully aware of the rules governing water utilities' affiliate transactions that the Commission recently adopted by Decision 10-10-019 in the Affiliate Transactions rulemaking, R.09-04-012. Applicants specifically acknowledge

and agree, after the Effective Time of the merger, to comply fully with those rules to the full extent they apply to Park Water, AVR, or any of their affiliates.

In sum, the planned Transaction will have no effect on either Park Water's or AVR's continued ability to provide high quality public utility water service to their customers. These water utilities will continue to serve their customers under the same management team and through the same employees. The Transaction will not adversely affect Park Water's financial resources. To the contrary, access to the resources of The Carlyle Group should enhance Park Water's access to capital markets to meet its periodic needs for outside sources of funds.

For all these reasons, it is evident that the proposed Transaction will have no adverse effects on ratepayers.

B. The Proposed Transaction Will Not Be Adverse to Employees and Will Benefit the State and Local Economies.

In certain prior transfer of control decisions, the Commission has considered whether a transfer of control would adversely affect utility employees or state and local economies and found that, in light of the conditions imposed and accepted, it would not. *Re Suburban, et al., Decision 10-09-012, Re Lennar Corporation, et al.,* Decision 04-01-051. Applicants propose no changes to Park Water's or AVR's employee policies or to reduce the number of employees, their wages, or their benefits, and Park Water and AVR's headquarters and principal place of business will remain in California. Accordingly, neither Park Water nor AVR employees will be adversely affected as a consequence of the Transaction

Finally, there is an important public interest in allowing financial markets to function efficiently, without unnecessary regulatory interference. The plan for The

Carlyle Group, through its affiliates, to obtain ownership and control over Park Water is a substantial financial transaction, adding strength to California's economy and providing new opportunities for investment in the regulated water industries. As demonstrated above, the proposed Transaction is not adverse to the interests of Park Water's or AVR's ratepayers or employees. Furthermore, because the proposed Transaction offers benefits to the state and local economies without adversely affecting ratepayers or employees and will significantly increase the financing options available to Park Water in the future, Commission authorization of the proposed Transaction will serve the public interest.

VII. CEQA Compliance.

Under the California Environmental Quality Act ("CEQA"), environmental review is required whenever an agency is contemplating approval of a discretionary "project." Cal. Pub. Res. Code, Section 21080(a).) A "project" is "an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . . ." Cal. Pub. Res. Code, Section 21065; *see also* 14 Cal. Code Regs. ("CEQA Guidelines"), Section 15378.

CEQA's environmental review requirement does not apply where a proposed activity will not result in a direct or reasonably foreseeable indirect change in the environment. Here, the change in ownership and control of Park Water and AVR will not result in either type of impact. These longstanding water utilities will continue to operate consistent with current conditions. No expansion or alteration of existing physical facilities or water resources will occur, nor will new facilities be constructed or new water resources employed, as a result of the Transaction. No change in the use of Park Water's or AVR's facilities or resources is proposed.

The Commission has found that "a change of ownership does not cause any *direct* physical change in the environment unless construction is required as a condition of sale." *Re Pacific Gas and Electric Company*, 78 CaL.P.U.C. 2d 684 (1998); *Re Pacific Gas and Electric Company*, 78 CaL.P.U.C. 2d 413 (1998). Accordingly, since no construction will result from the change of ownership and control of Park Water and AVR, approval of this Application will not cause a direct environmental impact.

The Commission and the California Court of Appeal have acknowledged that no *indirect* change to the environment occurs – and no environmental review pursuant to CEQA is required – where property will be used in the same manner as before the approval and an applicant does not propose a change in use. For example, in a case involving the sale of a utility street lighting system to a municipality, the Commission stated, "[b]ecause the Streetlight System will be used in the same manner as previously, and neither applicant nor City seeks authority from the Commission for a change in the existing use of the Streetlight System, there is no substantial evidence of any indirect change to the environment, and no CEQA review is required." *Re Pacific Gas and Electric Company and City of Oroville*, Decision 98-03-024, 1998 Cal. PUC Lexis 244, at *5; *see also*, *Re Pacific Gas and Electric Company and City of Cupertino,* Decision 98-02-026, 1998 Cal. PUC Lexis 1024, at *5.) Likewise, the court of appeal has held that a transfer of property is not a project subject to environmental review where the transfer does not involve a change in use. *Simons v. City of Los Angeles* (1976), 63 Cal.App.3d 455, 465-66.

In *Re MCI Communications Corporation, et al.*, the Commission found that a proposed change in control of several California telecommunications carriers would

not have an adverse effect on the environment because no change in use of physical assets was proposed: "We conclude that the proposed transfer will have no adverse effect or impact on the environment because the transaction involves only the transfer of outstanding shares of MCI stock for BT [shares] and cash." Decision 97-07-060, 1997 Cal. PUC Lexis 557, at *74. More recently, in a proceeding very similar to the present one, the Commission concluded that the proposed transfer of a 50% interest in the holding company of a natural gas corporation was exempt from the environmental review requirements of CEQA, pursuant to Section 15061(b)(3) of the CEQA Guidelines.[5] *Re Lodi Gas Storage, L.L.C.*, Decision 05-12-007, 2005 Cal. PUC Lexis 527, at *22. Likewise, in past decisions authorizing transfers of ownership or control of water utilities, the Commission concluded that the proposed transactions qualified for exemption from CEQA pursuant to CEQA Guidelines Section 15061(b)(3). *See*, *Suburban Water Systems, et al.*, Decision 10-09-012 (Conclusion of Law 3); *Lennar Corporation, et al.,* Decision 05-08-017 (Conclusion of Law 9).

Here, consistent with Commission and judicial precedent, because the proposed Transaction will not result in any physical changes and, therefore will not cause a direct or reasonably foreseeable indirect change to the environment, CEQA does not apply to the Application. Alternatively, based on CEQA Guidelines Section 15061(b)(3) and Commission decisions applying that regulation, because it can be seen with certainty that the proposed Transaction will not have a significant effect on the environment, the Transaction is exempt from CEQA environmental review.

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[5] Section 15061(b)(3) of the CEQA Guidelines provides that "CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

VIII. Categorization, Issues to be Considered and Proposed Schedule.

Rule 2.1(c) requires applicants to specify the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule. These requirements are addressed below.

A. Categorization.

This Application does not "clearly fit" into any of the categories defined in Commission Rule 1.3: Adjudicatory, Ratesetting, or Quasi-legislative. Accordingly, consistent with Rule 7.1(e)(2), the Applicants request that this proceeding be conducted in accordance with the rules applicable to ratesetting proceedings.

Hearings are not necessary in this proceeding. Applicants respectfully submit that the information set forth in this Application provides the Commission with a sufficient basis for determining that authorization of the proposed Transaction, including particularly the acquisition and control of Park Water and AVR by Holdings, an affiliate of The Carlyle Group, is consistent with and not adverse to the public interest.

B. Issues to be Considered.

The issues to be considered in this proceeding are:

(1) Whether authorization of the proposed acquisition by Holdings of ownership and control of Park Water and indirect control of AVR pursuant to the Merger Agreement are consistent with and not adverse to the public interest; and

(2) Whether CEQA applies to the proposed Transaction and, if so, whether the exemption from CEQA specified in CEQA Guidelines Section 15061(b)(3) applies.

C. Proposed Schedule.

There are no novel issues of law or policy presented by the present Application. The issues presented here are closely comparable to those the Commission has addressed and resolved, without adverse effects, in prior decisions authorizing changes of ownership or control of other Class A water utilities, including the recent Decision 10-09-012, authorizing a transfer of control over Suburban Water Systems. The Commission's adoption late last year of Decision 10-10-019, establishing uniform Affiliate Transaction Rules for Class A and B water utilities, further diminishes the need for the Commission to engage in speculation about potentially inappropriate future conduct by an acquiring company. Accordingly, Applicants believe the Commission will be able to address and resolve the present Application on a timely basis without a need for evidentiary hearings, consistent with Applicants' interest in closing their Transaction without unnecessary delay. With that expectation, Applicants propose the following schedule for this Application:

Application Filed	January 21	Day 0
Notice of Application in Commission's Daily Calendar	January 26	Day 5
Due Date for Protests or Responses	February 25	Day 35
Due Date for Applicants' Reply	March 7	Day 45
Status Conference (if necessary)	March 14	Day 52
Draft Decision (if no protest filed) or Proposed Decision (if protest filed)	April 19	Day 88
Final Decision	May 19	Day 118

IX. Compliance with Procedural Requirements.

The cross-references provided below demonstrate how Applicants have complied with all Commission rules applicable to this Application:

Rule 2.1: Contents	Introduction; Section I
Rule 2.1(a): Applicants	Section II
Rule 2.1(b): Designated Contact Persons	Section III
Rule 2.1(c): Proposed Category, Issues, and Schedule	Section VIII
Rule 2.2: Organization and Qualification to Transact Business	Section II; Exhibits C and D
Rule 2.4: CEQA Compliance	Section VII
Rule 3.6: Transfers and Acquisitions	Conclusion
Rule 3.6(a): Business and Territory Served by Each Applicant	Section II
Rule 3.6(b): Description of Property Involved in the Transaction	Sections I and IV; Exhibit A
Rule 3.6(c): Reasons for Each Applicant's Entering Into the Transaction	Sections I, II, V, and VI
Rule 3.6(d): Agreed Purchase Price and Terms for Payment	Sections I and IV; Exhibit A
Rule 3.6(e): Balance Sheets and Income Statements	Exhibits E and F
Rule 13.7: Exhibits	Exhibits A through F

X. Conclusion.

Based on the foregoing, the Applicants respectfully request that the Commission issue an order that will:

(1) Determine that the proposed acquisition of ownership and control over Park Water Company and Apple Valley Ranchos Water Company, by Western Water Holdings, LLC pursuant to the Agreement and Plan of Merger, is consistent with and not adverse to the public interest; and

(2) Determine that CEQA does not apply to the proposed acquisition of ownership and control or, if it does, that the exemption from CEQA specified in Title 14 of the California Code of Regulations, Section 15061(b)(3), applies; and

(3) Authorize the proposed acquisition and control of Park Water Company and Apple Valley Ranchos Water Company, by Western Water Holdings, LLC pursuant to the Agreement and Plan of Merger; and

(4) Be effective on the date thereof.

Respectfully submitted,

PARK WATER COMPANY

By: */S/ CHRISTOPHER SCHILLING*
Christopher Schilling

Its: Co- Chief Executive Officer

WESTERN WATER HOLDINGS, LLC

By: */S/ ROBERT DOVE*
Robert Dove

Its: President

APPLE VALLEY RANCHOS WATER COMPANY

By: */S/ LEIGH K. JORDAN*
Leigh K. Jordan

Its: Executive Vice President

PWC MERGER SUB, INC.

By: */S/ ROBERT DOVE*
Robert Dove

Its: President

Approved as to Form:

FULBRIGHT & JAWORSKI L.L.P.

/S/ DAVID A. EBERSHOFF
David A. Ebershoff

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Los Angeles, CA 90071
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Attorneys for APPLICANTS, PARK WATER COMPANY and APPLE VALLEY RANCHOS WATER COMPANY

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/S/ MARTIN A. MATTES
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Attorneys for APPLICANTS, WESTERN WATER HOLDINGS, LLC and PWC MERGER SUB, INC.

January 21, 2011

VERIFICATION OF APPLICATION

I, Robert Dove, hereby declare that I am a Managing Director of The Carlyle Group and serve as President of Western Water Holdings, LLC. and PWC Merger Sub, Inc.; that I have read the foregoing Application; and that the information set forth therein concerning those companies and The Carlyle Group is true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of January, 2011, at New York, New York.

Robert Dove
President
Western Water Holdings, LLC. and
PWC Merger Sub, Inc.
1001 Pennsylvania Avenue, N.W.,
Suite 2020 South
Washington, D.C. 20004

VERIFICATION OF APPLICATION

I, Christopher Schilling, hereby declare that I am Co-CEO/President of Park Water Company ("Park Water"); that I have read the foregoing Application; and that the information set forth therein concerning Park Water is true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21ST day of January, 2011, at Downey, California.

Christopher Schilling
Co-CEO/President
Park Water Company
9750 Washburn Road
P.O. Box 7002
Downey, CA 90241-7002

VERIFICATION OF APPLICATION

I, Leigh K. Jordan, hereby declare that I am Executive Vice President of Apple Valley Ranchos Water Company ("AVR"); that I have read the foregoing Application; and that the information set forth therein concerning AVR is true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21ST day of January, 2011, at Downey, California.

Leigh K. Jordan
Executive Vice President
Apple Valley Ranchos Water Company
9750 Washburn Road
P.O. Box 7002
Downey, CA 90241-7002

CERTIFICATE OF SERVICE

I, Jeannie Wong, hereby certify that on this date I served the foregoing APPLICATION by hand delivery to the following persons:

Danilo Sanchez
California Public Utilities Commission
Division of Ratepayer Advocates
505 Van Ness Avenue
San Francisco, CA 94102-3214
E-mail: des@cpuc.ca.gov

Raminder Kahlon
Director, Div of Water and Audits
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3214
E-mail: rsk@cpuc.ca.gov

Joseph Como
Acting Director
Division of Ratepayer Advocates
505 Van Ness Avenue
San Francisco, CA 94102-3214
E-mail: joc@cpuc.ca.gov

Executed this 21st day of January, 2011 in San Francisco, California.

/S/ JEANNIE WONG
Jeannie Wong

EXHIBIT A

Execution Copy

AGREEMENT AND PLAN OF MERGER

by and among

WESTERN WATER HOLDINGS, LLC,

PWC MERGER SUB, INC.,

PARK WATER COMPANY,

THE SHAREHOLDERS LISTED ON ANNEX A ATTACHED HERETO

and

HENRY H. WHEELER, JR., AS SHAREHOLDER REPRESENTATIVE

Dated as of December 21, 2010

TABLE OF CONTENTS

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is made as of December 21, 2010, by and among (i) Western Water Holdings, LLC, a Delaware limited liability company ("Buyer"), (ii) PWC Merger Sub, Inc., a California corporation ("Merger Sub"), (iii) Park Water Company, a California corporation (the "Company"), (iv) the Shareholders listed on Annex A (the "Controlling Shareholders") and (v) Henry H. Wheeler, Jr., in his capacity as representative of the Controlling Shareholders (the "Shareholder Representative"). Capitalized terms used herein and not otherwise defined herein shall have the meaning given such terms in Article XI.

RECITALS

WHEREAS, the respective Boards of Directors of Buyer, Merger Sub and the Company have approved and declared advisable the merger of Merger Sub with and into the Company (the "Merger") upon the terms and subject to the conditions of this Agreement and in accordance with applicable Law;

WHEREAS, the respective Boards of Directors of Buyer and the Company have determined that the Merger is in furtherance of and consistent with their respective business strategies and is in the best interest of their respective shareholders, and Buyer has approved this Agreement and the Merger as the sole shareholder of Merger Sub;

WHEREAS, the Board of Directors of the Company has resolved to submit this Agreement to the Shareholders for approval and to recommend approval of the Merger and this Agreement to the Shareholders;

WHEREAS, to induce Buyer to effect the Merger, the Controlling Shareholders, who as of the date of this Agreement collectively own of record 91.4% of the issued and outstanding common stock of the Company (the "Company Common Stock"), have agreed to become parties to this Agreement in order to facilitate certain matters following the consummation of the Merger and in support of certain indemnification obligations as set forth in Article IX hereof;

WHEREAS, concurrently with the execution of this Agreement, Carlyle Infrastructure Partners, L.P. (the "Guarantor") is entering into a limited guarantee in favor of the Company substantially in the form attached hereto as Exhibit A (the "Guarantee") with respect to certain of Buyer's obligations under this Agreement;

WHEREAS, prior to the consummation of the Merger, the Company intends to (i) contribute the intercompany payable owed by SICC, a wholly owned subsidiary of the Company ("SICC"), to SICC as a contribution to capital, (ii) sell all of the outstanding stock of SICC to Henry H. Wheeler, Jr. for an amount of cash equal to the appraised value of such stock, (iii) distribute an amount of cash equal to the cash received from the sale of SICC stock to Henry H. Wheeler, Jr., less cash retained by the Company to satisfy the Company's tax liability arising from such sale, pro rata to the Shareholders in the form of a dividend (collectively such actions, the "SICC Disposition"); and

WHEREAS, concurrently with the execution and delivery of this Agreement, Merger Sub and Christopher Schilling have entered into an employment agreement, to be effective upon the consummation of the Merger.

WHEREAS, Buyer wishes to retain the services of certain members of the management of the Company and will enter into (i) an employment agreement substantially in the form attached hereto as Exhibit F-2 (collectively, the "Employment Agreements") with each of the Persons set forth on Exhibit F-

1 attached hereto, (ii) an employment agreement substantially in the form attached hereto as Exhibit F-3 (collectively, the "Wheeler Employment Agreements") with each of Henry H. Wheeler III and Nyri A. Wheeler and (iv) a consulting agreement substantially in the form attached hereto as Exhibit F-4 (the "Consulting Agreement") with Henry H. Wheeler, Jr., each of which shall be effective upon the consummation of the Merger.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, warranties, promises, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
THE MERGER

1.1 The Merger. Upon the terms and subject to satisfaction or waiver of the conditions set forth in this Agreement, and in accordance with the California Corporations Code (the "California Law"), Merger Sub shall be merged with and into the Company. As a result of the Merger, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation of the Merger (the "Surviving Corporation") under the California Law as a wholly owned subsidiary of Buyer.

1.2 Effective Time. As soon as practicable after the satisfaction or, if permissible, waiver of the conditions set forth in Article VIII, the parties hereto shall cause the Merger to be consummated by filing (i) an Agreement of Merger substantially in the form attached hereto as Exhibit B and (ii) an officer's certificate for each of the Company and Merger Sub, duly executed by an officer of each of the Company and Merger Sub respectively, substantially in the forms attached hereto as Exhibits C-1 and C-2, with the Secretary of State of the State of California, in such form as required by, and executed in accordance with the relevant provisions of, the California Law (the date and time of such filing, or if another date and time is specified in such filing, such specified date and time, being the "Effective Time").

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the California Law. Without limiting the generality of the foregoing, at the Effective Time, except as otherwise provided herein, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 Articles of Incorporation; Bylaws. At the Effective Time, the Articles of Incorporation and the Bylaws of the Surviving Corporation shall be amended in their entirety to contain the provisions set forth in the Articles of Incorporation and the Bylaws of Merger Sub, each as in effect immediately prior to the Effective Time.

1.5 Directors and Officers. The initial directors and officers of the Surviving Corporation shall be the individuals set forth on Schedule 1.5, each to hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation.

1.6 Escrow Amount. The Company hereby authorizes and instructs Buyer to deduct from the Merger Consideration otherwise payable to the Controlling Shareholders at the Effective

Time an aggregate amount of $10,000,000 (the "Escrow Amount") and deposit such amount into an escrow account (the "Escrow Account") established pursuant to the terms of an Escrow Agreement to be entered into at the Effective Time among the Shareholder Representative, Buyer and Wells Fargo Bank, N.A., as escrow agent (the "Escrow Agent"), substantially in the form attached hereto as Exhibit D (the "Escrow Agreement"), in order to support the Controlling Shareholders' indemnification obligations under Article IX. The timing and methodology for the release of the Escrow Amount shall be governed by the terms and subject to the conditions set forth in this Agreement and the Escrow Agreement; provided, however, that each of Buyer and the Shareholder Representative agrees that it or he will act in good faith and cooperate with one another to execute and deliver such joint written instructions, including with respect to any distributions and further investments of the Escrow Amount, to the Escrow Agent as are required to implement the intent of this Agreement and the Escrow Agreement

ARTICLE II
CONVERSION OF SECURITIES; EXCHANGE OF CERTIFICATES

2.1 Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the holders of any of the following securities:

(a) Conversion Generally. Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than any shares of Company Common Stock to be canceled pursuant to Section 2.1(b) and any shares of Company Common Stock which are held by Shareholders exercising appraisal rights pursuant to Chapter 13 under the California Law ("Dissenting Shareholders")), shall be converted, subject to Section 2.2.(d), into the right to receive (i) in the case of each Controlling Shareholder, $3,729.40 in cash plus a pro rata portion of any amounts released from the Escrow Account pursuant to the Escrow Agreement, payable to the holder thereof, without interest and (ii) in the case of each other Shareholder, $4,177.65 in cash (collectively, the "Per Share Merger Consideration"); provided that notwithstanding anything to the contrary contained herein, in no event shall the aggregate of the Per Share Merger Consideration amounts paid by Buyer to the Shareholders pursuant to this Agreement exceed $102,000,000 (the "Merger Consideration"). All such shares of Company Common Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each certificate previously representing any such shares shall thereafter represent the right to receive the aggregate Per Share Merger Consideration therefor or the right, if any, to receive payment from the Surviving Corporation of the "fair value" of such shares of Company Common Stock as determined in accordance with Chapter 13 under the California Law. Certificates previously representing shares of Company Common Stock shall be exchanged for the aggregate Per Share Merger Consideration therefor upon the surrender of such certificates (or affidavits in support thereof) in accordance with the provisions of Section 2.2, without interest.

(b) Cancellation of Certain Shares. Each share of Company Common Stock held in the treasury of the Company or by any wholly owned subsidiary of the Company immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof and no payment shall be made with respect thereto.

(c) Merger Sub. Each share of common stock, par value $0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and be exchanged for one newly and validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

(d) Change in Shares. If between the date of this Agreement and the Effective Time the outstanding shares of Company Common Stock shall have been changed into a different number of

shares or a different class, by reason of any stock dividend, subdivision, reclassification, recapitalization, split, combination, issuance, redemption, repurchase or exchange of shares, the Per Share Merger Consideration shall be correspondingly adjusted to reflect such event(s).

2.2 Exchange of Certificates.

(a) Surrender Procedures for Company Common Stock.

(i) Promptly following the execution of this Agreement, the Company shall deliver to each Shareholder (1) a letter of transmittal, substantially in the form of Exhibit E hereto (the "Letter of Transmittal"), (2) instructions for use in effecting the surrender of the certificate or certificates which at such time represent outstanding shares of Company Common Stock (the "Certificates") held by such Shareholder and (3) such notification as may be required under the California Law to be given to Dissenting Shareholders.

(ii) Following its receipt of the Letter of Transmittal, each Shareholder that delivers to the Company (or, following the Effective Time, the Surviving Corporation): (1) such Shareholder's Letter of Transmittal, duly executed by such Shareholder, (2) such Certificates (or affidavits delivered pursuant to Section 2.2(c)) representing shares of Company Common Stock then held by such Shareholder and (3) such other documents and information as may be reasonably required by the Company or Buyer, shall be entitled to payment of the aggregate Per Share Merger Consideration payable with respect to such Shareholder's shares of Company Common Stock in accordance with Section 2.1; provided that (x) each Shareholder that delivers such materials to the Company prior to the Effective Time shall be entitled to payment of such consideration at the Effective Time and (y) each Shareholder that delivers such materials to the Surviving Corporation following the Effective Time shall be entitled to payment of such consideration within five Business Days following the Surviving Corporation's receipt of such materials.

(b) No Further Ownership Rights in Company Common Stock. At and after the Effective Time, each holder of a Certificate that represented issued and outstanding shares of Company Common Stock immediately prior to the Effective Time shall cease to have any rights as a holder of securities of the Company, except for the right to surrender its, his or her Certificate(s) in exchange for the aggregate Per Share Merger Consideration payable in respect of such Company Common Stock hereunder, or in the case of a Dissenting Shareholder, to perfect its, his or her right to receive payment for his or her shares of Company Common Stock pursuant to Chapter 13 under the California Law. After the Effective Time, there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of shares of Company Common Stock which were outstanding immediately prior to the Effective Time. If, after the date hereof, Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Article II, except as otherwise provided by Law.

(c) Lost, Stolen or Damaged Stock Certificates. In the event that any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if reasonably required by Buyer, the delivery by such Person of an indemnification agreement in form and substance acceptable to Buyer, in Buyer's reasonable discretion, Buyer will pay in exchange for such lost, stolen or destroyed Certificate the aggregate Per Share Merger Consideration to be paid with respect thereto, subject to the terms and conditions in this Article II.

(d) Withholding. Each of Buyer, Merger Sub, the Surviving Corporation and the Escrow Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of Company Common Stock such amounts as each of Buyer, Merger Sub, the Surviving Corporation or the Escrow Agent is required to deduct and withhold under the Code, or any provision of state, local or foreign tax Law, with respect to the making of such payment. To the extent that amounts are so withheld by Buyer, Merger Sub, the Surviving Corporation or the Escrow Agent such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of shares of Company Common Stock in respect of whom such deduction and withholding was made.

2.3 Dissenters' Rights.

(a) Notwithstanding anything in this Agreement to the contrary, if any Dissenting Shareholder shall properly demand payment and appraisal with respect to such Shareholder's shares of Company Common Stock, as provided in Chapter 13 of the California Law, such shares shall not be converted into or exchangeable for the right to receive the aggregate Per Share Merger Consideration payable with respect to such Shareholder's shares of Company Common Stock except as provided in this Section 2.3, and the Company shall give Buyer notice thereof and Buyer shall have the right to participate in all negotiations and proceedings with respect to any such demands. The Company agrees that, except with the prior written consent of Buyer, or as required under the California Law, the Company will not voluntarily make any payment with respect to, or settle or offer to settle, any such demand for payment.

(b) If any Dissenting Shareholder shall fail to perfect or shall have effectively withdrawn or lost the right to dissent, the shares of Company Common Stock held by such Dissenting Shareholder shall thereupon be treated as though such shares had been converted into the aggregate Per Share Merger Consideration payable with respect to such Shareholder's shares of Company Common Stock in accordance with Section 2.1.

(c) Each Dissenting Shareholder who, pursuant to the provisions of Chapter 13 of the California Law, becomes entitled to payment of the value of the shares of Company Common Stock held by such Dissenting Shareholder will receive payment therefor after the value thereof has been agreed upon or finally determined pursuant to such provisions, and any Per Share Merger Consideration that would have been payable with respect to such shares of Company Common Stock shall be retained by Buyer. Notwithstanding the foregoing, to the extent that Buyer, the Surviving Corporation or the Company (i) makes any payment or payments in respect of any shares of Company Common Stock held by a Dissenting Shareholder in excess of the consideration that otherwise would have been payable in respect of such shares in accordance with this Agreement or (ii) incurs any losses, (including reasonable attorneys' and consultants' fees, costs and expenses and including any such reasonable fees, costs and expenses incurred in connection with investigating, defending against or settling any action or proceeding) in respect of any such shares (excluding payments for such shares) ((i) and (ii) together "Excess Dissenting Share Payments"), Buyer shall be entitled to recover the amount of such Excess Dissenting Share Payments in accordance with the terms, and subject to the limitations, of Article IX hereof.

ARTICLE III
REPRESENTATIONS AND WARRANTIES REGARDING THE CONTROLLING SHAREHOLDERS

Except as set forth in the disclosure schedules dated as of the date of this Agreement and delivered to Buyer and Merger Sub herewith (the "Company Disclosure Schedules"), each Controlling Shareholder represents and warrants to Buyer and Merger Sub as follows as of the date of this Agreement and as of the Effective Time:

3.1 Organization. Such Controlling Shareholder, if not a natural person, is duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation or organization.

3.2 Power; Authorization. Such Controlling Shareholder has all power and authority required to execute, deliver and perform his, her or its obligations under this Agreement and the other Transaction Documents to which such Controlling Shareholder is a party and to consummate the transactions contemplated hereunder and thereunder. The execution, delivery and performance of this Agreement and the other Transaction Documents to which such Controlling Shareholder is a party have been duly authorized by such Controlling Shareholder. All organizational actions and proceedings required to be taken by or on the part of such Controlling Shareholder to authorize and permit the execution, delivery and performance by such Controlling Shareholder of this Agreement and the other Transaction Documents to which such Controlling Shareholder is a party, have been duly and properly taken. This Agreement has been, and each other Transaction Document to which such Controlling Shareholder is a party has been or will be, duly executed and delivered by such Controlling Shareholder. This Agreement constitutes, and each other Transaction Document to which such Controlling Shareholder is a party constitutes, or will constitute, when so duly executed and delivered, a valid and binding obligation of such Controlling Shareholder, enforceable in accordance with its terms, in each case subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3 No Conflict. The execution and delivery by such Controlling Shareholder of this Agreement does not, and the execution and delivery of the other Transaction Documents to which such Controlling Shareholder is a party and the performance of this Agreement and such other Transaction Documents will not, (i) if such Controlling Shareholder is an entity, conflict with or violate any provision of the organizational documents of such Controlling Shareholder; (ii) assuming that all consents, approvals, authorizations and permits described on Schedule 4.5(b) have been obtained and all filings and notifications described on Schedule 4.5(b) have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to such Controlling Shareholder or by which any property or asset of such Controlling Shareholder is bound or affected, in each case, which could reasonably be expected to adversely affect the ability of such Controlling Shareholder to consummate the transactions contemplated by this Agreement or any other Transaction Document to which such Controlling Shareholder is a party; (iii) except as set forth on Schedule 3.3, (A) require any consent or approval under, (B) result in any breach of, (C) constitute a change of control or default (or an event which with notice or lapse of time or both would become a default) under, or (D) give to others any right of termination, vesting, amendment, acceleration or cancellation of, any material Contract to which such Controlling Shareholder is a party or to which any of his, her or its property or assets is subject, in each case, which could reasonably adversely affect the ability of such Controlling Shareholder to consummate the transactions contemplated by this Agreement or any other Transaction Document to which such Controlling Shareholder is a party; or (iv) result in the creation of a Lien any shares of Company Common Stock held by such Controlling Shareholder.

3.4 Litigation. Except as set forth on Schedule 3.4, there are no Actions pending or, to such Controlling Shareholder's knowledge, threatened against or affecting such Controlling Shareholder, which could reasonably adversely affect the ability of such Controlling Shareholder to consummate the transactions contemplated by this Agreement or any other Transaction Document to which such Controlling Shareholder is a party.

3.5 Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement or any other

Transaction Document to which such Controlling Shareholder is a party based on any Contract to which such Controlling Shareholder is a party or that is otherwise binding upon such Controlling Shareholder.

3.6 No Other Representations. Except for the representations contained in this Agreement or in any other Transaction Document, each Controlling Shareholder makes no express or implied representation or warranty in respect of or on behalf of such Controlling Shareholder, and such Controlling Shareholder disclaims any such representation or warranty, whether by the Company or any other Person, with respect to the execution and delivery of this Agreement or any other Transaction Document or the consummation of the transactions contemplated hereby and thereby, notwithstanding the delivery or disclosure to Buyer or Merger Sub or any of their officers, directors, employees, agents or representatives or any other Person of any documentation or other information with respect to the foregoing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

Except as set forth in the Company Disclosure Schedules, the Company and each Controlling Shareholder represents and warrants to Buyer and Merger Sub as follows as of the date of this Agreement and as of the Effective Time:

4.1 Organization; Corporate Power. The Company is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation and is qualified and in good standing in all other jurisdictions in which its ownership of property or conduct of business requires it to be qualified, except where the absence of such qualification would not have a Company Material Adverse Effect. The Company possesses all corporate power and authority necessary to own, operate and lease and license its properties and to carry on its business as now conducted. Copies of the Company's organizational documents have been provided to Buyer and Merger Sub as currently in effect and such copies are true, correct and complete.

4.2 Capitalization and Related Matters.

(a) Schedule 4.2(a) sets forth (i) the number of authorized shares of Company Common Stock, (ii) the number of issued and outstanding shares of Company Common Stock, and (iii) a true and complete list of the Shareholders, listing for each Shareholder: (A) his, her or its name and (B) the number of shares of Company Common Stock owned by such Shareholder.

(b) All of the issued and outstanding shares of Company Common Stock have been duly authorized and validly issued, and are fully paid and non-assessable. Except as set forth on Schedule 4.2(a), there are no outstanding (i) shares of capital stock of the Company; (ii) securities of the Company convertible into or exchangeable for shares of capital stock of the Company or containing any profit participation features; or (iii) options, warrants, calls, subscriptions or other rights to acquire from the Company or other obligations of the Company to issue, any capital stock or securities convertible into or exchangeable for capital stock of the Company or any equity appreciation rights, phantom equity rights, restricted stock, stock units, performance shares or other compensatory equity or equity-linked awards of any type. There are no outstanding obligations of the Company to repurchase, redeem or otherwise acquire or retire for value any shares of Company Common Stock. Except as set forth on Schedule 4.2(b), there are no statutory or contractual equityholder preemptive or similar rights, rights of first refusal or registration rights with respect to the outstanding shares of Company Common Stock. There are no agreements with respect to the voting or transfer of the shares of Company Common Stock. There is no liability for, or obligation with respect to, the payment of dividends, distributions or similar participation interests declared or accumulated but unpaid with respect to any shares of capital stock of any class or any

other equity interests of the Company, and, except as set forth on Schedule 4.2(b), there are no restrictions of any kind which prevent the payment of the foregoing by the Company. Except as set forth on Schedule 4.2(b), no former shareholder of the Company has any claim or right against the Company that remains unresolved or to which the Company has or may have (now or in the future) any Liability.

(c) Schedule 4.2(c) sets forth, as of the date indicated therein, all outstanding Indebtedness of the Company and each Company Subsidiary (collectively, the "Company Debt"), and for each item of Company Debt, identifies the debtor, the principal amount as of the date indicated therein, the creditor, the maturity date, and the collateral, if any, securing such Company Debt; provided, however, that for purposes of disclosing obligations under subsections (g) and (j) of the definition of Indebtedness, Schedule 4.2(c) shall set forth the aggregate amount of such obligations as of the date indicated.

4.3 Subsidiaries; Investments.

(a) Schedule 4.3(a) sets forth all subsidiaries of the Company (each a "Company Subsidiary"), listing each Company Subsidiary's name, type of entity, jurisdiction and date of incorporation or organization, authorized capital stock, partnership capital or equivalent, the number and type of its issued and outstanding shares of capital stock, partnership interests or similar ownership interests, and the current ownership of such shares, partnership interests or similar ownership interests.

(b) Except for the Company Subsidiaries and as set forth on Schedule 4.3(b), there are no other corporations, limited liability companies, partnerships, joint ventures, associations or other entities or Persons in which the Company or any Company Subsidiary owns, of record or beneficially, any direct or indirect equity or other interest or any right (contingent or otherwise) to acquire the same.

(c) Each Company Subsidiary (i) is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and is qualified in all other jurisdictions in which its ownership of property or conduct of business requires it to be qualified, except where the absence of such qualification would not have a Company Material Adverse Effect, and (ii) possesses all requisite organizational power and authority to own, operate, lease or license its properties and to carry on its business as now conducted. Copies of each Company Subsidiary's organizational documents, other than the organizational documents of SICC, have been provided to Buyer and Merger Sub as currently in effect and such copies are true, correct and complete.

(d) All of the issued and outstanding shares of capital stock of each Company Subsidiary have been duly authorized and validly issued, and are fully paid and non-assessable. The Company or one or more Company Subsidiary owns (beneficially and of record) all of the outstanding shares of capital stock of each Company Subsidiary, free and clear of any Liens, except as set forth on Schedule 4.3(d) or restrictions on transfer arising under applicable federal and state securities Laws. Except as set forth on Schedule 4.3(d), there are no outstanding (i) shares of capital stock of any Company Subsidiary; (ii) securities of any Company Subsidiary convertible into or exchangeable for shares of capital stock of any Company Subsidiary or containing any profit participation features; or (iii) options, warrants, calls, subscriptions or other rights to acquire from any Company Subsidiary or other obligations of any Company Subsidiary to issue, any capital stock or securities convertible into or exchangeable for capital stock of any Company Subsidiary or any equity appreciation rights or phantom equity plans. There are no outstanding obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire or retire for value any securities of any Company Subsidiary. Except as set forth on Schedule 4.3(d), there are no statutory or contractual equityholder preemptive or similar rights, rights of first refusal or registration rights with respect to any security of any Company Subsidiary. Except as set forth on Schedule 4.3(d), there are no agreements with respect to the voting or

transfer of any security of any Company Subsidiary. There is no liability for, or obligation with respect to, the payment of dividends, distributions or similar participation interests declared or accumulated but unpaid with respect to any shares of capital stock of any class or any other equity interests of any Company Subsidiary, and, except as set forth on Schedule 4.3(d), there are no restrictions of any kind which prevent the payment of the foregoing by any Company Subsidiary. No former shareholder of any Company Subsidiary has any claim or right against the Company or any Company Subsidiary that remains unresolved or to which the Company or any Company Subsidiary has or may have (now or in the future) any Liability.

4.4 Authorization. The Company possesses all corporate power and authority required to execute, deliver and perform its obligations under this Agreement and the other Transaction Documents to which the Company is a party and, subject to obtaining the Company Shareholder Approval, to consummate the transactions contemplated hereunder and thereunder. Except for obtaining the Company Shareholder Approval, all corporate actions and proceedings required to be taken by or on the part of the Company to authorize and permit the execution, delivery and performance by the Company of this Agreement and the other Transaction Documents which the Company is a party have been duly and properly taken. This Agreement has been, and each other Transaction Document to which the Company is a party has been or will be, duly executed and delivered by the Company. This Agreement constitutes, and each other Transaction Document to which the Company is a party constitutes or will constitute, when so duly executed and delivered, a valid and binding obligation of the Company, enforceable in accordance with its terms, in each case subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.5 No Conflict; Required Filings and Consents.

(a) The execution and delivery by the Company of this Agreement does not, and the execution and delivery by the Company of the other Transaction Documents to which the Company is a party and the performance of this Agreement and such other Transaction Documents will not, (i) conflict with or violate any provision of the organizational documents of the Company or any Company Subsidiary; (ii) assuming that all consents, approvals, authorizations and permits set forth on Schedule 4.5(b) have been obtained and all filings and notifications set forth on Schedule 4.5(b) have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to the Company, any Company Subsidiary or by which any property or asset of the Company, any Company Subsidiary is bound or affected, in each case, which could reasonably adversely affect the ability of the Company to consummate the transactions contemplated by this Agreement or any other Transaction Document to which it is a party; (iii) except as set forth on Schedule 4.5(a), (A) require any consent or approval under, (B) result in any breach of or any loss of any benefit under, (C) constitute a change of control or default (or an event which with notice or lapse of time or both would become a default) under, or (D) give to others any right of termination, vesting, amendment, acceleration or cancellation of, any Material Contract, in each case, which could reasonably adversely affect the ability of the Company to consummate the transactions contemplated by this Agreement or any other Transaction Document to which it is a party; (iv) result in the creation of a Lien on any material property (individually or in the aggregate) or material asset of the Company or any Company Subsidiary, other than Permitted Liens; or (v) cause the Company or any Company Subsidiary to become subject to, or to become liable for the payment of, any Tax.

(b) Except as set forth on Schedule 4.5(b) and as may be required under the HSR Act, the execution and delivery by the Company of this Agreement and the other Transaction Documents to which the Company is a party does not, and the performance of this Agreement and such other

Transaction Documents by the Company will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity (including, without limitation, (i) any state public utility commission, state public service commission or similar state regulatory body (each, a "PUC") or (ii) any departments of public health or departments of health or similar regulatory bodies or body having jurisdiction over environmental protection or environmental conservation or similar matters (collectively, "Health Agencies") under applicable Law).

4.6 Financial Statements. The Company has delivered to Buyer true, correct and complete copies of the Company's and the Company Subsidiaries' (a) unaudited consolidated balance sheet as of June 30, 2010 (the "Reference Balance Sheet") and the related unaudited consolidated statements of income, changes in shareholders' equity, and cash flow for the six-month period then ended and (b) audited consolidated balance sheets and related audited consolidated statements of income, changes in shareholders' equity, and cash flow for the fiscal years ended December 31, 2007, December 31, 2008 and December 31, 2009. Except as set forth on Schedule 4.6, each of the foregoing financial statements (including in all cases the notes and schedules thereto, if any) (i) is accurate and complete in all material respects; (ii) is consistent with the books and records of the Company and each Company Subsidiary (which, in turn, are accurate and complete in all material respects); (iii) has been prepared in accordance with GAAP consistently applied throughout the periods covered thereby, except as expressly described in the June 30, 2010 financial statements; and (iv) presents fairly in all material respects the financial condition, results of operations, shareholders' equity and cash flow of the Company and the Company Subsidiaries as of the dates and for the periods referred to therein, subject to normal year-end adjustments, none of which would be material, individually or in the aggregate, and the absence of notes.

4.7 Absence of Undisclosed Liabilities. To the Company's knowledge, the Company has no material Liability, except for Liabilities (a) reflected on the face of the Reference Balance Sheet; (b) incurred in connection with the execution of this Agreement; (c) of the type reflected on the face of the Reference Balance Sheet which have arisen since the date of the Reference Balance Sheet in the ordinary course of business; (d) disclosed on Schedule 4.7; or (e) that do not exceed $50,000 individually or $250,000 in the aggregate.

4.8 Absence of Certain Developments. Since the date of the Reference Balance Sheet through the date of this Agreement, except as set forth on Schedule 4.8, (i) the Company has conducted its business in all material respects in the ordinary course of business and (ii) there has not occurred any event or development that, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect. Except as set forth on Schedule 4.8 or expressly contemplated by this Agreement, since the date of the Reference Balance Sheet through the date of this Agreement, neither the Company nor any Company Subsidiary has:

(a) sold, leased, licensed (as licensor), assigned, disposed of or transferred (including transfers to the Company, any Company Subsidiary or any of its respective employees or Affiliates) any of its assets (whether tangible or intangible), except for (i) retirement of assets, sales of retired assets for salvage value, or the trade-in of vehicles, in each case in the ordinary course of business and consistent with past practice, (ii) sales of inventory in the ordinary course of business and (iii) sales of other assets not in excess of $100,000 in the aggregate;

(b) mortgaged, pledged or subjected to any Lien any portion of its properties or assets, other than Permitted Liens;

(c) committed to make or authorized any Company funded expenditure, which would reasonably be likely to result in the Company exceeding its capital expenditure budget set forth on Schedule 4.8(c);

(d) acquired (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any Person or any division thereof or any assets, other than acquisitions of assets in the ordinary course of business;

(e) incurred any Indebtedness or assumed, guaranteed or endorsed the obligations of any Person, except for Indebtedness incurred (i) pursuant to lines of credit maintained by the Company or any Company Subsidiary or (ii) in the ordinary course of business in a principal amount not, in the aggregate, in excess of $500,000 for the Company and each Company Subsidiary taken as a whole;

(f) entered into, amended, modified, accelerated or terminated any Material Contract, other than in the ordinary course of business;

(g) issued, sold, pledged, disposed of, encumbered or transferred any equity securities, securities convertible, exchangeable or exercisable into equity securities, or warrants, options or other rights to acquire equity securities, of the Company or any Company Subsidiary;

(h) declared, set aside, or distributed any dividend or other distribution (whether payable in cash, stock, property or a combination thereof) with respect to any of its capital stock (or other equity securities), or entered into any agreement with respect to the voting of its capital stock (or other equity securities), except for such dividend in the aggregate amount of $2,000,000 as declared and distributed to the Shareholders on November 3, 2010;

(i) reclassified, combined, split, subdivided or redeemed, purchased or otherwise acquired, directly or indirectly, any of its capital stock (or other equity securities);

(j) waived, released, assigned, settled or compromised any material rights or claims, or any material litigation or arbitration;

(k) other than as required to be disclosed to regulatory agencies or local municipalities in the ordinary course of business, disclosed any trade or other proprietary and confidential information to any Person that is not subject to any confidentiality or non-disclosure agreement;

(l) suffered theft, damage, destruction or casualty loss in excess of $250,000, to its assets, whether or not covered by insurance;

(m) (i) increased any form of compensation or benefits payable or to become payable to any director, officer or other employee of the Company or any Company Subsidiary (other than increases to non-executive employees in the ordinary course of business); (ii) granted any rights to severance or termination pay to, or entered into any employment, consulting, severance, retention, change-in-control or other incentive agreement with, any director, officer or other employee of the Company or any Company Subsidiary; (iii) hired or engaged any employee, consultant, director or service provider (except for non-executive employees with annual compensation below $125,000 hired in the ordinary course of business), or (iv) established, adopted, entered into, amended, modified or terminated any Company Employee Plan except as required by applicable Law (other than in the ordinary course of business);

(n) made loans or advances to, guarantees for the benefit of, or any investments in, any Person, excluding intercompany loans or advances between the Company and any Company Subsidiary, in excess of $100,000 in the aggregate;

(o) forgave any loans to directors, officers, employees or any of their respective Affiliates, in excess of $10,000 in the aggregate;

(p) made any change in accounting policies, practices, principles, methods or procedures, other than as required by GAAP or by a Governmental Entity;

(q) (i) accelerated or delayed collection of notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of business; (ii) delayed or accelerated payment of any account payable in advance of its due date or the date such liability would have been paid in the ordinary course of business; (iii) made any changes to cash management policies; or (iv) varied any inventory purchase practices in any material respect from past practices;

(r) other than as provided to Buyer, received any adverse ruling or denial of any request by any Governmental Entity, including, without limitation, any Regulatory Agency, in each case, that has had or would reasonably be expected to have a Substantial Adverse Impact;

(s) written up, written down or written off the book value of any assets, individually or in the aggregate, for the Company and the Company Subsidiaries (excluding SICC) taken as a whole, in excess of $100,000, except for depreciation and amortization in accordance with GAAP consistently applied;

(t) made any material Tax election, or changed or revoked any material Tax election; settled or compromised any material Liability for Taxes; changed any annual Tax accounting period, or adopted or changed any method of Tax accounting; filed any amended Tax Return; entered into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement relating to any Tax; surrendered any right to claim a material Tax refund; or consented to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment; or

(u) agreed or committed to do any of the foregoing.

4.9 Intellectual Property.

(a) Schedule 4.9 sets forth the list of all Trademarks and domain name registrations, including all registrations and applications for registration thereof, owned by the Company and the Company Subsidiaries. Neither the Company nor any of the Company Subsidiaries has any patents or pending patent applications, or registrations or pending applications for registration of Trademarks or copyrights. The Company or the Company Subsidiaries are the exclusive owners of the Intellectual Property listed on Schedule 4.9. The Company or the Company Subsidiaries own or have a right to use, free and clear of any Liens, except for Permitted Liens, all the Intellectual Property necessary to permit the Company and its Subsidiaries to conduct their respective businesses as currently conducted in all material respects.

(b) Neither the Company nor any of the Company Subsidiaries has entered into any agreements relating to the licensing (whether as licensee or licensor) or use of any Intellectual Property material to the conduct of their respective businesses as they are conducted as of the date of this Agreement.

(c) To the Company's knowledge, the conduct by the Company and the Company Subsidiaries of their businesses as currently conducted, and the use of any Intellectual Property in connection therewith, does not conflict with, infringe, misappropriate or otherwise violate in any material

respect the Intellectual Property rights of any third person. No Actions have been asserted or are pending or, to the Company's knowledge, threatened against the Company or any Company Subsidiary (i) based upon or challenging or seeking to deny or restrict the ownership or use by the Company or any Company Subsidiary of any Intellectual Property, (ii) alleging that any services provided by or processes used by the Company or any Company Subsidiary infringe, misappropriate or otherwise violate the Intellectual Property rights of any third person. To the Company's knowledge, no Person is materially infringing, misappropriating or otherwise violating the Intellectual Property owned by the Company and the Company Subsidiaries.

(d) To the Company's knowledge, with respect to any data obtained and collected by the Company and the Company Subsidiaries, the obtaining, collection, use, disclosure and transfer of such data does not violate, in any material respect, any (i) applicable Law, (ii) privacy procedure of the Company or (iii) any agreement with any other Person. To the Company's knowledge, the Company and the Company Subsidiaries have taken reasonable measures to protect the confidentiality and security of their customer data, confidential information, computers, software, databases, and networks from unauthorized access, modification, corruption, transmission or use. The Company and the Company Subsidiaries have implemented and maintained industry appropriate data backup, data storage, system redundancy, and disaster avoidance and recovery procedures.

(e) Schedule 4.9(e) lists all computer software owned by the Company or a Company Subsidiary that is material to the conduct of their respective businesses, other than Commercially Available Software, and discloses whether any of such software is distributed to or used by any other Person.

4.10 Real Property; Tangible Assets.

(a) The Company or a Company Subsidiary possesses, free and clear of all Liens, except for Permitted Liens, good, valid and marketable title to the Owned Real Property (as hereinafter defined) or good and valid leasehold, license or easement interests in the Leased Real Property (as hereinafter defined). Schedule 4.10 contains a true, correct and complete list of (i) all real property and interests in real property owned in fee by the Company or a Company Subsidiary (collectively the "Owned Real Property"), (ii) all real property and interests in real property leased or subleased by the Company or a Company Subsidiary and (iii) all material real property and material interests in real property used or occupied by the Company or a Company Subsidiary under a license, excluding all interests in real property under an easement, (the real property and interests in real property described in clause (iii) and the preceding clause (ii) of this Section 4.10(a), collectively the "Leased Real Property" and, together with the Owned Real Property, collectively, the "Company Property"). No Owned Real Property is presently being marketed for sale, or is under contract to be sold, except as disclosed on Schedule 4.10(a). Except as disclosed on Schedule 4.10(a), there are no leases, subleases or other Contracts granting to any Person (other than the Company or a Company Subsidiary) the right to possess and occupy any portion of the Company Property.

(b) The Company or the relevant Company Subsidiary has previously delivered or made available to Buyer and/or its counsel true, correct and complete copies of each lease, sublease and license agreement (excluding any agreement relating to Real Property Easements) governing the occupancy and/or use, as applicable of the Leased Real Property or any portion thereof (each such agreement, a "Lease"), together with all amendments, modifications, supplements, waivers, notices and side letters related thereto. Each of the Company and the Company Subsidiaries has complied in all material respects with the terms of the Leases to which it is a party or under which it is in occupancy, and all such Leases are valid, legally binding, enforceable and in full force and effect. No notice of default under any Lease has been delivered to the Company or any Company Subsidiary and none of the

Company or any of the Company Subsidiaries is in breach or violation of or default under any Lease, and no event has occurred which, with notice, lapse of time or both, would constitute a breach, violation or default by any of the Company or the Company Subsidiaries of any Lease or permit termination, modification or acceleration or repudiation by any third party thereunder, or prevent, materially delay or materially impair the consummation of the transactions contemplated by this Agreement except in each case, for such invalidity, failure to be binding, unenforceability, ineffectiveness, breaches, violations, defaults, charges, terminations, modifications, accelerations or repudiations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Substantial Adverse Impact.

(c) Except as have not had and would not reasonably be expected to have, individually or in the aggregate, a Substantial Adverse Impact, (i) each of the Company and each Company Subsidiary has fulfilled and performed all of its obligations with respect to any authorizations, permits, easements, prescriptive rights and rights of way, whether or not of record, pertaining to real property (the "Real Property Easements") necessary to conduct their businesses as conducted on the date hereof, and (ii) to the Company's knowledge, no event has occurred that would allow, with or without notice or lapse of time or both, revocation or termination thereof or would result in any impairment of the rights of the Company or any Subsidiary with respect to any Real Property Easement.

(d) Neither the Company nor any Company Subsidiary has received any written notice from any Governmental Entity of any currently pending, threatened or contemplated condemnation, eminent domain, litigation, administrative action or similar proceedings by any Governmental Entity involving the taking of any real property or any portion thereof or interest therein, or any sale or other disposition of any real property to which it holds title or any portion thereof in lieu of condemnation, except such actions that have not had and would not reasonably be expected to have, individually or in the aggregate, a Substantial Adverse Impact. Except as set forth on Schedule 4.10(d), there are no outstanding options or rights of first refusal to purchase all or any portion of the Owned Real Property or any interest therein.

(e) (i) Neither the Company nor any Company Subsidiary has received any written notice of violation of any Law with respect to any of the Company Property, and (ii) no written notice of violation of any Law has been issued by any Governmental Entity with respect to any of the Company Property, except, in each case, to the extent that such violation or notice thereof would not reasonably be expected to have, individually or in the aggregate, a Substantial Adverse Impact. The Company Property and its use, occupancy and operation is in material compliance with all Laws, except where such non-compliance would not reasonably be expected to have, individually or in the aggregate, a Substantial Adverse Impact

(f) Except, in each case for conditions that would not, individually or in the aggregate, result in a Substantial Adverse Impact, all water, gas, electrical, steam, compressed air, telecommunication, utility, sanitary and storm sewage lines and systems and other similar systems serving the Company Property are fully operational and in working order and are sufficient to enable the Company Property to continue to be used, occupied and operated in the manner currently being used, occupied and operated, and are supplied directly to the Company Property by facilities of public utilities and are benefited by customary utility easements providing for the continued use and maintenance of such systems.

(g) The Company and the Company Subsidiaries own, lease or have a valid right to use all of the material tangible assets used or held for use by them in the conduct of their respective businesses ("Tangible Assets"). The Company and each Company Subsidiary has good and marketable title to, or in the case of leased or subleased Tangible Assets, valid and subsisting leasehold interests in, or in the case of licensed Tangible Assets, a valid license to use, all of the Tangible Assets, free and clear of

all Liens, other than Permitted Liens, and subject to the applicable rules and regulations of the Governmental Entities in the jurisdictions where such Tangible Assets are located. Except as set forth on Schedule 4.10(g), such Tangible Assets are in good operating condition (normal wear and tear excepted taking into account various factors that affect such wear and tear, including but not limited to, the age, type, use and location of each Tangible Asset), and are fit in all material respects for use in the ordinary course of business as such business is currently conducted, except, in each case, where the failure of such Tangible Asset to be in such good operating condition or fit for use would not, individually or in the aggregate, result in a Company Material Adverse Effect.

4.11 Contracts.

(a) Except as set forth on Schedule 4.11, as of the date of this Agreement, neither the Company nor any Company Subsidiary is a party to or bound by any written or oral:

(i) Collective bargaining agreement or other Contract with any labor union;

(ii) Management agreement or other Contract for the employment or consultancy of any officer, individual employee or other Person on a full time, part-time or consulting basis or providing for the payment of any cash or other compensation or benefits upon the sale of all or a material portion of its assets or a change of control or otherwise restricting its ability to terminate the employment or services of any officer, individual employee or other Person at any time without penalty or liability (other than at-will employment agreements with its employees which do not commit the Company or any Company Subsidiary to severance, termination or other similar payments and which are terminable without prior notice), profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, or other material plan or arrangement for the benefit of current or former directors, officers, employees or other service providers;

(iii) Noncompetition, nonsolicitation or similar Contract limiting the permissible activities of any employees, consultants or directors of the Company or any Company Subsidiaries;

(iv) Contract relating to Indebtedness or to the mortgaging or pledging of, or otherwise placing a Lien on, any of its material assets or any of its securities;

(v) Contract, (or group of related Contracts) for the purchase, sale, distribution or marketing of raw materials, commodities, supplies, products or other personal property or for the furnishing or receipt of services which (A) calls for performance over a period of more than one year or (B) involves consideration in excess of $300,000, in each case, other than construction contracts entered into pursuant to the capital expenditure budget set forth on Schedule 4.8(c);

(vi) Contract which prohibits it from freely engaging in business or competing with any Person anywhere in the world during any period of time without any limitation or adverse consequences;

(vii) Contract under which it has advanced or loaned or guaranteed any loan in any amount to (A) any of its directors or officers or any Controlling Shareholders or (B) outside the ordinary course of business, to any other Person (other than the Company and the Company Subsidiaries);

(viii) Contract under which it is lessee of or holds or operates any property, real or personal, owned by any other party, which involves annual rental payments of greater than $100,000 or group of such Contracts with the same Person which involve consideration in excess of $300,000 in the aggregate;

(ix) Contract under which it is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by it which involves consideration in excess of $100,000 or group of such Contracts with the same Person which involve consideration in excess of $300,000 in the aggregate;

(x) license, indemnification or other Contract with respect to any Intellectual Property to which the Company or any Company Subsidiary is party as licensor, licensee or otherwise, other than licenses to the Company or any Company Subsidiary of Commercially Available Software, in each case identifying the subject Intellectual Property;

(xi) Contract whereby the Company or any Company Subsidiary has agreed to provide indemnification to any Shareholder, officer, director or employee of the Company or any Company Subsidiary;

(xii) Contract granting any rights necessary to extract and deliver water to the Company's customers;

(xiii) any Contract with any of the Controlling Shareholders, the Company, any Company Subsidiary or their respective Affiliates;

(xiv) Contract that provides any customer with pricing, discounts or benefits that change based on the pricing, discounts or benefits offered to other customers of the Company, except as approved by an applicable Governmental Entity, including any Contract which contains a "most favored nation" provision;

(xv) Contract which contains performance guarantees;

(xvi) Contract involving the settlement of any Action or threatened Action (A) which will involve payments after the date of the Reference Balance Sheet of consideration in excess of $100,000 or imposition of monitoring or reporting obligations to any other Person outside the ordinary course of business or (B) with respect to which conditions precedent to the settlement have not been satisfied;

(xvii) Contract appointing any agent to act on its or their behalf or any power of attorney;

(xviii) Contract with any Governmental Entity;

(xix) partnership, joint venture or other similar Contract involving a share of profits, losses, costs, or liabilities with any other Person;

(xx) Contract to which the Company or any Company Subsidiary is party that purports to bind Affiliates (or that would purport to bind Buyer or its Affiliates after the Effective Time) other than Company Subsidiaries and which are not terminable on 30 or fewer days notice by the Company without liability for any material penalty;

(xxi) other Contract (or group of related Contracts) the performance of which involves consideration in excess of $300,000 per year or $500,000 in the aggregate or which cannot be canceled by the Company or any Company Subsidiary upon 30 days' notice without premium or penalty; or

(xxii) other Contract material to the Company or any Company Subsidiary, entered into outside the ordinary course of business.

(b) All of the Contracts set forth or required to be set forth on Schedule 4.11 (a "Material Contract") are valid, binding and enforceable against the Company and each Company Subsidiary (to the extent party thereto) and enforceable by the Company and each Company Subsidiary (to the extent party thereto) against the other parties thereto, in accordance with their respective terms. The Company and each Company Subsidiary (to the extent party thereto) have performed all material obligations required to be performed by them under all Material Contracts and neither the Company nor any Company Subsidiary has received any notice that it is in default under or in breach of any Material Contract. To the Company's knowledge, (i) no event has occurred which with the passage of time or the giving of notice or both would result in a default, breach or event of noncompliance by the Company or any Company Subsidiary under any Material Contract; (ii) no other party to any Material Contract is in breach thereof or default thereunder and neither the Company nor any Company Subsidiary has received any notice of termination, cancellation, breach or default under any Material Contract; and (iii) there are no renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any material amounts paid or payable to the Company or any Company Subsidiary under any of the Material Contracts with any Person and no such Person has made written demand for such renegotiation. The Surviving Corporation and each subsidiary of the Surviving Corporation (to the extent party thereto) shall have the benefit of each Material Contract and shall be entitled to enforce each such Material Contract immediately following the Effective Time.

(c) A true, correct and complete copy of each written Material Contract has been made available to Buyer as of the date of this Agreement (to the extent entered into prior to the date of this Agreement) and as of the Effective Time (to the extent entered into prior to the Effective Time).

4.12 Insurance. The Company, each of the Company Subsidiaries and their property is covered by valid and currently effective insurance policies issued in favor of the Company or one or more of the Company Subsidiaries and there have been no gaps in coverage since January 1, 2005. Schedule 4.12 contains a list of (a) all material fire and casualty, general liability, business interruption and other insurance policies (collectively, "Insurance Policies") maintained by the Company or any of the Company Subsidiaries and (b) all claims of the Company and each Company Subsidiary that are currently pending with an insurance carrier under any Insurance Policy. The Company or the Company Subsidiaries have made available copies of each Insurance Policy to Buyer as of the date of this Agreement. All Insurance Policies are in full force and effect and will continue in full force and effect following the Effective Time. The Company is insured in such amounts and against such risks and losses as are (a) customary for similarly situated companies in the United States conducting the type of business conducted by Company and the Company Subsidiaries, (b) required to be maintained by the Company or the Company Subsidiaries under the terms of any contract to which the Company or any of the Company Subsidiaries is a party or by which any of their properties are bound, except for such failures to maintain insurance that would not result in the acceleration of any payment of the principal amount of such contract, and (c) required to be maintained pursuant to any applicable Law. Neither the Company nor any of the Company Subsidiaries (i) has received any notice of cancellation or termination with respect to, or denial of coverage or reservation of rights under, any Insurance Policy or (ii) is in breach or default, and neither the Company nor any of the Company Subsidiaries has taken any action or failed to take any action which, with notice or the lapse of time, would constitute a breach or default, or permit termination

or modification of, any such policy. As of the date hereof, the Company and each of the Company Subsidiaries has complied in all material respects with their obligations under each Insurance Policy, including the payment of all premiums due thereon.

4.13 Litigation. Except as set forth on Schedule 4.13, there are no, and during the past three years there have not been any, material Actions pending or, to the Company's knowledge, threatened against the Company or any Company Subsidiary (or pending or, to the Company's knowledge, threatened against any Controlling Shareholder with respect to the business of the Company and the Company Subsidiaries), or pending or threatened by the Company or any Company Subsidiary against any third party, at law or in equity, or before or, to the Company's knowledge, by any Governmental Entity, other than workers' compensation claims and claims under the Company Employee Plans, which would not reasonably be expected to have a Substantial Adverse Impact. The Company and each Company Subsidiary are fully insured with respect to each of the Actions set forth on Schedule 4.13 in which the Company or any Company Subsidiary is a defendant. Neither the Company nor any Company Subsidiary is subject to any judgment, order or decree of any court or other Governmental Entity, other than orders from the PUCs of California and Montana relating to the rates and operations of the Company and the Company Subsidiaries, that would, individually or in the aggregate, have or reasonably be expected to have a Substantial Adverse Impact.

4.14 Tax Matters. Except as set forth on Schedule 4.14:

(a) The Company and each Company Subsidiary have duly and timely filed or caused to be timely filed (taking into account any and all extensions) with the appropriate Tax Authority all material Tax Returns required to be filed by, or with respect to, such entity. All such Tax Returns are true, complete and accurate in all material respects. Except as set forth on Schedule 4.14(a), neither the Company nor any Company Subsidiary is currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made in writing by a Tax Authority in a jurisdiction where the Company or any Company Subsidiary does not file a Tax Return that the Company or any Company Subsidiary is or may be subject to taxation by that jurisdiction in respect of Taxes that would be covered by or the subject of such Tax Return. All material Taxes due and owing by the Company or any Company Subsidiary (whether or not shown on any Tax Returns) have been timely paid (taking into account any and all extensions).

(b) The unpaid Taxes of the Company and any Company Subsidiary did not, as of the date of the Reference Balance Sheet, exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Reference Balance Sheet (rather than in any notes thereto). Since the date of the Reference Balance Sheet, except in connection with the SICC Disposition, neither the Company nor any Company Subsidiary has incurred any liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom or practice.

(c) No deficiencies for material Taxes with respect to the Company or any Company Subsidiary have been claimed, proposed or assessed by any Tax Authority. There are no pending or, to the Company's knowledge, threatened audits, assessments or other actions by any Tax Authority or relating to any liability in respect of Taxes of the Company or any Company Subsidiary. There are no matters under discussion with any Tax Authority, or known to the Company or a Controlling Shareholder, with respect to Taxes that are likely to result in an additional liability for Taxes with respect to the Company or a Company Subsidiary. No issues relating to Taxes of the Company or any Company Subsidiary were raised by the relevant Tax Authority in any completed audit or examination that would reasonably be expected to result in a material amount of Taxes for the Surviving Corporation or Buyer after the Effective Time. Neither the Company (or any predecessor of the Company) nor any Company

Subsidiary 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, nor has any request been made in writing for any such extension or waiver.

(d) The Company and each Company Subsidiary have withheld and paid all Taxes required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor, Shareholders or other Person.

(e) The Company has made available to Buyer complete and accurate copies of all federal, state, local and foreign Tax Returns of the Company and each Company Subsidiary for all taxable years remaining open under the applicable statute of limitations and complete and accurate copies of all audit or examination reports and statements of deficiencies assessed against or agreed to by the Company or any Company Subsidiary since the last open tax year. Except as set forth on Schedule 4.14(e), no power of attorney with respect to any Taxes of the Company or any Company Subsidiary has been executed or filed with any Tax Authority.

(f) There are no Liens for Taxes upon any property or asset of the Company or any Company Subsidiary (other than statutory liens for current Taxes not yet delinquent).

(g) During the past ten years, neither the Company nor any Company Subsidiary has ever been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which is the Company) or any similar group for federal, state, local or foreign Tax purposes. The Company has no liability for the Taxes of any Person (other than Taxes of the Company or any Company Subsidiary) (i) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), (ii) as a transferee or successor, (iii) by Contract or (iv) otherwise.

(h) Neither the Company nor any Company Subsidiary is a party to or bound by any Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement or similar Contract (excluding customary Tax indemnification provisions in commercial Contracts not primarily relating to Taxes).

(i) Neither the Company nor any Company Subsidiary is a partner for Tax purposes with respect to any material joint venture, partnership, or other arrangement or Contract which is treated as a partnership for Tax purposes.

(j) Neither the Company nor any Company Subsidiary has been a party to a transaction that is or is substantially similar to a "reportable transaction," as such term is defined in Treasury Regulations Section 1.6011-4(b)(1), or any other transaction requiring disclosure under analogous provisions of state, local or foreign Tax Law. Except as set forth on Schedule 4.14(j), if the Company or any Company Subsidiary has entered into any transaction such that, if the treatment claimed by it were to be disallowed, the transaction would constitute a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code, then the Company believes that it has either (x) substantial authority for the tax treatment of such transaction or (y) disclosed on its Tax Return the relevant facts affecting the tax treatment of such transaction. Neither the Company nor any Company Subsidiary has participated, or has plans to participate, in any Tax amnesty program.

(k) Except as set forth on Schedule 4.14(k), neither the Company nor any Company Subsidiary will be required to include any item of income in, or exclude any item of deduction from, taxable income for any period (or any portion thereof) beginning after the Effective Time as a result of any installment sale or other transaction on or prior to the Effective Time, any accounting method change

or agreement with any Tax Authority filed or made on or prior to the Effective Time, any prepaid amount received on or prior to the Effective Time or any intercompany transaction or excess loss account described in Section 1502 of the Code (or any corresponding provision of state, local or foreign Tax Law).

(l) Except for the Change in Accounting Method Election, neither the Company nor any Company Subsidiary (i) has agreed, or is required, to make any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise; (ii) has made an election, or is required, to treat any of its assets as owned by another Person pursuant to the provisions of former Section 168(f) of the Code or as tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code; (iii) has either acquired, or owns, any assets that directly or indirectly secure any debt the interest on which is tax exempt under Section 103(a) of the Code; and (iv) has made any of the foregoing elections, or is required to apply any of the foregoing rules, under any comparable state or local Tax provision.

(m) Neither the Company nor any Company Subsidiary or predecessors by merger or consolidation have been a party to any transaction intended to qualify under Section 355 of the Code at any time in the last five years.

(n) Except as set forth on Schedule 4.14(n), neither the Company nor any Company Subsidiary (i) has engaged in a trade or business, had a permanent establishment (within the meaning of an applicable Tax treaty), or otherwise become subject to Tax jurisdiction in a country other than the country of its formation; (ii) has been a shareholder of a "controlled foreign corporation" as defined in Section 957 of the Code (or any similar provision of state, local or foreign law); (iii) has been a "personal holding company" as defined in Section 542 of the Code (or any similar provision of state, local or foreign law); or (iv) has been a shareholder of a "passive foreign investment company" within the meaning of Section 1297 of the Code.

(o) Except as set forth on Schedule 4.14(o), neither the Company nor any Company Subsidiary owns an interest in real property in any jurisdiction (i) in which a material amount of Tax is imposed, or the value of the interest is materially reassessed, on the transfer of an interest in real property resulting from the transactions contemplated by this Agreement and (ii) which treats the transfer of an interest (resulting from the transactions contemplated by this Agreement) in an entity that owns an interest in real property as a transfer of the interest in real property.

4.15 Compliance with Laws.

(a) Except as set forth on Schedule 4.15(a) and except with respect to subject matters of the representations and warranties set forth in Section 4.14 (Tax Matters) , Section 4.16 (Employees), Section 4.17 (Employee Benefits) and Section 4.19 (Environmental Matters), during the past three years, (i) the Company and each Company Subsidiary has conducted its business in compliance with all Laws applicable to the operation and conduct of its business or any of its properties or facilities, except where the failure to so comply would not, individually or in the aggregate, have or reasonably be expected to have a Substantial Adverse Impact; and (ii) neither the Company nor any Company Subsidiary has received written notice of any material violation or alleged violation, or non-written notice of a material violation or alleged violation. No event has occurred that would reasonably be expected to (with or without notice or lapse of time) constitute or result in a material violation by the Company or any Company Subsidiary of any Law applicable to the operation and conduct of its business or any of its properties or facilities, except in each case where such violation has not had and would not reasonably be expected to have, individually or in the aggregate, a Substantial Adverse Impact.

(b) Except as set forth on Schedule 4.15(b), the Company and each Company Subsidiary are in possession of all authorizations, licenses, permits, certificates, approvals and clearances of any Governmental Entity necessary for the Company and each Company Subsidiary to own, lease and operate their respective properties or to conduct its business in all material respects as currently conducted (collectively, the "Permits"), except where the failure to possess such Permits would not reasonably be expected to have, individually or in the aggregate, a Substantial Adverse Impact. To the Company's knowledge, all applications for or renewals of all such Permits have been timely filed and made. All of such Permits are in full force and effect and, subject, to the extent applicable, to obtaining the Regulatory Approvals or as set forth on Schedule 4.15(b), will remain in full force and effect immediately following the Effective Time.

(c) Except as set forth on Schedule 4.15(c), the Company is not subject to regulation as a public utility holding company, public utility or public service company (or similar designation) by any PUC. Schedule 4.15(c) contains a true and complete list of each Company Subsidiary that is subject to regulation as a public utility or public service company (or similar designation) by any PUC, including the name of each such jurisdiction in which such Company Subsidiary is subject to such regulation. All filings required to be made by the Company or any Company Subsidiary since December 31, 2007, under any applicable Laws relating to the regulation of public utilities or public service companies (or similarly designated companies), have been filed with the appropriate PUC, Health Agency or other appropriate Governmental Entity (including, to the extent required, the California Public Utilities Commission, the Montana Public Service Commission and the Montana Consumer Counsel), as the case may be, including all forms, statements, reports, agreements (oral or written) and all documents, exhibits, amendments and supplements appertaining thereto, including all rates, tariffs, franchises, service agreements and related documents, and all such filings complied, as of their respective dates, with all applicable requirements of all applicable Laws, except for such filings or such failures to comply that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

4.16 Employees.

(a) Labor. Neither the Company nor any Company Subsidiary is a party to any collective bargaining or similar agreement, and there are no labor unions or other organizations representing, purporting to represent or, to the Company's knowledge, attempting to represent, any employee of the Company or any Company Subsidiaries. There are no unfair labor practice complaints pending against the Company or any Company Subsidiaries before the National Labor Relations Board or any other Governmental Entity, nor to the Company's knowledge, are any such complaints threatened. The Company has not, with respect to any employees of the Company or any Company Subsidiaries, experienced any strike, slowdown, picketing, lockouts or other organized work interruption during the past three years nor, to the Company's knowledge, are any such strikes, slowdowns, picketings, lockouts or other organized work interruptions threatened. To the Company's knowledge, neither Christopher Schilling nor any employee listed on Exhibit F-1 has any present intention to terminate their employment.

(b) Employment Law. To the Company's knowledge, neither the Company nor any Company Subsidiary has violated in any material respect any applicable Law regarding the terms and conditions of employment of employees, former employees or prospective employees or other labor related matters, including without limitation any laws relating to wrongful discharge, discrimination, personal rights, wages, hours, collective bargaining, fair labor standards or occupational health and safety in each case that would be expected, individually or in the aggregate, to have a Substantial Adverse Impact. Without limiting the foregoing, the Company and the Company Subsidiaries are in material compliance with the Immigration Reform and Control Act of 1986 and maintain a current Form I-9, to the extent required by such act, in the personnel file of each employee. Schedule 4.16(b) sets forth, as of the date indicated therein, (i) the names, hire date and principal work location of all present employees of the

Company and the Company Subsidiaries and (ii) a statement as to whether or not such employee has executed and delivered to the Company any (A) Contract providing for the nondisclosure by such Person of any confidential information of the Company, (B) Contract providing for the assignment or license by such Person to the Company of any Intellectual Property, (C) Contract preventing such Person from competing with the Company during or following termination of employment, (D) Contract preventing such Person from soliciting and hiring employees of the Company during or following termination of employment and (E) Contract preventing such Person from soliciting and servicing any customers of the Company.

(c) Compensation Practices. (i) The Company and the Company Subsidiaries have paid in full to all of their employees or adequately accrued in accordance with GAAP for all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees; (ii) there is no claim with respect to payment of wages, salary or overtime pay that has been asserted in writing or, to the Company's knowledge, has been asserted, is now pending or is threatened before any Governmental Entity with respect to any current or former employee of the Company or any Company Subsidiary; and (iii) the Company and the Company Subsidiaries are not parties to, or otherwise bound by, any consent decree with, or citation by, any Governmental Entity relating to employees or employment practices.

(d) WARN Act. In the three years prior to the date of this Agreement, neither the Company nor any Company Subsidiary has effectuated (i) a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar state, local or foreign Law) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company or (ii) a "mass layoff" (as defined in the WARN Act, or any similar state, local or foreign Law) affecting any site of employment or facility of the Company or any Company Subsidiary.

(e) Workers' Compensation. There are no material liabilities, whether contingent or absolute, of the Company or any Company Subsidiary relating to workers' compensation benefits that are not fully insured against by a bona fide third-party insurance carrier. With respect to each Company Employee Plan and with respect to each state workers' compensation arrangement that is funded wholly or partially through an insurance policy or public or private fund, all premiums required to have been paid to date under such insurance policy or fund have been paid.

4.17 Employee Benefits.

(a) Disclosure. Schedule 4.17(a) lists all Company Employee Plans. The Company has made available to Buyer, as applicable, true and complete copies of (i) each written Company Employee Plan (including any amendments thereto) and written descriptions of all material terms of any such plan that is not in writing; (ii) copies of each summary plan description for the Company Employee Plans and any other notice or description provided to employees (as well as any modifications or amendments thereto); (iii) all trust documents, investment management contracts, custodial agreements, insurance contracts and other funding arrangements relating to any Company Employee Plan, (iv) the three most recent annual reports, with accompanying schedules and attachments, filed with respect to each Company Employee Plan required to make such a filing, (v) the three most recent financial statements, actuarial reports and trustee reports for each Company Employee Plan, if applicable, (vi) all material records, notices and filings concerning IRS or Department of Labor audits or investigations and "prohibited transactions" within the meaning of Section 406 of ERISA or Section 4975 of the Code (including Forms 5330), (vii) all non-routine, written communications with the IRS, DOL or PCBG relating to any Company Employee Plan and any proposed Company Employee Plans, and (viii) the most recent determination letter from the IRS and each currently pending application to the IRS for a

determination letter for any Company Employee Plan intended to qualify under Section 401(a) of the Code.

(b) Company Employee Plan Compliance. With respect to each Company Employee Plan: (i) if intended to qualify under Section 401(a) of the Code, such Company Employee Plan has received a favorable determination letter or is entitled to rely on a favorable opinion letter from the IRS, in either case, that has not been revoked and, to the Company's knowledge, no event or circumstance exists that has adversely affected or would reasonably be expected to adversely affect such qualification or exemption; (ii) such Company Employee Plan has been operated and administered in compliance in all material respects with its terms and all applicable Law (including but not limited to ERISA and the Code); (iii) there are no pending or, to the Company's knowledge, threatened material claims against, by or on behalf of any Company Employee Plans or the assets, fiduciaries or administrators thereof (other than routine claims for benefits); (iv) to the Company's knowledge, the Company has not engaged in any breach of fiduciary duty or other failure to act or comply in connection with the administration or investment of the assets of a Company Employee Plan and, to the Company's knowledge, no breaches of fiduciary duty or other failures to act or comply in connection with the administration or investment of the assets of a Company Employee Plan have occurred, in each case, in connection with which the Company, any Company Subsidiary or any Company Employee Plan fiduciary could reasonably be expected to incur a material liability; (v) no non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code has occurred; (vi) no lien has been imposed under the Code or ERISA; and (vii) all contributions (including all employer contributions and employee salary reduction contributions), premiums and expenses to or in respect of such Company Employee Plan have been timely paid in full or, to the extent not yet due, have been adequately accrued on the Company's financial statements. No excise tax could reasonably be expected to be imposed upon the Company or any Company Subsidiaries under Chapter 43 of the Code. No filing has been made in respect of any Company Employee Plan under the Company Employee Plans Compliance Resolution System or the Department of Labor Delinquent Filer Program.

(c) Certain Company Employee Plans. Except as set forth on Schedule 4.17(c), no Company Employee Plan is, and neither the Company, any Company Subsidiary nor any ERISA Affiliate thereof contributes to, has ever contributed to or has any liability or obligation, whether actual or contingent, with respect to any Plan that is (i) a "multiemployer plan" (within the meaning of Section 3(37) of ERISA), (ii) a "multiple employer plan" (within the meaning of Section 413(c) of the Code), (iii) a single employer plan or other pension plan subject to Title IV or Section 302 of ERISA or Section 412 of the Code, or (iv) a multiple employer welfare arrangement (within the meaning of Section 3(40) of ERISA) (the Company Employee Plans described in clauses (i) and (iii) of this Section 4.18(c), "Title IV Plans").

(d) Title IV Plans. Title IV Plans. With respect to each Title IV Plan set forth on Schedule 4.17(a), there has been no failure to meet the minimum funding standards under Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, whether or not waived. No Title IV Plan is "at risk" within the meaning of Section 430 of the Code and neither the Company nor any ERISA Affiliate has terminated any Title IV Plan or incurred any outstanding liability under Section 4062 of ERISA to the PBGC or to a trustee appointed under Section 4042 of ERISA. All premiums due to the PBGC with respect to the Title IV Plans maintained by the Company or any ERISA Affiliate have been timely paid.

(e) Certain Post-Termination Benefits. Except as set forth on Schedule 4.17(e), neither the Company nor any Company Subsidiary has any obligation to provide health, accident, disability, life insurance or death benefits with respect to any current or former employees, consultants or directors or any retirees of the Company or any Company Subsidiary, or the spouses, dependents or beneficiaries of any of the foregoing, beyond the termination of employment or service of any such

employee, consultant, director or retiree, whether under a Company Employee Plan or otherwise, other than as required under Section 4980B of the Code or other applicable Law.

(f) Accelerated Payments. Except as set forth on Schedule 4.17(f), neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, either alone or in combination with another event (whether contingent or otherwise) will (i) entitle any current or former employee, consultant or director of the Company or any Company Subsidiary to any payment; (ii) increase the amount of compensation or benefits due to any such employee, consultant or director; or (iii) accelerate the vesting, funding or time of payment of any compensation, equity award or other benefit.

(g) Company Employee Plan Commitments. Each Company Employee Plan can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without Liability (other than (i) Liability for ordinary administrative expenses typically incurred in a termination event or (ii) if the Company Employee Plan is a pension benefit plan subject to Part 2 of Title I of ERISA, Liability for the accrued benefits as of the date of such termination (if and to the extent required by ERISA) to the extent that either there are sufficient assets set aside in a trust or insurance contract to satisfy such liability or such liability is reflected on the most recent balance sheet included in the Company's financial statements prior to the date of this Agreement). Neither the Company, nor to the Company's knowledge, any other Person or entity has any express or implied commitment, whether legally enforceable or not, to modify, change or terminate any Company Employee Plan, other than with respect to a modification, change or termination required by ERISA or the Code or changes in the ordinary course of business.

(h) Audits; Investigations. To the Company's knowledge, neither the Company nor any Company Subsidiary with respect to any Company Employee Plan, any Company Employee Plan nor any fiduciary thereof is the subject of an audit or investigation by the IRS, the U.S. Department of Labor, the PBGC or any other Governmental Entity, nor is any such audit or investigation pending or, to the Company's knowledge, threatened.

(i) Foreign Plans. No Company Employee Plan is subject to the laws of any jurisdiction outside of the United States or provides compensation or benefits to any employee or former employee of the Company (or any dependent thereof) which compensation or benefits are subject to the laws of any jurisdiction outside of the United States.

(j) COBRA; HIPAA; Welfare Plan Funding; Maintenance. The Company, the Company Subsidiaries and each of their ERISA Affiliates are in compliance in all material respects with (i) the applicable requirements of Section 4980B of the Code and any similar state law, and (ii) the applicable requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations (including the proposed regulations) thereunder. Except as set forth on Schedule 4.17(j), no Company Employee Plan is a voluntary employee benefit association under Section 501(a)(9) of the Code. The obligations of all Company Employee Plans that provide health, welfare or similar insurance are fully insured by bona fide third-party insurers. No Company Employee Plan is maintained through a human resources and benefits outsourcing entity, professional employer organization, or other similar vendor or provider.

(k) Parachute Payments. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, either alone or in combination with another event (whether contingent or otherwise) will give rise to any "excess parachute payment" under Section 280G of the Code (whether or not such payment or benefit would be considered reasonable compensation for services rendered).

(l) Section 409A. Each Company Employee Plan and each other contract, plan, program, agreement, or arrangement maintained, established or entered into by the Company or any Company Subsidiary (i) was operated in good faith compliance in all material respects with Code Section 409A or an available exemption therefrom from January 1, 2005 through December 31, 2008 (to the extent in existence during such period), and (ii) has been maintained and operated, since January 1, 2009 (to the extent in existence since such date), in all material respects, in documentary and operational compliance with Code Section 409A or an available exemption therefrom. No compensation has been or would reasonably be expected to be includable in the gross income of any "service provider" (within the meaning of Code Section 409A) of the Company or any Company Subsidiary as a result of the operation of Code Section 409A.

(m) Gross Up Payments. There is no Contract, agreement, plan or arrangement to which the Company or any Company Subsidiary is a party which requires the Company or any Company Subsidiaries to pay a Tax gross-up payment to any person, including without limitation, with respect to any Tax-related payments under Code Section 409A or Code Section 280G.

(n) Withholding. The Company and each Company Subsidiary have properly classified all of their service providers as either employees or independent contractors and as exempt or non-exempt for all purposes and have withheld and paid all applicable Taxes and made all appropriate filings in connection with services provided by, and compensation paid to, such service providers.

4.18 Affiliated Transactions. Except as set forth on Schedule 4.18, no Related Party (a) is a party to any Contract with the Company or any Company Subsidiary; (b) has any direct or indirect financial interest in, or is an officer, director, manager, employee or consultant of, (i) any competitor, supplier, licensor, distributor, lessor or independent contractor of the Company or any Company Subsidiary or (ii) any other entity in any business arrangement or relationship with the Company or any Company Subsidiary; provided, however, that the passive ownership of securities listed on any national securities exchange representing no more than five percent of the outstanding voting power of any Person shall not be deemed to be a "financial interest" in any such Person; (c) has any interest in any property, asset or right used by the Company or any Company Subsidiary or necessary for its business; (d) has outstanding any Indebtedness owed to the Company or any Company Subsidiary; or (e) has received any funds from the Company or any Company Subsidiary since the date of the Reference Balance Sheet, except for employment-related compensation received in the ordinary course of business or dividends received in such Person's capacity as a Shareholder. Except as set forth on Schedule 4.18, neither the Company nor any Company Subsidiary has any Liability or other obligation of any nature whatsoever to any Related Party, except for employment-related Liabilities and obligations incurred in the ordinary course of business.

4.19 Environmental Matters. Within the last ten years, except as set forth on Schedule 4.19, (a) each of the Company and the Company Subsidiaries (for the purposes Section 4.19, of this collectively, the "Company") is now and has been in material compliance with all Environmental Laws and each has all environmental Permits necessary for the conduct and operation of its business as now being conducted, and all such environmental Permits are in good standing; (b) there has not been any Hazardous Substances used, generated, treated, stored, transported, disposed of, Released, handled or otherwise existing on, under, about, or emanating from or to, any property currently owned, leased or operated by the Company, except in material compliance with all applicable Environmental Laws; (c) the Company has not received any written notice of alleged, actual or potential responsibility or liability for any release or threatened release of Hazardous Substances at any location or alleged violation of, or non-compliance with, any Environmental Law, nor does the Company have knowledge of any information which would reasonably be expected to form the basis of any such notice or claim; (d) the Company has not released any other Person from claims or liability under any Environmental Law nor has waived any

rights concerning any claims under any Environmental Law; (e) the Company is not an indemnitor under any Contract in connection with any potential or actual claim for any liability or responsibility under any Environmental Law. Except as set forth on Schedule 4.19 or disclosed to Buyer in writing prior to the date of this Agreement, the Company has not entered into or agreed to any consent order or decree, or Contract, and is not subject to any judgment, settlement, order, or agreement relating to, compliance with, or liability under, any Environmental Law, environmental Permit, or the investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Substances, has provided or made available true, complete and correct copies of all environmental insurance policies, if any, to Buyer, and true, complete and correct copies, in the Company's possession or control, of all environmental or safety audits or inspections, or other written reports issued in the last three years concerning environmental, health or safety issues, pertaining to any current or former operations of the Company or property currently or formerly owned, leased or operated by the Company, have been provided or made available to Buyer.

4.20 Water Quality and Water Rights. Except as set forth on Schedule 4.20, the drinking water supplied by the Company and the Company Subsidiaries to their customers is in material compliance with all applicable federal and state water standards. To the Company's knowledge, except as set forth on Schedule 4.20, the Company and the Company Subsidiaries have all rights necessary to extract or purchase and deliver water to their customers pursuant to existing agreements or otherwise and there are no actions currently pending or, to the Company's knowledge, threatened by which such rights may be lost, revoked or compromised or will not be satisfied.

4.21 Certain Payments. None of the Controlling Shareholders or, to the Company's knowledge, any of the directors, officers, agents, representatives or employees of the Company or any Company Subsidiary (in their capacity as such directors, officers, agents, representatives or employees), has at any time during the past three years: (a) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity in respect of its business; or (b) directly or indirectly, paid or delivered any fee, commission or other sum of money or item of property, however characterized, to any finder, agent, or other party acting on behalf of or under the auspices of a governmental official or Governmental Entity, in the United States or any other country, which is illegal under any Law of the United States or any other country having jurisdiction over the Company or such Company Subsidiary, as applicable.

4.22 Acquisition Proposals. Except for confidentiality agreements, neither the Company nor any Company Subsidiary is a party to or bound by any agreement with respect to any Acquisition Proposal and the Company has terminated all discussions with any third party, if any, regarding any Acquisition Proposal.

4.23 Brokerage. Except as set forth on Schedule 4.23, there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement or any other Transaction Document based on any Contract to which the Company or any Company Subsidiary is a party or that is otherwise binding upon the Company or any Company Subsidiary.

4.24 No Other Representations. Except for the representations contained in this Agreement or in any other Transaction Document, the Company makes no express or implied representation or warranty in respect of or on behalf of the Company, and the Company disclaims any such representation or warranty, whether by the Company or any of its officers, directors, employees agents or representatives or any other Person, with respect to the execution and delivery of this Agreement or any other Transaction Document or the consummation of the transactions contemplated hereby and thereby, notwithstanding the delivery or disclosure to Buyer or Merger Sub or any of their

officers, directors, employees, agents or representatives or any other Person of any documentation or other information with respect to the foregoing.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB

Except as set forth in the disclosure schedules dated as of the date of this Agreement and delivered to the Company and the Controlling Shareholders herewith (together with the Company Disclosure Schedules, the "Disclosure Schedules"), each of Buyer and Merger Sub represents and warrants to the Company and the Controlling Shareholders as follows as of the date of this Agreement and as of the Effective Time:

5.1 Organization; Corporate Power. Each of Buyer and Merger Sub is duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation or organization, as applicable, and all other jurisdictions in which its ownership of property or conduct of business requires it to be qualified, except where the absence of such qualification would not have a Buyer Material Adverse Effect. Each of Buyer and Merger Sub possesses all requisite organizational power and authority necessary to own, operate and lease and license its properties, to carry on its business as now conducted and to carry out the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party.

5.2 Authorization. Each of Buyer and Merger Sub has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereunder and thereunder. The execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party by each of Buyer and Merger Sub, as applicable, have been duly authorized by Buyer and Merger Sub, as applicable. All corporate actions and proceedings required to be taken by or on the part of Buyer and Merger Sub to authorize and permit the execution, delivery and performance by them of this Agreement and the other Transaction Documents to which they are a party have been duly and properly taken. This Agreement has been, and each other Transaction Document to which Buyer or Merger Sub is a party will be, duly executed and delivered by Buyer and Merger Sub, as applicable. This Agreement constitutes, and each Transaction Document to which Buyer or Merger Sub are a party will constitute, when so duly executed and delivered, a valid and binding obligation of Buyer or Merger Sub, as applicable, enforceable in accordance with its terms, in each case subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.3 No Conflict; Required Filings and Consents.

(a) The execution and delivery each of Buyer and Merger Sub of this Agreement do not, and the execution and delivery of the other Transaction Documents to which Buyer or Merger Sub is a party and the performance of this Agreement and such other Transaction Document by Buyer and Merger Sub will not, (i) conflict with or violate any provision of the organizational documents of Buyer or Merger Sub; (ii) assuming that all consents, approvals, authorizations and permits described on Schedule 5.3 have been obtained and all filings and notifications set forth on Schedule 5.3 have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to Buyer or Merger Sub or by which any property or asset of Buyer or Merger Sub is bound or affected, in each case, which could reasonably adversely affect the ability of Buyer or Merger Sub to consummate the transactions contemplated by this Agreement or any other Transaction Document to which it is a party; (iii) except as set forth on Schedule 5.3, (A) require any consent or approval under, (B)

result in any breach of or any loss of any benefit under, (C) constitute a change of control or default (or an event which with notice or lapse of time or both would become a default) under, or (D) give to others any right of termination, vesting, amendment, acceleration or cancellation of, any material Contract to which Buyer or Merger Sub is a party or to which any of its property or assets is subject, in each case, which could reasonably adversely affect the ability of Buyer or Merger Sub to consummate the transactions contemplated by this Agreement or any other Transaction Document to which it is a party.

(b) Except as set forth on Schedule 5.3, the execution and delivery of this Agreement and the other Transaction Documents to which Buyer or Merger Sub is a party do not, and the performance by each of Buyer or Merger Sub of this Agreement and the other Transaction Documents to which it is a party will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity which has had, or would reasonably be expected to adversely affect the ability of either Buyer or Merger Sub to consummate the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party.

5.4 Ownership of Merger Sub; No Prior Activities.

(a) Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement.

(b) Except for obligations or liabilities incurred in connection with its incorporation or organization and the transactions contemplated by this Agreement and each other Transaction Document, Merger Sub has not and will not have incurred, directly or indirectly, through any subsidiary or Affiliate, any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person.

5.5 Financing; Guarantee.

(a) At the Effective Time, Buyer will have available all the funds necessary to pay the Merger Consideration and to pay all fees and expenses payable by Buyer related to the transactions contemplated by this Agreement and the other Transaction Documents.

(b) The Guarantee is in full force and effect and is the valid and binding obligation of the Guarantor, enforceable in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.6 Litigation. Except as set forth on Schedule 5.6, there are no Actions pending or to Buyer's knowledge, threatened in writing against or affecting Buyer or Merger Sub, or pending or threatened in writing by Buyer or Merger Sub against any third party, at law or in equity, or before or by any Governmental Entity (including any Actions with respect to the transactions contemplated by the Transaction Documents), which have had, or would reasonably be expected to adversely affect the ability of Buyer or Merger Sub to consummate the transactions contemplated by the Transaction Documents.

5.7 Brokerage. Except as set forth on Schedule 5.7, there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by the Transaction Documents based on any Contract to which Buyer or Merger Sub is a party or that is otherwise binding upon Buyer or Merger Sub.

5.8 No Other Representations. Except for the representations contained in this Agreement or in any other Transaction Document, neither Buyer nor Merger Sub makes any express or implied representation or warranty in respect of or on behalf of Buyer, Merger Sub or their respective Affiliates, and each of Buyer and Merger Sub disclaims any such representation or warranty, whether by Buyer, Merger Sub or any of their respective officers, directors, employees agents or representatives or any other Person, with respect to the execution and delivery of this Agreement or any other Transaction Document or the consummation of the transactions contemplated hereby and thereby, notwithstanding the delivery or disclosure to the Company and the Controlling Shareholders or any of their officers, directors, employees, agents or representatives or any other Person of any documentation or other information with respect to the foregoing.

ARTICLE VI
PRE-MERGER COVENANTS

6.1 Conduct of Business by the Company. From the date of this Agreement until the Effective Time, unless Buyer and Merger Sub otherwise agree in writing or expressly permitted by any other provision of this Agreement, the Company will, and will cause each Company Subsidiary to use commercially reasonable efforts to (a) conduct its businesses and operations in the ordinary course of business; (b) preserve intact its corporate existence and business organization; (c) preserve, in all material respects, the goodwill and present business relationships (contractual or otherwise) with all customers, suppliers, resellers, employees, licensors, distributors, Governmental Entities, and others having business relationships with it; (d) keep available the services of its current officers, directors, employees and consultants; (e) preserve in all material respects its present properties and its tangible and intangible assets, except for dispositions of property in the ordinary course of business; (f) comply in all material respects with all applicable Laws and Material Contracts; (g) pay all applicable Taxes as such Taxes become due and payable; and (h) maintain all existing Permits used in its operations and businesses as currently conducted, in each case consistent with past practices of the Company or Company Subsidiaries, as applicable. Without limiting the foregoing, and as an extension thereof, except as set forth on Schedule 6.1 or as expressly permitted by any other provision of this Agreement, including the SICC Disposition, the Company will not, and will cause each Company Subsidiary not to, from the date of this Agreement until the Effective Time, directly or indirectly, do, or agree to do, any of the following without the prior written consent of Buyer and Merger Sub (which consent shall not be unreasonably withheld):

(i) sell, lease, license (as licensor), assign, dispose of or transfer (including transfers to any non-wholly owned Company Subsidiary or any of the Company's or any Company Subsidiary's respective employees or Affiliates) any of its assets (whether tangible or intangible), except for (i) retirement of assets, sales of retired assets for salvage value, and the trade-in of vehicles, in each case in the ordinary course of business and consistent with past practice, (ii) sales of inventory in the ordinary course of business and (iii) sales of other assets not in excess of $100,000 in the aggregate;

(ii) mortgage, pledge or subject to any Lien any portion of its properties or assets, other than Permitted Liens and Liens in connection with any Alternative Financing;

(iii) except as mandated or required by any Governmental Entity or applicable Law, commit to make or authorize any material capital expenditure, which would reasonably be likely to result in the Company and the Company Subsidiaries exceeding the capital expenditure budget set forth on Schedule 4.8(c). For purposes of this clause (iii), such capital expenditures shall exclude all contributions or advances in aid of construction and expenditures which are initially funded by or are authorized or otherwise agreed in writing to be reimbursed by a Governmental Entity;

(iv) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any Person or any division thereof or any assets, other than acquisitions of assets in the ordinary course of business and any other acquisitions for consideration that are individually not in excess of $200,000, or in the aggregate, not in excess of $400,000 for the Company and each Company Subsidiary taken as a whole;

(v) incur any Indebtedness or assume, guarantee or endorse the obligations of any Person, except for Indebtedness incurred (i) pursuant to lines of credit maintained by the Company or any Company Subsidiary, (ii) with respect to construction or development advances or (iii) in the ordinary course of business in a principal amount not, in the aggregate, in excess of $500,000 for the Company and each Company Subsidiary taken as a whole;

(vi) amend, modify, accelerate or terminate any Material Contract, or enter into any Contract that would be a Material Contract had it been entered into as of the date of this Agreement, other than construction contracts entered into pursuant to the capital expenditure budget set forth on Schedule 4.8(c);

(vii) issue, sell, pledge, dispose of, encumber or transfer any equity securities, securities convertible, exchangeable or exercisable into equity securities, or warrants, options or other rights to acquire equity securities, of the Company or any Company Subsidiary;

(viii) declare, set aside, or distribute any dividend or other distribution (whether payable in cash, stock, property or a combination thereof) with respect to any of its capital stock (or other equity securities), or enter into any agreement with respect to the voting of its capital stock (or other equity securities);

(ix) reclassify, combine, split, subdivide or redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock (or other equity securities);

(x) waive, release, assign, settle or compromise any material rights or claims, or any material litigation or arbitration;

(xi) other than as required to be disclosed to regulatory agencies or local municipalities in the ordinary course of business, disclose any trade secrets or other proprietary and confidential information to any Person that is not subject to any confidentiality or non-disclosure agreement;

(xii) (A) increase any form of compensation or benefits payable or to become payable to any director, officer or other employee of the Company or any Company Subsidiary other than in the ordinary course of business consistent with past practice; (B) grant any rights to severance or termination pay to, or enter into any severance, retention, change-in-control or other incentive agreement with, any director, officer or other employee of the Company or any Company Subsidiary; (C) hire or engage any employee, consultant, director or service provider (except for non-executive employees with annual compensation below $125,000 hired in the ordinary course of business); or (D) establish, adopt, enter into, amend, modify or terminate any Company Employee Plan except as required by applicable Law (other than in the ordinary course of business);

(xiii) make loans or advances to, guarantees for the benefit of, or any investments in, any Person in excess of $100,000 in the aggregate, excluding intercompany loans or advances between the Company and any Company Subsidiary;

(xiv) forgive any loans to directors, officers, employees or any of their respective affiliates;

(xv) make any change in accounting policies, practices, principles, methods or procedures, other than as required by GAAP or by a Governmental Entity;

(xvi) (A) accelerate or delay collection of notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of business; (B) delay or accelerate payment of any account payable in advance of its due date or the date such liability would have been paid in the ordinary course of business; (C) make any changes to cash management policies; or (D) vary any inventory purchase practices in any material respect from past practices;

(xvii) write up, write down or write off the book value of any assets, individually or in the aggregate, for the Company and the Company Subsidiaries taken as a whole, in excess of $100,000, except for depreciation and amortization in accordance with GAAP consistently applied;

(xviii) except for the Change in Accounting Method Election, make, change or revoke any material Tax election; settle or compromise any material Liability for Taxes; change any annual Tax accounting period; except for the Change in Accounting Method Election, adopt or change any method of Tax accounting; file any amended Tax Return except as required by Law; enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement relating to any material Tax; surrender any right to claim a material Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(xix) take any action for the winding up, liquidation, dissolution or reorganization of the Company or any Company Subsidiary or for the appointment of a receiver, administrator or administrative receiver, trustee or similar officer of its assets or revenues;

(xx) amend the Company's or any Company Subsidiary's charter documents, bylaws or similar governing documents;

(xxi) layoff or terminate employees that could result in a material liability under the WARN Act;

(xxii) fail to keep in force any Insurance Policies or, upon the expiration or termination of such Insurance Policies, replacement or revised policies providing insurance coverage with respect to the assets, operations and activities of the Company and each Company Subsidiary as are currently in effect; or

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

6.2 Access to Information. From the date of this Agreement until the Effective Time, the Company will use its commercially reasonable efforts, and will cause each Company Subsidiary to use their commercially reasonable efforts to (a) give Buyer, Merger Sub and their Affiliates, counsel, financial advisors, auditors, employees, agents and other representatives, and their financing sources and their representatives, reasonable access on reasonable notice during normal business hours to all material properties, facilities and offices and true, correct and complete copies of books, records and Contracts (including customer and supplier Contracts) and such financial and operating data and other

information with respect to the Company and each Company Subsidiary as such persons may reasonably request and (b) instruct its employees, counsel, accountants, financial advisors and other representatives to cooperate reasonably with Buyer in its investigation of the Company and each Company Subsidiary.

6.3 Governmental Approvals.

(a) Buyer and the Company will each advise the other party promptly of any material communication received by such party or any of its Affiliates from the Federal Trade Commission, Department of Justice, any state attorney general or any other Governmental Entity regarding any of the transactions contemplated by this Agreement and the other Transaction Documents, and of any understandings, undertakings or agreements (oral or written) such party proposes to make or enter into with the Federal Trade Commission, Department of Justice, any state attorney general or any other Governmental Entity in connection with the transactions contemplated hereby and thereby. None of the Company, Buyer or Merger Sub will meet with any Governmental Entity in respect of any findings or inquiry in connection with the transactions contemplated by this Agreement and the other Transaction Documents without giving, in the case of the Company, Buyer or Merger Sub, and in the case of Buyer or Merger Sub, the Company, prior notice of the meeting and, to the extent reasonably practicable and not prohibited by the applicable Governmental Entity, the opportunity to attend and/or participate in such meetings. The Company and Buyer will consult and cooperate with each other in connection with any information or proposals submitted in connection with proceedings under or relating to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 or any successor statute, as amended and in effect from time to time (the "HSR Act") in connection with the transactions contemplated by this Agreement and the other Transaction Documents.

(b) Each of the Company, Buyer and Merger Sub will make or cause to be made all filings and submissions required under the HSR Act, and any applicable Laws of any foreign jurisdiction relating to antitrust or competition with respect to the transactions contemplated by this Agreement and the other Transaction Documents as promptly as practicable after the date hereof, and thereafter make any other required submissions with respect to the transactions contemplated hereby and thereby under the HSR Act and otherwise use its commercially reasonable efforts to cause the expiration or termination of the applicable waiting period or obtain any consents or approvals under the HSR Act and any similar foreign Laws as soon as practicable. Neither the Company nor Buyer or Merger Sub will extend any waiting period or comparable period under the HSR Act or enter into any agreement with any Governmental Entity not to consummate the transactions contemplated by the Transactions Documents, except with the prior written consent of the other. Nothing in this Agreement shall require Buyer or Merger Sub to, or permit the Company or any Company Subsidiary to, agree to propose or accept the sale, divestiture, disposition or holding separate of any assets or businesses of itself or any of its Affiliates (or otherwise take any action that limits the freedom of action with respect to, or its ability to retain, any of its businesses, product lines, or assets or those of its Affiliates) in order to avoid the entry of or to effect the dissolution of any injunction or other order (whether temporary, preliminary or permanent), which would otherwise have the effect of preventing or delaying the consummation of the transactions contemplated by this Agreement and the other Transaction Documents. The Company shall have the right to review in advance and Buyer shall consult with the Company about all information relating to the Company and the Controlling Shareholders that appears in any filing made with, or written material submitted to, any Governmental Entity in connection with the transactions contemplated by this Agreement. The Buyer and Merger Sub shall have the right to review in advance and the Company shall consult with the Buyer and Merger Sub about all information relating to the Buyer or Merger Sub that appears in any filing made with, or written material submitted to, any Governmental Entity in connection with the transactions contemplated by this Agreement.

(c) Each of the Company, Buyer and Merger Sub will make, cause to be made, or authorize the Company to make a filing or submission to the California Public Utilities Commission, and the Company will make, or cause to be made, a filing or submission to the Montana Public Service Commission (the California Public Utilities Commission and Montana Public Service Commission are herein referred to collectively as, the "Regulatory Agencies") and will use its commercially reasonable efforts to obtain all consents, approvals, evidence of no objection or similar orders or notices from such Regulatory Agencies, with respect to the Merger and any other transaction contemplated by the Transaction Documents (collectively, the "Regulatory Approvals"). Each of the Company, Buyer and Merger Sub shall use commercially reasonable efforts to respond promptly to any requests for additional information made by Regulatory Agencies and to cause the Regulatory Agencies to issue the Regulatory Approvals as soon as practicable.

6.4 Consents. From the date of this Agreement until the Effective Time, the Company shall, and shall cause each Company Subsidiary to, use commercially reasonable efforts to obtain all authorizations, consents and approvals of, and give all notices to be obtained or given in connection with the transactions contemplated by the Transaction Documents to all third parties required under the Contracts set forth on Schedule 6.4.

6.5 Regulatory Filings. The Company shall, and shall cause each Company Subsidiary to, timely file in the ordinary course of business all rate applications and all other filings required to be made, with any Regulatory Agency or other Governmental Entity (including, without limitation, any Health Agency) under any Law relating to the regulation of public utilities or public service companies (or similarly designated companies), including any filings to implement any changes in any of its or any Company Subsidiary's rates or surcharges for water service, standards of service or accounting; provided that the Company shall, and shall cause each Company Subsidiary to, consult with Buyer reasonably in advance of any filing of a general rate case with any Regulatory Agency or other Governmental Entity and prior to any such filing, consider in good faith any of Buyer's comments on such filing; provided further that the Company shall obtain Buyer's consent (such consent not to be reasonably withheld) prior to including any description of Buyer, Merger Sub or their affiliates or the Merger in any filing with any Regulatory Agency or other Governmental Entity.

6.6 Shareholder Approval.

(a) The Company shall promptly take all action necessary in accordance with Section 603 of the California Law and the Company's Articles of Incorporation and Bylaws to solicit the written consent necessary for the Company Shareholder Approval as soon as practicable after the date hereof, and shall recommend approval of this Agreement and the Merger to the solicited Shareholders.

(b) Upon obtaining written consent for the Company Shareholder Approval, the Company shall promptly provide notice in accordance with Section 603 of the California Law to any Shareholder that was not solicited for purposes thereof. Buyer and Merger Sub shall cooperate with the Company in connection with the preparation of any materials delivered to such Shareholders; provided that Buyer, Merger Sub and their counsel shall be given a reasonable opportunity to review and comment on such materials before they are mailed to the Shareholders.

(c) The Company shall take all action necessary with respect to the rights of Dissenting Shareholders required pursuant to the California Law, including the delivery of notice required under Chapter 13 of the California Law to any Dissenting Shareholders as soon as reasonably practicable after obtaining the Company Shareholder Approval.

6.7 Notice of Developments

(a) From the date of this Agreement until the Effective Time, the Company and the Controlling Shareholders shall promptly notify Buyer in writing of (i) all events, circumstances, facts and occurrences existing as of the date hereof which should have been included in the Company Disclosure Schedules in order to make the representations and warranties set forth in this Agreement true and correct as of the date hereof, (ii) any failure to comply in all material respects with any covenant, condition or agreement to be complied with or satisfied by it or them under this Agreement and (iii) all other material developments affecting the assets, Liabilities, business, financial condition, operations, and results of operations of the Company or any Company Subsidiary. No disclosure by the Company pursuant to this Section 6.7(a) shall be deemed to amend or supplement the Company Disclosure Schedules, to prevent or cure any misrepresentation, breach of warranty or breach of covenant, or to affect the rights of Buyer or Merger Sub under Section 9.2.

(b) The Company and the Controlling Shareholders agree to promptly notify Buyer in writing of any new event, circumstance, fact, and/or occurrence that arise after the date of this Agreement and that did not exist as of the date hereof that, had it existed on the date hereof, would have been required to be set forth or listed in the Company Disclosure Schedules hereto (each event, circumstance, fact or occurrence is referred to herein as a "Post-Signing Change" and, collectively, the notices thereof provided in accordance with this Section 6.7(b) are referred to as "Notices of Change").

6.8 Exclusivity. From the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement pursuant to Article X hereof, the Shareholder Representative, each Controlling Shareholder and the Company shall not, and shall use commercially reasonable efforts to cause each Company Subsidiary and the officers and directors of the Company and each Company Subsidiary not to, directly or indirectly, discuss, pursue, solicit, initiate, participate in, facilitate or otherwise enter into any discussions, negotiations, agreements or other arrangements regarding a possible sale or other disposition (whether by merger, reorganization, recapitalization or otherwise) of all or any part of the capital stock or any substantial portion of the assets other than inventory to be sold in the ordinary course of business of the Company or any Company Subsidiary (other than in connection with the SICC Disposition) with any other Person other than Buyer or its Affiliates (an "Acquisition Proposal") or provide any information to any Person other than Buyer and its Affiliates, representatives, agents and lenders other than information which is traditionally provided in the regular course of the Company's and the Company Subsidiaries' business operations to third parties. No Controlling Shareholder shall vote any shares of Company Common Stock held by such Controlling Shareholder in favor of any Acquisition Proposal. The Company shall, and shall cause each Company Subsidiary and the officers and directors of the Company and each Company Subsidiary to, (a) immediately cease and cause to be terminated any and all contacts, discussions and negotiations with any Person other than Buyer and its Affiliates and representatives regarding the foregoing; (b) promptly notify Buyer if any Acquisition Proposal, or any inquiry or contact with any Person with respect thereto, is subsequently made, and the details of such contact (including the identity of the third party or third parties and copies of any proposals and the specific terms and conditions discussed or proposed); and (c) keep Buyer fully informed with respect to the status of the foregoing. The Company and each Controlling Shareholder agrees not to, and to cause the Company and each Company Subsidiary not to, without the prior consent of Buyer, release any Person from, or waive any provision of, any standstill agreement or confidentiality agreement to which any Controlling Shareholder, the Company or any Company Subsidiary is a party. Neither the Company or any Company Subsidiary will authorize its employees, representatives, agents, investment bankers or other professional advisors to take, and will use their commercially reasonable efforts to cause any action which the Company or the Company Subsidiaries are prohibited from taking under this Section 6.8 and the Company and the Company Subsidiaries will use their commercially reasonable efforts to cause their employees, representatives, agents, investment bankers and other professional advisors not to take any action which the Company or the Company Subsidiaries are prohibited from taking under this Section 6.8.

6.9 Lender Consents; Alternative Financing. The parties acknowledge and agree that, in connection with the Merger, (a) Buyer and the Company will each use its commercially reasonable efforts to obtain certain waivers of any (x) rights and remedies of or that may be exercisable by lenders under and (y) any defaults or events of default that may be triggered under any instruments governing the Company Debt due to the execution of this Agreement and/or the consummation of the transactions contemplated hereby (the "Required Lender Consents"), and (b) if the parties are unable to obtain one or more of the Required Lender Consents (any Company Debt for which Required Lender Consents are not obtained is referred to herein as "Non-Consenting Debt"), the Company and Buyer each will use its commercially reasonable efforts to arrange and obtain replacement financing from alternative sources reasonably acceptable to Buyer in an amount (both drawn and available to be drawn) equal to the Non-Consenting Debt being replaced with terms and conditions no less favorable to the Company and any Company Subsidiaries (and, following the Effective Time, the Surviving Corporation and its subsidiaries) in any respect than the terms and conditions of the Non-Consenting Debt being replaced (as determined in the reasonable judgment of Buyer) (all such replacement financing, considered together, the "Alternative Financing"). In connection with the parties' efforts to obtain such Required Lender Consents or Alternative Financing (collectively, "Financing Activities"), the Company and the Controlling Shareholders agree that the Company shall provide to Buyer, and shall cause the Company Subsidiaries and its and their respective officers, employees and Representatives to, provide to Buyer all cooperation reasonably requested by Buyer in connection with the Financing Activities, including the following: (i) using commercially reasonable efforts to cause the Company's and the Company Subsidiaries' senior officers and other Representatives to participate in meetings, presentations, due diligence sessions (including accounting due diligence sessions) and other sessions with current or prospective lenders and/or Alternative Financing sources; (ii) assisting with, and causing its independent accountants and legal advisors to cooperate and assist with, the preparation of appropriate and customary disclosure and offering materials and similar documents reasonably required in connection with the Financing Activities; (iii) assisting with the preparation of any mortgage, pledge and security documents, any loan agreement or interest hedging agreement, other definitive financing documents on terms satisfactory to Buyer, or other certificates, legal opinions or documents as may be reasonably requested by Buyer and available to, or capable of being prepared by, the Company without onerous cost or effort; (iv) facilitating the pledging of collateral; (v) furnishing to Buyer (and, if requested by Buyer, the Company's and the Company Subsidiaries' current lenders and/or potential new financing sources), as promptly as practicable, such financial and other pertinent information regarding the Company and the Company Subsidiaries as may be reasonably requested by Buyer; (vi) providing monthly and quarterly financial statements, to the extent the Company customarily prepares such financial statements, within the time such statements have been customarily prepared by the Company; (vii) obtaining such legal opinions, surveys and title insurance as reasonably requested by Buyer or Alternative Financing sources in connection with the Required Lender Consents or Alternative Financing; and (viii) taking all corporate or entity actions, subject to the occurrence of the Merger, reasonably requested by Buyer to permit the consummation of any Required Lender Consents or Alternative Financing that result from the Financing Activities on or prior to the Effective Time and to permit the proceeds thereof, if any, to be made available to the Company and/or the Company Subsidiaries at the Effective Time; provided, however, that nothing herein shall prevent the Company from, in its reasonable discretion, determining and controlling the Company's and each Company Subsidiary's participation in such Financing Activities. The Company hereby consents to the use of its and any Company Subsidiary's logos in connection with the Financing Activities. Without limiting the foregoing, Buyer agrees that, in the event that this Agreement is terminated pursuant to Sections 10.1(a), 10.1(b)(ii), 10.1(c)(ii), 10.1(d) or 10.1(f), Buyer will reimburse the Company, promptly after Buyer's receipt of reasonably detailed invoices therefor, all reasonable, documented, out-of-pocket costs and expenses incurred by the Company or any Company Subsidiary in connection with actions taken by the Company or such Company Subsidiary in support of the Financing Activities pursuant to this Section 6.9.

6.10 Efforts. Unless a different or higher standard is expressly required by this Agreement, the parties hereto agree to use their commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Laws, and to execute and deliver such documents and other papers, as may be required to carry out the provisions of the Transaction Documents to which it is a party and consummate and make effective the transactions contemplated thereby. The foregoing shall not be deemed to be an agreement by any of the Controlling Shareholders to consent to the Merger in connection with the Company Shareholder Approval.

6.11 Other Agreements by Buyer. From the date of this Agreement until the date Regulatory Approval is obtained in the applicable state, none of the Buyer, Merger Sub or the Guarantor shall enter into any agreement to purchase or merge with another Person engaged in regulated water utility distribution services that is, as applicable, subject to the regulatory jurisdiction of the California Public Utilities Commission or the Montana Public Service Commission without providing notice to the Company and obtaining the Company's consent (not be unreasonably withheld) to proceed.

6.12 No Right to Control. Buyer and Merger Sub acknowledge and agree that (a) nothing contained in this Agreement shall give Buyer or Merger Sub, directly or indirectly, the right to control or direct the Company's or the Company Subsidiaries' operations prior to the Effective Time, and (b) prior to the Effective Time, each of the Company and the Company Subsidiaries, on the one hand, and Buyer and Merger Sub, on the other hand, shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its respective operations; provided, however, that the parties hereto acknowledge and agree that the exercise of such control in breach or violation of this Agreement may give rise to Actions and/or indemnification claims; provided further, that nothing in this Section 6.12 shall limit the effect of Section 12.13.

ARTICLE VII
ADDITIONAL AGREEMENTS

7.1 Litigation Support. After the Effective Time, in the event that, and for so long as, Buyer or the Surviving Corporation or any subsidiary of the Surviving Corporation is actively contesting or defending against any charge, audit, complaint, action, suit, proceeding, hearing, investigation, grievance, arbitration, claim, or demand in connection with (a) any transaction contemplated by the Transaction Documents or (b) any occurrence, event, incident or transaction occurring on or prior to the Effective Time involving the Surviving Corporation or subsidiary of the Surviving Corporation, the Shareholder Representative and each Controlling Shareholder will reasonably cooperate with such contesting or defending party and its counsel in the contest or defense and provide such testimony as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of Buyer or (at Buyer's discretion) the Surviving Corporation or subsidiary of the Surviving Corporation; provided, however nothing herein shall require the Shareholder Representative or any Controlling Shareholder to cooperate with or otherwise assist Buyer, the Surviving Corporation or any subsidiary of the Surviving Corporation in any action or proceeding by Buyer seeking indemnification under the provisions of this Agreement.

7.2 Tax Matters.

(a) Tax Returns.

(i) The Company shall prepare and timely file, or shall cause to be prepared and timely filed, all Tax Returns in respect of the Company or any Company Subsidiaries that are required to be filed (taking into account any extension) on or before the Effective Time, and the Company shall pay, or cause to be paid, all Taxes of the Company and the Company Subsidiaries due on or before the Effective Time. Such Tax Returns shall be prepared by treating items on such Tax Returns in a manner consistent with the past practices of the Company and the Company Subsidiaries, as applicable, with respect to such items, except as required by applicable Law. At least ten days prior to filing any such Tax Return, the Company shall submit a copy of such Tax Return to Buyer for Buyer's review and approval, which approval shall not be unreasonably withheld or delayed.

(ii) Buyer shall prepare and timely file, or shall cause to be prepared and timely filed, all Tax Returns in respect of the Company or any Company Subsidiaries that relate to taxable periods ending on or before the Effective Time but that are required to be filed after the Effective Time, and to the extent the Controlling Shareholders would have an indemnity obligation for such Taxes pursuant to Section 9.2, the Controlling Shareholders shall pay Buyer, in accordance with Section 9.7(b), such Taxes due with respect to such Tax Returns. Except for with respect to the Change in Accounting Method Election and any issues or matters related thereto, such Tax Returns shall be prepared by treating items on such Tax Returns in a manner consistent with past practices of the Company and the Company Subsidiaries, as applicable, with respect to such items, except as required by applicable Law. Buyer shall deliver at least thirty Business Days prior to the due date (taking into account any extension) for the filing of such Tax Returns to Shareholder Representative for Shareholder Representative's review a draft of such Tax Returns. Buyer shall make any reasonable changes that Shareholder Representative submits to Buyer no less than five Business Days prior to the due date of such Tax Returns. Subject to the provisions of Section 9.7(b), Controlling Shareholders shall make any payment due to Buyer under this Section 7.2(a)(ii) at least two Business Days before payment of Taxes (including estimated Taxes) is due to the Tax Authority.

(iii) Buyer shall prepare and timely file, or cause to be prepared and timely filed, any Tax Return (a "Straddle Period Tax Return") required to be filed by the Company or the Company Subsidiaries for a Straddle Period. Except for with respect to the Change in Accounting Method Election and any issues or matters related thereto, such Tax Returns shall be prepared by treating items on such Tax Returns in a manner consistent with past practices of the Company and the Company Subsidiaries, as applicable, with respect to such items, except as required by applicable Law. Buyer shall deliver at least thirty Business Days prior to the due date for the filing of such Straddle Period Tax Return to Shareholder Representative for Shareholder Representative's review a draft of such Tax Return. Buyer shall make any reasonable changes that Shareholder Representative submits to Buyer no less than five Business Days prior to the due date of such Straddle Period Tax Return.

(iv) With respect to Taxes of the Company and the Company Subsidiaries relating to a Straddle Period, the Controlling Shareholders shall pay, in accordance with Section 9.7(b), to Buyer the amount of such Taxes that are allocable to the portion of the Straddle Period that is deemed to end on the close of business on the date of the Effective Time and for which the Controlling Shareholders would have an indemnity obligation pursuant to Section 9.2. The portion of any Tax that is allocable to the taxable period that is deemed to end on the close of business on the date of the Effective Time will be: (x) in the case of Property Taxes, deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days of such Straddle Period in the Pre-Merger Tax Period and the denominator of which is the number of calendar days in the entire Straddle Period, and (y) in

the case of all other Taxes, determined as though the taxable year of the Company terminated at the close of business on the date of the Effective Time; provided, however, that any Taxes attributable to transactions outside the ordinary course of business effected by Buyer after the Effective Time shall be deemed to have occurred after the Effective Time. Subject to the provisions of Section 9.7(b), Controlling Shareholders shall make any such payment due under this Section 7.2(a)(iv) at least two Business Days before payment of Taxes (including estimated Taxes) is due to the Taxing Authority.

(v) Notwithstanding anything contained in this Section 7.2(a) to the contrary, Buyer shall not file, and shall not cause to be filed, any amended Tax Returns in respect of the Company or any Company Subsidiaries that relate to a Pre-Merger Tax Period unless Buyer first obtains the prior written consent of the Shareholder Representative, which consent may be withheld in the Shareholder Representative's sole discretion unless Buyer can establish to the reasonable satisfaction of the Shareholder Representative that the amendment of the Tax Return is required by Law.

(b) Tax Contests.

(i) Buyer, the Company, any Company Subsidiary, and the Surviving Corporation, on the one hand, and the Shareholders, the Shareholder Representative and their Affiliates, on the other hand, shall promptly notify each other upon receipt by such party of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes relating to a Pre-Merger Tax Period (any such inquiry, claim, assessment, audit or similar event, a "Tax Matter"). Any failure to so notify the other party of any Tax Matter shall not relieve such other party of any liability with respect to such Tax Matters except to the extent such party was actually prejudiced as a result thereof.

(ii) Buyer shall have sole control of the conduct of all Tax Matters that arise after the Effective Time, including any settlement or compromise thereof, provided, however, that Buyer shall keep the Shareholder Representative reasonably informed of the progress of any Tax Matter and shall not effect any such settlement or compromise with respect to which the Shareholders are liable or which could give rise to a claim for indemnification by Buyer under Article IX without obtaining Shareholder Representative's prior written consent thereto, which shall not be unreasonably withheld or delayed.

(iii) In the event of any conflict or overlap between the provisions of this Section 7.1(b) and Article IX, the provisions of this Section 7.2(b) shall control.

(c) Cooperation. Buyer and the Controlling Shareholders agree to furnish or cause to be furnished to the other, upon request, as promptly as practicable, such information and assistance relating to Taxes, including, without limitation, access to books and records, as is reasonably necessary for the filing of all Tax Returns by Buyer or the Controlling Shareholders, the making of any election relating to Taxes, the preparation for any audit by any Tax Authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Each of Buyer and the Controlling Shareholders shall retain all books and records with respect to Taxes for a period of at least seven years following the Effective Time.

(d) Tax Sharing Agreements. All Tax sharing agreements or similar agreements between the Company or any Company Subsidiaries, on the one hand, and any of Shareholders and their Affiliates, on the other hand, shall be terminated prior to the Effective Time, and, after the Effective

Time, neither the Surviving Corporation nor any of its subsidiaries shall be bound thereby or have any liability thereunder.

(e) Tax Refunds. Any Tax refund (i) that is received by Buyer (or any of its Affiliates) or the Company (or any Company Subsidiary) after the Effective Time, or any amount of an otherwise available Tax refund that is utilized to offset a Tax of Buyer (or any of its Affiliates) or the Company (or any Company Subsidiary) for which the Shareholders are not responsible under this Agreement, (ii) that relates to any period (or portion thereof) ending on or prior to the date of the Reference Balance Sheet, and (iii) that exceeds the amount for such Tax refund reflected as an asset on the face of the Reference Balance Sheet (rather than in any notes thereto) shall be for the account of the Shareholders. Buyer shall promptly notify the Shareholder Representative in writing of its receipt or utilization of any such Tax refunds and shall pay the Shareholder Representative an amount equal to such refund or the amount of any such utilization within ten Business Days after receipt or utilization thereof. Buyer shall cooperate, and cause its Affiliates and the Company (and the Company Subsidiaries) to cooperate, in obtaining any refund that the Shareholders reasonably believe should be available, including without limitation, through filing appropriate forms with the applicable Tax Authorities.

(f) Change in Accounting Method Election. Prior to December 31, 2010, the Company shall file the Change in Accounting Method Election with the Internal Revenue Service. Prior to filing the Change in Accounting Method Election with the Internal Revenue Service, the Company shall provide Buyer with a copy of such election and shall make revisions to such election as reasonably requested by Buyer.

7.3 Employee Matters.

(a) For 12 months following the Effective Time, Buyer shall use commercially reasonable efforts to ensure that the Surviving Corporation continues to offer employee benefits that are not less advantageous in the aggregate to the benefits in effect immediately prior to the Effective Time. Buyer shall use commercially reasonable efforts to ensure that, to the extent permitted under the applicable terms of any health and welfare benefit plans of Buyer or its subsidiaries in which employees of the Company and/or any Company Subsidiary who continue employment following the Effective Time (including with Buyer or any of its subsidiaries) (each, a "Continuing Employee") become eligible to participate following the Effective Time (if any, "Buyer Plans"), each Continuing Employee receives full credit for service with the Company and Company Subsidiaries under such Buyer Plans for purposes of eligibility to participate, post-Merger vacation accrual, and severance benefits (if any), but not for purposes of vesting or benefit accrual under any defined benefit or similar pension plan or under any equity plan; provided, however, that no such service recognition shall result in any duplication of benefits. For the avoidance of doubt, nothing in the preceding sentence is intended to, or shall, reduce any benefit in which any Continuing Employee has vested under any Company Employee Plan as of the Effective Date. With respect to each Buyer Plan, Buyer shall use commercially reasonable efforts to cause, to the extent permitted under the applicable terms of such Buyer Plan, (i) the waiver of any eligibility waiting periods, any evidence of insurability requirements and the application of any pre-existing condition limitations under such Buyer Plan (except to the extent that any such restrictions or limitations would have applied under a comparable Company Employee Plan), and (ii) each Continuing Employee to be given credit under such Buyer Plan for all amounts paid by such Continuing Employee under any similar Company Employee Plan for the plan year that includes the date of the Merger for purposes of applying deductibles, co-payments and out-of-pocket maximums as though such amounts had been paid in accordance with the terms and conditions of the applicable Buyer Plan for the plan year in which the Effective Time occurs.

(b) Nothing in this Agreement shall, or shall be construed so as to: (i) prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any service provider of the Company or any Company Subsidiary (or to cause any of the foregoing actions) at any time, or to change (or cause the change of) the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such service providers, subject to the terms of the Employment Agreements; (ii) create any third-party rights in any current or former service provider of the Company or any Company Subsidiary (or any beneficiaries or dependents thereof); (iii) obligate Buyer or its subsidiaries to adopt or maintain any Plan or other compensatory or benefits arrangement at any time, except as set forth in Section 7.3(a); or (iv) prevent or restrict in any way the right of Buyer or the Surviving Corporation to at any time amend, modify or terminate any Company Employee Plan, except as set forth in Section 7.3(a).

7.4 Directors' and Officers' Liability.

(a) For a period of six years after the Effective Time, Buyer shall, at no expense to the beneficiaries thereof, either (i) cause to be maintained in effect the policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by the Company and the Company Subsidiaries immediately prior to the Effective Time or (ii) provide substitute policies with carriers having comparable or greater financial resources to the current carriers or purchase, or cause the Surviving Corporation to purchase, a "tail policy" in any case of at least the same coverage and amounts and containing other terms and conditions that are not less advantageous in the aggregate than all such policies in effect immediately prior to the Effective Time, with respect to matters arising on or before the Effective Time.

(b) The obligations under this Section 7.4 shall not be terminated or modified in such a manner as to adversely affect any indemnified party to whom this Section 7.4 applies without the consent of such affected indemnified party (it being expressly agreed that the indemnified parties to whom this Section 7.4 applies shall be third party beneficiaries of this Section 7.4 and shall be entitled to enforce the covenants contained herein).

(c) In the event Buyer or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, Buyer or the Surviving Corporation, as applicable, shall use commercially reasonable efforts to ensure that proper provision shall be made so that the successors and assigns of Buyer or the Surviving Corporation (or their respective successors or assigns), as the case may be, shall assume the obligations set forth in this Section 7.4.

(d) To the fullest extent permitted by law, Buyer shall pay all expenses, including reasonable attorneys' fees, that may be incurred by the persons referred to in this Section 7.4 in connection with their enforcement of their rights provided in this Section 7.4.

7.5 Confidentiality of Terms of Transaction, Etc. Except as required by any Regulatory Agency or as otherwise required to consummate the transactions contemplated by the Transaction Documents, the parties hereto will keep confidential the terms and status of this Agreement and the other Transaction Documents, the transactions contemplated hereby and thereby; provided that each of the Controlling Shareholders, the Shareholder Representative and the Company shall have the right to communicate and discuss with, and provide to, its legal advisors, representatives, officers or employees, directors, consultants and agents, any information regarding the terms and status of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby.

7.6 Pre-Merger Transactions. Immediately prior to the Effective Time, the Company shall have consummated and shall have caused its Affiliates and Related Parties to have consummated the following transactions (collectively, the "Pre-Merger Transactions"):

(a) Consummate the SICC Disposition; and

(b) In accordance with Schedule 7.6(b), satisfy, and cause each Company Subsidiary to satisfy, all obligations of the Company and each Company Subsidiary and/or induce or confirm satisfaction of all obligations of non-Company parties (including, without limitation, delivery or collection of final payment of all amounts due) under and/or terminate the Contracts specified on Schedule 7.6(b).

7.7 Acknowledgment by the Parties.

(a) EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THE REPRESENTATIONS AND WARRANTIES BY THE OTHER PARTIES SET FORTH IN THIS AGREEMENT AND ANY CERTIFICATE DELIVERED HEREUNDER, CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE OTHER PARTIES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, AND EACH OF THE PARTIES HERETO UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, ANY RELATING TO THE FUTURE FINANCIAL CONDITION OR PROJECTIONS, RESULTS OF OPERATIONS, ASSETS OR LIABILITIES OF THE COMPANY OR PARENT OR ANY OTHER PERSON) ARE SPECIFICALLY DISCLAIMED BY THE PARTIES.

(b) Buyer and Merger Sub acknowledge and agree that they have made their own inquiry and investigation into, and, based thereon, have formed an independent judgment concerning the Company and the Company Subsidiaries and their businesses and operations. Buyer and Merger Sub acknowledge and agree that they have had an opportunity to ask all questions of and receive answers from the Company with respect to this Agreement and the transactions contemplated by the Transaction Documents. Buyer and Merger Sub acknowledge and agree that, except as expressly set forth in this Agreement, neither the Company or any of the Company Subsidiaries, nor any of their respective Shareholders or the Shareholder Representative, will have or be subject to any liability or indemnification obligation to Buyer, Merger Sub, any of their respective representatives, or any other person resulting from the delivery, dissemination or any other distribution to Buyer, Merger Sub, or any other person, or the use by Buyer, Merger Sub, or any other person, of any such information provided or made available to them by or on behalf of the Company or any Company Subsidiary, including any information, documents, projections, forecasts, estimates, or other forward-looking information, business plans, or other material provided for or made available to Buyer, Merger Sub or any of their representatives in any physical or on-line data rooms, confidential information memoranda or in-person presentations or teleconferences in connection with the transactions contemplated by this Agreement.

(c) Without limiting the generality of the foregoing, in connection with each party hereto's investigation of the other parties, a party may have received certain projections from or on behalf of another party. Each party hereto acknowledges and agrees that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, and that the receiving parties are each familiar with such uncertainties. No party hereto makes any representations or warranties whatsoever with respect to such estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and forecasts).

7.8 Further Actions. In case at any time after the Effective Time any further actions are necessary to carry out the purposes of this Agreement, each party hereto will take such further actions (including the execution and delivery of such further instruments and documents) as any other such party may reasonably request, all at the sole cost and expense of the requesting party. The Controlling Shareholders acknowledge and agree that from and after the Effective Time, Buyer will be entitled to possession of all documents, books, records (including Tax records), agreements, and financial data of any sort relating to the Company or any Company Subsidiary. Buyer shall provide the Controlling Shareholders and the Shareholder Representative full access to such materials in the event of any disputes arise or indemnification claims are made under this Agreement or any other Transaction Document; provided, however, that such access does not disrupt the normal operations of Buyer, the Surviving Corporation or its subsidiaries.

ARTICLE VIII
CONDITIONS

8.1 Conditions to Obligation of Buyer and Merger Sub. The obligation of each of Buyer and Merger Sub to consummate the transactions to be performed by them in connection with the Merger is subject to the satisfaction of each of the following conditions as of the Effective Time:

(a) Representations and Warranties. Each of the representations and warranties of the Company and the Controlling Shareholders contained herein shall be true and correct in all respects on and as of the date of this Agreement and on and as of the Effective Time (except to the extent such representations and warranties address matters as of particular dates, in which case, such representations and warranties need only be true and correct in all respects on and as of such dates) except where the failure to be so true and correct (without giving effect to any limitation or qualification as to "materiality" or "Material Adverse Effect") does not constitute, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Performance of Covenants. The Company and the Controlling Shareholders shall have performed and complied in all material respects with all of their covenants and agreements required to be performed by them pursuant to this Agreement prior to the Effective Time.

(c) Company Shareholder Approval. The Company Shareholder Approval shall have been validly obtained under the California Law and the Company's Articles of Incorporation and Bylaws.

(d) Dissenting Shareholders. Not more than three percent (3%) of the shares of Company Common Stock outstanding immediately prior to the Effective Time shall be held by Dissenting Shareholders or shall continue to have a right to exercise dissenters, appraisal or other similar rights under applicable Law by virtue of the Merger.

(e) Compliance with Laws. The consummation of the transactions contemplated by the Transaction Documents will not be prohibited by any Law or subject Buyer, its Affiliates, the Surviving Corporation or any subsidiary of the Surviving Corporation to any material penalty or Liability (other than obligations of the Company specifically set forth in this Agreement) or other onerous condition arising under any Law or imposed by any Governmental Entity or otherwise adversely affect (i) Buyer's right to directly or indirectly own the equity interests of the Surviving Corporation and each subsidiary of the Surviving Corporation and to control the Surviving Corporation and each subsidiary of the Surviving Corporation or (ii) the right of the Surviving Corporation and each of its subsidiaries to own its assets and operate its business substantially as operated prior to the Effective Time.

(f) Proceedings; Orders. (i) No Action shall be pending before any Governmental Entity in which it is sought to restrain or prohibit or to obtain material damages or other relief (including rescission) in connection with the transactions contemplated by the Transaction Documents; or (ii) no injunction, judgment, order or decree has been entered by a Governmental Entity and not subsequently dismissed or discharged with prejudice.

(g) Governmental Approvals. All (i) waiting periods (and extensions thereof) under the HSR Act and any applicable foreign antitrust Laws relating to the transactions contemplated by the Transaction Documents shall have expired or terminated early and (ii) all Regulatory Approvals and all other filings, notices, licenses, permits, approvals or other Consents of, to or with, any Governmental Entity that is listed on Schedule 8.1(g) shall have been duly made or obtained, shall be in full force and effect as of the Effective Time, and shall not contain any conditions, limitations or obligations that, in Buyer's commercially reasonable discretion, could materially and adversely affect the operations, revenues or profitability of the Company or the Company Subsidiaries.

(h) Consents. All filings, notices, licenses, permits, approvals and other Consents of, to or with, any Person (other than a Governmental Entity) that are listed on Schedule 8.1(h) shall have been duly made or obtained and shall be in full force and effect as of the Effective Time, each in form and substance reasonably satisfactory to Buyer.

(i) Escrow Agreement. The Shareholder Representative and the Escrow Agent shall have entered into the Escrow Agreement, and the Escrow Agreement shall be in full force and effect as of the Effective Time.

(j) No Material Adverse Effect. Since the date of this Agreement, there shall have been no Company Material Adverse Effect.

(k) Consummation of Pre-Merger Transactions. The Company shall have delivered, or caused to be delivered, to Buyer, written evidence, in form and substance reasonably satisfactory to Buyer, evidencing the consummation of the Pre-Merger Transactions.

(l) Lender Consents; Alternative Financing. The parties shall have obtained all of the Required Lender Consents or, to the extent the parties are unable to obtain one or more Required Lender Consents, the Company shall have obtained Alternative Financing in accordance with Section 6.9.

(m) Opinion of Company Montana Counsel. Hughes, Kellner, Sullivan & Alke, PLLP, counsel to the Company, shall have furnished to Buyer and Merger Sub its written opinion, dated as of the Effective Time, covering the matters set forth on Schedule 8.1(m).

(n) Opinion of Company Counsel. Fulbright & Jaworski, L.L.P., counsel to the Company, shall have furnished to Buyer and Merger Sub its written opinion, dated as of the Effective Time, covering the matters set forth on Schedule 8.1(n).

(o) Other Documents to be Delivered. The Company shall have delivered to Buyer at the Effective Time:

(i) a certificate duly executed by the Chief Executive Officer of the Company, dated as of the Effective Time, certifying that each of the conditions specified in Sections 8.1(a) and 8.1(b) have been fully satisfied;

(ii) a certificate executed by the secretary of the Company certifying (A) the Company's and each Company Subsidiary's articles of incorporation, organization or formation (or equivalent document), in each case, as filed with and certified by the Secretary of State of each of their respective jurisdictions of organization and any amendments thereto, (B) certified copies of the Company's and each Company Subsidiary's bylaws (or equivalent document), (C) certified copies of the resolutions duly adopted by the Company's Board of Directors, approving the Merger and the Agreement of Merger and authorizing the Company's execution, delivery and performance of the Transaction Documents and the transactions contemplated by the Transaction Documents, and (D) the incumbency of each individual who shall be authorized to sign, in the name and on behalf of the Company, each of the Transaction Documents to which the Company is or is to become a party in connection herewith;

(iii) the respective good standing certificates (or equivalent document) for the Company and each Company Subsidiary in each of their respective jurisdictions of organization and in each jurisdiction where the Company and each Company Subsidiary is qualified to do business as a foreign organization, in each case dated within 10 days prior to the Effective Time; and

(iv) an affidavit, under penalties of perjury, stating that the Company is not and has not been a United States real property holding corporation, dated as of the Effective Time and in form and substance satisfactory to Buyer.

Buyer and Merger Sub may waive any condition specified in this Section 8.1 if it executes a writing so stating at or prior to the Effective Time.

8.2 Conditions to Obligation of the Company. The obligation of the Company and the Controlling Shareholders to consummate the transactions to be performed by them in connection with the Merger is subject to satisfaction of each of the following conditions as of the Effective Time:

(a) Representations and Warranties. Each of the representations and warranties of Buyer and Merger Sub contained herein shall be true and correct in all respects on and as of the date of this Agreement and on and as of the Effective Time (except to the extent such representations and warranties address matters as of particular dates, in which case, such representations and warranties shall be true and correct in all respects on and as of such dates) except where the failure to be so true and correct (without giving effect to any limitation or qualification as to "materiality" or "Material Adverse Effect") does not constitute, and would not be reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect.

(b) Performance of Covenants. Each of Buyer and Merger Sub shall have performed in all material respects all of the covenants and agreements required to be performed by it pursuant to the Transaction Documents on or prior to the Effective Time.

(c) Compliance with Laws. The consummation of the transactions contemplated by the Transaction Documents will not be prohibited by any Law, or subject the Company or any of the Shareholders to any material penalty or Liability or other onerous conditions arising under any Law or imposed by any Governmental Entity.

(d) Governmental Approvals. All (i) waiting periods (and extensions thereof) under the HSR Act and any applicable foreign antitrust Laws relating to the transactions contemplated by the Transaction Documents shall have expired or terminated early and (ii) all Regulatory Approvals and all other filings, notices, licenses, permits, approvals or other Consents of, to or with, any Governmental

Entity that are listed on Schedule 8.1(g) shall have been duly made or obtained and shall be in full force and effect as of the Effective Time, and shall not contain any conditions, limitations or obligations which would reduce or limit the full amount of the Merger Consideration being received or retained by the Shareholders or that, in the Shareholder Representative's commercially reasonable discretion, would materially and adverse affect the Controlling Shareholders and/or Shareholders.

(e) Officer's Certificate. Buyer shall have delivered to the Company a certificate to the effect that each of the conditions specified in Sections 8.2(a) and 8.2(b) have been satisfied.

(f) Escrow Agreement. Buyer and the Escrow Agent shall have entered into the Escrow Agreement, and the Escrow Agreement shall be in full force and effect as of the Effective Time.

(g) Merger Consideration. Each payment under Section 2.2 shall have been made to the parties specified therein (to the extent that such payment is required to be made at the Effective Time).

(h) Employment Agreements. Each of (x) the Employment Agreements, (y) the Wheeler Employment Agreements and (z) the Consulting Agreement shall have been executed and delivered by the Surviving Corporation, to be effective upon consummation of the Merger.

The Company may waive any condition specified in this Section 8.2 if it executes a writing so stating at or prior to the Effective Time.

ARTICLE IX
INDEMNIFICATION

9.1 Survival Periods. Subject to the limitations contained in this Article IX, all representations, warranties, covenants and agreements contained herein shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Notwithstanding anything herein to the contrary, the Controlling Shareholders will not be liable with respect to any claim for the breach or inaccuracy of any representation or warranty pursuant to Section 9.2(a)(i), no Controlling Shareholder will be liable with respect to any claim for breach or inaccuracy of any representation or warranty pursuant to Section 9.2(b)(i), and Buyer will not be liable with respect to any claim for the breach or inaccuracy of any representation or warranty pursuant to Section 9.3(a)(i), unless (x) written notice of a claim thereof is delivered to the Shareholder Representative or Buyer, as the case may be, and (y) if applicable, such notice is delivered prior to 5:00 p.m., Los Angeles time, on the applicable Survival Date. For purposes of this Agreement, subject to Section 9.4, the term "Survival Date" shall mean such date which is 12 months after the Effective Time; provided that (a) with respect to the representations and warranties set forth in Section 4.19 (Environmental Matters), Section 4.20 (Water Quality and Water Rights) and the last sentence of Section 3.2, Section 4.4 and Section 5.2 regarding enforceability, the Survival Date shall be the date that is 18 months after the Effective Time, (b) with respect to the representations and warranties set forth in Sections 4.14 (Tax Matters), 4.19 (Employee Benefits), the Survival Date shall be the 30th day after the expiration of the applicable statute of limitations (including any extensions thereto to the extent that such statute of limitations may be tolled), and (c) with respect to the representations and warranties set forth in Sections 3.1 (Organization), 3.2 (Power; Authorization), but excluding the last sentence of Section 3.2 regarding enforceability, 3.5 (Brokerage), 4.1 (Organization; Corporate Power), 4.2(a) and (b) (Capitalization and Related Matters), 4.3 (Subsidiaries; Investments), 4.4 (Authorization), but excluding the last sentence of Section 4.4 regarding enforceability, and 4.23 (Brokerage), 5.1 (Organization; Corporate Power), 5.2 (Authorization) but excluding the last sentence regarding enforceability, and 5.7 (Brokerage), there shall be no Survival Date and such representations and warranties shall survive beyond the Effective Time indefinitely. For the avoidance of doubt, any covenant, agreement or obligation set

forth in this Agreement shall survive beyond the Effective Time until the date that such covenant, agreement or obligation has been fully performed in all material respects in accordance with its terms.

9.2 Indemnification of the Buyer Indemnified Parties by Controlling Shareholders.

(a) Obligation of Controlling Shareholders Generally. Subject to the terms, limitations and conditions of this Agreement, the Controlling Shareholders hereby agree, severally (and not joint and severally), first from the amounts available in the Escrow Account (except as set forth in Section 9.7(b)), to indemnify Buyer and its Affiliates (including the Surviving Corporation and each of its subsidiaries after the Effective Time) and each of their respective officers, directors, shareholders, managers, members, partners, employees, agents, representatives, successors and assigns (collectively, the "Buyer Indemnified Parties") and hold each of them harmless from and against any Loss which such Buyer Indemnified Party may suffer, sustain or become subject to, as a result of, arising out of, relating to or in connection with:

(i) subject to the limitations in this Article IX, the breach or inaccuracy of any representation or warranty of the Company contained in this Agreement, in each case, without giving effect to any limitation or qualification as to "materiality," "material," "Material Adverse Effect" or similar qualifiers set forth in such representation or warranty for purposes of (and solely for the purposes of) determining the amount of Losses resulting from, arising out of or relating to a breach;

(ii) the breach, non-compliance or non-performance of any covenant, agreement or obligation of the Company contained in this Agreement;

(iii) (A) any Taxes of the Company or any Company Subsidiary with respect to any Pre-Merger Tax Period; (B) Taxes attributable to the SICC Disposition or any other restructuring or reorganization undertaken by the Shareholders, the Company or any Company Subsidiary in connection with the Merger prior to the Effective Time, including, but not limited to, any such Taxes resulting from deferred intercompany gains or excess loss accounts triggered or realized as a result of any Pre-Merger Transaction (regardless of whether such Taxes were reflected on the Reference Balance Sheet); (C) Taxes for which the Company or any Company Subsidiary (or any predecessor of the foregoing) is held liable under Section 1.1502-6 of the United States Treasury Regulations (or any similar provision of state, local or foreign Law) by reason of such entity being included in any consolidated, affiliated, combined or unitary group at any time on or before the Effective Time; (D) Taxes imposed on or payable by third parties with respect to which the Company or any Company Subsidiary has an obligation to indemnify such third party pursuant to a transaction consummated on or prior to the Effective Time; (E) any Taxes arising out of or resulting from the payment of amounts due or collection of amounts owed in connection with the Company's obligations under Section 7.6(b); and (F) any Taxes attributable to or payable as a result of or in connection with the Change in Accounting Method Election referenced in Section 7.2(f); provided, however, that in the case of clause (F), the Controlling Shareholders shall only be liable to the extent that such Taxes (i) consist of interest (less any applicable tax deductions related thereto, if any) or penalties or (ii) are not either recoverable by the Company or a Company Subsidiary in rates through an increase in rate base or recordable expenses, in which case the Controlling Shareholders will be liable for such Taxes less the value of any such future deductions available to the Company or Company Subsidiary. The value of such future deductions shall be based on their time value, as reasonably determined in good faith by the Company. The Company shall consult with the Shareholder Representative in connection with the methodology to be used in determining such value. Notwithstanding the foregoing, (a) in the case of clauses (A), (C), (D) or (E), the Controlling Shareholders shall be

liable only to the extent such Taxes (1) relate to periods or portions thereof ending on or prior to the date of the Reference Balance Sheet and exceed the reserve for such Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Reference Balance Sheet (rather than in any notes thereto), or (2) relate to periods or portions thereof beginning after the date of the Reference Balance Sheet and were incurred outside of the ordinary course of business or in a manner otherwise inconsistent with past practice by the Company or such Company Subsidiary; provided however, that for purposes of this clause (2) any interest, penalties, or additions to Tax shall be treated as incurred outside of the ordinary course of business and in a manner inconsistent with past practice of the Company and the Company Subsidiaries, and (b) in the case of clause (B), the Controlling Shareholders shall be liable only to the extent such Taxes exceed the cash reserve for such Taxes established by the Company; and/or

(iv) any Excess Dissenting Share Payments.

(b) Obligations of Controlling Shareholders Individually. Subject to the terms, limitations and conditions of this Agreement, each Controlling Shareholder hereby agrees, severally (and not joint and severally), first from the amounts available in the Escrow Account (except as set forth in Section 9.7(b)), to indemnify the Buyer Indemnified Parties and hold each of them harmless from and against any Loss which such Buyer Indemnified Party may suffer, sustain or become subject to, as a result of, arising out of, relating to or in connection with:

(i) subject to the limitations in this Article IX, the breach or inaccuracy of any representation or warranty of such Controlling Shareholder contained in this Agreement, in each case, without giving effect to any limitation or qualification as to "materiality," "material," "Material Adverse Effect" or similar qualifiers set forth in such representation or warranty for purposes of (and solely for the purposes of) determining the amount of Losses resulting from, arising out of or relating to a breach; and/or

(ii) the breach, non-compliance or non-performance of any covenant, agreement or obligation of such Controlling Shareholder contained in this Agreement.

(c) Limitations.

(i) No amount shall be payable to the Buyer Indemnified Parties in satisfaction of claims for indemnification pursuant to Sections 9.2(a)(i) and Section 9.2(b)(i) unless and until the aggregate amount of all Losses of the Buyer Indemnified Parties arising therefrom exceeds $500,000 (the "Deductible"), at which time the Controlling Shareholders shall indemnify the Buyer Indemnified Parties for the full amount of all such Losses in excess of the Deductible up to an amount equal to the Cap; provided that the Deductible shall not apply with respect to any Losses resulting from, arising out of or relating to breaches of representations and warranties contained in Sections 3.1 (Organization), 3.2 (Power; Authorization) but excluding the last sentence of Section 3.2 regarding enforceability, 3.5 (Brokerage), 4.1 (Organization; Corporate Power), 4.2(a) and (b) (Capitalization and Related Matters), 4.3 (Subsidiaries; Investments), 4.4 (Authorization), but excluding the last sentence of Section 4.4 regarding enforceability, and 4.23 (Brokerage) (collectively, the "Fundamental Representations"), and none of such Losses shall count towards the satisfaction of the Deductible;

(ii) In addition to the other limits set forth in this Article IX, no amount shall be payable to the Buyer Indemnified Parties in satisfaction of claims for indemnification resulting from, arising out of or relating to any Post-Signing Change set forth in a Notice of Change

delivered prior to the Closing in accordance with Section 6.7 unless and until the aggregate amount of Losses of the Buyer Indemnified Parties arising therefrom exceeds $500,000 (the "Post-Signing Change Deductible"), and then only to the extent such amount exceeds $500,000; provided that the Post-Signing Change Deductible shall not apply with respect to any Losses resulting from, arising out of or relating to breaches of any of the Fundamental Representations and/or the breach of any covenant contained herein by the Company or the Controlling Shareholders, and none of such Losses shall count towards the satisfaction of the Post-Signing Change Deductible. Notwithstanding anything to the contrary contained herein, in the event the aggregate amount of Losses of the Buyer Indemnified Parties resulting from, arising out of or relating to Post-Signing Changes would reasonably be expected to exceed $2,000,000, then the Parties agree that Buyer shall have the right (subject to the Company's rights in Section 10.1(h)), to either (a) terminate this Agreement and, in such case, no Party will be deemed to have breached this Agreement as a result of such Post-Signing Changes, including for the failure to consummate the Merger as a result of such Post-Signing Changes, or (b) to consummate the Merger; provided that, to the extent that Buyer elects to consummate the Merger, the Buyer Indemnified Parties shall maintain the right to be indemnified pursuant to this Agreement for all Losses resulting from, arising out of or relating to such Post-Signing Changes, subject to the Post-Signing Change Deductible and up to a maximum of $2,000,000, and, unless otherwise agreed to in writing by the Company, the Buyer Indemnified Parties shall be deemed to have waived any right to pursue any Losses resulting from, arising out of or relating to such Post-Signing Changes in excess of $2,000,000.

(iii) The aggregate amount of all payments made by the Controlling Shareholders in satisfaction of claims for indemnification pursuant to Sections 9.2(a)(i), 9.2(a)(ii), and 9.2(a)(iv) and Section 9.2(b) shall not exceed $10,000,000 (the "Cap"); provided that no payments made by the Controlling Shareholders with respect to Losses resulting from, arising out of or relating to breaches of any of the Fundamental Representations shall count towards the Cap.

(iv) In no event shall the aggregate amount of all payments made by any Controlling Shareholder in satisfaction of claims for indemnification pursuant to Article IX exceed the aggregate amounts actually received by such Controlling Shareholder in respect of such Controlling Shareholder's shares of Company Common Stock pursuant to this Agreement or, in respect to Dissenting Shareholders, pursuant to applicable appraisal proceedings.

9.3 Indemnification of Shareholders by Buyer.

(a) Obligation. Subject to the terms, limitations and conditions of this Agreement, Buyer agrees to indemnify the Company (prior to the Effective Time), the Shareholder Representative and the Shareholders, and their respective Affiliates and each of their respective officers, directors, shareholders, managers, members, partners, employees, agents, representatives, successors and assigns (collectively, the "Shareholder Indemnified Parties") and hold each of them harmless against any Losses which any of them may suffer, sustain or become subject to, as the result of, arising out of, relating to or in connection with:

(i) subject to the limitations in this Article IX, the breach or inaccuracy by Buyer of any representation or warranty made by Buyer in this Agreement; or

(ii) the breach, non-compliance or non-performance of any covenant, agreement or obligation of Buyer contained in this Agreement.

(b) Limitations.

(i) No amount shall be payable to the Shareholder Indemnified Parties in satisfaction of claims for indemnification pursuant to Section 9.3(a)(i) unless and until the aggregate amount of all Losses of the Shareholders arising therefrom exceeds the Deductible, at which time Buyer shall indemnify the Shareholders for the full amount of all such Losses in excess of the Deductible up to an amount equal to the Cap; provided that (A) the Deductible shall not apply with respect to any Losses resulting from, arising out of or relating to breaches of representations and warranties contained in Sections 5.1 (Organization; Corporate Power), 5.2 (Authorization) but excluding the last sentence of Section 5.2 regarding enforceability, or 5.7 (Brokerage) (collectively, the "Buyer Fundamental Representations"), and (B) none of such Losses shall count towards the satisfaction of the Deductible.

(ii) The aggregate amount of all payments made by Buyer in satisfaction of claims for indemnification pursuant to Section 9.3(a) shall not exceed the Cap; provided that no payments made by Buyer with respect to Losses resulting from, arising out of or relating to breaches of any of the Buyer Fundamental Representations shall count towards the Cap; and

(iii) In no event shall the aggregate amount of all payments made by the Buyer in satisfaction of claims for indemnification pursuant to this Article IX exceed $102,000,000.

9.4 Special Rule for Fraud and Intentional Misrepresentation. Notwithstanding anything in this Article IX to the contrary, in the event of any breach of a representation or warranty by any party hereto that results from intentional misrepresentation or constitutes fraud, by or on behalf of any Controlling Shareholder or the Company, on the one hand, or Buyer, on the other hand, then (a) such representation or warranty will survive indefinitely the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and, notwithstanding any shorter survival period or statute of limitations provided elsewhere in this Agreement or by Law, (b) the limitations set forth in Section 9.2(c) or Section 9.3(b) (as the case may be) shall not apply to any Loss that the Buyer Indemnified Parties or the Shareholder Indemnified Parties, respectively, may suffer, sustain or become subject to, as a result of, arising out of, relating to or in connection with any such breach, (c) none of such Losses shall count towards the satisfaction of the Deductible or the Cap, and (d) the maximum amount of Losses that the Buyer Indemnified Parties may recover from the Controlling Shareholders, as a result of, arising out of, relating to or in connection with any such breach covered by this Section 9.4 shall not, under any circumstances, exceed $20 million.

9.5 Notice and Defense of Third-Party Claims.

(a) If a party hereto seeks indemnification under this Article IX with respect to any action, lawsuit, proceeding, investigation or other claim brought against it by a third party (a "Third-Party Claim"), such party (the "Indemnified Party") shall promptly give written notice to the Shareholder Representative, on behalf of the Controlling Shareholders, or to Buyer, as applicable (the "Indemnifying Party"), after receiving written notice of such Third-Party Claim, describing the Third-Party Claim, the amount thereof (if known and quantifiable), and the basis thereof; provided that any failure to provide such notice shall not relieve the Indemnifying Party of any obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure or delay. With respect to any Third-Party Claim which, if adversely determined, would entitle the Indemnified Party to indemnification pursuant to this Article IX, the Indemnifying Party shall be entitled, at its sole cost and expense, (i) to participate in the defense of such Third-Party Claim giving rise to the Indemnified Party's claim for indemnification or (ii) at its option (subject to the limitations set forth below), to assume control and appoint lead counsel of such defense with counsel reasonably acceptable to the Indemnified Party. Notwithstanding the foregoing, the Indemnifying Party shall not have the right to assume control of such defense, and shall

pay the fees and expenses of counsel retained by the Indemnified Party in accordance with and subject to the limitations set forth in this Article IX, if the Third-Party Claim which the Indemnifying Party seeks to assume control (I) seeks non-monetary relief, (II) involves criminal or quasi-criminal allegations, (III) involves a claim which, if adversely, determined, would be reasonably expected, in the good faith judgment of the Indemnified Party, to establish a precedent, custom or practice materially adverse to the continuing business interests or prospects of the Indemnified Party or the Company or (IV) involves a claim that, in the good faith judgment of the Indemnified Party, the Indemnifying Party failed or is failing to vigorously prosecute or defend. If the Shareholder Representative is defending a Third-Party Claim, the Shareholder Representative shall be entitled to reimbursement from the Escrow Account of its reasonable costs and expenses incurred in defending such Third-Party Claim (including the costs and expenses of counsel). The Buyer agrees to authorize the payment of such expenses from the Escrow Account promptly upon presentment by the Shareholder Representative of written evidence of such costs and expenses, but in any event within ten (10) days after the Buyer's receipt of such evidence.

(b) In the event that either the Indemnifying Party does not elect to assume the control of the defense of any Third-Party Claim pursuant to Section 9.5(a) or any of the conditions in Section 9.5(a) is or becomes unsatisfied, the Indemnified Party may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, the Third-Party Claim in any manner it may deem appropriate in its good faith judgment; provided, however, that in settling any Third-Party Claim in respect of which indemnification is payable under this Article IX, the Indemnified Party shall act reasonably and in good faith and shall not settle any such Third-Party claim without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

(c) In the event the Indemnifying Party is controlling the defense of any Third-Party Claim in accordance with Section 9.5(a):

(i) the Indemnified Party shall nonetheless have the right to participate in the defense of such Third-Party Claim giving rise to the Indemnified Party's claim for indemnification at the Indemnified Party's sole cost and expense; provided, however, that if outside counsel to the Indemnified Party advises that there may be one or more material legal defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party, or that there exists a material conflict of interest which would make it inappropriate for the same counsel to represent both the Indemnifying Party and the Indemnified Party, and in either case such counsel determines that it is therefore advisable for the Indemnified Party to employ separate counsel, then the Indemnifying Party shall pay the one-half of the fees and expenses of such separate counsel in accordance with and subject to the limitations set forth in this Article IX; and

(ii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to or cease to defend such Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be withheld unreasonably); provided that the Indemnified Party shall have no obligation of any kind to consent to the entrance of any judgment or into any settlement unless such judgment or settlement (A) is for only money damages, (B) includes, as a condition thereof, an express, unconditional release of the Indemnified Party from any liability or obligation with respect to such Third-Party Claim and (C) would be reasonably expected, in the good faith judgment of the Indemnified Party, to establish a precedent, custom or practice materially adverse to the continuing business interests or prospects of the Indemnified Party or the Surviving Corporation.

(d) Irrespective of who controls the defense of any Third Party Claim, each party shall act in good faith in responding to, defending against, settling or otherwise dealing with such claims,

and cooperate in any such defense and give each other party reasonable access to and copies of information, records and documents relevant thereto.

9.6 Notice of Non-Third-Party Claims. If an Indemnified Party seeks indemnification under this Article IX with respect to any matter which does not involve a Third-Party Claim, the Indemnified Party shall give written notice to the Indemnifying Party promptly after discovering the liability, obligation or facts giving rise to such claim for indemnification, describing the nature of the claim in reasonable detail, the amount thereof (if known and quantifiable), and the basis thereof; provided that any failure to so notify or any delay in notifying the Indemnifying Party shall not relieve the Indemnifying Party of its or his obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure or delay. If the Indemnifying Party has delivered indemnity dispute notice to the Indemnified Party, the Indemnifying Party and the Indemnified Party shall proceed in good faith to negotiate a resolution to such dispute. If the Indemnifying Party and the Indemnified Party cannot resolve such dispute in 30 days after delivery of indemnity dispute notice, such dispute shall be resolved through binding arbitration in accordance with Section 12.10.

9.7 Manner of Payment.

(a) Subject to Section 9.7(b), any indemnification pursuant to this Article IX by or on behalf of the Controlling Shareholders shall be effected first by deduction from the Escrow Amount and then, to the extent such Escrow Amount is insufficient to pay or reimburse such Losses and Buyer is entitled to seek recovery beyond the Escrow Amount, by wire transfer of immediately available funds to an account designated by Buyer.

(b) Notwithstanding any of the foregoing, in the event that any Losses are subject to indemnification pursuant to Section 9.2(a)(iii), Buyer shall be entitled, but shall not be obligated to seek recovery thereof from the Escrow Amount, and may instead seek recovery first from the Controlling Shareholders, in which case payment shall be made by wire transfer of immediately available funds to an account designated by Buyer; provided, however, that any indemnification payment pursuant to Section 9.2(a)(iii)(F) shall be effected (i) first, to the extent sufficient funds remain in the Escrow Amount, from the Escrow Amount up to an amount equal to $500,000, (ii) after payment has been effected pursuant to the preceding clause (i), by wire transfer of immediately available funds to an account designated by Buyer up to an amount equal to $500,000, (iii) after payment has been effected pursuant to the preceding clauses (i) and (ii), to the extent sufficient funds remain in the Escrow Amount, from the Escrow Amount up to an amount equal to $500,000, and (iv) after payment has been effected pursuant to the preceding clauses (i), (ii) and (iii), by wire transfer of immediately available funds to an account designated by Buyer.

(c) Any indemnification pursuant to this Article IX by or on behalf of Buyer shall be effected by wire transfer of immediately available funds to an account designated by the Shareholder Representative.

(d) Indemnification payments made by wire transfer shall be made to the applicable account within three Business Days after the determination of the amount thereof, whether pursuant to a final judgment, settlement or agreement among the parties hereto. In the case of indemnification payments to be satisfied by deduction from the Escrow Amount, the Shareholder Representative and Buyer shall, within three Business Days after the determination of the amount thereof, deliver a joint written instruction to the Escrow Agent instructing the Escrow Agent to release the appropriate portion of the Escrow Amount to an account designated by Buyer.

9.8 Determination of Loss Amount.

(a) The amount of Losses subject to indemnification pursuant to Section 9.2(a) or Section 9.2(b), shall be reduced by any insurance proceeds previously received by the Surviving Corporation with respect to such Losses (net of any deductible or co-payment, Buyer's reasonable estimate of any increase in insurance premiums attributable to such recovery and all out of pocket costs related to such recovery) from any insurance carrier pursuant to any insurance coverage in place with respect to such Losses. If any insurance proceeds are subsequently recovered by the Surviving Corporation from an insurance carrier after payment has been made by the Controlling Shareholders to the Buyer Indemnified Parties in accordance with this Article IX with respect to the Losses to which such insurance recoveries relate, then Buyer shall promptly cause the Surviving Corporation to remit to the Controlling Shareholders such insurance recoveries (net of any deductible or co-payment, Buyer's reasonable estimate of any increase in insurance premiums attributable to such recovery and all out of pocket costs related to such recovery); provided that in no event shall Buyer have any obligation hereunder (i) to cause the Surviving Corporation to remit to the Controlling Shareholders any portion of such insurance recoveries in excess of the indemnification payment or payments actually received from the Controlling Shareholders with respect to such Losses or (ii) to make, or to cause the Surviving Corporation or any subsidiary of the Surviving Corporation to make, any insurance claim or to pursue any recovery from any insurance carrier or third party with respect thereto.

(b) The amount of Losses associated with Third-Party Claims and subject to indemnification pursuant to Section 9.2(a) or Section 9.2(b) shall be reduced by the amount of any of such Losses that a PUC declares recoverable by the Surviving Corporation through rate recovery and that are authorized to be recovered. Buyer shall cause the Surviving Corporation in good faith to seek such determination if the Shareholder Representative reasonably concludes, based on the advice of regulatory counsel, and notifies the Surviving Corporation that a recovery of any such Losses through a PUC filing or proceeding is reasonably likely to be authorized by such PUC. The reasonable fees and costs incurred by the Surviving Corporation and/or any of its subsidiaries in connection with such recovery efforts (x) shall be borne solely and directly by the Controlling Shareholders, who shall pay such fees and costs promptly upon delivery of reasonably detailed invoices therefor and (y) shall not be subject to, or count toward, the Deductible, Cap or any other limitation on Losses set forth in this Agreement. If the Surviving Corporation or any of its subsidiaries seeks recovery of any such Losses through a PUC filing or proceeding, then (i) payment of the underlying Third-Party Claim (but not the pursuit of the validity and/or merits of the underlying claim) will be stayed until the PUC has made a determination regarding the recovery requested by the Surviving Corporation or its subsidiary, as applicable, (ii) notwithstanding the time limitations set forth in Section 9.1 or in the Escrow Agreement, both the Third Party Claim and any representation or warranty underlying such Third Party Claim shall continue to survive until the matter is finally resolved and (iii) notwithstanding the time limitations set forth in Section 9.1 or in the Escrow Agreement, Buyer shall be entitled to retain in the Escrow Account the amount of any such Losses for which a PUC recovery is sought until the PUC has ruled on the recovery request of the Surviving Corporation or its subsidiary.

(c) In the event that the Merger occurs, each Controlling Shareholder agrees that such Controlling Shareholder will not seek, nor will any Controlling Shareholder be entitled to, reimbursement or contribution from, subrogation to, or indemnification by the Surviving Corporation or any of its subsidiaries, under their organizational documents, this Agreement, applicable corporate Laws or other legal requirements or otherwise, in respect of any amounts due from the Controlling Shareholders to any Buyer Indemnified Party under this Article IX or otherwise in connection with this Agreement. Each Controlling Shareholder further agrees not to make any claims against any directors and officers insurance policy maintained or to be maintained by or for the benefit of the Company or any Company Subsidiary in respect of amounts due by the Controlling Shareholders to a Buyer Indemnified Party under this Article IX.

(d) The right to indemnification and the payment of Losses of any Buyer Indemnified Party pursuant to this Article IX, or the availability of any other remedies contemplated hereby or otherwise available to the Buyer Indemnified Parties at law or in equity, based upon any representation, warranty, covenant, agreement or obligation of the Controlling Shareholders or the Company contained in or made pursuant to this Agreement will not be affected by any investigation made by or on behalf of any Buyer Indemnified Party or its Affiliates, or the knowledge of any such Buyer Indemnified Party's (or its Affiliates') officers, directors, shareholders, managers, members, partners, employees or agents, with respect to the accuracy or inaccuracy of, or compliance or non-compliance with, any such representation, warranty, covenant, agreement or obligation at any time prior to or following the party's entrance into this Agreement.

(e) Upon and after becoming aware of any event which is reasonably likely to give rise to Losses subject to indemnification hereunder, the parties hereto shall use, and, following the Effective Time, the Buyer shall cause the Surviving Corporation to use, commercially reasonable efforts to mitigate their respective Losses arising from such events, in each case, to the extent required by applicable Law.

9.9 Exclusive Remedy. The parties hereto hereby agree that, from and after the Effective Time, the indemnification provisions set forth in this Article IX are the exclusive provisions in this Agreement with respect to the liability of the Controlling Shareholders or Buyer for the breach, inaccuracy or nonfulfillment of any representation or warranty or any covenants, agreements or other obligations contained in this Agreement and the sole remedy of the Buyer Indemnified Parties and the Shareholder Indemnified Parties for any claims for breach of representation or warranty or covenants, agreements or other obligations arising out of this Agreement; provided that nothing herein shall preclude any party from enforcing its right to specific performance of post-Merger covenants, agreements or other post-Merger obligations pursuant to Section 12.12.

ARTICLE X
TERMINATION

10.1 Termination. This Agreement may be terminated at any time prior to the Effective Time:

(a) Mutual Consent. By mutual written consent of Buyer and the Company;

(b) Breach of Representations or Warranties.

(i) By Buyer upon delivery of written notice to the Company if (A) the Company shall have breached any of its representations or warranties in this Agreement, or any such representation or warranty otherwise shall have become untrue, (B) such breach(es) or failure(s) of representations and warranties to be true (1) are not capable of cure prior to the End Date or (2) if capable of cure prior to the End Date, are not cured within 20 Business Days of delivery of written notice thereof from Buyer (and if not cured by such date, such breach(es) or failure(s) shall be deemed incurable) and (C) whether considered individually or in the aggregate, such uncured breach(es) or failure(s) of representations and warranties to be true would result in a failure of the condition set forth in Section 8.1(a);

(ii) By the Company upon delivery of written notice to Buyer if (A) Buyer or Merger Sub shall have breached any of their respective representations or warranties in this Agreement, or any such representation or warranty otherwise shall have become untrue in any material respect, (B) such breach(es) or failure(s) of representations and warranties to be true (1)

are not capable of cure prior to the End Date or (2) if capable of cure prior to the End Date, are not cured within 20 Business Days of delivery of written notice thereof from the Company (and if not cured by such date, such breach(es) or failure(s) shall be deemed incurable) and (C) whether considered individually or in the aggregate, such uncured breach(es) or failure(s) of representations and warranties to be true would result in a failure of the condition set forth in Section 8.2(a);

(c) Breach of Covenants or Agreements.

(i) By Buyer upon delivery of written notice to the Company if (A) the Company shall have breached any of its covenants or agreements in this Agreement or any other Transaction Document, (B) such breach(es) (1) are not capable of cure prior to the End Date or (2) if capable of cure prior to the End Date, are not cured within 20 Business Days of delivery of written notice thereof from Buyer (and if not cured by such date, such breach(es) shall be deemed incurable) and (C) whether considered individually or in the aggregate, such uncured breach(es) would result in a failure of the condition set forth in Section 8.1(b);

(ii) By the Company upon delivery of written notice to Buyer if (i) Buyer or Merger Sub shall have breached any of their respective covenants or agreements in this Agreement or any other Transaction Document, (ii) such breach(es) (A) are not capable of cure prior to the End Date or (B) if capable of cure prior to the End Date, are not cured within 20 Business Days of delivery of written notice thereof from the Company (and if not cured by such date, such breach(es) shall be deemed incurable) and (iii) whether considered individually or in the aggregate, such uncured breach(es) would result in a failure of the condition set forth in Section 8.2(b);

(d) End Date. By either Buyer or the Company upon delivery of written notice to the other if the consummation of the Merger has not occurred on or before 5:00 p.m., Los Angeles time, on the date which is 12 months from the date of this Agreement, subject to extension by the mutual written agreement of the parties hereto as provided immediately below or otherwise (the "End Date"); provided, that (i) neither Buyer nor the Company will be entitled to terminate this Agreement pursuant to this Section 9.1(d) if such Person's material breach of, or material failure to fulfill any obligation under, this Agreement or any other Transaction Document has been the principal cause of the failure of the Merger to occur on or prior to such time on the End Date and (ii) the parties hereto agree, from time to time by execution of a written agreement prior to such time on the End Date, to extend the End Date to a time and date not later than 5:00 p.m., Los Angeles time, on the 15-month anniversary of the date hereof in the event that the conditions set forth in Section 6.3 have not been satisfied but, at the time of such extension, are, in the good faith judgment of Buyer and the Company, reasonably capable of being satisfied prior to the End Date (as so extended);

(e) Failure to Obtain Shareholder Approval. By Buyer if the Company Shareholder Approval shall not have been obtained and a true, correct and complete copy of the written consent(s) comprising the Company Shareholder Approval delivered to Buyer within one Business Day of the date of this Agreement; provided that such termination right shall lapse at such time as the Company Shareholder Approval shall have been obtained and a true, correct and complete copy of the written consent(s) comprising the Company Shareholder Approval delivered to Buyer;

(f) Orders; Laws. By either Buyer or the Company upon delivery of written notice to the other if any Governmental Entity shall have issued or entered any judgment, order or decree, enacted any Law or taken any other action which, in any such case, (i) permanently restrains, enjoins or otherwise prohibits the consummation of the transactions contemplated by this Agreement and the other

Transaction Documents, (ii) would prevent the Merger from occurring as contemplated by this Agreement on or prior to the applicable time on the End Date or (iii) has had or would reasonably be expected to have a Company Material Adverse Effect;

(g) Material Adverse Effect. By Buyer upon delivery of written notice to the Company if there shall have occurred a Company Material Adverse Effect; or

(h) Material Post-Signing Change. By Buyer in accordance with and subject to the provisions of Section 9.2(c)(ii) upon delivery of written notice to the Company; provided, however, that within 10 Business Days of receipt of such notice, the Company may, upon delivery of written notice to Buyer, elect to (i) indemnify all Losses arising from all Post-Signing Changes, subject to the Post-Signing Change Deductible, but not subject to the $2,000,000 maximum recovery limit in Section 9.2(c)(ii)(b) and (ii) thereby defease Buyer's right to terminate this Agreement pursuant to this Section 10.1(h).

10.2 Effect of Termination. Subject to the provisions of this Section 10.2, the rights of termination set forth above are in addition to any other rights a terminating party may have under this Agreement, and the exercise of a right of termination will not be an election of remedies. Notwithstanding the foregoing sentence, in the event of any termination of this Agreement by either Buyer or the Company as provided in Section 10.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of any party or any of its or their Affiliates to any other Person by virtue of, arising out of or otherwise in connection with this Agreement or any other Transaction Document except that (a) nothing in this Agreement or any other Transaction Document will relieve any party from any material breach of this Agreement or any other Transaction Document prior to such termination or for fraud and (b) the provisions of Article XII (Miscellaneous) shall survive termination.

ARTICLE XI
DEFINITIONS

11.1 Interpretation. Where specific language is used to clarify by example a general statement contained herein (such as by using the word "including"), such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The words "include" and "including," and other words of similar import when used herein shall not be deemed to be terms of limitation but rather shall be deemed to be followed in each case by the words "without limitation." The word "if" and other words of similar import when used herein shall be deemed in each case to be followed by the phrase "and only if." The words "herein," "hereto," and "hereby" and other words of similar import in this Agreement shall be deemed in each case to refer to this Agreement as a whole and not to any particular Article, Section or other subdivision of this Agreement. Any reference herein to "dollars" or "$" shall mean United States dollars. The words "as of the date of this Agreement" and words of similar import shall be deemed in each case to refer to the date this Agreement was first signed. The term "or" shall be deemed to mean "and/or." Any reference to any particular Code section or any other Law will be interpreted to include any revision of or successor to that section regardless of how it is numbered or classified and any reference herein to a Governmental Entity shall be deemed to include reference to any successor thereto.

11.2 Certain Definitions.

"Action" means any action, arbitration, charge, claim, complaint, demand, grievance, hearing, inquiry, investigation, proceeding or suit by or before any Governmental Entity.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, (including, but not limited to, all directors and officers of such Person) controlled by, or under common control with, such Person.

"Business Day" means each day of the week except Saturdays, Sundays and days on which banking institutions are authorized by Law to close in the State of California.

"Buyer Material Adverse Effect" means any change, event, occurrence or circumstance that, individually or in the aggregate with all other changes, events occurrences and circumstances, results in, or could reasonably be expected to result in, a material adverse effect on the business, results of operations, condition (financial or otherwise), prospects, assets, or Liabilities of Buyer and Merger Sub, individually and taken as a whole, or on the ability of Buyer or Merger Sub to perform their respective obligations hereunder or to consummate the transactions contemplated hereby except, in each case, to the extent resulting from (A) changes or developments in general domestic, foreign, or international economic conditions, (B) acts of war, sabotage or terrorism, military actions or the escalation thereof, or (C) any changes in applicable laws or accounting rules or principles, including changes in GAAP, (D) any actions required by this Agreement, or (E) the announcement of the transactions contemplated by the Transaction Documents.

"Change in Accounting Method Election" means the election to change the U.S. federal income tax accounting method with respect to advances for construction received by the Company or any Company Subsidiary to be filed for the Company's 2010 fiscal tax year.

"Code" means the Internal Revenue Code of 1986, as amended from time to time and the regulations promulgated and rulings issued thereunder, as amended, supplemented or substituted therefor from time to time.

"Commercially Available Software" means commercial software that is "off-the-shelf" or widely available, and which software has not been modified by Company or a Company Subsidiary, other than reports or reporting features or other immaterial modifications, with a total annual purchase or license fee of less than $100,000 in the aggregate for any such license or group of related licenses.

"Company Employee Plans" means each Plan under which the Company or any Company Subsidiary has any obligation or liability, whether actual or contingent, direct or indirect, to provide compensation or benefits to or for the benefit of any current or former employees, consultants or directors of such entity, or the spouses, beneficiaries or other dependents thereof.

"Company Material Adverse Effect" means any change, event, occurrence or circumstance that, individually or in the aggregate with all other changes, events occurrences and circumstances, results in, or would reasonably be expected to result in, a material adverse effect (i) on the business, results of operations, condition (financial or otherwise), assets, or Liabilities of the Company and each Company Subsidiary, taken as a whole, or (ii) on the ability of the Controlling Shareholders or the Company to perform their respective obligations hereunder or to consummate the transactions contemplated hereby except, to the extent resulting from any of the following, in each case to the extent that none of the following other than (F) has a disproportionate impact on the Company and the Company Subsidiaries relative to other similarly situated participants in such industries or markets, (A) changes or developments

in general, local, domestic, foreign, or international economic conditions, (B) changes or developments affecting generally the water utilities or water services industries or markets in which Company and the Company Subsidiaries operate; (C) acts of war, sabotage or terrorism, military actions or the escalation thereof, (D) any changes in applicable laws or accounting rules or principles, including changes in GAAP, (E) any actions required by this Agreement, (F) the announcement of the transactions contemplated by the Transaction Documents or the terms of any Alternative Financing, or (G) changes arising from weather patterns in the regions in which the Company and the Company Subsidiaries operate.

"Company Shareholder Approval" means the approval by Shareholders holding a majority of the shares of Company Common Stock outstanding as of the date of this Agreement of this Agreement, the Merger and the other transactions contemplated hereby.

"Contract" means any agreement, contract, instrument, commitment, lease, guaranty, indenture, license, option or other arrangement or understanding (and all amendments, side letters, modifications and supplements thereto) between parties or by one party in favor of another party, whether written or oral.

"Environmental Law" means any United States federal, state or local Laws (including common law), statutes, regulations, ordinances, rules, and enforceable governmental guidance, policies or orders relating to pollution or protection of the environment, human health and safety, or natural resources, including without limitation the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Sections 9601 et seq. ("CERCLA"), the Clean Water Act, 33 U.S.C. Sections 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq. ("RCRA").

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder, as amended, supplemented or substituted therefor from time to time.

"ERISA Affiliate" means any entity (whether or not incorporated) other than the Company that, together with the Company, is required to be treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"GAAP" means United States generally accepted accounting principles, consistently applied.

"Governmental Entity" means any (a) region, state, county, city, town, village, district or other jurisdiction; (b) federal, regional, state, local or municipal or other government; (c) governmental or quasi governmental authority of any nature (including any PUC, Health Agency, other governmental agency, branch, bureau, department or other entity and any court or other tribunal); (d) body exercising, or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature with respect to the Company or the Company Subsidiaries; or (e) official of any of the foregoing.

"Hazardous Substances" means those hazardous or toxic substances, chemicals, wastes, pollutants, contaminants, and terms of similar import defined in or regulated under any Environmental Law, including without limitation toxic mold, natural gas, petroleum products or petroleum derivatives, RCRA hazardous wastes and CERCLA hazardous substances.

"Indebtedness" means, at any specified time, any of the following indebtedness of any Person (whether or not contingent and including, without limitation, any and all principal, accrued and unpaid interest, prepayment premiums or penalties, related expenses, commitment and other fees, sale or liquidity participation amounts, reimbursements, indemnities and other amounts which would be payable

in connection therewith): (a) any obligations of such Person for borrowed money or in respect of loans or advances (whether or not evidenced by bonds, debentures, notes, or other similar instruments or debt securities); (b) any obligations of such Person as lessee under any lease or similar arrangement required to be recorded as a capital lease in accordance with GAAP; (c) all liabilities of such Person under or in connection with letters of credit or bankers' acceptances, performance bonds, sureties or similar obligations that have been drawn down, in each case, to the extent of such draw; (d) any obligations of such Person to pay the deferred purchase price of property, goods or services other than those trade payables incurred in the ordinary course of business; (e) all liabilities of such Person arising from cash/book overdrafts; (f) all liabilities of such Person under conditional sale or other title retention agreements; (g) all obligations of such Person with respect to construction or development advances or any vendor advances made to such Person outside the ordinary course of business; (h) all liabilities of such Person arising out of interest rate and currency swap arrangements and any other arrangements designed to provide protection against fluctuations in interest or currency rates; (i) any liability or obligation of others guaranteed by, or secured by any Lien on the assets of, such Person; and (j) with respect to the Company or any Company Subsidiary, the net amount of any obligation or liability of the Company or any Company Subsidiary to any Controlling Shareholder or Affiliate of any Controlling Shareholder (except for compensation payable to any such Controlling Shareholder in the ordinary course of business for such Controlling Shareholder's services as an employee of the Company or any Company Subsidiary); provided that with respect to the Company and the Company Subsidiaries, Indebtedness shall not include (i) any trade payables accumulated in the ordinary course of business and (ii) any payables or loans of any kind or nature between the Company and any Company Subsidiary.

"Intellectual Property" means Trademarks, trade dress, corporate names, and all translations, adaptations, derivations and combinations of the foregoing, together with all goodwill associated with each of the foregoing, patents and patent applications, inventions (whether or not patentable or whether or not reduced to practice), invention disclosures, trade secrets, technology, discoveries, improvements, specifications, designs, formulae, techniques, technical data and manuals, research and development information, know how, methods and processes, copyrights and copyrightable works (including, without limitation, computer software, source code, executable code, data, databases and documentation), domain names, rights of privacy, rights of publicity, proprietary information and data, all other intellectual property and registrations and applications for any of the foregoing.

"knowledge" means with respect to any Person the actual knowledge after reasonable inquiry of any director or executive officer of such Person; provided that, in the case of the Company, "knowledge" means the actual knowledge of the Shareholder Representative, Christopher Schilling, Doug Martinet, Leigh Jordan, and John Kappes after reasonable inquiry of the Persons set forth on Schedule F-1.

"Law" means any requirement arising under any constitution, law, statute, code, treaty, decree, rule, ordinance or regulation or any determination or direction of any arbitrator or any Governmental Entity, including any environmental and safety requirements and including any of the foregoing that relate to data use, privacy or protection.

"Liability" means any liability, debt, obligation, deficiency, interest, Tax, penalty, fine, claim, demand, judgment, cause of action or other loss, cost or expense of any kind or nature whatsoever, whether asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or become due and regardless of when asserted.

"Lien" means any security interest, pledge, bailment (in the nature of a pledge or for purposes of security), mortgage, deed of trust, the grant of a power to confess judgment, conditional sales and title retention agreement (including any lease in the nature thereof), charge, encumbrance or other similar arrangement or interest in real or personal property or Intellectual Property.

"Losses" means any and all losses, liabilities, actions, causes of action, costs, damages (including, without limitation, lost profits, diminution of value, and consequential damages or other damages that are reasonably foreseeable) or expenses, whether or not arising from or in connection with any Third-Party Claims (including, without limitation, interest, penalties, reasonable attorneys', consultants' and experts' fees and, in connection with any Third-Party Claim, expenses and all amounts paid in investigation, defense or settlement of any of the foregoing); provided, however, that Losses shall not include (a) punitive, incidental, exemplary, or unforeseen damages, speculative contract damages or special damages, except to the extent payable to a third party in connection with a Third-Party Claim, (b) loss of business reputation or opportunity, or (c) in connection with the investigation and defense of any Third-Party Claim, any amounts for salary, benefits or other compensation paid to employees (such as internal counsel) working on such investigation and defense.

"Multiemployer Plan" has the meaning set forth in Section 3(37) of ERISA (Code Section 29 USC Section 1002(37)).

"ordinary course of business" means the ordinary course of business consistent with past custom and practice, including as to frequency and amount.

"Permitted Lien" means (a) any restriction on transfer arising under applicable securities law; (b) any Liens for Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP; (c) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of business that are not yet due and payable and which are not, individually or in the aggregate, material to the business, operations and financial condition of the Company Properties so encumbered or the Company and the Company Subsidiaries, taken as a whole; (d) zoning, entitlement, building and other land use regulations imposed by Governmental Entities having jurisdiction over any Company Property which are not violated by the current use and operation of such Company Property; (e) survey exceptions, imperfections of title, covenants, conditions, restrictions, easements and other similar matters of record affecting title to any of the Company Properties disclosed in policies of title insurance made available to Buyer prior to the date hereof which, individually or in the aggregate, do not materially impair the occupancy or use of such Company Property for the purposes for which it is currently used or proposed to be used in connection with the relevant Person's business; and (f) those Liens set forth on Schedule 11.2.

"Person" means an individual, a partnership, a corporation, an association, a limited liability company a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity.

"Plan" means (i) each employment, consulting, noncompetition, nondisclosure, nonsolicitation, severance, termination, pension, retirement, supplemental retirement, excess benefit, profit sharing, bonus, incentive, deferred compensation, retention, transaction and change in control plan, program, arrangement, agreement, policy or commitment, (ii) each stock option, restricted stock, deferred stock, performance stock, stock appreciation, stock unit or other equity or equity-based plan, program, arrangement, agreement, policy or commitment, (iii) each savings, life, health, disability, accident, medical, dental, vision, cafeteria, insurance, flex spending, adoption/dependent/employee assistance, tuition, vacation, paid-time-off, other welfare fringe benefit and other employee compensation plan, program, arrangement, agreement, policy or commitment, including in each case, each "employee benefit plan" as defined in Section 3(3) of ERISA and any trust, escrow, funding, insurance or other agreement related to any of the foregoing.

"Pre-Merger Tax Period" means any Tax period ending on or before the Effective Time and that portion of any Straddle Period ending on the date of the Effective Time.

"Property Taxes" mean all real property Taxes, personal property Taxes and similar ad valorem Taxes.

"Related Party" means (a) any officer, director, employee or Controlling Shareholder of any of the Company or any Company Subsidiary; (b) any individual related by blood, marriage or adoption to any such Person in clause (a); or (c) any entity in which any such Person in clause (a) owns any 10% or greater beneficial interest.

"Release" means any release, spill, leak, emission, discharge, leach, dumping, escape or disposal.

"Representative" means with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

"Shareholders" means all holders of capital stock of the Company as of the Effective Time.

"Straddle Period" means any Tax period beginning before or on and ending after the Effective Time.

"Substantial Adverse Impact" means a Company Material Adverse Effect, except that a "material adverse effect" will be deemed to have occurred (subject to the limitations in such definition) where the applicable effect or effects would reasonably be expected to result, individually or in the aggregate, in Losses that exceed $350,000.

"Tax" means any federal, state, local, or foreign income, gross receipts, license; payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, branch, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, goods and services, alternative or add on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, and including any obligation to indemnify or otherwise assume or succeed to the Tax Liability of any other Person.

"Tax Authority" shall mean any Governmental Entity, having or purporting to exercise jurisdiction with respect to any Tax.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, filed or required to be filed in connection with the determination, assessment or collection of Taxes or the administration of any Laws, regulations or administrative requirements relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Trademarks" means any trademark, service mark, design, logo, slogan or other indicator that identifies and distinguishes the source of a good or service.

"Transaction Documents" means this Agreement, the Escrow Agreement, the Letters of Transmittal, the Guarantee and the Employment Agreements and other documents contemplated to be delivered or executed in connection herewith.

11.3 Additional Definitions.

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ARTICLE XII
MISCELLANEOUS

12.1 No Third-Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement; provided that any Person that (i) by the terms of Article IX, is entitled to indemnification, and (ii) with respect to Section 7.4, constitutes the Company's current and former officers, directors and other indemnified agents under the Company's Articles of Incorporation or Bylaws or beneficiaries under any insurance policies of the Company, shall be considered a third-party beneficiary of this Agreement, with full rights of enforcement as though such Person was a signatory to this Agreement.

12.2 Entire Agreement. This Agreement, including the exhibits hereto and the Disclosure Schedules, and the other Transaction Documents, constitute the entire agreement between the parties hereto and supersede any prior understandings, agreements or representations by or between such parties, written or oral, that may have related in any way to the subject matter hereof.

12.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, but neither this Agreement nor any of the rights or obligations hereunder may be assigned (whether by operation of Law, through a change in control or otherwise) by the Company without the prior written consent of Buyer and Merger Sub, or by Buyer or Merger Sub without the prior written consent of the Company; provided that Buyer and Merger Sub and their respective Affiliates shall have the right to assign, without such consent but with prior written notice to the Company, (a) Buyer's and Merger Sub's respective rights and obligations hereunder in whole or in part to a wholly owned subsidiary or Affiliate of Buyer (a "Buyer Assignee"); (b) all or any portion of any Transaction Document (including rights thereunder), to any of their or any Buyer Assignee's (whether prior to or subsequent to the Effective Time) lenders as collateral security; and (c) after the Effective Time, all or any portion of its rights and obligations hereunder; provided further that (i) such assignee (other than a Buyer Assignee's lenders) executes a joinder to and agrees to be bound by this Agreement and (ii) no such assignment will affect the obligations of the Guarantor under the Guarantee.

12.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12.5 Titles. The titles, captions or headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

12.6 Notices. All notices, requests, demands, claims and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by facsimile (with written confirmation of transmission); the Business Day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and five Business Days after the date mailed by certified or registered mail, postage prepaid, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to:

If to the Company, the Controlling Shareholders or the Shareholder Representative:

Park Water Company
9750 Washburn Road
Downey, CA 90241-7002
Attention: Christopher Schilling
Facsimile No.: (562) 923-1186

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

Fulbright & Jaworski L.L.P.
555 South Flower Street, 41st Floor
Los Angeles, CA 90071-1560
Attention: David A. Ebershoff
Facsimile No.: (213) 892-9494

If to Buyer or Merger Sub or, after the Effective Time, the Surviving Corporation:

c/o Carlyle Investment Management L.L.C.
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2505
Attention: Robert Dove
Facsimile No.: (202) 347-1818

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

Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Attention: Bradley A. Helms and Jonathan Rod
Facsimile No.: (213) 891-8763

Any party hereto may send any notice, request, demand, claim or other communication hereunder to the intended recipient at the address set forth above using any other means, but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any party hereto may change the address or facsimile number to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving each other party notice in the manner herein set forth.

12.7 Governing Law. This Agreement (and any claim or controversy arising out of or relating to this Agreement) shall be governed by and construed in accordance with the domestic Laws of the State of California without giving effect to any choice or conflict of law provision or rule that would cause the application of the Laws of any jurisdiction other than the State of California.

12.8 Consent to Jurisdiction. Each party to this Agreement hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any California State court, or Federal court of the United States of America, sitting in California, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the agreements delivered in connection herewith or the transactions contemplated hereby or thereby or for recognition or enforcement of any judgment relating thereto, and each of the parties hereby irrevocably and unconditionally (a) agrees not to commence any such action or proceeding except in such courts, (b) agrees that any claim in respect of any such action or proceeding may be heard and determined in such California State court or, to the extent permitted by law, in such Federal court, (c) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such California State or Federal court, and (d) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such California State or Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party to this

Agreement irrevocably consents to service of process in the manner provided for notices in Section 12.6. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

12.9 Waiver of Trial by Jury. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS; (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS; (C) IT MAKES SUCH WAIVERS VOLUNTARILY; AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.9.

12.10 Dispute Resolution. The parties hereto understand and agree that if the transactions contemplated by the Transaction Documents are consummated, from and after the Effective Time, any and all claims, grievances, demands, controversies, causes of action or disputes of any nature whatsoever (including, but not limited to, tort and contract claims, and claims upon any law, statute, order, or regulation) (hereinafter "Disputes"), arising out of, in connection with, or in relation to (i) this Agreement, or (ii) questions of arbitrability under this Agreement, shall be resolved by final, binding, nonjudicial arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. Section 1, et seq. pursuant to the following procedures:

(a) Any party may send another party or parties written notice identifying the matter in dispute and invoking the procedures of this Section (the "Dispute Notice"). Within 14 days from delivery of the Dispute Notice, each party involved in the dispute shall meet at a mutually agreed location in Los Angeles, California, for the purpose of determining whether they can resolve the dispute themselves by written agreement, and, if not, whether they can agree upon an impartial third-party arbitrator (the "Arbitrator") to whom to submit the matter in dispute for final and binding arbitration. The parties agree that the Arbitrator shall have served as a judge for at least five years and shall have substantial experience drafting or litigating merger or purchase agreements governed by California law.

(b) If such parties fail to resolve the dispute by written agreement or agree on the Arbitrator within the later of 14 days from any such initial meeting or within 30 days from the delivery of the Dispute Notice, any such party may make written application to the Judicial Arbitration and Mediation Services ("JAMS"), in Los Angeles, California for the appointment of a single Arbitrator to resolve the dispute by arbitration. The Arbitrator shall be selected in accordance with the JAMS rules and the arbitration shall be conducted in accordance with those rules. JAMS shall have discretion, in such event, to depart from the Arbitrator qualifications specified above to assemble a list of potential Arbitrators, but only to the minimum degree necessary to carry out selection procedures under its rules.

(c) The arbitration award shall be a final and binding determination of the dispute and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over such parties.

12.11 Amendment or Modification. This Agreement may not be amended except in a written instrument executed by Buyer and the Shareholder Representative. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party hereto to be bound thereby.

12.12 Waivers. Except where a specific period for action or inaction is provided herein, neither the failure nor any delay on the part of any party hereto in exercising any right, power or privilege under this Agreement or any Transaction Document shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The failure of a party hereto to exercise any right conferred herein within the time required shall cause such right to terminate with respect to the transaction or circumstances giving rise to such right, but not to any such right arising as a result of any other transactions or circumstances.

12.13 Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by, or were otherwise breached by, the parties in accordance with their specific terms. It is accordingly agreed that (x) Buyer and Merger Sub shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the Company and/or the Controlling Shareholders and to enforce specifically the terms and provisions of this Agreement, and (y) the Company, prior to the Effective Time, or the Shareholder Representative, after the Effective Time, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the Buyer or Merger Sub and to enforce specifically the terms and provisions of this Agreement. Any such injunction(s) or action seeking specific performance shall be sought in California State court. Notwithstanding the foregoing, the parties agree that, in order to facilitate expedient adjudication of any disputes under this Agreement, it is their express mutual intent that any injunctions or specific performance actions on behalf of the Company (prior to the Effective Time) or the Shareholders be sought solely by the Company or the Shareholder Representative in accordance with this Section 12.13; accordingly, the parties agree that other than as set forth in this Section 12.13, no Shareholder shall be entitled to seek or obtain an injunction or injunctions to prevent breaches of this Agreement by Buyer or Merger Sub or to enforce specifically the terms and provisions of this Agreement.

12.14 Press Releases. The timing and content of all press releases and other public announcements to the Company's and each Company Subsidiary's customers and vendors relating to the transactions contemplated by the Transaction Documents shall be determined jointly by Buyer and the Company prior to the Effective Time and thereafter by the Surviving Corporation; provided that any party hereto may make any public disclosure required by Law (in which case the disclosing party will use its reasonable best efforts to advise the other parties hereto prior to making the disclosure); provided further, that the Company shall have the sole right to determine when and in which manner it will disclose the transactions contemplated by the Transaction Documents to its employees and the employees of the Company Subsidiaries.

12.15 Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel, and accountants.

12.16 Construction.

(a) Each party hereto agrees that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation,

holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. The parties hereto intend that each representation, warranty, and covenant contained herein shall have independent significance. If any party hereto has breached any representation, warranty, or covenant contained herein (or is otherwise entitled to indemnification) in any respect, the fact that there exists another representation, warranty, or covenant (including any indemnification provision) relating to the same subject matter (regardless of the relative levels of specificity) which such party has not breached (or is not otherwise entitled to indemnification with respect thereto) shall not detract from or mitigate the fact that such party is in breach of the first representation, warranty, or covenant (or is otherwise entitled to indemnification pursuant to a different provision).

(b) The Disclosure Schedules are hereby incorporated by reference into the sections in which they are directly referenced and nothing in the Disclosure Schedules shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the Disclosure Schedules identify the exception with reasonable particularity and describes the relevant facts in reasonable detail. The section headings contained herein are for reference purposes only and do not broaden or otherwise affect any of the provisions of the Agreement.

12.17 Severability of Provisions. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced as a result of any rule of law or public policy, all other terms and other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated by this Agreement are fulfilled to the greatest extent possible.

12.18 Representation by Counsel. Each party hereto represents and agrees with each other that it has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s), that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by such party's respective counsel, that each is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

12.19 Shareholder Representative.

(a) Each Controlling Shareholder irrevocably constitutes and appoints Henry H. Wheeler, Jr. as the Shareholder Representative, such Controlling Shareholder's true and lawful attorney-in-fact and agent and authorizes him acting for such Controlling Shareholder and in such Controlling Shareholder's name, place and stead, in any and all capacities to do and perform every act and thing required, permitted, necessary or desirable to be done in connection with the transactions contemplated by the Transaction Documents, as fully to all intents and purposes as such Controlling Shareholder might or could do in person, including to:

(i) take any and all actions (including, without limitation, executing and delivering any documents, incurring any costs and expenses on behalf of the Controlling Shareholders) and make any and all determinations which may be required or permitted in

connection with the post-Merger implementation of this Agreement and related agreements and the transactions contemplated hereby and thereby;

(ii) give and receive notices and communications thereunder;

(iii) negotiate, defend, settle, compromise and otherwise handle and resolve any and all claims and disputes with Buyer and Merger Sub and any other Buyer Indemnified Party arising out of or in respect of the Transaction Documents, including, without limitation, claims and disputes pursuant to Article IX of this Agreement;

(iv) authorize release of amounts from the Escrow Account in satisfaction of claims made by Buyer or the Surviving Corporation thereunder;

(v) enter into the Escrow Agreement and act pursuant thereto;

(vi) enter into any waiver or amendment of the Escrow Agreement or this Agreement after the Effective Time;

(vii) receive all notices under the Transaction Documents;

(viii) retain legal counsel, accountants, consultants and other experts, and incur any other reasonable expenses, in connection with all matters and things set forth or necessary with respect to the Transaction Documents and the transactions contemplated hereby and thereby; and

(ix) to make any other decision or election or exercise such rights, power and authority as are incidental to the foregoing.

(b) Each of the Controlling Shareholders acknowledges and agrees that upon execution of this Agreement, upon any delivery by the Shareholder Representative of any waiver, amendment, agreement, opinion, certificate or other document executed by the Shareholder Representative, such Controlling Shareholder shall be bound by such documents as fully as if such Controlling Shareholder had executed and delivered such documents.

(c) The Shareholder Representative may resign at any time; provided that it must provide the Controlling Shareholders who held a majority of shares of Company Common Stock held by the Controlling Shareholders immediately prior to the Effective Time 30 days' prior written notice of such decision to resign. The Shareholder Representative shall not receive compensation for service in such capacity.

(d) In the event of the death or resignation of the Shareholder Representative, the Controlling Shareholders shall promptly elect a replacement Shareholder Representative. Such replacement Shareholder Representative shall be elected by majority vote of the Controlling Shareholders (with each Controlling Shareholder receiving a single vote) and such election shall be binding on all Controlling Shareholders in accordance with the terms of this Section 12.19.

(e) Any and all actions taken or not taken, exercises of rights, power or authority and any decision or determination made by the Shareholder Representative in connection herewith shall be absolutely and irrevocably binding upon the Controlling Shareholders as if such Person had taken such action, exercised such rights, power or authority or made such decision or determination in its individual capacity, and the Escrow Agent, Buyer and the Surviving Corporation may rely upon such action,

exercise of right, power, or authority or such decision or determination of the Shareholder Representative as the action, exercise, right, power, or authority, or decision or determination of such Person, and no Controlling Shareholder shall have the right to object, dissent, protest or otherwise contest the same. Buyer and the Surviving Corporation is hereby relieved from any liability to any Person for any acts done by the Shareholder Representative and any acts done by Buyer or the Surviving Corporation in accordance with any decision, act, consent or instruction of the Shareholder Representative.

(f) The Shareholder Representative shall not be liable to the Buyer or the Controlling Shareholders in his capacity as the Shareholder Representative for any error of judgment, or any act done or step taken or omitted by him, believed by him to be in good faith or for any mistake in fact or law, or for anything which he may do or refrain from doing in connection with this Agreement or any Transaction Document except in the case of gross negligence or willful misconduct by him. The Shareholder Representative may seek the advice of reputable legal counsel (at no expense to Buyer, Merger Sub or their Affiliates) in the event of any dispute or question as to the construction of any of the provisions of this Agreement or its duties hereunder, and he shall incur no liability in his capacity as Shareholder Representative to the Buyer or the Controlling Shareholders and shall be fully protected with respect to any action taken, omitted or suffered by it in good faith in accordance with the advice of such counsel.

* * *

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

COMPANY

PARK WATER COMPANY

By: _____
Name: Henry H. Wheeler, Jr.
Its: Chief Executive Officer

BUYER

WESTERN WATER HOLDINGS, LLC

By: _____
Name: Robert Dove
Its: President

MERGER SUB

PWC MERGER SUB, INC.

By: _____
Name: Robert Dove
Its: President

SHAREHOLDER REPRESENTATIVE

_____
Henry H. Wheeler, Jr.

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

COMPANY

PARK WATER COMPANY

By: _____
Name: Henry H. Wheeler, Jr.
Its: Chief Executive Officer

BUYER

WESTERN WATER HOLDINGS, LLC

By: _____
Name: Robert Dove
Its: President

MERGER SUB

PWC MERGER SUB, INC.

By: _____
Name: Robert Dove
Its: President

SHAREHOLDER REPRESENTATIVE

_____
Henry H. Wheeler, Jr.

CONTROLLING SHAREHOLDERS

Henry H. Wheeler, Jr. Trust, as amended

By: _____
Name: Henry H. Wheeler, Jr.
Its: Trustee

_____
Nyri A. Wheeler

_____
Henry H. Wheeler III

ANNEX A

Controlling Shareholders

Henry H. Wheeler, Jr. (as trustee of the Henry H. Wheeler, Jr. Trust, as amended)

Nyri A. Wheeler

Henry H. Wheeler III

EXHIBIT B

OWNERSHIP STRUCTURE

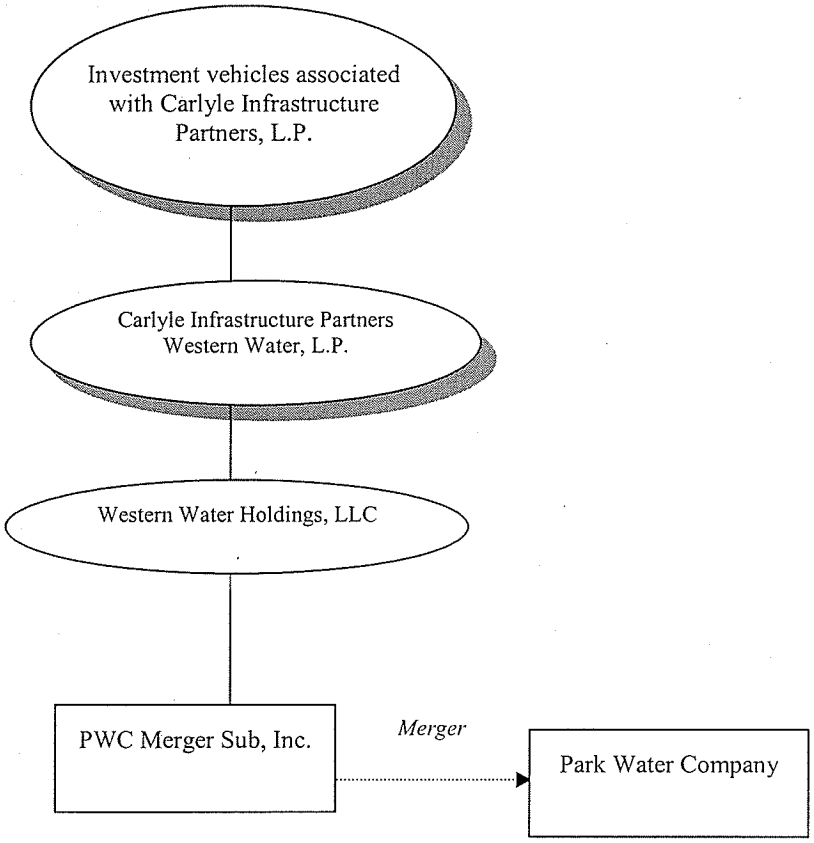

EXHIBIT C

State of California
Secretary of State

CERTIFICATE OF REGISTRATION

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That on the **12TH day of JANUARY, 2011, WESTERN WATER HOLDINGS, LLC**, complied with the requirements of California law in effect on that date for the purpose of registering to transact intrastate business in the State of California; and further purports to be a limited liability company organized and existing under the laws of **DELAWARE** as **WESTERN WATER HOLDINGS, LLC** and that as of said date said limited liability company became and now is duly registered and authorized to transact intrastate business in the State of California, subject, however, to any licensing requirements otherwise imposed by the laws of this State.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of January 13, 2011.

Debra Bowen

DEBRA BOWEN
Secretary of State

JKM

Limited Liability Company (LLC)

20110131 0016

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JAN 12 2011

This Space For Office Use Only

To register an LLC from another state or country in California, fill out this form, and submit for filing along with:

- A $70 filing fee,
- A certificate of good standing from the agency where your LLC was formed **originally**, and
- A separate, non-refundable $15 service fee, if you drop off the completed form.

Important! LLCs in California may have to pay a minimum $800 yearly tax to the Franchise Tax Board.

LLCs that provide *professional* services cannot register in California.

For questions about this form, go to *www.sos.ca.gov/business/be/filing-tips.htm*

① Name to be used for this LLC in California

Western Water Holdings, LLC
(Proposed LLC name)

The proposed LLC name: **must** end with **one** of these terms: "LLC," "L.L.C.," "Limited Liability Company," "Limited Liability Co.," "Ltd. Liability Co." or "Ltd. Liability Company;" and **may not** include these words: "bank," "trust," "trustee," "incorporated," "inc.," "corporation," or "corp.," "insurer," or "insurance company."

② LLC History

a. If the proposed LLC name you listed above is different than the LLC name you use **now** (as listed on your certificate of good standing), list the complete LLC name used now:
N/A

b. Date your LLC was formed *(MM, DD, YYYY)*: 12/15/2010

c. State or country where your LLC was formed: Delaware

d. Your LLC currently has powers and privileges to conduct business in the state or country listed above.

③ Service of Process

List a California resident or a qualified 1505 corporation in California that agrees to be your agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may **not** list an LLC as your agent.

a. *Agent's name:* CT Corporation System

If the agent you listed above is a California *resident* (not a *corporation*), list that person's address:

b. *Agent's address:* _____ CA _____
street address | *city (no abbreviations)* | *state* | *zip*

If the agent listed above has resigned or cannot be found or served after reasonable attempts, the California Secretary of State will be appointed the agent for service of process for your LLC.

④ LLC Address

a. List address for your LLC's headquarters:
1001 Pennsylvania Ave NW | Washington, D.C. | | 20004
street address | *city (no abbreviations)* | *state* | *zip*

b. List address for your LLC's main office in **California**, if any:
_____ | _____ | CA | _____
street address | *city (no abbreviations)* | *state* | *zip*

⑤ Read and sign below:

I declare that I am the person who signed this form, and that I am authorized to do so under the laws of the state or country where this LLC was formed.

▶ _____ 1-12-2011
Sign here | *Date*

Bryan Lin | Vice President and Secretary
Print your name here | *Your business title*

Make check/money order payable to: **Secretary of State**	***By Mail***	***Drop-Off***
We can give you up to 2 free certified copies of your filed form if you submit up to 2 completed copies of this form (with all attachments).	Secretary of State Business Entities, P.O. Box 944228, Sacramento, CA 94244-2280	Secretary of State 1500 11th St., 3rd Floor, Sacramento, CA 95814

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "WESTERN WATER HOLDINGS, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWELFTH DAY OF JANUARY, A.D. 2011.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

Jeffrey W. Bullock, Secretary of State

4907838 8300

110038247

AUTHENTICATION: 8490763

DATE: 01-12-11

You may verify this certificate online at corp.delaware.gov/authver.shtml

I hereby certify that the foregoing transcript of 2 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

JAN 13 2011 JKM

Date: _____

Debra Bowen

DEBRA BOWEN, Secretary of State

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "WESTERN WATER HOLDINGS, LLC", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF DECEMBER, A.D. 2010, AT 1:52 O'CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

4907838 8100

AUTHENTICATION: 8430470

101191851

DATE: 12-15-10

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:02 PM 12/15/2010
FILED 01:52 PM 12/15/2010
SRV 101191851 - 4907838 FILE

CERTIFICATE OF FORMATION

OF

WESTERN WATER HOLDINGS, LLC

This Certificate of Formation of Western Water Holdings, LLC (the "Company") is being executed by the undersigned, as an authorized person of the Company, for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act.

1. The name of the limited liability company is Western Water Holdings, LLC.

2. The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

3. The Company will have a perpetual existence.

IN WITNESS WHEREOF, the undersigned, as an authorized person of the Company, has executed this Certificate of Formation to be duly executed as of the 15th day of December, 2010.

Daniel A. D'Aniello, Authorized Person

LIMITED LIABILITY COMPANY AGREEMENT

OF

WESTERN WATER HOLDINGS, LLC

a Delaware Limited Liability Company

LIMITED LIABILITY COMPANY AGREEMENT
OF
WESTERN WATER HOLDINGS, LLC

This **LIMITED LIABILITY COMPANY AGREEMENT** (the *"Agreement"*) of Western Water Holdings, LLC (the *"Company"*) is effective as of December 15, 2010.

1. Formation of Limited Liability Company. Carlyle Infrastructure Partners Western Water, L.P., a Delaware limited partnership, (the *"Member"*), hereby forms the Company as a limited liability company pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C §18-101, *et seq.*, as it may be amended or succeeded from time to time (the *"Act"*). The rights and obligations of the Member and the administration of the Company shall be governed by the Agreement and the Act. The Agreement shall be considered the "Limited Liability Company Agreement" of the Company. To the extent this Agreement is inconsistent in any respect with the Act, the Agreement shall control.

2. Member. Carlyle Infrastructure Partners Western Water, L.P., a Delaware limited partnership, is the sole and managing member of the Company.

3. Purpose. The Company may engage in any and all businesses or activities in which a limited liability company may be engaged under applicable law (including, without limitation, the Act).

4. Name. The name of the Company shall be *"Western Water Holdings, LLC"*.

5. Registered Agent and Principal Office. The registered office and registered agent of the Company in the State of Delaware shall be as the Member may designate from time to time. The Company may have such other offices as the Member may designate from time to time. The mailing address of the Company shall be c/o The Carlyle Group, 1001 Pennsylvania Avenue NW, Suite 220 South, Washington, D.C. 20004.

6. Term of Company. The Company commenced on the date the Certificate of Formation (the *"Certificate"*) first was properly filed with the Secretary of State of the State of Delaware and shall exist in perpetuity or until its business and affairs are earlier wound up following proper dissolution.

7. Management of Company. All decisions relating to the business, affairs, and properties of the Company shall be made by the Member. The Member may appoint directors and/or officers of the Company using any titles, and may delegate all or some decision-making duties and responsibilities to such persons. Any such directors and/or officers shall serve at the pleasure of the Member. To the extent delegated by the Member, directors and/or officers shall have the authority to act on behalf of, bind, and execute and deliver documents in the name and on behalf of the Company. In addition,

unless otherwise determined by the Member, any officer(s) so appointed shall have such authority and responsibility as is generally attributable to the holders of such offices in corporations incorporated under the laws of the state of Delaware. No delegation of authority hereunder shall cause the Member to cease to be a Member.

8. Other Activities. The Member may engage or invest in, and devote its time to, any other business venture or activity of any nature and description (independently or with others), whether or not such other activity may be deemed or construed to be in competition with the Company. The Company shall not have any right by virtue of this Agreement or the relationship created hereby in or to such other venture or activity of the Member (or to the income or proceeds derived therefrom), and the pursuit thereof, even if competitive with the business of the Company, shall not be deemed wrongful or improper.

9. Standards of Conduct. Whenever the Member is required or permitted to make a decision, take or approve an action, or omit to do any of the foregoing, then the Member shall be entitled to consider only such interests and factors, including its own, as it desires, and shall have no duty or obligation to consider any other interests or factors whatsoever. To the extent that the Member has, at law or in equity, duties (including, without limitation, fiduciary duties) to the Company or other person bound by the terms of this Agreement, the Member acting in accordance with this Agreement shall not be liable to the Company or any such other person for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties of the Member otherwise existing at law or in equity, replace such other duties to the greatest extent permitted under applicable law.

10. Limited Liability. Except as otherwise required by any non-waivable provision of the Act or other applicable law, the Member shall not be personally liable in any manner whatsoever for any debt, liability, or other obligation of the Company, whether such debt, liability, or other obligation arises in contract, tort, or otherwise.

11. Contributions. The Member has contributed capital to the Company in the amounts reflected on the books and records of the Company. The Member may not be required to contribute any additional capital without such Member's consent.

12. Distributions. Each distribution of cash or other property by the Company shall be made 100% to the Member. Cash shall not be retained at the Company level any longer than administratively or legally necessary. Each item of income, gain, loss, deduction, credit, and other tax items of the Company shall be allocated 100% to the Member.

13. Tax Treatment. It is intended that, for federal tax purposes, the Company be disregarded as an entity separate from the Member.

14. Indemnification. The Company shall indemnify and hold harmless the Member to the full extent permitted by law from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements, and other amounts (collectively, "*Costs*") arising from any and all claims, demands, actions, suits, or proceedings (civil, criminal, administrative, or investigative) (collectively, *Actions*") in which the Member may be involved, or threatened to be involved as a party or otherwise, relating to the performance or nonperformance of any act concerning the activities of the Company. In addition, to the extent permitted by law, the Member may cause the Company to indemnify and hold harmless any managers and/or officers from and against any and all Costs arising from any or all actions arising in connection with the business of the Company or by virtue of such person's capacity as an agent of the Company. Notwithstanding the foregoing, any and all indemnification obligations of the Company shall be satisfied only from the assets of the Company, and the Member shall have no liability or responsibility therefor.

15. Dissolution and Winding Up. The Company shall dissolve and its business and affairs shall be wound up pursuant to a written instrument executed by the Member. In such event, after satisfying creditors, all remaining assets shall be distributed to the Member.

16. Amendments. This Agreement may be amended or modified from time to time only by a written instrument executed by the Member.

17. Governing Law. The validity and enforceability of this Agreement shall be governed by and construed in accordance with the laws of Delaware without regard to other principles of conflicts of law.

[signature page follows]

IN WITNESS WHEREOF, the Member has duly executed this Agreement effective as of the above stated date.

Carlyle Infrastructure Partners Western Water, L.P.

By: Carlyle Infrastructure General Partner, L.P.,
its general partner

By: TC Group Infrastructure, L.L.C.
its general partner

By: _____
Name: Daniel A. D'Aniello
Title: Managing Director

EXHIBIT D

C3336594

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 15 2010

ARTICLES OF INCORPORATION

OF

PWC MERGER SUB, INC.

I

The name of this corporation is PWC Merger Sub, Inc.

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The service agent in the State of California of this corporation's initial agent for service of process is CT Corporation System.

IV

This corporation is authorized to issue only one class of shares of stock, which shall be Common Stock. The total number of shares of Common Stock which this corporation is authorized to issue is Twenty-Five Thousand (25,000) with a par value of $0.01 per share.

V

This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to the applicable limits set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to the corporation and its shareholders.

VI

The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

DATED: December 15, 2010

Anthony Lebron, Incorporator

I hereby certify that the foregoing transcript of 1 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

DEC 15 2010

Date: _____

Debra Bowen

DEBRA BOWEN, Secretary of State

EXHIBIT E

Park Water Company
(Unaudited)
Balance Sheet as of November 30, 2010

Assets and Other Debits	
Utility Plant at Cost	60,111,402
Depreciation Reserve	(22,681,339)
Intercompany Investments and Receivables	36,122,819
Current and Accrued Assets	16,381,630
Deferred Debits	12,042,640
Total	101,977,152
Liabilities and Other Credits	
Capital Stock and Surplus Profit (Deficit)	(17,665,383)
Long Term Debt	54,440,982
Intercompany Advances and Payables	42,135,842
Current and Accrued Liabilities	12,755,304
Deferred Credits	6,426,913
Advances for Construction	1,355,602
Contributions in Aid of Construction	2,527,892
Total	101,977,152

Park Water Company
Income Statement
(Unaudited)
Eleven Months as of November 30, 2010

Operating Revenues	22,393,318
Operating Expenses	17,005,899
Depreciation	1,045,662
Taxes Other Than Income	1,013,601
Net Operating Revenue	3,328,156
Other Income	(641,990)
Income Deductions	5,287,843
Net Income Before Taxes	(2,601,677)
Estimated Income Taxes (1)	1,040,671
Net Loss After Taxes	(1,561,006)

(1) Taxes are estimated at 40%.

EXHIBIT F

Apple Valley Ranchos Water Company
(Unaudited)
Balance Sheet as of November 30, 2010

Assets and Other Debits	
Utility Plant at Cost	101,516,965
Depreciation Reserve	(23,686,867)
Intercompany Investments and Receivables	760,691
Current and Accrued Assets	1,639,509
Deferred Debits	8,851,842
Total	89,082,140
Liabilities and Other Credits	
Capital Stock and Surplus Profit (Deficit)	41,029,806
Long Term Debt	0
Intercompany Advances and Payables	0
Current and Accrued Liabilities	6,333,141
Deferred Credits	9,642,171
Advances for Construction	29,996,615
Contributions in Aid of Construction	2,080,407
Total	89,082,140

Apple Valley Ranchos Water Company
Income Statement
(Unaudited)
Eleven Months as of November 30, 2010

Operating Revenues	18,545,587
Operating Expenses	10,763,916
Depreciation	2,196,833
Taxes Other Than Income	565,955
Net Operating Revenue	5,018,883
Other Income	10,082
Income Deductions	95,234
Net Income Before Taxes	4,933,731
Estimated Income Taxes (1)	(1,973,491)
Net Loss After Taxes	2,960,240

(1) Taxes are estimated at 40%.