

Board of Municipal Utilities  
**Meeting Minutes**  
**February 6, 2024**  
201 Miller Road  
Avon Lake, Ohio

***Call to Order – Roll Call***

The meeting was called to order at 6:33 PM. The meeting was held in-person using web-based video conferencing technology. A recording was posted to Facebook February 7, 2024.

Present: Mr. Abram, Mr. Dzwonczyk, Mr. Rickey, Mr. Rush and Mrs. Schnabel.

Also present: CUE Munro, CUO Yuronich, Business & Financial Coordinator Bill Logan, Law Director Gary Ebert, Attorney Connie Carr of Seeley, Savage, Ebert and Gourash, and Councilwoman Gentry.

***Approve Minutes***

Mr. Dzwonczyk presented the Minutes of the January 16, 2024 regular meeting. With no additional changes, additions or corrections noted, he ordered that the minutes stand and be distributed as presented.

***Public Speakers***

None.

***Correspondence***

None.

***Expenditures***

Following review of expenses for funds and amounts as follows, Mr. Abram moved, Mr. Rickey seconded, to approve the expenditures of December 29, 2023 through February 1, 2024:

Water Fund 701	\$	565,339.72
Wastewater Fund 721	\$	427,524.13
ETL1 Fund 703	\$	199,795.54
ETL2 Fund 762	\$	415,948.37
LORCO Fund 749	\$	34,685.29

Ayes (per voice vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel

Nays: None

Motion carried.

## ***H2Ohio Grant***

Mr. Munro informed the Board that he had recently applied for an equipment grant under the Ohio Governor's H2Ohio program which is intended for water and sewer infrastructure. Mr. Munro stated that staff was notified that the grant application had been approved at the maximum amount of \$10,000 and that this grant was specifically for leak detection equipment purchases. Mr. Munro added that this grant is a reimbursement grant and is fully funded meaning that no matching funds are required from Avon Lake Regional Water (ALRW). Mr. Munro stated that once the final grant award documents are received staff will move forward with the purchase of the leak detection equipment.

Mr. Rickey inquired if the purchase price included any training. Mr. Munro stated that there is training included.

Mr. Dzwonczyk inquired if there was any information that Mr. Munro could provide regarding how this equipment works. Mr. Munro responded that the transducers are coupled to the pipes, metal surfaces or fire hydrants on either side of the area where there is a suspected leak. Mr. Munro stated that the equipment then is able to monitor sound waves and provide the workers with an approximate distance of where along the line the leak is coming from. Mr. Munro stated that a leak does not necessarily surface right above the leak and this equipment can help with the location.

Mr. Munro added that while this is a relatively small grant, he had also applied for a five-million-dollar grant through the Department of Development to be used towards the improvements at the water filtration plant improvement project. Mr. Munro stated that it will be another couple of months before awards of that grant would be announced.

## ***Property Taxes***

Mr. Munro stated that several property tax bills were received by staff in January. Mr. Munro informed the Board that a majority of those were for properties that had been purchased in 2023 and that although the properties can receive tax-exempt status the bills must still be paid until the time that tax-exempt status is granted. Mr. Munro stated that once the tax-exempt status has been granted the funds will be refunded. Mr. Munro also added that there are certain properties that are taxable such as those that generate income for ALRW through cell tower leases such as the Division Rd. site. Mr. Munro stated that once the tax bill is received on those locations, we submit an invoice to the cellular companies per the contractual agreements with those companies and ALRW is reimbursed. Attorney Carr also stated that a few of the properties that were purchased by ALRW have "lease-back" clauses in them in which the previous owner is still utilizing the property so those may not yet qualify for tax exempt status. Attorney Carr also stated that due to a gray area of the tax law a determination will have to be made by the County Auditor and the tax-exempt status can be decided at that time. Attorney Carr also stated that exemptions can only be filed the year the taxes are due so the properties that were purchased in 2023 need to have their exemptions filed for 2024. Mr. Munro added that while taxes paid are refunded, late fees are never refundable so that is why the tax payments are being made now. Mr. Munro also added that Mr. Logan is very familiar with the Auditor's Office and is also very familiar with this whole process and has already been communicating with the Auditor in regards to these assessed taxes. Mr. Munro stated that the Board should expect to see these tax payments on the expenditures at an upcoming meeting.

Mr. Rickey inquired if some of the recently purchased properties had significant tax bills due to being lake-front property. Mr. Logan stated that 64 West Shore Rd. has a tax bill for about \$4400 for the year and that the small size of the lots contributes to this lower number.

## ***Project Updates***

***Power Plant Update:*** Mr. Yuronich informed the Board that some of the work on the north side of Lake Rd. has slowed due to the high-reach excavator being down for repairs for the last two weeks. Mr. Yuronich stated that the Ohio Environmental Protection Agency (OEPA) officially recognized that all industrial activity on the south side of Lake Rd. has ceased and the former “coal-pile retention pond” is now classified as a storm water retention pond. Mr. Yuronich added that Charah has been granted approval to demolish the treatment building that previously treated the coal-pile runoff and that will take place at the end of February. Mr. Yuronich informed the Board that Charah/ALERG were granted a permit-to-install (PTI) for a portable treatment unit that they had been utilizing to eliminate the risk of any further mercury violations on water that is discharged on the north side of Lake Rd. for water that may enter the lake. Mr. Yuronich stated that this portable treatment unit consists of a bag filter and powdered activated carbon.

Mr. Dzwonczyk inquired if Charah/ALERG monitor that discharge and Mr. Yuronich replied that they do.

***ETL Design Services:*** Mr. Yuronich stated that staff has received a red-line version of the Railpros easement agreement to place our water main underneath their railroad tracks and that Mr. Munro was reviewing it. Mr. Yuronich stated that the final payment for wetlands credits was made to the Streams & Wetlands Foundation on January 18, 2024. Mr. Yuronich stated that there will need to be updates to the bulk customer’s cooperative agreements to account for funding the ETL improvements and that the CUE is working with the Law Director to modify those contracts.

***WFP Improvements:*** Mr. Yuronich informed the Board that the loan application was submitted to the Ohio Water Development Authority (OWDA) and that staff is waiting for approval. Mr. Yuronich added that since the application was submitted prior to February 1, 2024 it will be on the next meeting’s agenda which will occur on February 29, 2024. Staff will receive a verbal response a day or two after that meeting. Mr. Yuronich stated that once the funding has been procured a notice-to-proceed will be issued and the contract documents will be executed.

***Additional Storage Building:*** Mr. Yuronich stated that there was one punch list item that remained. The incorrect model of gas sensor was initially installed but the correct models were ordered and received. Mr. Yuronich informed the Board that the utility portion of the contract has been completed and a final draw to complete payment is being processed. Mr. Yuronich stated that Hydro Chem will be onsite and is completing the final tuning of the system along with providing training to our staff on the operation and maintenance of this system.

Mr. Dzwonczyk stated that they should be onsite this week and Mr. Yuronich confirmed that was correct. Mr. Munro added that several vehicles had gone through the wash system earlier in the day and that many more will go through tomorrow. Mr. Munro also added that staff was impressed with the operation of the equipment thus far and noticed how clean it was getting the vehicles. Mr. Munro stated that Hydro Chem is still fine tuning the length of the wash cycles and the pressures of the different nozzles.

***Inductively Coupled Plasma Mass Spectrometer (ICP):*** Mr. Yuronich informed the Board that the lab staff is conducting analyses on wastewater samples in parallel with a third-party lab and have found that the results of low-matrix samples are accurate. Mr. Yuronich explained that low-matrix samples are ones that do not contain anything that will interfere with the specific analyte they are analyzing for. Mr. Yuronich stated that the lab staff is having more difficulty getting acceptable results on the medium and high-matrix samples and are still working to

develop methodology that will accurately quantify the analytes in those samples. Mr. Yuronich added that staff has not noticed anything in the drinking water samples that will require them to deviate from the base methods they already have worked out and that the method development issue only applies to medium and high-matrix industrial or wastewater samples. Mr. Yuronich stated that while it is somewhat time consuming, it is a beneficial learning experience to the lab staff.

Mr. Dzwonczyk inquired if it was typical for analytical equipment like this to have such a long development period for methods. Mr. Yuronich responded that this is in fact normal and that once the methods are developed and confirmed each test will go much more quickly in normal use. Mr. Dzwonczyk further inquired how staff will know if the equipment is still within its accuracy range. Mr. Yuronich stated that he was unsure of how frequently a lab is required to perform this quality control practice, all labs are required to perform proficiency testing where they are given an “unknown” sample for analysis. The lab will perform an analysis, submit their result and the testing company will then provide the expected result and inform the lab if they are within the acceptable range. Mr. Yuronich stated that if they are found to be outside of that acceptable range, they will have to do a thorough investigation as to why the error occurred and either perform additional troubleshooting on the equipment, modify the methodology or have the machine serviced by the manufacturer. Mr. Dzwonczyk further inquired how the lab would respond if faced with uncertainty of our equipment to deliver quality results. Mr. Yuronich stated that in the event the lab was at all unsure of accurate data they would contract with a third-party laboratory while they were correcting a failure of the ALRW equipment.

Mr. Rush inquired how often there were maintenance items required to be performed on the equipment. Mr. Yuronich responded that there are maintenance tasks that are outlined by the manufacturer for daily, weekly, monthly and yearly. Mr. Munro added that upon startup of the equipment it goes through a series of self-checks and that lab staff will perform calibrations and confirmations of standards prior to testing. Mr. Munro also added that there is an hour meter on the instrument that will keep tabs on the total run time of the instrument.

Mr. Dzwonczyk stated that keeping track of all of these items is going to be integral to the organization’s quality initiative.

### ***CUE Report***

Mr. Munro introduced Bill Logan as the Business & Financial Coordinator. Mr. Munro stated that Mr. Logan brings many years of experience including fifteen years as the Finance Director for the City of Avon. Mr. Munro informed the Board that Mr. Logan also has many years of experience in the accounting field as well. Mr. Munro stated that Mr. Logan is becoming familiar with the budget and has already met with the City of Avon Lake’s Finance Director Ed Widman.

Mr. Logan stated that he is happy to be offered this position and that he realized that he was not yet ready to be retired. Mr. Logan stated that there are a lot of things to be excited for about this organization and he looks forward to contributing and working with the staff.

Mr. Munro stated that the Request for Qualifications (RFQ) for the water system master plan is due on February 13, 2024 by noon. Mr. Munro informed the Board that staff held the mandatory pre-bid meeting and that had three firms in attendance.

Mr. Munro stated that staff currently has a bid out for providing concrete to the organization for 2024 and those bids are due February 16, 2024.



Mr. Munro stated that ALRW is currently accepting applications to fill the open position of Customer Service Rep and this will bring the organization to three full-time employees and will help take some of the workload from the two current employees.

Mr. Munro informed the Board that he spoke with the Law Director regarding a change to the Ohio Revised Code that addresses the bidding threshold for public entities in Ohio. Mr. Munro stated that the bidding threshold was previously set at \$50,000 and any project or service above that amount was required to be bid. Mr. Munro stated that for 2024 the threshold has been raised to \$75,000 and that each following year it will increase an additional three-percent. Mr. Munro stated that much of this was due to the significant increase in products and services that occurred because of the pandemic. Mr. Munro informed the Board that the current City ordinance references the \$50,000 threshold and ALRW will continue to follow this until the City of Avon Lake memorializes this change in their ordinances.

Mr. Rush stated that in the past the CUE has kept the Board well informed of larger purchases that pertain to this requirement and Mr. Munro assured him that will continue. Mr. Munro also added that for larger purchases under this threshold, staff will continue to obtain a minimum of three quotations as has been done in the past. Mr. Munro stated that having all staff following the same procedures throughout the organization is part of the continual quality initiative.

### ***Miscellaneous & Member Reports***

Mr. Abram stated that the Lead and Copper Rule mandated by the USEPA requires water utilities to update their lead service line inventory by October 16, 2024 and that there is federal funding available to assist utilities in completing this work. Mr. Abram asked the CUE or CUO to provide an update on ALRW's progress in completing this. Mr. Yuronich stated that the camera truck contains software to assist staff in identifying all service line materials and integrate this information into our GIS system. Mr. Yuronich stated that there are still a few areas within ALRW's distribution system that contain "unknowns." Mr. Yuronich informed the Board that if there is a service line that does not contain a detailed record it must be treated as a lead service line. Mr. Yuronich added that if there is any disturbance to the water lines in an area of unknowns, staff is required to distribute water filters to any affected residents in the area. Mr. Munro stated that ALRW received a \$50,000 grant that paid for most of the \$63,000 purchase price for the mapping software to assist staff and that money was part of the federal infrastructure funding.

### ***Public Speakers***

None.

### ***Executive Session***

Mr. Rush moved, Mr. Abram seconded, to meet in executive session as allowed by ORC §121.22 (G)(1), (G)(2) and (G)(3) to discuss the employment of a public employee, the purchase and/or sale of property for public purposes, and pending or imminent court actions, and to include the CUE, the CUO, Law Director Ebert, and Attorney Connie Carr.

Ayes (per roll call vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel

Nays: None

Motion carried.

The Board entered Executive Session at 7:15 PM.

The Board reconvened the public meeting at 8:57 PM.

Mr. Dzwonczyk moved, Mr. Rush seconded, to authorize the CUE to execute a purchase agreement with Avon Lake Environmental Redevelopment Group in the amount of \$3,250,000.00 per the presented purchase agreement contingent on final legal review and approval.

Ayes: Abram, Dzwonczyk, Rickey, Rush, and Schnabel  
Nays: None  
Motion carried.

### ***Adjourn***

As there was no further business, Mr. Abram moved, and Mr. Rush seconded, to adjourn. The meeting adjourned at 8:58 PM.

Ayes (per voice vote): Abram, Dzwonczyk, Rush and Schnabel  
Nays: None  
Motion carried.

Approved February 20, 2024.

John Dzwonczyk, Chairman

Robert Munro, Clerk

**ASSET PURCHASE AGREEMENT**

between

**Avon Lake Environmental Redevelopment Group., Seller**

and

**The Board of Municipal Utilities d/b/a Avon Lake Regional Water, Purchaser**

dated as of

March 13, 2024

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "**Agreement**"), dated as of the 13<sup>th</sup> day of March, 2024 (the "**Effective Date**"), is entered into between (i) AVON LAKE ENVIRONMENTAL REDEVELOPMENT GROUP LLC, a Kentucky limited liability company ("**Seller**") having an address at 12601 Plantside, Louisville, KY 40299, and (ii) BOARD OF MUNICIPAL UTILITIES d/b/a AVON LAKE REGIONAL WATER, by and through the City of Avon Lake, a municipal corporation ("**Purchaser**"), having an address at 201 Miller Road, Avon Lake, Ohio 44012.

### RECITALS

WHEREAS, Seller is the owner of certain real estate as legally as depicted on Exhibit A and legally described on Exhibit B attached hereto containing approximately 35.38 acres;

WHEREAS, subject to the terms and conditions hereof, Seller desires to sell to Purchaser the Property and Purchaser desires to purchase the Property (hereinafter defined) from Seller;

WHEREAS, Seller has entered into or is about to enter into an Option Agreement ("**reNRG Option**") for the sale of approximately four (4) acres of the Property (the "**NRG Option Property**") depicted on Exhibit C attached hereto to reNRG OH 4 LLC or a company affiliated therewith ("**reNRG**") and Purchaser has agreed to acquire the Property subject to the NRG Option (excluding certain indemnities and related remediation obligations), to convey the reNRG Property to reNRG upon exercise of the reNRG Option and to create a twenty (20) foot surface and sub-surface easement for the benefit of and appurtenant to the reNRG Option Property (the "**reNRG Easement**") as depicted on Exhibit C attached hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

"**Agreement**" has the meaning set forth in the preamble.

"**Bill of Sale**" has the meaning set forth in Section 4.02(c).

"**Broker**" has the meaning set forth in Section 14.01.

"**Closing**" has the meaning set forth in Section 4.01(a).

"**Closing Date**" has the meaning set forth in Section 4.01(a).

"**Confidential Information**" has the meaning set forth in Section 13.01.

"**Deed**" has the meaning set forth in Section 4.02(a).

"**Deposit**" has the meaning set forth in Section 3.01(a).

"**Effective Date**" has the meaning set forth in the Preamble.

"**Escrow Agent**" has the meaning set forth in Section 3.01(a).

"**License**" shall mean a License Agreement with Purchaser as the "licensor" and Seller as the "licensee" for a portion of the Property containing Seller's work trailer, to allow Seller to continue occupying such location for a period of time that permits Seller to complete remediation and removal work on its remaining property located by the Property.

"**Notices**" has the meaning set forth in Section 10.01.

"**OFAC**" has the meaning set forth in Section 6.01(h).

"**Permitted Exceptions**" has the meaning set forth in Section 5.02 and 5.03.

"**Personal Property**" has the meaning set forth in Section 2.01.

"**Property**" has the meaning set forth in Section 2.01.

"**Purchase Price**" has the meaning set forth in Section 3.01.

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser Default**" has the meaning set forth in Section 11.01(a).

"**Purchaser Related Party**" shall mean collectively any Purchaser agent, advisor, representative, affiliate, employee, director, partner, member, beneficiary, investor, servant, shareholder, trustee, or other person or entity acting on Purchaser's behalf, otherwise related to, or affiliated with Purchaser.

"**Post Closing Escrow**" has the meaning set forth in Section 6.02.

"**Post Closing Required Remediation and Removal Work**" has the meaning set forth in Section 6.02.

"**Required Remediation and Removal Work**" has the meaning set forth in Section 6.02.

"**Seller**" has the meaning set forth in the preamble.

"**Seller Related Party**" shall mean collectively any Seller agent, advisor, representative, affiliate, employee, director, partner, member, beneficiary, investor, servant, shareholder, trustee, or other person or entity acting on Seller's behalf, otherwise related to, or affiliated with Seller.



"**Title Commitment**" has the meaning set forth in Section 5.03(a)(i).

"**Title Insurance Company**" has the meaning set forth in Section 3.01(a).

"**Title Objection Date**" has the meaning set forth in Section 5.03(b).

"**Title Objection Notice**" has the meaning set forth in Section 5.03(b).

"**Transaction Parties**" has the meaning set forth in Section 13.01.

"**Transfer Tax Document**" has the meaning set forth in Section 4.02(b).

"**Transfer Tax Documents**" has the meaning set forth in Section 4.02(b).

"**Violations**" has the meaning set forth in Section 5.05.

## **ARTICLE II CONVEYANCE OF THE PROPERTY; EASEMENT AGREEMENT**

**Section 2.01 Subject of Conveyance.** Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, all right, title, and interest of Seller in and to the following (collectively referred to herein as the "**Property**"):

(a) all that certain lot, piece, or parcel of land located in the City of Avon Lake, County of Lorain and State of Ohio, as more particularly depicted on Exhibit A and legally described in Exhibit B attached hereto and hereby made a part hereof (the "**Real Estate**") as well as (i) all easements, rights-of-way, and other appurtenances used or connected with the beneficial use or enjoyment of the Real Estate; and (ii) all right, title and interest in and to all streets, water courses or water bodies adjacent to, abutting or serving the Land;

(b) all buildings, structures and improvements located on the Real Estate and all Seller's right, title, and interest in and to any and all fixtures attached thereto (collectively, the "**Improvements**");

(c) all rights appurtenant to the Real Estate, if any, including without limitation, any strips and gores abutting the Land, and any land lying in the bed of any street, road, or avenue in front of, or adjoining the Land, to the center line thereof; and

(d) all other rights, privileges, easements, licenses, appurtenances, and hereditaments relating to the Property, including building licenses, certificates of occupancy, ingress and egress permits, NPDES permits, storm water discharge permits and the like.

### **Section 2.02 AS-IS.**

(a) Except as otherwise set forth in this Agreement and subject to Sections 5.03 and 6.02 of this Agreement, Purchaser acknowledges that Purchaser shall make thorough inspections and investigations of the Property and Purchaser agrees to take title to the Property "AS-IS,

WHERE IS, AND WITH ALL FAULTS" and in the condition existing as of the date of this Agreement, subject to reasonable use, ordinary wear and tear, and without any reduction in or abatement of the Purchase Price. Purchaser shall undertake all such investigations of the Property as Purchaser deems necessary or appropriate under the circumstances as to the status of the Property and the existence or nonexistence of curative action to be taken with respect to any hazardous or toxic substances on or discharged from the property, and based upon same but except as otherwise set forth in this Agreement, Purchaser is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers.

(b) Neither party to this Agreement is relying on any statement or representation not expressly stated in this Agreement. Except as otherwise set forth in this Agreement, Purchaser specifically confirms and acknowledges that in entering into this Agreement, Purchaser has not been induced by, and has not relied upon, whether express or implied, warranties, guaranties, promises, statements, inducements, representations, or information pertaining to the Property or its uses, the physical condition, environmental condition, state of title, income, expenses, or operation of the Property, or any other matter or thing with respect thereto, written or unwritten, whether made by Seller or any agent, employee, or other representative of Seller, or any broker or any other person representing (or purporting to represent) Seller, which are not expressly set forth in this Agreement. Seller shall not be liable for or bound by any written or unwritten statements, representations, warranties, brokers' statements, or other information pertaining to the Property furnished by Seller, any broker, any agent, employee, or other actual (or purported) representative of Seller, or any person, unless and only to the extent the same are expressly set forth in this Agreement.

(c) Except as otherwise set forth in this Agreement, Seller makes no warranty with respect to the presence of any hazardous or toxic substances on, above, beneath, or discharged from the Property (or any adjoining or neighboring property) or in any water on or under the Property. Except as otherwise set forth in this Agreement, the Closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to recover from Seller, and forever releases, covenants not to sue, and discharges Seller from, any and all damages, demands, claims, losses, liabilities, penalties, fines, liens, judgments, costs, or expenses whatsoever, including attorneys' fees and costs, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Property.

(d) The provisions of this Section 2.03 shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

**Section 2.03 reNRG Option reNRG Easement.** Purchaser and Seller shall mutually execute and deliver to the Escrow Agent at Closing an assignment and assumption (excluding the assumption of Section 10(e)) of the reNRG Option ("**reNRG Option Assignment**") together with an easement agreement (the "**reNRG Easement Agreement**"), which agreement shall provide for creation of surface and sub-surface easement rights for the benefit of and appurtenant to the reNRG Option Property and other ingress, egress access rights within areas of the Real Estate set forth in the reNRG Easement Agreement, the location and legal description of which areas being set forth in the Easement Agreement.



The form of the reNRG Option Assignment and the reNRG Easement Agreement shall be negotiated by Seller and Purchaser during the Inspection Period.

### ARTICLE III PURCHASE PRICE

**Section 3.01 Purchase Price and Deposit.** The purchase price to be paid by Purchaser to Seller for the Property is Three Million Two Hundred Fifty Thousand and No/100 Dollars (\$3,250,000.00) (the "**Purchase Price**"). The Purchase Price shall be payable as follows:

(a) Within three (3) days after the Effective Date, the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "**Deposit**") shall be paid by Purchaser's certified check or official bank check, subject to collection made payable to Erie Commercial Title (Attn: Jackie Shear, 868 Corporate Way, Westlake, Ohio 44145; (216) 689-1050 (jacquelineshear@ecommtitle.com), as escrow agent ("**Escrow Agent**" or the "**Title Insurance Company**"), to an account at such bank as designated by Escrow Agent. Upon receipt of same, Escrow Agent agrees to hold the Deposit in escrow pursuant to the terms of Article XI of this Agreement. Any interest earned on the principal portion of the Deposit shall be deemed to be part of the Deposit and shall be paid together with the principal portion of the Deposit, it being understood and agreed that if the transaction contemplated under this Agreement closes, any interest earned on the Deposit shall be credited to the Purchase Price upon the Closing. Escrow Agent shall not be required to place the Deposit in an interest-bearing account unless otherwise agreed by Seller and Purchaser.

(b) The balance of the Purchase Price, plus or minus any prorations, credits, adjustments, costs and apportionments set forth in this Agreement, shall be remitted to Escrow Holder by one or more wire transfers of immediately available federal funds to an account, or accounts, designated in writing by Escrow Agent no later than (1) business day prior to the Closing Date. The balance of the Purchase Price due to Seller (after the prorations, credits, adjustments, costs and apportionments set forth in this Agreement have been applied per the settlement statement agreed to by the parties) shall be remitted to Seller on the Closing Date by one or more wire transfers of immediately available federal funds to an account, or accounts, designated in writing by Seller to Escrow Agent no later than one (1) business day prior to the Closing Date.

**Section 3.02 No Financing.** Purchaser expressly agrees and acknowledges that Purchaser's obligations to pay the Purchase Price and otherwise consummate the transactions contemplated hereby are not in any way conditioned upon Purchaser's ability to obtain financing of any type or nature whatsoever (that is, whether by way of debt financing or equity investment, or otherwise) or be subject to budgetary appropriate of any kind.

### ARTICLE IV CLOSING

**Section 4.01 Closing Date.** The closing of the transaction contemplated by this Agreement (the "Closing") shall take place within fifteen (15) days after expiration of the Inspection Period



provided that all conditions to closing have been met (or waived) by the applicable party) (the "**Closing Date**") through an escrow closing with the Title Insurance Company. Purchaser and Seller both acknowledge and agree that **TIME SHALL BE OF THE ESSENCE** with respect to the performance by each party of its obligations to consummate the transaction contemplated in this Agreement on the Closing Date.

**Section 4.02 Seller's Closing Deliverables.** At Closing, Seller shall deliver or cause to be delivered to Purchaser, the following executed, certified, and acknowledged by Seller, as appropriate:

(a) A limited warranty deed executed with the appropriate acknowledgement form and otherwise in proper form for recording so as to convey title to the Property as required by this Agreement (the "**Deed**") in substantially the form attached hereto as Exhibit D executed by Seller. The Closing of the transaction contemplated by this Agreement and the recording of the Deed shall be deemed the full performance and discharge of every obligation on the part of the parties hereto to be performed pursuant to this Agreement, except those obligations of the parties that are expressly stated in this Agreement to survive the Closing.

(b) State and any county and municipal transfer tax declarations that are required in connection with the conveyance and transfer of the Property contemplated hereby (unless exempt), in the form(s) prescribed by the applicable governmental authority (individually, a "**Transfer Tax Document**" and collectively the "**Transfer Tax Documents**") executed by Seller if the Seller's signature is required unless the Transfer Tax Document is filed electronically.

(c) An executed and acknowledged counterpart of reNRG Option Assignment and the reNRG Easement Agreement in the form agreed upon by Seller and Purchaser.

(d) An executed and acknowledged counterpart signature page to the License in the form agreed upon by Seller and Purchaser.

(e) A certification that Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code, as amended and the regulations thereunder, which certification shall be signed under penalty of perjury.

(f) Originals, or copies certified by Seller as being complete, of all applicable bills, invoices, and other items that shall be apportioned as of the Closing Date.

(g) An Officer's Certificate from a duly authorized officer or representative of the Seller authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(h) A closing settlement statement prepared by the Escrow Agent reflecting the prorations and adjustments required under this Agreement and the balance of the Purchase Price due Seller.

(i) All keys and access codes to any portion of the Property, to the extent in Seller's possession or control or that of its agents.

(j) An affidavit from Seller in such form and content as may be reasonably necessary to enable the Title Insurance Company to delete the standard exceptions listed in the Title Commitment from the Owner's Policy.

(k) Evidence of the issuance of endorsements to Seller's environmental insurance policy adding Purchaser and the City of Avon Lake as additional insured parties, adding this Agreement to the Schedule of Insured Contracts. Purchaser shall also have the right to add any subsequent purchaser of a portion of the Property as an additional insured to such policy.

(l) All other documents reasonably necessary or otherwise required by the Escrow Agent and Title Insurance Company to consummate the transaction contemplated by this Agreement.

**Section 4.03 Purchaser's Closing Deliverables.** At the Closing, Purchaser shall deliver or cause to be delivered to Seller, the following executed, certified, and acknowledged by Purchaser, as appropriate:

(a) The balance of the Purchase Price as set forth in Section 3.01(b).

(b) An executed and acknowledged counterpart of reNRG Option Assignment and the reNRG Easement Agreement.

(c) An executed and acknowledged counterpart signature page to the License in the form agreed upon by Seller and Purchaser.

(d) Purchaser shall, where applicable, join with Seller in the execution and delivery of the closing documents and instruments required under Section 4.02 of this Agreement.

(e) The Transfer Tax Documents or authorization for the Title Company to electronically file the Transfer Tax Documents if the Purchaser's signature is required unless the Transfer Tax Document is filed electronically.

(f) A resolution, ordinance and consent of the Purchaser, as applicable, authorizing the transaction contemplated hereby in a form reasonably satisfactory to Seller and the execution and delivery of the documents required to be executed and delivered hereunder.

(g) All other documents reasonably necessary or otherwise required by the Escrow Agent and Title Insurance Company to consummate the transaction contemplated by this Agreement.

**Section 4.04 Closing Costs.**

(a) Seller and Purchaser shall each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement. The fees related to the negotiation and preparation of the deed and other agreements and instruments related to the transaction contemplated by this Agreement and such legal costs shall not be part of the closing costs.



- (b) Seller shall pay:
- (i) the commission owed to the Broker, if any, pursuant to Article XIII of this Agreement;
  - (ii) the cost of paying off and discharging or obtaining releases for any mortgages or similar monetary liens which are a lien against the Property and all recording fees for the release of said liens on the Property, as required pursuant to the terms of this Agreement;
  - (iii) one-half of the cost of title search and issuance of the Title Commitment, and one-half of the base premium cost for the Owner's Policy, including the removal of the standard exceptions;
  - (iv) one-half of the Escrow Agent's fee; and
  - (v) State of Ohio and county deed transfer taxes/conveyance fees.
- (c) Purchaser shall pay:
- (i) one-half of the cost of title search and issuance of the Title Commitment, and one-half of the base premium cost for Owner's Policy, including the removal of the standard exceptions;
  - (ii) the cost of any endorsements to the Owner's Policy requested by Purchaser;
  - (iii) the costs related to any survey or survey update (if any);
  - (iv) any other fees or costs related to Purchaser's due diligence reviews;
  - (v) one-half of the Escrow Agent's fees; and
  - (vi) all costs related to the recording fees payable in connection with the recording of the deed and Purchaser's lender's security instruments, if any.

**Section 4.05 Apportionments.** The following shall be apportioned as of 11:59 p.m. of the date immediately preceding the Closing Date by the Title Insurance Company, unless expressly provided for otherwise:

- (a) Real estate taxes shall be prorated, such that credits and charges for the Closing Date and all days preceding the Closing Date shall be allocated to Seller, and credits and charges for all days after the Closing Date shall be allocated to Purchaser. If the Property shall be, or has been, affected by any assessments or special assessments payable in a lump sum or which are, or may become, payable in installments, of which the first installment is then a charge or lien, or has already been paid, then at the Closing such amounts shall be paid or apportioned, as the case may be in the following manner:

(i) any such assessments or installments, or portion thereof, payable on or after the Closing Date shall be the responsibility of Purchaser; and

(ii) any such assessments or installments, or portion thereof, payable prior to the Closing Date shall be the responsibility of Seller.

The proration of such real estate taxes and assessments shall be based on a 365-day year and on the most recently available tax rates and valuations. The obligations contained in this Section 4.05(b) shall survive the Closing and shall not be merged into the Deed.

(b) All water and sewer charges are based on the fiscal year for which they are assessed, unless the meters are read on the date immediately preceding the Closing Date.

(c) All other items customarily apportioned in connection with sales of buildings substantially similar to the Property in the City of Avon Lake, County of Lorain and State of Ohio.

#### **Section 4.06 Closing Conditions.**

(a) The obligations of Purchaser hereunder are subject to the following conditions, any of which may be waived by Purchaser in writing or which shall be deemed waived if Purchaser shall close the purchase of the Property without satisfaction of any of the following:

(i) The representations and warranties of Seller set forth in Section 7.01 shall be true and correct in all material respects on the Closing Date.

(ii) Purchaser being satisfied with the results of its due diligence investigations, as evidenced by the failure of Purchaser to terminate this as provided in Section 6.01 hereof.

(iii) Purchaser having received all requisite approvals from its Board and from the Avon Lake City Council to consummating the transaction contemplated by this Agreement, which Purchaser shall seek to obtain within the Inspection Period set forth in Section 6.01.

(iv) All obligations of Seller hereunder to be performed at or prior to the Closing Date have been performed as of the Closing Date.

(b) The obligations Seller hereunder are subject to the following conditions, any of which may be waived by Seller in writing or which shall be deemed waived if Seller shall close the sale of the Property without satisfaction of any of the following:

(i) The representations and warranties of Purchaser as set forth in Section 7.03 shall be true and correct in all material respects on the Closing Date;

(ii) All obligations of Purchaser hereunder to be performed at or prior to the Closing Date have been performed as of the Closing Date.



**Section 4.07 Miscellaneous.** Any miscellaneous adjustments payable by either Purchaser or Seller, as the case may be, that occur at the Closing may be paid at the Closing by delivery of personal or business checks. Any errors in calculations or apportionments shall be corrected or adjusted as soon as practicable after the Closing Date. The provisions of this Section 4.06 and Section 4.05 shall survive the Closing.

## **ARTICLE V TITLE MATTERS AND VIOLATIONS**

**Section 5.01 Acceptable Title.** Seller shall convey, and Purchaser shall accept, fee simple title to the Property in accordance with the terms and conditions of this Agreement, and subject to the Permitted Exceptions.

**Section 5.02 Permitted Exceptions.** The Property shall be sold, assigned, and conveyed by Seller to Purchaser, and Purchaser shall accept and assume same, subject to the following matters which shall be considered **Permitted Exceptions** in addition to those matters set forth in Section 5.03(b):

(a) Any and all present and future zoning, building, environmental, and other laws, statutes, ordinances, codes, rules, regulations, requirements, or executive mandates of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any.

(b) Any state of facts that an accurate survey of the Property would disclose.

(c) All future liens for unpaid real estate taxes, assessments, and water and sewer charges that are not due and payable as of the Closing Date, subject to any apportionments as provided for in this Agreement.

(d) Any lien or encumbrance arising out of the acts or omissions of the Purchaser.

(e) The standard conditions and exceptions to title contained in the form of title policy or "marked-up" Title Commitment issued to Purchaser by the Title Insurance Company, except to the extent same are removed by the Title Company prior to Closing based upon an affidavit or affidavits provided by Seller to the Title Company.

(f) The reNRG Option and reNRG Easement.

### **Section 5.03 Title.**

(a) Purchaser shall promptly order a commitment for an ALTA owner's title insurance policy from the Title Insurance Company in the amount of the Purchase Price setting forth the state of title to the Property on or after the date of this Agreement showing Seller as the record owner with Purchaser as the proposed insured, together with true, legible (to the extent available) and all instruments giving rise to any defects or exceptions to title to the Property (collectively, the "**Title Commitment**"), which Title Commitment shall be delivered to counsel for both Purchaser and Seller concurrently. Upon receipt of the Title Commitment, Purchaser shall, at its option, order a survey of the Property certified to Purchaser, and the Title Insurance

Company sufficient to allow the Title Insurance Company to delete the relevant standard exceptions to coverage (the “**Survey**”).

(b) Purchaser or Purchaser's attorney shall deliver to Seller, and Seller's attorney, in writing ("**Title Objection Notice**"), any objections to the exceptions to title and/or survey set forth in the Title Commitment and Survey (collectively, “**Title and Survey Defects**”), by no later than 11:59 pm (Central Time) on the date that is fifteen (15) days after Purchaser's receipt of the Title Commitment and the Survey ("**Title Objection Date**"). The failure by Purchaser, or Purchaser's attorney, to deliver the Title Objection Notice on or before the Title Objection Date shall constitute Purchaser's irrevocable acceptance of the Title Commitment, and Purchaser shall be deemed to have unconditionally waived any right to object to any matters set forth therein. Notwithstanding anything herein to the contrary, Seller shall be required to discharge, at Seller's sole cost and expense, at or prior to the Closing, all mortgages, financing statements and other instruments evidencing or securing the repayment of debt, judgment liens and other liens of a liquidated amount evidencing a monetary obligation (excluding liens for general real estate taxes not due and payable) (all of the foregoing hereinafter collectively referred to as “**Monetary Liens**”). If, after giving the Title Objection Notice to Seller and Seller's attorney, Purchaser receives any amendment or update to the Title Commitment showing any additional title defects which Purchaser claims are not Permitted Exceptions, Purchaser shall give written notice thereof to Seller within five (5) days after the date Purchaser receives such evidence and Purchaser shall be deemed to have unconditionally waived any such matters which it fails to give such notice to Seller within five (5) days after the date Purchaser receives same. Seller may, within fifteen (15) days after receiving said notice from Purchaser, take such steps as are necessary to secure the removal of the Title and Survey Defects (or, if the Title and Survey Defects are not readily curable within said fifteen (15) day period, then Seller may have such additional time as Purchaser may permit in writing, in which case the Closing shall be extended as necessary). In the alternative, Seller may elect not to cure the Title and Survey Defects within the time period specified in the preceding sentence. If Seller elects not to cure the Title and Survey Defects within the specified time period, then Purchaser may elect to terminate this Agreement upon written notice to Seller, in which case the Deposit shall be refunded to Purchaser and neither Purchaser nor Seller shall have any further rights, duties or obligations hereunder (except as to the payment of expenses as set forth herein). Any title encumbrances or exceptions set forth in the Title Commitment, to which Purchaser does not object within the Review Period, and any Title and Survey Defects which Seller elects not to cure and Purchaser accepts, shall be deemed to be permitted exceptions to the status of Seller's title for purposes of this Agreement (the “**Permitted Exceptions**”). Neither Monetary Liens nor any leases shall be Permitted Encumbrances. Each of Purchaser and Seller acknowledges and agrees that **TIME IS OF THE ESSENCE** with respect to all time periods relating to their obligations set forth in this Section 5.03.

(c) Title Insurance. The consummation of the Closing shall be conditioned upon the issuance to Purchaser by the Title Company of an Owner's Policy of Title Insurance (ALTA Form 2006), together with endorsements reasonably requested and paid for by Purchaser (the “**Owner's Policy**”) in the amount of the Purchase Price, insuring good and marketable fee simple title to the Property in Purchaser, with extended coverage over the general exceptions customarily set forth in Schedule B, subject only to the Permitted Exceptions, and containing

endorsements insuring that the legal description contained in the Title Commitment describes the Land and such other matters as may be specified by Purchaser.



**ARTICLE VI  
INSPECTION AND REMEDIATION/REMOVAL.**

**Section 6.01 Inspection Period.** Not later than five (5) business days after the Effective Date, Seller shall provide Purchaser with copies of all drawings, materials, documents, surveys, reports and environmental assessments regarding the Property that are in Seller's possession or that of its agents (if any). During the period commencing on the date of this Agreement and ending 90 days following the Effective Date (the "**Inspection Period**"), Purchaser, its agents, contractors, engineers and surveyors shall have the right at any time and from time to time to enter upon the Property to conduct and make any and all examinations, surveys, inspections and investigations of or concerning the Property, including, without limitation, Phase I environmental site assessments and observation of Seller's Phase II or Phase III environmental work. Seller shall make a knowledgeable representative of Seller available to discuss the Phase I environmental site assessment with Purchaser's environmental consultant. Purchaser shall be responsible for repairing any damages to the Property resulting from Purchaser's inspections and to reimburse Seller for and costs or expenses directly incurred by Seller as a result of Purchaser's exercise of the right of inspection granted under this Section 6.01. Purchaser acknowledges and agrees that any such inspections conducted by Purchaser or Purchaser's agents and representatives shall be solely at the risk of Purchaser. All of the obligations of Purchaser under this Section 6.01 shall survive Closing or the termination of this Agreement. In the event Purchaser shall be dissatisfied with the results of its inspections and investigations of the Property and notifies Seller on or prior to the date of expiration of the Inspection Period, Purchaser shall be entitled to a refund of the Deposit and this Agreement shall be null and void and of no further force effect except for any obligations of Purchaser which survive the Closing or termination of this Agreement. In the event Purchaser shall fail to exercise its right to terminate this Agreement on or prior to the expiration of the Inspection Period, then Purchaser shall be deemed to have waived its right to terminate, shall accept the results of its inspections and investigations of the Property and shall proceed to close the transaction contemplated herein. It is understood and agreed that Purchaser shall attempt in good faith to obtain the approval of its Board and the City of Avon Lake to consummate the purchase of the Property during the Inspection Period and failure to obtain such approvals shall entitle Purchaser to terminate this Agreement as provided in this Section 6.01 by notice to Seller on or prior to expiration of the Inspection Period. Purchaser shall deliver to Seller evidence of the foregoing approvals of its Board and the City of Avon Lake on the Closing Date.

**Section 6.02 Required Remediation and Removal Work.** Attached hereto as Exhibit E is a schedule of required remediation and removal work ("**Required Remediation and Removal Work**") which shall be Seller's responsibility, at its sole cost. Any Required Remediation and Removal Work that has not been completed as of the Closing shall be completed as soon as possible by Seller following the Closing ("**Post Closing Remediation and Removal Work**").

**ARTICLE VII  
REPRESENTATIONS AND WARRANTIES**

**Section 7.01 Seller's Representations and Warranties.** Seller represents and warrants to Purchaser on and as of the date of this Agreement and on and as of the Closing Date as set forth in this Section 7.01:



(a) Seller is a corporation duly formed, validly existing and in good standing under the laws of the State of Wisconsin.

(b) The execution, delivery, and performance of this Agreement by Seller and all agreements, instruments, and documents herein provided to be executed by Seller on the Closing Date: (i) do not violate the formation documents of Seller, or any contract, agreement, commitment, lease, order, judgment, or decree to which Seller is a party; and (ii) have been duly authorized by the consent of the members of Seller and the appropriate and necessary action has been taken by the authorized representatives on the part of Seller. This Agreement is valid and binding upon Seller, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally.

(c) Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code or any regulations promulgated thereunder, as amended.

(d) To Seller's actual knowledge, there is no pending or threatened litigation or condemnation action against the Property or against Seller with respect to the Property as of the date of this Agreement.

(e) Seller has not entered into any service or equipment leasing contracts relating to the Property. There are no contracts or agreements of any kind pertaining to the Property including, without limitation, any of the same in connection with the maintenance, service, ownership and/or operation of the Property which will survive the Closing.

(f) Seller is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(g) Except for this Agreement and the reNRG Option, there is no option to purchase, right of first refusal to purchase or agreement of any kind for the sale and purchase of the Property, or any portion thereof, to any person or entity.

(h) To the best of Seller's knowledge, except as disclosed in environmental reports delivered to Purchaser and the Required Remediation and Removal Work, no leak, spill, discharge, emission or disposal of Hazardous Materials (as such term is hereinafter defined) has occurred on, beneath or about the Property, and the soil, groundwater and soil vapor on or under the Property is free of Hazardous Materials as of the date hereof. Seller has not received any written notice from any governmental agency or any other person or entity advising it that a breach of any Environmental Laws (as such term is hereinafter defined) may have occurred or that Seller may be responsible for any costs, fees, damages or expenses related to a release or disposal of Hazardous Materials on the Property. To the best of Seller's knowledge and except as disclosed in environmental reports delivered to Purchaser and the Required Remediation and

Removal Work, there are no known, nor have there been any Hazardous Materials generated, transported, released, stored, buried or deposited over, beneath, in or on the Property from any source whatsoever, and no leak, spill, discharge, emission or disposal of Hazardous Materials has occurred on the Property. The term “**Hazardous Materials**” as used in this Agreement shall mean “hazardous substances,” “hazardous materials,” “pollutants,” “contaminants,” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*; “hazardous chemicals” as defined under OSHA’s hazard communication standard, 29 C.F.R. Section 1910.1200; and those substances defined as “hazardous wastes” or as “hazardous substances” under the laws of the State of Ohio; and in the regulations adopted, published and/or promulgated pursuant to such laws or in substitution or amendment of such laws, and shall include asbestos and lead. The term “**Environmental Laws**” shall include any federal, state, county or local law, ordinance, statute, rule or regulation relating to the following air; water; the production, storage, labeling or disposition of Hazardous Materials; or the health, safety or environmental condition on, beneath or about the Property.

(i) Intentionally Deleted.

(j) That no labor, materials or services have been furnished by or at the direction of a Seller or Seller’s licensees, employees or agents, on or about the Property, which have not been paid for in full, and no mechanic’s or materialmen’s liens or claims might arise on account thereof. Seller shall pay or perform when due any and all liabilities and obligations of Seller arising out of or in connection with the ownership, operation and maintenance of the Property prior to Closing.

**Section 7.02 Survival.** Seller’s representations, warranties and covenants made in this Agreement shall be remade by Seller as of the Closing and shall survive the Closing for a period of nine (9) months after the Closing. Seller shall deliver to Purchaser all notices and additional information and documentation that Seller hereafter obtains or becomes aware of that would cause any of Seller’s representations contained in this Agreement to be untrue on the Closing Date. Seller hereby agrees to indemnify, defend and hold Purchaser, their successors and assigns, harmless from any and all loss, liability, damage, cost or expense, including reasonable attorneys’ fees and court costs, that Purchaser incurs because of the breach of any of the Seller’s covenants, representations and/or warranties as set forth in this Agreement, including, without limitation, as set forth above in Section 7.01, whether such breach is discovered before or after the Closing. Notwithstanding the foregoing, as used herein, (a) the term “Seller’s knowledge” or “to the best of Seller’s knowledge” or words of similar import and interpretation shall mean and be limited to the actual present knowledge of Scott Reschly or Dan Rogatto with no duty of investigation; and (b) in no event shall Seller’s total liability for any breach of a representation, warranty or covenant exceed in the aggregate Five Hundred Thousand and No/100 Dollars (\$500,000.00).

**Section 7.03 Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller on and as of the date of this Agreement and on and as of the Closing Date as set forth in this Section 7.02.



(a) Purchaser is validly existing and authorized as a governmental entity or department of the City of Avon Lake under the laws of the State of Ohio.

(b) The execution, delivery, and performance of this Agreement by Purchaser and all agreements, instruments, and documents herein provided to be executed by Purchaser on the Closing Date: (i) do not violate the power and authority of Purchaser, or any contract, agreement, commitment, lease, order, judgment, or decree to which Purchaser is a party; and (ii) have been duly authorized by the resolution, ordinance or other official action of the corporate authorities of Purchaser and the appropriate and necessary action has been taken on the part of Purchaser. This Agreement is valid and binding upon Purchaser, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally.

(c) To the best of Purchaser's knowledge, Purchaser has not violated any contract, agreement, or other instrument to which Purchaser is a party nor any judicial order, judgment, or decree to which Purchaser is bound by: (i) entering into this Agreement; (ii) executing any of the documents Purchaser is obligated to execute and deliver on the Closing Date; or (iii) performing any of its duties or obligations under this Agreement or otherwise necessary to consummate the transactions contemplated by this Agreement.

(d) To the best of Purchaser's knowledge, there are no actions, lawsuits, litigation, or proceedings pending or threatened in any court, or before any governmental or regulatory agency that affect Purchaser's power or authority to enter into or perform this Agreement. There are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied of record, or, to the best of Purchaser's knowledge, threatened against Purchaser, which would have any material adverse effect on the business or assets or the condition, financial or otherwise, of Purchaser or the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(e) Except for the express representations and warranties of Seller found in Section 7.01 and the obligations of Seller with respect to the Required Remediation and Removal Work, Purchaser acknowledges that it is acquiring the Property on an "**AS-IS, WHERE IS**" basis, without any representation or warranty of any kind or nature whatsoever, express or implied with respect to the Property or any other matters except as expressly set forth herein, and Purchaser acknowledges that no such representations or warranties have been made except as set forth in writing herein.

Purchaser's representations, warranties and covenants made in this Agreement shall be remade by Purchaser as of the Closing and shall survive the Closing for a period of nine (9) months after the Closing. Purchaser shall deliver to Seller all notices and additional information and documentation that Purchaser hereafter obtains or becomes aware of that would cause any of Purchaser's representations contained in this Agreement to be untrue on the Closing Date. Purchaser shall be liable and responsible for any and all reasonable loss, liability, damage, cost or expense, including reasonable attorneys' fees and court costs, that Seller incurs because of the breach of any of the Purchaser's covenants, representations and/or warranties as set forth in this Agreement, including, without limitation, as set forth above in this Section 7.02, whether such breach is discovered before or after the Closing. Notwithstanding the foregoing, as used herein, the term "Purchaser's knowledge" or "to the best

knowledge” or words of similar import and interpretation shall mean and be limited to the actual present knowledge of Robert Munro.

## **ARTICLE VIII MAINTENANCE AND REPAIRS**

**Section 8.01 Maintenance and Repairs.** Seller shall cause the Property, and the Improvements, to be maintained in substantially the same manner as prior to the date of this Agreement pursuant to Seller's normal course of business.

## **ARTICLE IX RISK OF LOSS**

**Section 9.01 Risk of Loss.** Risk of loss to the Property from fire or other casualty shall be borne by Seller until the Closing, provided that if any part of the Property is substantially damaged or destroyed by fire or other casualty prior to the Closing, Seller shall immediately notify Purchaser of the same in writing and then Purchaser may (a) elect to proceed with this transaction, in which event Purchaser shall be entitled to all insurance proceeds payable to Seller under any and all policies of insurance covering that part of the Property so damaged or destroyed; or (b) elect to rescind this Agreement, in which event both Purchaser and Seller shall be released from all further liability hereunder and the Deposit shall be promptly returned to Purchaser.

## **ARTICLE X NOTICES**

**Section 10.01 Delivery of Notices.** Unless specifically stated otherwise in this Agreement, all notices, demands, requests, consents, approvals, waivers or other communications (for purposes of this Section 10.01 collectively referred to as "Notices") shall be in writing and delivered to Purchaser, Seller or Escrow Agent, at the addresses set forth in Section 10.02 below, by one the following methods:

- (a) overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; or
- (b) certified U.S. mail, postage prepaid, return receipt requested, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service.

**Section 10.02 Parties' Addresses.**

- (a) Unless changed in accordance with Section 10.02(b) of this Agreement, the addresses for all communications and notices shall be as follows:

**If to Seller:**

Name: Avon Lake Environmental Redevelopment Group

Address: 12601 Plantside  
Louisville, KY 40299

Attention: Matthew Sutton  
Email: msutton@charah.com

**With a copy to:**

Name: Rimôn, P.C.  
Address: 980 N. Michigan Ave., Suite 1400.  
Chicago, Illinois 60611  
Attention: Robert H. Goldman, Esq.  
Email: Robert.goldman@rimonlaw.com

**If to Purchaser:**

Name: Avon Lake Regional Water  
Address: 201 Miller Road  
Avon Lake, Ohio 44012  
Attention: Robert Munro  
Email: rmunro@avonlakewater.org

**With a copy to:**

Name: Seeley, Savidge, Ebert & Gourash Co., LPA  
Address: 26600 Detroit Road, Suite 300  
Westlake, Ohio 44145  
Attention: Gary A. Ebert, Esq. and Connie S. Carr, Esq.  
Emails: [gaebert@sseg-law.com](mailto:gaebert@sseg-law.com) and [ccarr@sseg-law.com](mailto:ccarr@sseg-law.com)

**If to Escrow Agent:**

Name: Erie Commercial Title  
Address: 868 Corporate Way  
Westlake, Ohio 44145  
Attention: Jackie Shear  
Email: jacquelineshear@ecommtitle.com

(b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.



(c) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

## **ARTICLE XI REMEDIES**

### **Section 11.01 Remedies.**

(a) If Purchaser shall default in the observance or performance of Purchaser's obligations under this Agreement and Seller is ready, willing, and able to close in accordance with the terms, provisions, and conditions of this Agreement and the Closing does not occur as a result thereof and such failure continues for ten (10) days after receipt of written notice of such default from Seller (a "**Purchaser Default**"), Seller's sole and exclusive remedy shall be to retain the Deposit plus any accrued interest thereon, if any, as and for full and complete liquidated and agreed damages for Purchaser's Default, and the parties shall be released from further liability to each other hereunder, except for those obligations and liabilities that are expressly stated to survive termination of this Agreement. SELLER AND PURCHASER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER UPON A PURCHASER DEFAULT AND THAT THE DEPOSIT AND ANY INTEREST EARNED THEREON, AS THE CASE MAY BE, REPRESENTS A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER UPON A PURCHASER DEFAULT. SUCH LIQUIDATED AND AGREED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF APPLICABLE LAW.

(b) If Seller shall default in the observance or performance of any of the terms of this Agreement, and Purchaser is ready, willing, and able to close in accordance with the terms, provisions, and conditions of this Agreement and the Closing does not occur as a result thereof, and such failure continues for ten (10) days after receipt of written notice of such default from Purchaser, Purchaser shall thereafter have the right to either: (i) enforce specific performance of Seller's obligations under this Agreement, or (ii) receive the Deposit plus any accrued interest thereon. Without in any way limiting the generality of the foregoing, the parties acknowledge and agree that should Seller fail to convey the Property to Purchaser, Purchaser will be irreparably injured and that money damages will be inadequate to fully remedy such injury, and consequently, Purchaser shall be entitled to preliminary and/or permanent orders: (a) restraining and enjoining any act which constitutes a breach of this Agreement; or (b) compelling the specific performance of Seller's obligations under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Seller be liable to Purchaser for any damages of any kind whatsoever. Purchaser waives all rights to specific performance or injunctive relief or other relief to cause Seller to perform its obligations under this Agreement.

(c) The provisions of this Article shall survive the Closing or termination of this Agreement.

## **ARTICLE XII ESCROW**

**Section 12.01 Escrow Terms.** Escrow Agent shall hold and disburse the Deposit in accordance with the following provisions:

(a) Escrow Agent shall have the right, but not the obligation, to invest the Deposit in savings accounts, treasury bills, certificates of deposits, and/or in other money market instruments approved by Seller, or in funds investing in any of the foregoing, and shall not be liable for any losses suffered in connection with any such investment.

(b) If the Closing occurs, then Escrow Agent shall deliver the Deposit to Seller via a wire transfer in accordance with the procedure set forth in Section 3.01(b) above.

(c) If for any reason the Closing does not occur and either party makes a written demand upon Escrow Agent for payment of the Deposit, Escrow Agent shall give written notice to the other party of such demand. If Escrow Agent does not receive a written objection from the other party to the proposed payment within five (5) days after the giving of such notice, Escrow Agent is hereby authorized to make such payment. If Escrow Agent does receive such written objection within such five (5) day period or if for any other reason Escrow Agent in good faith shall elect not to make such payment, Escrow Agent shall continue to hold such amount until otherwise directed by written instructions from the parties to this Agreement or a final judgment in court.

**Section 12.02 Escrow Agent's Duties and Responsibilities.**

(a) Escrow Agent has signed this Agreement for the sole purpose of agreeing to act as Escrow Agent in accordance with this Article. Escrow Agent shall have no duties or responsibilities except those set forth in this Agreement and Seller and Purchaser agree and acknowledge that Escrow Agent shall act hereunder as a depository only.

(b) Escrow Agent shall be protected in relying upon the accuracy, acting in reliance upon the contents, and assuming the genuineness of any notice, demand, certificate, signature, instrument, or other document that is given to Escrow Agent without verifying the truth or accuracy of any such notice, demand, certificate, signature, instrument, or other document.

(c) The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the duties of the Escrow Agent hereunder are purely ministerial in nature and shall be expressly limited to the safekeeping and disposition of the Deposit in accordance with the provisions of this Agreement. Escrow Agent shall not be liable for any action taken or omitted by Escrow Agent in good faith and believed by Escrow Agent to be authorized or within its rights or powers conferred upon it by this Agreement, except for any damage caused by Escrow Agent's own gross negligence or willful default. Escrow Agent shall not have any liability or obligation for loss of all or any portion of the Deposit by reason of the insolvency or failure of the institution of depository with whom the escrow account is maintained. Upon the disbursement of the Deposit in accordance with this Agreement, Escrow Agent shall be relieved and released from any liability under this Agreement, except in connection with Escrow Agent's gross negligence or willful misconduct.



(d) In the event that a dispute shall arise in connection with this Agreement, or as to the rights of the parties in and to, or the disposition of, the Deposit, Escrow Agent shall have the right to: (i) hold and retain all or any part of the Deposit until such dispute is settled or finally determined by litigation, arbitration, or otherwise; (ii) deposit the Deposit in an appropriate court of law, following which Escrow Agent shall thereby and thereafter be relieved and released from any liability or obligation under this Agreement; (iii) institute an action in interpleader or other similar action permitted by stakeholders in Ohio; or (iv) interplead any of the parties in any action or proceeding which may be brought to determine the rights of the parties to all or any part of the Deposit.

(e) Escrow Agent has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this Agreement.

**Section 12.03 Survival.** This Article shall survive the Closing or the termination of this Agreement.

### ARTICLE XIII CONFIDENTIALITY

**Section 13.01 Confidential Information.** Each party acknowledges that in the course of conducting due diligence or otherwise performing under this Agreement, it may learn confidential or proprietary information concerning the other party or third parties to whom the other party has an obligation of confidentiality. Each party shall protect and shall not disclose the other's proprietary information, including but not limited to, all nonpublic information regarding the Property and other party or a third party to whom the disclosing party has an obligation of confidentiality ("Confidential Information"). Notwithstanding anything to the contrary herein, Seller understands that Purchaser is required (subject to certain exceptions) under Ohio Sunshine Laws and other governmental transparency laws to conduct the public business of Purchaser in an open and transparent fashion. To the extent the terms and conditions set forth in this Article XIII conflicts with such requirements, Seller understands Purchaser must adhere to these laws whether or not the adherence would result in disclosure.

### ARTICLE XIV BROKERS

**Section 14.01 Brokers.** Purchaser and Seller each represent and warrant to each other that they dealt with no broker in connection with, nor has any broker had any part in bringing about, this transaction other than Avison Young which shall be paid by Seller. Seller and Purchaser shall each indemnify, defend, and hold harmless the other from and against any claim of any other broker or other person for any brokerage commissions, finder's fees, or other compensation in connection with this transaction if such claim is based in whole or in part by, through or on account of, any acts of the indemnifying party or its agents, employees, or representatives and from all reasonable losses, liabilities, costs, and expenses in connection with such claim, including without limitation, reasonable attorneys' fees, court costs, and interest.

**Section 14.02 Survival.** The provisions of this Article XIII shall survive the Closing, or the termination of this Agreement prior to the Closing.



## ARTICLE XV MISCELLANEOUS

**Section 15.01 Governing Law; Venue.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Ohio. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction and the provision that is prohibited or unenforceable shall be reformed or modified to reflect the parties' intent to the maximum extent permitted by applicable legal requirements. Venue for any dispute between the parties over or arising out of the terms of this Agreement will be the state or federal courts located in or serving Lorain County, Ohio.

**Section 15.02 Merger; No Representations.** This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. This Agreement is entered into after full investigation, no party relying upon any statement or representation, not set forth in this Agreement, made by any other party.

**Section 15.03 No Merger.** Except as otherwise expressly set forth in this Agreement (including the survival periods set forth in Section 7) all warranties, representations, obligations, covenants and agreements contained herein shall survive the Closing in accordance with the terms and conditions set forth herein, and shall not be merged with any instruments delivered by Seller to Purchaser at the Closing.

### **Section 15.04 Limitation of Liability.**

(a) No representative, officer, member, director, shareholder, agent or employee of Seller, nor any Seller Related Party, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement or any amendment or amendments to any of the foregoing made at any time or times, heretofore and hereafter, and Purchaser and its successors and assigns and, without limitation all other persons and entities, shall look solely to Seller's assets for the payment of any claim or for any performance and Purchaser, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

(b) No officials, officials, trustees, officers, agents or employees of Purchaser, nor any Purchaser Related Party shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Seller and its successors and assigns and, without limitations, all other persons and entities, shall look solely to Purchaser's assets for the payment of any claim or for any performance, and Seller, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

**Section 15.05 Business Days.** Whenever any action must be taken (including the giving of notices) under this Agreement during a certain time period (or by a particular date) that ends or occurs

on a nonbusiness day, then such period (or date) shall be extended until the next succeeding business day. As used herein, the term "business day" shall mean any day other than a Saturday, a Sunday, or a legal holiday on which national banks are not open for general business in the State of Ohio.

**Section 15.06 Modifications and Amendments.** This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate, or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Purchaser.

**Section 15.07 No Recording.** Neither this Agreement, nor any memorandum of this Agreement, shall be recorded. The recording of this Agreement, or any memorandum of this Agreement, by Purchaser shall constitute a material default and shall entitle Seller to retain the Deposit and any interest earned thereon.

**Section 15.08 Successors and Assigns; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Purchaser may not assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Notwithstanding the foregoing, Purchaser may assign this Agreement at any time prior to the Closing to an entity owned or controlled by Purchaser; provided, however, that no such assignment shall relieve Purchaser of its obligations hereunder. Notwithstanding the foregoing, Purchaser's assignment of its rights and obligations pursuant to this Agreement shall have no effect on the Deposit, which shall remain in escrow in accordance with Section 3.01. Seller may not assign this Agreement, and any attempt to do so shall be null and void. Any purported assignment without Seller's consent shall be void and of no force or effect. Any change in control of Purchaser or of any of the direct or indirect ownership interests in Purchaser, at any level or tier of ownership, whether in one transaction or a series of transactions, shall constitute an assignment for purposes of this Section 15.08.

**Section 15.09 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect, invalidate or render unenforceable any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, 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 a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

**Section 15.10 Further Assurances.** Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances, and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in Ohio and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

**Section 15.11 Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.



**Section 15.12 Time Is of the Essence.** The parties hereto acknowledge and agree that TIME IS OF THE ESSENCE for the performance of all actions (including, without limitation, the giving of notices, the delivery of documents and the funding of money) required or permitted to be taken under this Agreement. Both parties agree to perform all obligations set forth in the Agreement in accordance with the schedules and deadlines set forth herein. Whenever action must be taken (including, without limitation, the giving of notice, the delivery of documents or the funding of money) under this Agreement, prior to the expiration of, by no later than or on a particular date, unless otherwise expressly provided in this Agreement, such action must be completed by 11:59 pm (Central Time) on such date, provided that such action must be completed by 11:59 pm (Central Time) with respect to the payment of the balance of the Purchase Price and other payments by Purchaser on the Closing Date. However, notwithstanding anything to the contrary herein, whenever action must be taken (including, without limitation, the giving of Notice, the delivery of documents or the funding of money) under this Agreement prior to the expiration of, by no later than or on a particular date that is not a business day, then such date shall be extended until the immediately following business day.

**Section 15.13 Headings.** The captions or paragraph titles contained in this Agreement are for convenience and reference only and shall not be deemed a part of the text of this Agreement.

**Section 15.14 No Waivers.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party providing the waiver. No waiver by either party of any failure or refusal to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

**Section 15.15 No Offer.** This Agreement shall not be deemed an offer or binding upon Seller or Purchaser until this Agreement is fully executed and delivered by Seller and Purchaser.

**Section 15.16 Waiver of Jury Trial.** SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY SUCH PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

**Section 15.17 Parties Bound.** This Agreement shall inure to the benefit of and bind the parties hereto and their respective successors and permitted assigns. No provision of this Agreement is intended or shall be construed to confer upon any entity or person other than the parties hereto and their respective successors and permitted assigns any right, remedy or claim under or by reason of this Agreement or any part hereof.

**Section 15.18 Electronic Execution.** For purposes of executing this Agreement, a document signed and transmitted by electronic transmission shall be treated as an original document. The signature of any party thereon shall be considered an original signature and the document transmitted shall be considered to have the binding legal effect as if it were originally signed. At the request of either party, any document sent by electronic communication shall be re-executed in original form. No party hereto may raise the use of electronic communication, or the fact that any signature was transmitted through the use of electronic communication as a defense to the enforcement of this Agreement or any amendment executed in compliance with this section.

[SIGNATURE PAGE FOLLOWS]


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written.

**PURCHASER:**  
BOARD OF UTILITIES d/b/a AVON LAKE  
REGIONAL WATER

By: 

Name: Robert K. Munro  
Title: Chief Utilities Executive

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
Director of Law  
City of Avon Lake, Ohio

CITY OF AVON LAKE, OHIO

By: 

Name: MARK A. SPATZEL  
Title: MAYOR

**CERTIFICATE OF THE DIRECTOR OF  
FINANCE**

I hereby certify that the amount required to meet the Purchaser's obligations under this Agreement has been lawfully appropriated and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance.

  
\_\_\_\_\_  
Director of Finance

**SELLER:**  
AVON LAKE ENVIRONMENTAL  
REDEVELOPMENT GROUP LLC  
By: CHARAH LLC, Its Manager

By: 

Name: Steve Brehm  
Title: Vice President of Legal Affairs

**ESCROW AGENT:**

Erie Commercial Title

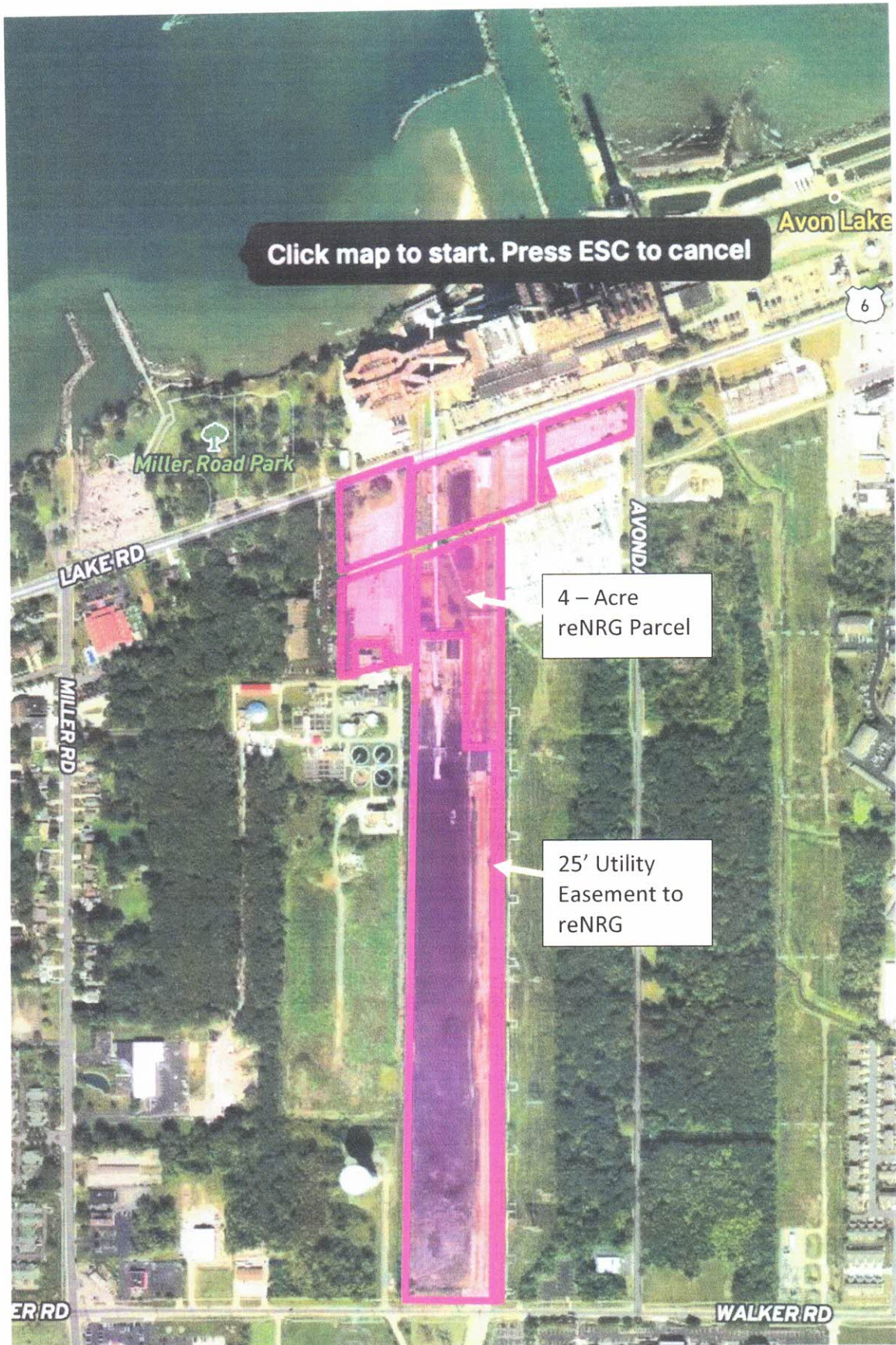
By: \_\_\_\_\_

Jacqueline Shear

Commercial Escrow Officer

**EXHIBITS A AND B**  
**PLAT AND LEGAL DESCRIPTION**





Click map to start. Press ESC to cancel

Avon Lake

Miller Road Park

LAKE RD

MILLER RD

AVONDA

4 - Acre  
reNRG Parcel

25' Utility  
Easement to  
reNRG

ER RD

WALKER RD



Parcel 1:

Situated in the City of Avon Lake, County of Lorain, State of Ohio and known as being part of the lands conveyed to Orion Power Midwest, L.P. in Instrument No. 20000683049 of Lorain County Recorder's Records dated 5/05/00 being part of Section Number 6 in the City of Avon Lake, Township of Avon Lake, formerly a part of Avon Township, further bounded and described as follows:

Beginning at the intersection of the centerline of Lake Road (variable width) and the centerline of Shields Road (30 feet wide), said point being witnessed by a 5/8" rebar with cap stamped "Cinni & Lynn 7394" found South 26 degrees 56 minutes 20 seconds East, 30.49 feet and the principal place of beginning of the parcel described herein;

Thence South 2 degrees 31 minutes 42 seconds West, 800.88 feet along the centerline of said Shields Road to a 5/8" rebar with cap stamped "Cunningham-5274" set;

Thence North 86 degrees 40 minutes 45 seconds West, 32.00 feet to a 5/8" rebar with cap stamped "Cunningham-5274" set;

Thence North 3 degrees 19 minutes 15 seconds East, 16.83 feet to a 5/8" rebar with cap stamped "Cunningham-5274" set;

Thence North 86 degrees 40 minutes 45 seconds West, 57.50 feet to a 5/8" rebar with cap stamped "Cunningham-5274" set;

Thence North 3 degrees 19 minutes 15 seconds East, 50.61 feet to a 5/8" rebar with cap stamped "Cunningham-5274" set;

Thence North 86 degrees 40 minutes 45 seconds West, 117.52 feet to a 5/8" rebar with cap stamped "Cunningham-5274" set;

Thence South 2 degrees 31 minutes 39 seconds West, 127.61 feet to a 5/8" rebar with cap stamped "Cunningham-5274" set in the North line of land conveyed to the Village of Avon Lake on Volume 434, Page 278 of Lorain County Recorder's Records dated 2/14/28;

Thence North 86 degrees 40 minutes 45 seconds West, 56.95 feet along the North line of said land conveyed to the Village of Avon Lake to a 5/8" rebar with cap stamped "Cinni & Lynn 7394" found at the Southeast corner of land conveyed to Avon Lake Associates in Volume 1270, page 169 of Lorain County Recorder's Records;

Thence North 01 degrees 45 minutes 07 seconds East, 763.42 feet along the East line of said land conveyed to Avon Lake Associates to the Northeast corner thereof being in the centerline of said Lake Road;

Thence North 73 degrees 32 minutes 32 seconds East, 289.08 feet along the centerline of said Lake Road to the principal place of beginning and containing therein 4.5177 acres of land as surveyed in December, 2008 by Robert A. Damon, Registered Surveyor No. 6083

Bearings are to an assumed meridian and are used to denote angles only.

EXCEPTING THEREFROM a parcel of land owned by the City of Avon Lake described as follow and also known as Electric Boulevard;



Beginning at a 5/8" rebar with cap stamped "Cinni & Lynn 7394" found at the Southeast corner of land conveyed to Avon Lake Associates in Volume 1270, Page 169 of Lorain County Recorder's Records;

Thence North 01 degrees 45 minutes 07 seconds East, 376.77 feet along the East of said land conveyed to Avon Lake Associates to the principal place of beginning on the parcel described herein witnessed by a 5/8" rebar with "Cinni & Lynn 7394" found 0.05 feet West;

Thence North 01 degrees 45 minutes 07 seconds East, 42.26 feet along the East line of said land conveyed to Avon Lake Associates to a point witnessed by a 5/8" rebar with "Cinni & Lynn 7394" found 0.06 feet South;

Thence North 72 degrees 55 minutes 08 seconds East, 285.23 feet to a point in the centerline of Shields Road (30 feet wide) witnessed by a 5/8" rebar with "Cinni & Lynn 7394" found 0.02 feet West;

Thence South 2 degrees 31 minutes 42 seconds West, 42.46 feet along the centerline of said Shields Road to a point witnessed by a 5/8" rebar with "Cinni & Lynn 7394" found 0.08 feet South and 0.10 feet West;

Thence South 72 degrees 55 minutes 08 seconds West, 284.62 feet to the principal place of beginning and containing therein 0.2616 acres of land as surveyed in December 2008 by Robert A. Damon, Registered Surveyor No. 6083.

Bearings are to be assumed meridian and arc used to denote angles only.

Said parcel contains 4.2561 net acres of land.

Parcel No. 0400006111014

#### Parcel 2:

Situated in the City of Avon Lake, County of Lorain and State of Ohio and known as being a part of Section Number 6 in the City of Avon Lake, Township of Avon Lake, formerly a part of Avon Township and further bounded and described as follows:

Beginning at an iron pin monument at the centerline of intersection of Walker Road (86 feet wide) and Miller Road (60 feet wide);

Thence South 88 degrees 12 minutes 07 seconds East along the centerline of said Walker Road, a distance of 805.79 feet to a PK nail found 0.16 feet South at an angle point;

Thence South 87 degrees 13 minutes 08 seconds East along the centerline of said Walker Road, a distance of 894.05 feet to a point, said point being North 87 degrees 13 minutes 08 seconds West along the centerline of said Walker Road, a distance of 2301.30 feet from an iron pin monument found at the centerline intersection of Moore Road (60 feet wide);

Thence North 02 degrees 16 minutes 36 seconds East a distance of 43.00 feet to an iron pin set on the Northerly line of said Walker Road and the Southwest corner of lands conveyed to the Cleveland Electric Illuminating Company as recorded in Volume 958, Page 839 of the Lorain County Records, said point also being the Principal Place of Beginning for the parcel of land described herein;

Thence North 87 degrees 13 minutes 08 seconds West along the Northerly line of said Walker Road, a distance of 373.24 feet to an iron pin set on the Easterly line of Shields Road (30 feet wide);

Thence North 02 degrees 26 minutes 22 seconds East along the Easterly line of said Shields Road, a distance of 629.66 feet to an iron pin set;

Thence North 87 degrees 03 minutes 38 seconds West a distance of 15.00 feet to a point on the centerline of said Shields Road;

Thence North 02 degrees 26 minutes 22 seconds East along the centerline of said Shields Road, a distance of 913.45 feet to a point;

Thence South 87 degrees 03 minutes 38 seconds East a distance of 15.00 feet to an iron pin set on the Easterly line of said Shields Road;

Thence North 02 degrees 26 minutes 22 seconds East along the Easterly line of said Shields Road, a distance of 124.25 feet to an iron pin set at an angle point;

Thence North 02 degrees 31 minutes 42 seconds East continuing along the Easterly line of said Shields Road, a distance of 1306.27 feet to a point on the Southerly line of lands conveyed to the City of Avon Lake as recorded in Volume 394, Page 433 of the Lorain County records;

Thence North 72 degrees 55 minutes 22 seconds East along the Southerly line of said City of Avon Lake lands a distance of 385.44 feet to an iron pin set;

Thence South 02 degrees 20 minutes 23 seconds West a distance of 816.75 feet to an iron pin set on the Northerly line of Durrell Avenue (50 feet wide);

Thence South 02 degrees 16 minutes 36 seconds West along the Westerly line of lands owned by the Cleveland Electric Illuminating Company (PPN 04-00-006-123-031 and 04-00-006-129-033) a distance of 2287.89 feet to the Principal Place of Beginning for the parcel of land described herein, containing 26.0276 acres as surveyed by Joseph R. Ciuni, Registered Surveyor Number 7394, dated March 20, 2000.

Parcel No. 400006115019



Parcel No. 2 (Coal Storage Yard)

Situated in the City of Avon Lake, County of Lorain and State of Ohio and known as being a part of Section Number 6 in the City of Avon Lake, Township of Avon Lake, formerly a part of Avon Township and further bounded and described as follows:

Beginning at an iron pin monument at the centerline of intersection of Walker Road (86 feet wide) and Miller Road (60 feet wide);

Thence South 88 degrees 12 minutes 07 seconds East along the centerline of said Walker Road, a distance of 805.79 feet to a PK nail found 0.16 feet South at an angle point.

Thence South 87 degrees 13 minutes 08 seconds East along the centerline of said Walker Road, a distance of 894.05 feet to a point, said point being North 87 degrees 13 minutes 08 seconds West along the centerline of said Walker Road, distance of 2301.30 feet from an iron pin monument found at the centerline intersection of Moore Road (60 feet wide);

Thence North 02 degrees 16 minutes 36 seconds East a distance of 43.00 feet to an iron pin set on the Northerly line of said Walker Road and the Southwest corner of lands conveyed to the Cleveland Electric Illuminating Company as recorded in Volume 958, Page 839 of the Lorain County Records;

Thence North 87 degrees 13 minutes 08 seconds West along the Northerly line of said Walker Road, a distance of 373.24 feet to an iron pin set on the Easterly line of Shields Road (30 feet wide);

Thence North 02 degrees 26 minutes 22 seconds East along the Easterly line of said Shield Road, a distance of 629.66 feet to an iron pin set;

Thence North 87 degrees 03 minutes 38 seconds West a distance of 15.00 feet to a point on the centerline of said Shields Road;

Thence North 02 degrees 26 minutes 22 seconds East along the centerline of said Shields Road, a distance of 913.45 feet to a point;

Thence South 87 degrees 03 minutes 38 seconds East a distance of 15.00 feet to an iron pin set on the Easterly line of said Shields Road;

Thence North 02 degrees 26 minutes 22 seconds East along the East right of way of said Shields Road a distance of 124.25 feet to an iron pin set at an angle point in said right of way;

Thence North 02 degrees 31 minutes 42 seconds East along the Easterly line of said Shields Road, a distance of 1306.27 feet to a point on the Southerly line of the lands conveyed to the City of Avon Lake as recorded in Volume 394, Page 433 of the Lorain County Records;

Thence North 02 degrees 31 minutes 42 seconds East along the Easterly line of said Shields Road a distance of 42.53 feet to a point on the Northerly line of said City of Avon Lake lands and to the Principal Place of Beginning for the parcel of land described herein;

Thence North 02 degrees 31 minutes 42 seconds East a distance of 342.52 feet to a point on the centerline of Lake Road (60 feet wide) passing over an iron pin set on the Southerly line of said Lake Road a distance of 310.85 feet;

*A.P.*

Thence North 73 degrees 51 minutes 32 seconds East along the centerline of said Lake Road a distance of 382.08 feet to a point;

Thence South 02 degrees 21 minutes 22 seconds West a distance of 31.63 feet to a drill hole set on the Southerly line of said Lake Road;

Thence North 73 degrees 51 minutes 32 seconds East along the Southerly line of said Lake Road a distance of 544.61 feet to a drill hole set on the Westerly line of Avondale Avenue (60 feet wide);

Thence South 02 degrees 19 minutes 32 seconds West along the Westerly line of said Avondale Avenue a distance of 127.78 feet to a drill hole set;

Thence South 72 degrees 48 minutes 00 seconds West a distance of 383.10 feet to an iron pin set;

Thence South 17 degrees 31 minutes 45 seconds East a distance of 156.35 feet to an iron pin set on the Northerly line of said City of Avon Lake lands;

Thence South 72 degrees 55 minutes 22 seconds West along the Northerly line of said City of Avon Lake a distance of 606.65 feet to the Principal Place of Beginning for the parcel of land described herein, containing 5.0939 acres as surveyed by Joseph R. Ciuni, Registered Surveyor Number 7394, dated March 20, 2000.

EXHIBIT C

reNRG Property

SHOWN ON EXHIBIT A



**EXHIBIT D**

**DEED**

**LIMITED WARRANTY DEED**

\_\_\_\_\_ (“Grantor”),  
for One Dollar and other valuable consideration (\$1.00 and O.V.C.) paid, grant(s), with limited warranty  
covenants, to \_\_\_\_\_ (“Grantee”), whose tax-mailing address is \_\_\_\_\_, the  
following described real property:

**See Exhibit A, attached hereto and incorporated by reference herein.**

Commonly known as:

Parcel Nos.:

Prior Instrument Reference: Vol. \_\_\_\_\_, page \_\_\_\_\_ of Lorain County, Ohio records.

Subject to (i) taxes and assessments, both general and special, which are not yet due and payable; (ii) restrictions, covenants, easements and reservations set forth on Exhibit B attached hereto and incorporated by reference herein; and (iii) all legal highways.

TO HAVE AND TO HOLD the above granted and bargained Premises unto the said Grantee, its successors and assigns, forever.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

GRANTOR:

[GRANTOR NAME], a[n] [STATE OF ORGANIZATION] [ENTITY TYPE]

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

Name:

Title:

STATE OF OHIO )  
COUNTY OF [COUNTY NAME] )

ss.

The foregoing instrument was acknowledged before me this [DAY] day of [MONTH], [YEAR], by [OFFICER OR AGENT NAME], [OFFICER OR AGENT TITLE] of [ENTITY NAME], a[n] [STATE OF ORGANIZATION] [ENTITY TYPE], on behalf of the [ENTITY TYPE].

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

Notary Expiration: \_\_\_\_\_

This instrument prepared by:  
[PREPARER NAME]  
[ADDRESS]  
[CITY], [STATE] [ZIP CODE]

**EXHIBIT E**

**REQUIRED REMEDIATION AND REMOVAL WORK**

	<b>PRE_CLOSING Task/Activity</b>	<b>Description</b>	<b>Timeline</b>
A1	Demolish Coal Yard WWTP building, and related above-grade structures on former coal pile run-off pond. Backfill to grade with on-site surplus ballast stone. Ballast stone shall be analyzed for full Ohio VAP parameters list using NELAP accredited laboratory and shall meet direct contact industrial/commercial standards in the upper 2 ft. of surface fill.	Demolition	Completion expected prior to Day 45 of 90 day inspection period.
A2	Conduct two (2) Phase II subsurface borings after treatment plant demolition to assess environmental conditions under/adjacent to Former WWTP.	4 soil samples at 2 depths in each boring for full Ohio VAP parameters list using NELAP accredited laboratory. These additional borings supplement completed boring/MW designated as H2.	Completion expected prior to Day 90 inspection period.
A3	Removal/disposal of concrete-stained fuel storage pads	2 small concrete storage pads have residual staining that cannot be practicably removed and will be hauled to a local licensed landfill. Sub-soils beneath the concrete pads will be sampled and analyzed for the Ohio VAP parameter list by a NELAP accredited lab.	
	<b>POST-CLOSING Task/Activity</b>	<b>Description</b>	<b>Timeline</b>



B1	Placement of Clean Hard Fill into subsurface cavities of coal dumper and coal crusher structures.	For a period until power plant demolition is completed, if approved by Purchaser, Seller will place any surplus 12-inch minus material that meets the definition of clean hard fill into cavity openings. Such activity shall be coordinated with Purchaser and is intended to benefit redevelopment of former power plant properties north and south of Lake Ave. For avoidance of doubt, the Seller as part of this sale is not obligated to place any material in the cavities and Purchaser has assume that responsibility.	As permitted by Purchaser.
B2	Attainment of Ohio EPA NFA/CNS by Purchaser	Seller will release any additional environmental data not available during 90 day inspection period to Purchaser for Purchaser to conduct additional as needed work toward attainment of NFA/CNS.	At closing