

From: Julie Orchard
To: Livingston, Merilee
Date: 4/22/2009 4:38 PM
Subject: Fwd: FW: Utah PSC
Attachments: HildalePSA 20Apr09 MA.doc; AZ CNN ROO Recommended Order.pdf

I don't remember the previous filing, do you? Did you open a file on this topic? JPO

>>> "Mike Avant" <mavant@garkaneenergy.com> 4/22/2009 11:22 AM >>>

Julie Orchard, on 3 March 2009, Carl Albrecht sent a letter to the Commission informing them that Garkane Energy was working with the Town of Colorado City, Arizona; the Town of Hildale, Utah; and Wells Fargo Bank (as trustees for the bond holders) to acquire the Twin Cities Municipal Power System. Carl Albrecht has asked that I send you a copy of the Purchase Sale Agreement between Garkane, Hildale, Colorado City, and Wells Fargo Bank. I am also enclosing a copy of the Recommended Opinion and Order from the Arizona Corporation Commission. Garkane will be applying the same rates in Hildale, Utah as are used in Colorado City, Utah. They are scheduled to take final action of the application in Arizona on the 28th of April. The closing for this transaction is scheduled for the 14th of May 2009, with Garkane assuming service to the area on or about the 27th of May.

Thanks,

Mike Avant
 Engineering Manager
 Garkane Energy
mavant@garkaneenergy.com

Phone: 435-644-5026

From: Carl Albrecht [<mailto:calbrecht@garkaneenergy.com>]
Sent: Wednesday, April 22, 2009 10:38 AM
To: 'Mike Avant'
Cc: 'Stan Chappell'
Subject: Utah PSC

When I sent them the letter a couple of months ago, I told them we would file further info. later. I talked to Marlin Burrow of the Division this morning. He suggested filing the PSA and the Arizona Draft Order with Julie Orchard the PSC Secretary today. It will get referred to the Division and they will take a cursory review. Nothing to hold us up on closing. Just a heads up. Please email those two documents to jorchard@utah.gov with a small explanatory letter. I'm busy now with the Board Pres. prior to our meeting today. Thanks.

Carl R. Albrecht, CEO
 Garkane Energy Cooperative, Inc.
 (800) 747-5403

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1634001

**AGREEMENT FOR PURCHASE AND SALE
OF MUNICIPAL ELECTRICITY DISTRIBUTION SYSTEMS**

And Associated Facilities

Among

HILDALE CITY, UTAH dba Twin City Power

and

COLORADO CITY, ARIZONA

As Sellers

AND

GARKANE ENERGY COOPERATIVE, INC.

As Buyer

Dated: May [___], 2009

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Exhibit B. 69 kV Right-of-Way
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Exhibit E. Form of Bill of Sale
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Exhibit G. Assignment of Right-of-Way/Transmission Line Conveyance
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Exhibit L. Post Closing Transmission Documents

**AGREEMENT FOR PURCHASE AND SALE
OF MUNICIPAL ELECTRICITY DISTRIBUTION SYSTEMS
And Associated Facilities**

THIS AGREEMENT FOR PURCHASE AND SALE OF MUNICIPAL ELECTRICITY DISTRIBUTION SYSTEMS AND ASSOCIATED FACILITIES (this “Agreement”) is made and entered into as of the [] day of May, 2009 among HILDALE CITY, UTAH, a municipal corporation organized and existing under the laws of the State of Utah (“Hildale”), COLORADO CITY, ARIZONA, a municipal corporation organized and existing under the laws of Arizona (“Colorado City”), (as used herein each of Hildale, and Colorado City is referred to individually as a “Seller” and collectively as “Sellers”), and GARKANE ENERGY COOPERATIVE, INC., a Utah non-profit corporation (“Buyer”).

A. Hildale, either in its own name and/or by and through one or more intermediaries and/or in one or more other names, including TWIN CITY POWER, a Utah DBA, as well as Colorado City each owns an electric distribution system for delivery of electric power and energy to certain residents within its City limits (as more fully described in the words and the drawings attached hereto as Exhibit A), together with certain rights-of-way, transmission and transformation facilities, including a 69 kV transmission line (the “Hildale System” and the “Colorado City System” respectively, and collectively the “Systems”).

B. Buyer desires to purchase from Sellers, and Sellers desire to sell to Buyer, the Systems together with related assets upon the terms and subject to the conditions of this Agreement.

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

**ARTICLE 1.
DEFINITIONS**

1.1 Certain Defined Terms. For purposes of this Agreement, the following terms shall have the following meanings:

(a) “69 kV Right-of-Way” shall mean that certain easement and right-of-way more particularly described in Exhibit B hereto, including without limitation permits and/or rights-of-way granted by the Bureau of Land Management, Utah Department of Transportation, and/or Utah State School and Institutional Trust Lands Administration.

(b) “69 kV Transmission Line” shall mean and include all transmission line facilities (including all easements) from and including the interconnect point at the Clifton Wilson Substation located in Hurricane, Utah to the Twin Cities Substation located in Hildale, Utah.

(c) “Affiliate” of a specified Person shall mean any corporation, partnership, sole proprietorship or other Person which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the Person specified, with “control” meaning the ability to direct or cause the direction of the management and policies of a Person.

(d) “Authorized Officer” shall mean, as to Buyer, Buyer’s chief executive officer, president, chief financial officer or treasurer, in each case, acting in his or her capacity as such, and as to Seller, the Mayor of Seller.

(e) “Bondholders” shall mean and include all holders of any of the System Indebtedness, any general creditors of either Seller, and/or any person with any legal or equitable interest in and to [describe bonds].

(f) “Business Day” shall mean any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in the State of Utah are authorized by law or governmental action to close.

(g) “Distribution ROW’s” shall mean all rights, privileges, property or other interests in any real property granted to either Seller or otherwise owned by any Seller, for easements, rights-of-way, licenses, permitted uses, or fee title used or useful for the current or future operation and/or maintenance of the System. Notwithstanding the foregoing, the Distribution ROW’s shall not include any obligation, undertaking, or liability of either Seller pursuant to any agreement, document, conveyance, understanding or arrangement to or for the benefit of any grantor, customer, property owner or other Person except and solely to the extent that Buyer agrees, in writing, prior to the Closing Date to assume any such liability or obligation.

(h) “Governmental Body” shall mean any federal, state, regional, local or other government; any governmental, regulatory or administrative agency, commission, body, interlocal agency or other authority having jurisdiction to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power affecting the Purchased Assets; and any court or governmental tribunal.

(i) “Knowledge” of a party shall mean the extent of the actual knowledge of any Person who serves as of the date hereof or as of the Closing as a duly elected officer of such party or serves as an executive officer of such party.

(j) “Laws” shall mean all, court decisions, case law, statutes, rules, regulations, ordinances, orders, decrees and codes of Governmental Bodies.

(k) “Lien” shall mean any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise.

(l) “Material Adverse Effect” (x) when used with respect to the all or any portion of the Purchased Assets, shall mean a quantifiable material adverse economic effect on all or such portion of the Purchased Assets and on the operation thereof and (y) when used with respect to an entity, such as Seller or Buyer, means a quantifiable material adverse economic effect on the

business, condition (financial or otherwise) and results of operations of such entity taken as a whole (including any subsidiaries of such entity) or on the ability of such entity to consummate the transactions contemplated hereby.

(m) “Permit” shall mean permits, registrations, licenses, authorizations and other consents or approvals or entitlements issued by any Governmental Bodies.

(n) “Permitted Lien” shall mean (i) the Assumed Liabilities, (ii) mechanic’s, material men’s, workmen’s, repairmen’s and similar Liens arising in the ordinary course of business, either for amounts arising for work and/or services occurring after the Closing Date and not yet due and payable or for amounts being contested in good faith through appropriate proceedings (but Seller shall indemnify and hold Buyer harmless from and against any amounts of such liens for services or material prior to Closing), (iii) Liens for taxes not yet due and payable or for taxes being contested in good faith through appropriate proceedings (but Seller shall pay its prorated share of any such taxes as of Closing), (iv) statutory Liens arising under workers’ compensation legislation, unemployment insurance laws or similar laws or to secure other public or statutory obligations (but Seller shall indemnify and hold Buyer harmless for losses or damages arising on account of any failure of Seller to comply with such laws), (v) such state of facts as an accurate survey would show, provided, that such state of facts, in the aggregate do not have a Material Adverse Effect on the System and without limiting any indemnification by Seller set forth pursuant to Section 12.3 below, (vi) easements, covenants, rights of way, encumbrances and other restrictions and irregularities to title existing as of the date of this agreement which in the aggregate, do not have a Material Adverse Effect on the System and which have been recorded in the real estate records of the county in which real property is located, but without limiting any indemnification by Seller set forth pursuant to Section 12.3 below; (vii) rights reserved to or vested in any Governmental Body, by the terms of any franchise, grant, license or provision of Law, to purchase, condemn, appropriate or recapture or designate a purchaser of the real property, (viii) rights reserved to or vested in any Governmental Body to control or regulate the use of the real property or to use the real property in any manner, in each case as may be set forth in any zoning and land use regulation and (ix) other non-monetary Liens individually, or in the aggregate, which do not interfere with or impair, in any material respect, the present operation of the System but without limiting any indemnification by Seller set forth pursuant to Section 12.3 below.

(o) “Person” shall mean any individual, sole proprietorship, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

(p) “Purchased Assets” shall mean and include any and all of each Seller’s right, title and interest in and to the business, properties, goods, assets and rights of any kind, whether tangible or intangible, real or personal and constituting, or used or useful in connection with, or related to, the operation of the portion(s) of the Systems owned directly or indirectly by or for each Seller or in which each Seller has any interest, including without limitation all of each Seller’s right, title and interest in:

(i) the assets identified on the revised inventory delivered by Seller to Buyer on _____, 2009, a copy of which is attached hereto as Exhibit C;

(ii) the 69 kV Transmission Line;

(iii) All electric utility poles, attachments, conductors, equipment, substation and switch yard facilities including all land the stations utilize located near 770 North 1400 West Hildale UT, including the underlying property interests, with the exception of the generator stepup transformers and the associated lowside wiring from the transformer to the generator building located inside the substation yard;

(iv) The “stick built” or wooden frame control “building” located inside the metal generator building together with the metal generator building located at the site of the Retained Generating Facility.

(v) The existing 24 and 48 volt DC systems necessary for the operation of the controls and relays associated with the substation located in Hildale, Utah, which DC systems shall remain in operation at all times through and until the complete removal of the Retained Generation Facility;

(vi) All existing substation metering and protective equipment, which shall remain in place and in operation at all times through and until the complete removal of the Retained Generation Facility;

(vii) All electrical distribution system facilities (including all easements, whether recorded or unrecorded, arising by agreement or otherwise by law), including without limitation any and all rights of way, poles, wires, transformers, conductors, switches, meters, metering equipment, and associated facilities necessary and/or desirable for the optimal operation and maintenance of the Systems;

(viii) The existing L&G Prepaid Metering System;

(ix) The laydown or storage yard located in Hildale, Utah and used for the storage and/or other uses in conjunction with electric utility plant and equipment, inventory, or associated goods, including property rights to all lands the yard utilizes, with storage vans, materials, supplies, and spares currently located within the yard.

(x) All Distribution ROW's;

(xi) All meters and metering supplies in stock;

(xii) One service truck used by electric department employees with associated tools and materials, less individual personal hand tools;

(xiii) all amounts held by either Seller as of the Closing Date as a customer security deposit, a customer prepay balance, credit balance(s) held by or owed to any customer of either Seller, and any and all other balances held in trust for any customer of

either Seller on account of payments, deposits, performance security, estimated charges, or similar amounts; and

(xiv) the Purchased Real Property;

provided, that the Purchased Assets shall include all such assets acquired by, and shall not include all such assets disposed of in accordance herewith, by Seller in the ordinary course of business and operation of the System prior to the Closing Date; and provided, further, that the Purchased Assets shall not include any Excluded Assets.

(q) "Purchased Real Property" shall mean all of each Seller's right, title and interest in and to any real property described in any of the Purchased Assets, together with real property described on Exhibit D.

(r) "System Customers" shall mean all electric customers, regardless of class of service, residing in either Hildale or Colorado City, and shall include all customers and/or persons receiving electric service from either of the Systems at the time of closing, or receiving electric service after closing which would have received such service through any portion of the Systems had Sellers, or either of them, continued to operate the Systems.

(s) "System Indebtedness" shall mean any and all indebtedness, liabilities, or obligations arising prior to Closing to any of the Bondholders or to any other person disclosed in writing by Sellers to Buyer prior to Closing and holding any claim under any lien, note, contract, or other obligation for borrowed money or other obligation related in any way to any portion of the Systems.

(t) "UEP" shall mean the United Effort Plan, a common law trust, its trustees beneficiaries, successors and assigns, together with any Person affiliated with UEP.

(u) "Termination Date" shall be June 30, 2009, or such later date as the Parties hereto may agree in writing.

1.2 Index of Other Defined Terms

In addition to those terms defined above, the following terms shall have the respective meanings given thereto in the Sections indicated below:

<u>Defined Term</u>	<u>Section</u>
Agreement	Preamble
Anticipated Wholesale Rate	9.7
Approvals	9.4
Assumed Contracts	2.4(a)
Assumed Liabilities	2.4
Assumption Document	3.3
Bill of Sale	3.2(a)
Buyer	Preamble
Claim Notice	12.6

<u>Defined Term</u>	<u>Section</u>
Colorado City System	Recitals
Closing	3.1
Closing Date	3.1
Comprehensive Franchise Agreement	9.6
Confidential Information	6.4
Deseret G&T	9.7
Deseret Generation Contract	9.7
Excluded Assets	2.3
Escrow Instructions	2.1(b)
Excluded Liabilities	2.5
Hurricane City Release	6.2(b)
Hildale City System	Recitals
Indemnitee	12.5
Indemnified Person	12.3
Indemnitor	12.5(a)
Losses	12.3(a)
Purchase Price	2.1(a)
Reacquired Property	3.2(b)
Related Agreements	4.3
Retained Generating Facility	2.3(d)
Seller(s)	Preamble
Special Warranty Deed	3.2(b)
Systems	Recitals
Third Party Claims	12.5(a)
Transmission Line Conveyance	3.2(c)
UAMPS	9.13

1.3 Certain Interpretive Matters

(a) In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The terms “includes” and “including” shall not be limiting whether or not followed by the words “without limitation.” References to a Section, Article, Exhibit or Schedule shall mean a Section, Article, Exhibit or Schedule of this Agreement, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented and restated through the date as of which such reference is made. References to Laws shall be deemed references to such Laws as they may be amended from time to time.

(b) This Agreement and any documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the parties participated equally in the drafting of the same.

Consequently, the parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable either to this Agreement or such other documents and instruments.

(c) Wherever the consent or approval of any party is required under this Agreement, such consent or approval shall not be unreasonably withheld, unless such consent or approval is to be given by such party at the sole or absolute discretion of such party or is otherwise similarly qualified.

ARTICLE 2. TERMS OF THE TRANSACTION

2.1 Purchase Price

(a) Consideration. As consideration for the purchase and sale of the Purchased Assets, except as adjusted or modified pursuant to the express terms of this Agreement, Buyer shall pay to Seller an amount in cash equal to Three Million Dollars (\$3,000,000) (the "Purchase Price").

(b) Payment. The Purchase Price shall be paid by Buyer in cash by wire transfer of immediately available funds in U.S. dollars to such account(s) as agreed between Buyer and Seller and placed into escrow pursuant to escrow instructions as specified in writing executed by Buyer and Sellers not later than two Business Days prior to the Closing Date. The Purchase Price shall be released from the escrow and disbursed in accordance with the forgoing Escrow Instructions immediately upon Closing.

2.2 Purchased Assets

On the terms and subject to the conditions contained in this Agreement, at the Closing Buyer shall purchase, and each Seller shall sell, convey, assign, transfer and deliver to Buyer the Purchased Assets, but excluding all Excluded Assets.

2.3 Excluded Assets

The Purchased Assets shall not include any of the following assets (the "Excluded Assets"):

(a) all cash and cash equivalents of each Seller on hand and on deposit on the Closing Date with any financial institution;

(b) all securities and any other equity or debt interests or investments in any Person owned by either Seller as of the Closing Date;

(c) all accounts and notes receivable, deposits and prepaid expenses related to the operation of the System and outstanding as of the Closing Date, subject to the terms of Section 6.5(b) below;

(d) the Retained Generating Facility and associated assets identified and described on the attached Exhibit "K" (the "Retained Generating Facility");

(e) all miscellaneous and sundry assets, if any, which are not intended by the Parties to be included in the Purchased Assets and which are fairly included within the general description of those items enumerated in subparagraphs (a) through (e) of this Section 2.3; provided, however, that to the extent of any ambiguity or uncertainty concerning any asset, good, chose in action, account, property, or interest held, used, or otherwise useful for the ownership, operation, maintenance or continued use and enjoyment of the System, then unless and except expressly excluded as an Excluded Asset pursuant to the foregoing subparagraphs (a) through (e) of this Section 2.3, any and all such items shall be deemed to be included in the Purchased Assets.

2.4 Assumed Liabilities

Subject to the terms and conditions set forth in this Agreement, and without limiting in any way the indemnification by Seller set forth in Section 12.3 below, Buyer shall assume, pay, discharge and perform as and when due, only the following obligations and liabilities of Seller (the "Assumed Liabilities"), provided that, unless expressly and specifically enumerated below, no obligation, debt, liability, or similar undertaking of either Seller shall be deemed to be among the Assumed Liabilities:

(a) liabilities and obligations of each Seller arising out of the operation, repair, expansion and maintenance of the System that are required to be performed following the Closing Date which are incurred pursuant to written agreement(s) for necessary maintenance of the Systems and which agreements are disclosed to Buyer prior to the date of this Agreement (together, the "Assumed Contracts"); and

(b) liabilities related to receiving and holding as security for customer accounts any security deposits transferred by either Seller to Buyer pursuant to Section 6.6(a).

2.5 Excluded Liabilities

The parties agree that Buyer shall not assume or become obligated with respect to any of the following obligations or liabilities of Seller (collectively, "Excluded Liabilities"), all of which shall remain the sole responsibility of, and be discharged and performed as and when due by, Sellers and/or each of them:

(a) liabilities or obligations associated with or arising from the Excluded Assets, and liabilities associated with or arising from Seller's obligations under the Related Agreements;

(b) liabilities or obligations arising from: (a) the acquisition, construction, operation, ownership, or maintenance of any portion of the Systems prior to Closing; or (b) the acquisition, construction, operation, ownership, or maintenance of any portion of the Retained Generating Facility;

(c) liabilities, obligations, undertakings, agreements, or arrangements of Sellers (or either of them) to UAMPS or to UEP (no matter when or how they might arise);

(d) liabilities, obligations, undertakings, agreements, or arrangements of Sellers (or either of them) to Bondholders (no matter when or how they might arise); and

(e) liabilities or obligations related to the operation of the System that are incurred or required to be performed prior to the Closing Date, including without limitation, the use and payment for all wholesale power received prior to the Closing Date.

2.6 Meter Reading

Each Seller retains the right to payment from each Seller's customers for electric services rendered by each Seller prior to the Closing; however, any claim to payment for such amounts shall in no wise obligate Buyer for payment thereof, nor shall any such claim result in any Lien upon any Purchased Asset. On the Closing Date (or as close thereto as practicable), Buyer and Seller shall jointly read the meters for each of Seller's customers. Thereafter, each Seller shall be authorized to send final billings to its customers based on such readings and shall be entitled to receive all customer payments for services provided prior to the Closing. Buyer shall use such final readings as its beginning readings for billing purposes. Notwithstanding the foregoing, Buyer and each Seller shall jointly coordinate this final meter reading with their appropriate power suppliers so as to facilitate an orderly conversion of relevant metering information to effect as nearly as possible a "seamless" change in wholesale power suppliers serving power requirements of customers within the System.

ARTICLE 3. CLOSING

3.1 Closing Date

Subject to the terms and conditions hereof, the consummation of the transactions contemplated hereby (the "Closing") shall occur at the offices of Buyer, 1802 South HWY 89, Kanab, Utah 84741 within five Business Days after all of the conditions set forth in Article 9 and Article 10 hereof have been satisfied or waived or at such other place or time as the parties may agree, but in no event later than the Termination Date. The date on which the Closing actually occurs is referred to herein as the "Closing Date." The Closing shall be effective for all other purposes as to the System (and the Purchased Assets and Assumed Liabilities related thereto) at 11:59 p.m. Mountain Time on the Closing Date or at such other time as the parties hereto may mutually designate in writing.

3.2 Closing Deliveries by Sellers

To effect the sale and transfer referred to in Article 2 hereof, each Seller will, at the Closing, execute and deliver or cause to be executed and delivered to Buyer:

(a) one or more Bills of Sale, each in the form attached hereto as Exhibit E, conveying in the aggregate all of the personal property included in the Purchased Assets (the "Bill of Sale");

(b) one or more Special Warranty Deeds, each in the form attached hereto as Exhibit F, conveying in the aggregate all of the Purchased Real Property included in the Purchased Assets (the "Special Warranty Deed"), except that, to the extent any Purchased Real Property is specifically identified and determined by Hildale City and by Buyer to have been acquired by Hildale City from Buyer in conjunction with a transaction which occurred in approximately 1995

(the “Reacquired Property”), then such Reacquired Property need not be included in the Special Warranty Deed delivered by Hildale City, but may instead be conveyed to Buyer from Hildale City pursuant to a quitclaim deed in form and substance reasonably satisfactory to Buyer, which form shall be suitable for recordation in real property records in the State of Utah and shall otherwise generally conform to the manner in which such property was originally conveyed to Hildale City from Buyer;

(c) an Assignment of Right-of-Way, Special Warranty Deed and Bill of Sale, in substantially the form attached hereto as Exhibit G, in recordable form, pursuant to which Hildale City will grant, convey, and assign to Buyer the 69 kV Right-of-Way and the 69 kV Transmission Line (the “Transmission Line Conveyance”);

(d) one or more Owner’s Polic(ies) of Title Insurance in form and substance acceptable to Buyer covering all: (i) Purchased Real Property; and (ii) all transmission line easements. Garkane will be responsible to pay upon Closing, one half of the cost of such Title Insurance as an addition to the amount provided in paragraph 2.1 with the remainder of such cost being borne by Seller.

(e) One or more Assignment of Rights, in substantially the form attached hereto as Exhibit H, pursuant to which each Seller assigns to Buyer certain rights under contracts, agreements, and/or rights to other claims, including without limit claims identified in writing and included in the Purchased Assets; (the “Assignment of Rights”);

(f) an itemized list of all customer security deposit amounts, pre-pay credits, and any other credit balance amounts, the account they are held for, the date such deposit was received by each Seller, and the terms and conditions of refunds due and/or which will become due. Each Seller shall transfer to Buyer all amounts held as contributions in aid of construction and provide an itemized list of all such amounts, the account they are held for, the date such deposit was received by each Seller, terms and conditions of refunds due and/or which will become due, copies of all contracts or documents pertaining to the amount, and the amount of accrued interest if any;

(g) as permitted by applicable Law, a list of Seller’s customers served by the System containing such information as Seller has accumulated in the course of operating the System, without including any requirement that Seller gather any additional information; and

(h) such other instruments as shall be reasonably requested by Buyer to vest in Buyer title in and to the Purchased Assets free and clear from any and all liens or encumbrances (except Permitted Liens) in accordance with the provisions hereof.

3.3 Assumption Document

Upon the terms and subject to the conditions contained herein, at the Closing, Buyer shall deliver to each Seller an instrument of assumption substantially in the form attached hereto as Exhibit I, evidencing Buyer’s assumption of the Assumed Liabilities (the “Assumption Document”).

3.4 Form of Instruments

To the extent that a form of any document to be delivered hereunder is not attached as an Exhibit hereto, such documents shall be in form and substance, and shall be executed and delivered in a manner, satisfactory to Buyer.

3.5 Payment at Closing

Subject to the terms of this Agreement, Buyer shall deliver the Purchase Price into escrow in accordance with Section 2.1(b). Sellers shall indemnify Buyer jointly and severally from and against any and all costs, attorneys fees, damages, liability, or additional expense on account of any dispute or any proceeding related to the Escrow Instructions or the disbursement of any amount(s) placed into escrow pursuant hereto.

3.6 Certificates; Documents

Each Seller and Buyer shall deliver or cause to be delivered the certificates, documents and evidence of satisfaction of conditions and other matters described in Article 9 and Article 10.

3.7 Risk of Loss

From the date hereof through the Closing Date, all risk of loss or damage to the property included in the Purchased Assets shall be borne by each Seller, respectively, and thereafter shall be borne by Buyer. If any portion of the Purchased Assets is destroyed or damaged by fire or any other cause on or prior to the Closing Date, other than use, wear or loss in the ordinary course of business, the appropriate Seller shall give written notice to Buyer as soon as practicable after, but in any event within five days of, discovery of such damage or destruction, the amount of insurance, if any, covering such Purchased Assets and the amount, if any, which either Seller is otherwise entitled to receive as a consequence. In the event of such damage or destruction, Buyer shall accept the Purchased Assets in their destroyed or damaged condition and shall be entitled to the proceeds of any insurance or other proceeds payable with respect to such damaged or destroyed Purchased Assets. Notwithstanding the foregoing, if such damage or destruction has a Material Adverse Effect on the System, then Buyer shall have the option, which shall be exercised by written notice to both Sellers within 10 days after receipt of any Seller's notice or if there is not 10 days prior to the Closing Date, as soon as practicable prior to the Closing Date, of (a) accepting such Purchased Assets in their destroyed or damaged condition in which event Buyer shall be entitled to the proceeds of any insurance or other proceeds payable with respect to such loss or (b) terminating this Agreement in accordance with Section 11.1. If Buyer accepts such Purchased Assets, then after the Closing, any insurance or other proceeds shall belong, and shall be assigned to, Buyer without any reduction in the Purchase Price; otherwise, such insurance proceeds shall belong to each Seller as their respective interests may appear.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers each hereby represent and warrants to Buyer, with respect to itself (and not with respect to the other Seller unless specifically indicated by the context below), as follows, except as set forth in Schedules numbered in relation to the Sections set forth below.

4.1 Power and Authority

Seller has the power and authority to enter into this Agreement and to carry out its duties and obligations contemplated by this Agreement and all other agreements contemplated hereby.

4.2 Authority and Enforceability

The execution, delivery and performance of this Agreement and all other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been duly and effectively authorized by the governing body of each Seller; no other act or proceeding on the part of either Seller is necessary to authorize this Agreement or the transactions contemplated hereby, other than the approval of the electorate of each Seller, which approval was given, as to each Seller, at a general election held November ___, 2008. This Agreement has been duly executed and delivered by each Seller, and this Agreement constitutes a valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

4.3 No Breach or Conflict

Subject to the provisions of Section 4.4 below regarding required Approvals, the execution, delivery and performance by Seller of this Agreement and the Comprehensive Franchise Agreement (collectively the "Related Agreements") and any of the documents, instruments or other items to be delivered at Closing hereunder, does not and will not: (a) contravene any Law affecting or binding Seller, except where such contravention will not have a Material Adverse Effect on the Purchased Assets and will not affect the validity or enforceability of this Agreement and the Related Agreements or the validity of the transactions contemplated hereby and thereby; (b) conflict with or result in a breach of or default (with or without notice or lapse of time or both) under any material agreement or instrument to which Seller is a party or by which it or any of its properties may be affected or bound, the effect of which conflict, breach, or default, either individually or in the aggregate, would be a Material Adverse Effect on the Purchased Assets; or (c) interfere with, contravene, or violate any property right, contract right, expectation, or other enforceable right or privilege of any Person in and to any of the Purchased Assets hereunder, any of the Excluded Assets hereunder, or any portion of the System.

4.4 Approvals

(a) Except as set forth on Schedule 4.4, the execution, delivery and performance by Seller of this Agreement and the Related Agreements do not require the authorization, consent or

approval of any Person that is not a Governmental Body of such a nature that the failure to obtain the same would have a Material Adverse Effect on the System.

(b) Except as set forth on Schedule 4.4, the execution, delivery and performance by Seller of this Agreement and the Related Agreements do not require the authorization, consent, approval, certification, license or order of, or any filing with, any court or Governmental Body of such a nature that the failure to obtain the same would have a Material Adverse Effect on the System.

4.5 Title to Purchased Assets

Seller has good and marketable title to all tangible and intangible personal property and real property included in the Purchased Assets to be sold, conveyed, assigned, transferred and delivered to Buyer by Seller, free and clear of all Liens, except for those created or allowed to be suffered by Buyer and except for any Permitted Liens. All Purchased Assets are owned, either individually or collectively, by the Sellers as of the date hereof and as of the Closing Date, and no third party owns or has any legal or equitable interest in and to any portion of the Purchased Property, except for such liens or encumbrances as constitute Permitted Liens hereunder.

4.6 No Undisclosed Liabilities.

Each Seller has disclosed in writing to Buyer each and every: (a) liability or obligation of such Seller for borrowed money arising from, related to, or in any manner secured by any portion of the Purchased Assets; (b) right, interest and/or title of any Person not a party to this Agreement in or to any portion of any property used and/or useful for the continued operation and maintenance of the System; (c) agreement, understanding, undertaking, arrangement, or condition between either Seller and any Person not a party to this Agreement which would, in any material manner, limit or impair the ability of Buyer to the quiet enjoyment and full, uninterrupted use of any portion of the System from and after the Closing Date.

4.7 Litigation

Except for ordinary routine claims and litigation incidental to the operation of the System, the existence and nature of which have been disclosed to Buyer, there are no actions, suits, claims or proceedings pending, or to the best of Seller's Knowledge, threatened against or affecting the Purchased Assets or relating to the operation of the System, or the execution or consummation of this Agreement, at law or in equity, or before or by any Governmental Body.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents, warrants and covenants to Seller, as of the date hereof, as follows, except as set forth in Schedules numbered in relation to the Sections set forth below.

5.1 Organization and Corporate Power

Buyer is a legal business entity duly formed and validly existing under the Laws of the State of Utah, and is authorized to exercise its powers, rights and privileges and is in good

standing in, the State of Utah and has full power to carry on its business as presently conducted and to own or lease and operate its properties and assets now owned or leased and operated by it and to perform the transactions on its part contemplated by this Agreement and all other agreements contemplated hereby.

5.2 Authority and Enforceability

The execution, delivery and performance of this Agreement and all other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been duly and effectively authorized by the governing board of Buyer; no other act or proceeding on the part of Buyer is necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer, and this Agreement constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

5.3 No Breach or Conflict

Subject to the provisions of Section 5.4 below regarding required Approvals, the execution, delivery and performance by Buyer of this Agreement and the Related Agreements do not: (a) conflict with or result in a breach of any of the provisions of the Articles of Incorporation or Bylaws of Buyer, (b) contravene any Law affecting or binding Buyer or any of its material properties or (c) conflict with or result in a breach of or default under any material agreement or instrument to which Buyer is a party or by which it or any of its properties may be affected or bound.

5.4 Approvals

(a) Except as set forth on Schedule 5.4, the execution, delivery and performance by Buyer of this Agreement and the Related Agreements do not require the authorization, consent or approval of any Person that is not a Governmental Body.

(b) Except as set forth on Schedule 5.4, the execution, delivery and performance by Buyer of this Agreement and the Related Agreements do not require the authorization, consent, approval, certification, license or order of, or any filing with, any court or Governmental Body.

5.5 Litigation

There are no actions, suits, claims or proceedings pending, or to the best of Buyer's Knowledge, threatened against Buyer likely to impair the consummation of the transactions contemplated by this Agreement or otherwise material to Buyer, and Buyer is not aware of facts likely to give rise to such litigation.